

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2272, Bill, "An Act to Clarify Eligibility Requirements for the Open Space Land Program"

Amend the bill by inserting after the title the following:

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a number of pending applications for the open space land program must be decided prior to April 1, 1990, based on the new guidelines established in this legislation; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill in section 1 in subsection 6 in the 4th and 5th lines (page 1, lines 9 and 10 in L.D.) by striking out the following: "would provide a significant public benefit by" and inserting in its place the following: 'would provides a public benefit in any of the following areas'

Further amend the bill in section 3 in that part designated "§1106." in the first paragraph in the 6th line (page 2, line 12 in L.D.) by striking out the following: ", based on the particular use the open space serves"

2 Further amend the bill by striking out all of sections 4 and
5 and inserting in their place the following:

4
6 'Sec. 4. 36 MRSA §1109, sub-§3, as amended by PL 1977, c. 467,
§8, is repealed and the following enacted in its place:

8 3. Open space qualification. The owner or owners of land
10 who believe that the owners' land falls within the definition of
12 open space land contained in section 1102, subsection 6 shall
14 submit a signed schedule in duplicate on or before April 1st of
16 the year in which that land first becomes subject to taxation
18 under this subchapter to the assessor on a form prescribed by the
20 State Tax Assessor that must contain a description of the land, a
22 general description of the use to which the land is being put and
24 such other information as the assessor may require to aid in
26 determining whether the land qualifies for such classification.
28 The assessor shall determine whether the land falls within the
30 definition of open space land contained in section 1102,
subsection 6 and, if so, that land must be classified as open
space land and subject to taxation under this subchapter. In
making the determination that the restriction or preservation of
land under open space classification provides a public benefit,
as required in section 1102, subsection 6, the assessor shall
consider all facts and circumstances pertinent to the land and
its vicinity. Factors appropriate to one application may be
irrelevant in determining the public benefit of another
application. A single factor, whether listed below or not, may be
determinative of public benefit. Among the factors to be
considered are:

32 A. The importance of the land by virtue of its size or
34 uniqueness in the vicinity or proximity to extensive
development or comprising an entire landscape feature;

36 B. The likelihood that development of the land would
38 contribute to degradation of the scenic, natural, historic
or archeological character of the area;

40 C. The opportunity of the general public to appreciate
42 significant scenic values of the land;

44 D. The opportunity for regular and substantial use of the
46 land by the general public for recreational or educational
use;

48 E. The importance of the land in preserving a local or
50 regional landscape or resource that attracts tourism or
commerce to the area;

52 F. The likelihood that the preservation of the land as
undeveloped open space will provide economic benefit to the

2 town by limiting municipal expenditures required to service
development;

4 G. Whether the land is included in an area designated as
open space land or resource protection land on a
6 comprehensive plan or in a zoning ordinance or on a zoning
map as finally adopted;

8
10 H. The existence of a conservation easement, other legally
enforceable restriction, or ownership by a nonprofit entity
12 committed to conservation of the property that will
permanently preserve the land in its natural, scenic or open
character;

14
16 I. The proximity of other private or public conservation
lands protected by permanent easement or ownership by
18 governmental or nonprofit entities committed to conservation
of the property;

20 J. The likelihood that protection of the land will
contribute to the ecological viability of a local, state or
22 national park, nature preserve, wildlife refuge, wilderness
area or similar protected area;

24
26 K. The existence on the land of habitat for rare,
endangered or threatened species of animals, fish or plants,
28 or of a high quality example of a terrestrial or aquatic
community;

30 L. The consistency of the proposed open space use with
public programs for scenic preservation, wildlife
32 preservation, historic preservation, game management or
recreation in the region;

34
36 M. The identification of the land or of outstanding natural
resources on the land by a legislatively mandated program,
38 on the state, local or federal level, as particular areas,
parcels, land types or natural resources for protection
40 including, but not limited to, the Register of Critical
Areas under Title 5, chapter 312; the laws governing
42 wildlife sanctuaries and management areas under Title 12,
sections 7651 and 7652; the laws governing the State's
44 rivers under Title 12, chapter 200; the natural resource
protection laws under Title 38, chapter 3, subchapter I,
46 article 5-A; and the Maine Coastal Barrier Resources Systems
under Title 38, chapter 21; or

48 N. Whether the land contains historic or archeological
resources listed in the National Register of Historic Places
50 or is determined eligible for such a listing by the Maine
Historic Preservation Commission, either in its own right or
52 as contributing to the significance of an adjacent historic

2 or archeological resource listed, or eligible to be listed,
3 in the National Register of Historic Places.

4 In the event that any parcel of land, for which the owner or
5 owners are seeking classification as open space, contains any
6 principal or accessory structures or any substantial improvements
7 that are inconsistent with the preservation of the land as open
8 space, the owner or owners in their schedule shall exclude from
9 their application for classification as open space a parcel of
10 land containing those buildings or improvements at least
11 equivalent in size to the state minimum lot size as prescribed by
12 Title 12, section 4807-A, or by the zoning ordinances or zoning
13 map pertaining to the area in which the land is located,
14 whichever is larger.

15 **Sec. 5. 36 MRSA §1109, sub-§7** is enacted to read:

16 7. Transition. Municipalities with land already classified
17 as open space under this subchapter shall notify the owner or
18 owners of any such land, on or before January 1, 1991, that they
19 must reapply for open space classification on the land and must
20 meet the new public benefit test to qualify for
21 reclassification. If an owner who has been notified in
22 accordance with this section fails to reapply on or before April
23 1, 1991, the land is deemed to have been voluntarily withdrawn
24 from classification and the appropriate recapture penalty
25 provided in section 1112 applies. If land, for which a
26 reapplication is timely filed, is determined to have failed to
27 meet the open space public benefit test required by this
28 subchapter, the land is removed from classification as of April
29 1, 1991 and no penalty may be imposed.

30 **Sec. 6. 36 MRSA §1112, 3rd ¶**, as amended by PL 1989, c. 555,
31 §19, is further amended to read:

32 No A penalty may not be assessed at the time of a change of
33 use from the farmland classification of land subject to taxation
34 under this subchapter to the open space classification of land
35 subject to taxation under this subchapter. No A penalty may not
36 be assessed upon the withdrawal of open space land from taxation
37 under this subchapter if the owner applies for and is accepted
38 for classification as timberland under subchapter II-A. There
39 also is no penalty imposed when land classified as timberland is
40 accepted for classification as open space land. A penalty may
41 not be assessed upon withdrawal of open space land from taxation
42 under this subchapter, or from timberland taxation under
43 subchapter II-A, if the owner applies for and is accepted for
44 classification as farmland under this subchapter. The recapture
45 penalty for withdrawal from farmland classification within 10
46 years of a transfer from either open space tax classification or
47 timberland tax classification is the same imposed on withdrawal
48 from either open space or timberland classification.

1 from the prior tax classification, open space or tree growth.
2 The recapture penalty for withdrawal from farmland classification
3 more than 10 years after such a transfer will be the regular
4 farmland recapture penalty provided for in this section. In the
5 event a penalty is later assessed under subchapter II-A, the
6 period of time that the land was taxed as farmland or as open
7 space land under this subchapter shall must be included for
8 purposes of establishing the amount of the penalty.

10 **Sec. 7. 36 MRSA §1115, as enacted by PL 1975, c. 726, §2, is**
11 **amended to read:**

12 **§1115. Transfer of portion of parcel of land**

13
14 Sale Transfer of a portion of a parcel of land farmland
15 subject to taxation under this subchapter shall does not affect
16 the taxation under this subchapter of the resulting parcels
17 unless they do not meet the minimum acreage requirements of this
18 subchapter. Transfer of a portion of a parcel of open space land
19 subject to taxation under this subchapter does not affect the
20 taxation under this subchapter of the resulting parcels unless
21 either or both of the parcels no longer provide a public benefit
22 as required in section 1102, subsection 6. Each resulting parcel
23 shall must be taxed to the owners under this subchapter until
24 such a parcel is withdrawn from taxation under this subchapter,
25 in which case, the penalties provided for in section 1112 shall
26 apply only to the owner of such that parcel. If a parcel of
27 farmland resulting from ~~such sale~~ is the transfer of less than
28 the minimum acreage requirement of this subchapter or, if a
29 parcel of open space land resulting from a transfer no longer
30 provides public benefit, such that parcel shall must be
31 considered as withdrawn from taxation under this subchapter as a
32 result of ~~such sale~~ the transfer and subject to penalties as
33 provided.
34

35 **Emergency clause.** In view of the emergency cited in the
36 preamble, this Act takes effect when approved.
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40 **STATEMENT OF FACT**

41
42 This amendment adds an emergency preamble and emergency
43 clause. It also provides a new and expanded list of factors to
44 be considered by a municipal assessor relative to open space
45 qualification, clarifies the penalty provisions for transfer of
46 parcels between various current use classifications and clarifies
47 that removal of a portion of a parcel by transfer, not only sale,
48 may result in penalties.