

# MAINE STATE LEGISLATURE

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(New Draft of H. P. 2012, L. D. 2193)  
FIRST SPECIAL SESSION

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**ONE HUNDRED AND SEVENTH LEGISLATURE**

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**Legislative Document**

**No. 2330**

H. P. 2258

House of Representatives, March 29, 1976

Reported by Mr. Drigotas from Committee on Taxation. Printed under  
Joint Rules No. 18.

EDWIN H. PERT, Clerk

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**STATE OF MAINE**

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SIX

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**AN ACT to Clarify and Strengthen the Statute Governing Current Use  
Taxation of Farmland.**

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 36 MRSA § 581, as enacted by PL 1971, c. 616, § 8 and as amended by PL 1973, c. 308, § 12, is further amended by adding at the end the following new paragraph:

No penalty shall be assessed upon the withdrawal of land from taxation under this subchapter if the owner applies for and is accepted for classification as farmland or open space land under subchapter II-B, provided that in the event that a penalty is later assessed under section 1112, the period of time that the land was taxed as forest land under this subchapter shall be included for the purposes of establishing the amount of the penalty.

Sec. 2. 36 MRSA c. 105, sub-c. X is enacted to read:

**SUBCHAPTER X**

**FARM PRODUCTIVITY AND OPEN SPACE LAND LAW**

§ 1101. Purpose

It is declared that it is in the public interest to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressures caused by the assessment

thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination.

§ 1102. Definitions

When used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Assessor. "Assessor" means the State Tax Assessor with respect to the unorganized territory and the respective municipal assessors with respect to the organized area.

2. Comprehensive plan. "Comprehensive plan" means a plan of development, including any amendment thereto, prepared or adopted by the planning board.

3. Cropland. "Cropland" means acreage within a farm unit of land in tillage rotation, open land formerly cropped and land in bush fruits.

4. Farmland. "Farmland" means any tract or tracts of land, including woodland and wasteland of at least 10 contiguous acres on which farming or agricultural activities have produced a gross income per year in one of the 2 or 3 of the 5 calendar years preceding the date of application for classification of at least:

A. \$1,000 for 10 acres; and

B. \$100 per acre for each acre over 10, up to a maximum of \$2,000.

Gross income as used in this section includes the value of commodities produced for consumption by the farm household. Any applicant for assessment under this subchapter bears the burden of proof as to his qualification.

5. Farm woodland. "Farm woodland" means the combined acreage within a farm unit of forested land.

6. Open space land. "Open space land" means any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which would:

A. Conserve scenic resources;

B. Enhance public recreation opportunities;

C. Promote game management; or

D. Preserve wildlife.

7. Orchard land. "Orchard land" means the combined acreage within a farm unit of land devoted to the cultivation of trees bearing edible fruit.

8. Pastureland. "Pastureland" means the combined acreage within a farm unit of land devoted to the production of forage plants used for annual production.

9. Planning board. "Planning board" means a planning board created for the purpose of planning in any municipality or the Maine Land Use Regulation Commission in the unorganized territory.

§ 1103. Owner's application

An owner of farmland or open space land may apply for taxation under this subchapter for the calendar year 1978 at his election by filing with the assessor the schedule provided for in section 1109. The election to apply shall require the unanimous consent of all owners of an interest in that farmland or open space land.

§ 1104. Administration; regulations

The Commissioner of Agriculture and the State Assessor shall adopt and amend such rules and regulations as may be reasonable and appropriate to carry out their responsibilities as provided in this subchapter. They may contract with municipal, State and Federal Governments or their agencies to assist in the carrying out of any of their assigned tasks. They are authorized to request such technical assistance from the Department of Finance and Administration as it may be able to provide.

§ 1105. Powers and duties, Commissioner of Agriculture

The Commissioner of Agriculture, in consultation with the Director of the Cooperative Extension Service and the Maine Agricultural Experiment Station shall determine an average 100% productivity value for good cropland, orchard land and pastureland in each county based on the productivity of the land for agricultural purposes and not on its potential for development for purposes other than agriculture. In establishing the average 100% productivity values for each county, the Commissioner of Agriculture may consider, but shall not be limited to, the following factors: Soil types, cash value of typical county crops, length of growing season and accessibility to markets. After the Commissioner of Agriculture has made the foregoing determinations, he shall apply a 10% capitalization rate to the value of the cropland, orchard land and pastureland in each county in order to determine the 10% productivity value.

Following the determination of the average productivity value of good cropland, orchard land and pastureland for each county, the Commissioner of Agriculture shall determine the 100% productivity value for very good and poor land in each classification by applying the following ratios to the 100% productivity values:

	Very good	Good	Poor
Cropland	120	100	80
Orchard land	120	100	80
Pastureland	120	100	80

If the Commissioner of Agriculture determines that the above ratios do not substantially reflect actual relative farmland values in a particular county, he may alter such ratios after notice and public hearing.

The 100% productivity values of farm woodland by county shall be the productivity values established for forest land pursuant to chapter 105, subchapter II-A.

**§ 1106. Powers and duties, State Tax Assessor**

The State Tax Assessor shall also establish recommended current use values by county for each classification of open space land established in section 1102, subsection 6. The municipal assessors shall not be required to use the values recommended, but must be prepared in any appeal to explain their systems or arriving at current use values and shall have the burden of proving the recommended values to be in error with regard to the parcel or parcels of land in question. For the purposes of this section "current use" shall mean the valuation per acre which land would command if it were required to remain henceforth in an open space qualifying use.

**§ 1107. Orders**

The Commissioner of Agriculture or the State Tax Assessor shall hold one or more public hearings, with such reasonable notice to the public as either shall find appropriate, upon the foregoing matters to be determined in sections 1105 and 1106, shall provide for transcripts thereof and shall each issue an order on or before August 1, 1977 and on or before June 1st biennially thereafter. The Commissioner of Agriculture and the State Tax Assessor shall give public notice of such orders by certifying a copy of such orders to the Secretary of State and in such other manner as either determines reasonable.

The State Tax Assessor shall place such orders on file in the Bureau of Taxation and shall certify and transmit such orders to the municipal assessors of each municipality with respect to farmland and open space land therein on or before April 1, 1978, but on or before November 1st for each year thereafter.

**§ 1108. Assessment of tax**

1. Organized areas. The municipal assessors shall adjust the State Tax Assessor's 100% valuations per acre for their county by whatever ratio, or percentage of current just value, is then being applied to other property within the municipality to obtain the assessed values. Commencing April 1, 1978, land in the organized areas subject to taxation under this subchapter shall be taxed at the property tax rate applicable to other property in the municipality, which rate shall be applied to the assessed values so determined. The assessed values determined under this section shall first be reflected in the 1979 State Valuation of Municipalities.

2. Unorganized territory. The State Tax Assessor shall adjust the 100% valuation per acre for each land classification for each county by such ratio or percentage as is then being used to determine the state valuation applicable to other property in the unorganized territory to obtain the assessed values. Commencing April 1, 1978, land in the unorganized territory subject to taxation under this subchapter shall be taxed at the state property tax rate applicable to other property in the unorganized territory, which rate shall be applied to the assessed values so determined.

**§ 1109. Schedule; investigation**

1. Schedule. The owner or owners of farmland subject to taxation under this subchapter shall submit a signed schedule in duplicate, on or before

April 1st of the year preceding that in which such land first becomes subject to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor identifying the land to be taxed hereunder, listing the number of acres of each farmland classification, showing the location of the land in each classification and representing that the land is farmland within the meaning of section 1102, subsection 4. In determining whether such land is farmland, there shall be taken into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith and the extent to which the tracts comprising such land are contiguous. If the assessor finds that the land meets the requirements of section 1102, subsection 4, the assessor shall classify it as farmland and it shall be subject to taxation under this subchapter. The assessor shall file with the register of deeds in the appropriate county on or before June 1st in each year, a list of all parcels of land newly classified under this subchapter. If a parcel of land is classified after such date, the assessor shall file notice of said classification with the register of deeds in the appropriate county within 14 days of said classification. The list filed pursuant to this subsection shall be on a form provided by the State Tax Assessor, shall contain the name of each owner, the date of classification and a short description of each parcel of real estate, together with such other information as the State Tax Assessor may prescribe. This form shall have spaces in which yearly recertification by the assessor can be noted.

2. Provisional classification. The owner of a parcel of land, including woodland and wasteland of at least 10 contiguous acres on which farming or agricultural activities have not produced the gross income required in section 1102, subsection 4 per year for one of the 2 or 3 of the 5 preceding calendar years, may apply for a 2-year provisional classification as farmland by submitting a signed schedule in duplicate, on or before November 1st of the year preceding that for which provisional classification is requested, identifying the land to be taxed hereunder, listing the number of acres of each farmland classification, showing the location of the land in each classification and representing that the applicant intends to conduct farming or agricultural activities upon that parcel. Upon receipt of the schedule, the land shall be provisionally classified as farmland and subjected to taxation under this subchapter. If at the end of the 2-year period, the land does not qualify as farmland under section 1102, subsection 4, the owner shall pay a penalty which shall be an amount equal to the taxes which would have been assessed had the property been assessed at its fair market value on the first day of April for the 2 preceding tax years less the taxes paid on the property over the 2 preceding years and interest at the legal rate from the dates on which those amounts would have been payable.

3. Comprehensive plan. The owner or owners of land included in any area designated as open space land upon any comprehensive plan as finally adopted or any other owner of land who believes that his land falls within the definition of open space land contained in section 1102, subsection 6, shall submit a signed schedule in duplicate on or before November 1st of the year

preceding that in which such land first becomes subject to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor containing a description of the land, a general description of the use to which it is being put and such other information as the assessor may require to aid him in determining whether such land qualifies for such classification. If the land is included in an area designated as open space land on a comprehensive plan as finally adopted, such land shall be classified as open space land and shall be subject to taxation hereunder. If the land is not included in an area designated as open space land on a comprehensive plan as finally adopted, the assessor shall determine that the land falls within the definition of open space land contained in section 1102, subsection 6, and if so, such land shall be classified as open space land and subject to taxation hereunder.

4. Investigation. Within 60 days of receipt of a signed schedule meeting the requirements of this section, the assessor shall notify the landowner of his determinations as to the applicability of this subchapter. If such notification is not given, except for an application for provisional classification as farmland, the assessor shall be deemed to have denied taxation hereunder at that time unless the land was taxed under this subchapter in the preceding year, in which case the assessor shall be deemed to have permitted taxation hereunder.

The assessor or the assessor's duly authorized representative may enter and examine the lands under this subchapter for tax purposes and may examine into any information submitted by the owner or owners.

Upon notice in writing by certified mail, return receipt requested, or by such other method as provides actual notice, any owner or owners shall appear before the assessor at such reasonable time and place as the assessor may designate and answer such questions or interrogatories as the assessor may deem necessary to obtain material information about those lands.

5. Owner obligation. If the owner or owners of any parcel of land subject to taxation under this subchapter fail to submit the schedules under the foregoing provisions of this section or fail to provide information after notice duly received as provided under this section, such owner or owners shall be deemed to have waived all rights of appeal pursuant to section 1117 for the next property tax year, except for the determination that the land is subject to taxation under this subchapter.

It shall be the obligation of the owner or owners to report to the assessor any change of use or change of classification of land subject to taxation hereunder and to file annually by April 1st with the assessor a determination of the gross income realized the previous year from acreage classified as "farmland." If the owner or owners fail to report to the assessor as required by the foregoing paragraph, the assessor may collect such taxes as should have been paid, shall collect the penalty provided in section 1112 and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

6. Recertification. Each year the assessor shall certify any classifications made under this subchapter. If any classified land no longer meets the

requirements of this subchapter, the assessor shall either remove the classification or, if he deems it appropriate, allow the land to have a provisional classification as detailed in subsection 2.

#### § 1110. Reclassification

Land subject to taxes under this subchapter may be reclassified as to land classification by the assessor upon application of the owner with a proper showing of the reasons justifying such reclassification or upon the initiative of the respective assessor where the facts justify same.

#### § 1111. Scenic easements and development rights

Any municipality may, through donation or the expenditure of public funds, accept or acquire scenic easements or development rights for preserving property for the preservation of agricultural farmland or open space land. The term of such scenic easements or development rights must be for a period of at least 10 years.

#### § 1112. Recapture penalty

Any change in use disqualifying land for classification under this subchapter shall cause a penalty to be assessed by the assessors of the municipality in which the land is located, or by the State Tax Assessor if the land is not within a municipality, in addition to the annual tax in the year of disqualification except when the change is occasioned by a transfer resulting from the exercise or the threatened exercise of the power of eminent domain.

Such penalty shall be an amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates: Ten percent for land which has been taxed under this subchapter for 5 years or less, 20% for land which has been taxed under this subchapter for more than 5 years but less than 10 years and 30% for land which has been taxed under this subchapter for 10 years or more.

No penalty shall be assessed at the time of a change of use from one classification of land subject to taxation under this subchapter to another classification of land subject to taxation under this subchapter nor shall any penalty be assessed upon the withdrawal of land from taxation under this subchapter if the owner applies for and is accepted for classification as timberland under subchapter II-A, provided that in the event a penalty is later assessed under subchapter II-A the period of time that the land was taxed as farmland or open space land under this subchapter shall be included for purposes of establishing the amount of the penalty.

#### § 1113. Enforcement provision

There shall be a tax lien to secure the payment of the penalty provided in section 1112. Such a lien may be enforced in the same manner as liens on real estate created by section 552.



**§ 1114. Application**

No person can apply for classification for more than an aggregate total of 15,000 acres under this subchapter. The classification of farmland or open space land hereunder shall continue until the municipal assessor, or State Tax Assessor in the unorganized territory, determine that the land no longer meets the requirements of such classification.

**§ 1115. Sale of a portion of a parcel of land**

Sale of a portion of a parcel of land subject to taxation under this subchapter shall not affect the taxation under this subchapter of the resulting parcels unless they do not meet the minimum acreage requirements of this subchapter. Each resulting parcel shall be taxed to the owners under this subchapter until such parcel is withdrawn from taxation under this subchapter, in which case the penalties provided for in section 1112 shall apply only to the owner of such parcel. If a parcel resulting from such sale is less than the minimum acreage requirement of this subchapter, such parcel shall be considered as withdrawn from taxation under this subchapter as a result of such sale and subject to penalties as provided.

**§ 1116. Reclassification and withdrawal in unorganized territory**

In the case of reclassification or withdrawal of land in the unorganized territory, the State Tax Assessor shall make such supplementary assessments or abatements as may be necessary to carry out this subchapter.

**§ 1117. Appeal from State Tax Assessor or Commissioner of Agriculture**

1. **Petition for reconsideration.** Any person aggrieved by any order of either the State Tax Assessor or the Commissioner of Agriculture under sections 1105 or 1106 may petition him for reconsideration of that order within 30 days of the issuance of that order. If a petition for reconsideration is filed within that period, the State Tax Assessor or the Commissioner of Agriculture shall reconsider the matter and, if the petitioner has so requested in his petition, shall grant that petitioner an oral hearing, shall provide for a transcript thereof and shall give the petitioner at least 15 days' notice of the time and place thereof. For cause shown, the State Tax Assessor or the Commissioner of Agriculture may extend the time for filing of such petition. The State Tax Assessor or the Commissioner of Agriculture may amend or reaffirm his orders or determinations as he sees fit and may order a refund in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid since the changed rates or values. In the event of any change in rates or values, the rates or values as so changed shall remain in effect until the next review period. If the State Tax Assessor fails to give written notice of his decision within 90 days of the filing of a petition for reconsideration, the petition shall be deemed to have been denied and the petitioner may appeal as provided, unless the petitioner shall in writing have consented to further dealy.

2. **Appeal to Superior Court.** Any person aggrieved by the decision upon such petition may, within 30 days after notice thereof from the State Tax Assessor or the Commissioner of Agriculture, or after the petition shall be

deemed to have been denied, appeal therefrom to the Superior Court in the county where the land or any part of the land is located. Notice of the appeal shall be ordered by the court and trial shall be held without jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcripts of the hearing, the transcript of the reconsideration hearing if further evidence was offered, the exhibits thereto and the decision of the assessor. The court's review shall be limited to questions of law and to whether the assessor acted regularly and within the scope of his authority and the assessor's decision shall be final so long as supported by substantial evidence. The court may enter a judgment affirming or nullifying such order in whole or in part, or remanding the cause to the State Tax Assessor or the Commissioner of Agriculture upon such terms as the court may direct; and the court may order the refund, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid since the changed rates or values. In the event of any change in rates or values on appeal, the rates or values as so changed shall remain in effect until the review period. An appeal may be taken to the law court as in other actions.

3. Other persons affected. The State Tax Assessor or the Commissioner of Agriculture or the court, as the case may be, upon receiving a petition for reconsideration or an appeal, shall give public notice of that proceeding by publication for 3 successive days in a newspaper of daily circulation in the county or counties affected and may give such further public notice as the State Tax Assessor or the Commissioner of Agriculture or the court determines reasonable. Any person who may be aggrieved as a result of such a hearing shall be entitled to appear at the hearing and enjoy the same rights to a hearing before the State Tax Assessor or the Commissioner of Agriculture or the court as the person filing the petition or the appeal.

4. Persons aggrieved. A person aggrieved hereunder shall be any person with a legal interest in land subject to the determination, any municipality in which land subject to the determination lies, and the Attorney General of the State of Maine upon the written petition of 10 residents of the State of Maine, if he shall see fit to intervene or appeal, in which event the Attorney General shall be authorized to employ independent counsel to represent such petitioners if he deems it appropriate to do so.

#### § 1118. Appeal from assessor

1. Petition for reconsideration. Any person aggrieved by any determination by an assessor, other than orders pursuant to section 1105, may petition for a reconsideration of that determination. If a petition for reconsideration is filed within that period, the assessor shall reconsider the matter and, if the petitioner has so requested in his petition, shall grant that petitioner an oral hearing and shall give the petitioner at least 15 days' notice of the time and place thereof. For cause shown, the assessor may extend the time for filing of such petition. The assessor may amend or reaffirm his determination as he sees fit and may order a refund, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. If the assessor fails to give written notice of his decision within 90 days of the

filing of a petition for reconsideration, the petition shall be deemed to have been denied and the applicant may appeal as provided, unless the applicant shall in writing have consented to further delay.

2. **Farm and Open Space Appeal Board.** The Farm and Open Space Appeal Board is established to hear appeals from a decision of the State Tax Assessor. The board shall be composed of 3 members. One member shall be selected by the aggrieved landowner, one member shall be selected by the assessors of the municipality in which the land lies and the 3rd member shall be the Commissioner of Agriculture or a person chosen by him. The 2 designated members shall be knowledgeable in farm and open space land values. The board shall select a chairman. Each member shall be compensated for time spent in service on the board and actual expenses incurred from funds available for representing his agency or the aggrieved landowner. Prior to any hearing, the landowner shall pay to the Commissioner of Agriculture a sum of \$25 to assure his appearance at the hearing, which sum shall be refunded to the landowner upon his appearance. The municipality shall pay its share of the costs upon notification of the amount by the Commissioner of Agriculture following the conclusion of the activities of the board. Any amount remaining unpaid may be added to the next state tax levied against that municipality or may be recovered in a civil action brought in the name of the Treasurer of State.

3. **Hearing.** On receipt of an application for review by the Farm and Open Space Appeal Board, the Commissioner of Agriculture shall notify the applicant of the review and shall secure the designation of the 2 other members of the board for the case in question, and with the approval of the board members, designate a time and place for hearing and make such other arrangements for such hearing as may be necessary. The board may summons witnesses, administer oaths, order the production of books, records, papers and instruments and direct the production of any evidence it deems necessary in order to make a decision. The technical rules of evidence shall not apply at such hearings. The decision of the board shall be filed with the Commissioner of Agriculture who shall notify the county commissioners and the assessors of the municipality in question. The assessors of such municipality, upon receipt of such decision, shall record the same and make such abatement or refund, if any, as may be required thereby.

4. **Appeal to Superior Court.** Either party may appeal from the decision of the Farm and Open Space Appeal Board to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

**Sec. 3.** 36 MRSA c. 105, sub-c. II-B, as enacted by PL 1971, c. 548 and as amended, shall be repealed, effective December 31, 1977. The liability of any person for a recapture penalty under subchapter II-B shall not lapse upon its repeal.

#### STATEMENT OF FACT

The substantive changes of the committee's new draft are:

1. Restricts the definition of "farmland" so that in order to qualify the

acreage must yield at least \$1,000 for the first 10 acres and \$100 per acre for each additional acre, up to a maximum of \$2,000.

2. Shifts the responsibility for estimating the productivity of farmland from the State Tax Assessor to the Commissioner of Agriculture.

3. Adds a 10% capitalization rate to the determined value of the cropland, orchard land and pastureland (parallels the "Tree Growth" law).

4. Further defines the meaning of the term "current use."

5. Allows the State Tax Assessor until April 1, 1978 to certify productivity values.

6. Allows future land purchasers notice of classification under this subchapter.

7. Requires persons whose land is classified under this Act to certify each year the gross income the land produced and requires the assessor to recertify each year any classifications.

8. Establishes guidelines for classifying land as farmland (taken from the current law).

9. Allows the current Farmland and Open Space Land Law to remain in effect until the calendar year 1978, when the classification of land under subchapter X becomes possible. Recapture penalties incurred under subchapter II-B shall not lapse upon its repeal.