

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2272

H.P. 1639

House of Representatives, February 1, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative COLES of Harpswell.

Cosponsored by Senator ERWIN of Oxford, Representative JACQUES of Waterville and Senator LUDWIG of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Clarify Eligibility Requirements for the Open Space Land Program.



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

2
4 **Sec. 1. 36 MRSA §1102, sub-§6**, as enacted by PL 1975, c. 726, §2, is amended to read:

6 **6. Open space land.** "Open space land" means any area of
8 land, including state wildlife and management areas, sanctuaries
10 and preserves designated as such in Title 12, the preservation or
restriction of the use of which would provide a significant public benefit by:

- 12 A. Conserve Conserving scenic resources;
- 14 B. ~~Enhance~~ Enhancing public recreation opportunities;
- 16 C. ~~Promote~~ Promoting game management; or
- 18 D. Preserve Preserving wildlife or wildlife habitat.

20 **Sec. 2. 36 MRSA §1105**, as repealed and replaced by PL 1987,
22 c. 728, §4, is amended to read:

24 **§1105. Valuation of farmland and open space land**

26 The municipal assessor, chief assessor or State Tax Assessor
for the unorganized territory shall establish the 100% valuation
per acre based on the current use value of farmland used for
28 agricultural or horticultural purposes and open space land used
for open space purposes. The values established shall must be
30 based on such considerations as farmland rentals,
farmer-to-farmer sales, soil types and quality, commodity values,
32 topography, sales of land subject to permanent conservation
restrictions, sales of land subject to enforceable deed
34 restrictions, enhancement to unclassified appurtenant land areas
under same ownership, before and after appraisals of permanently
36 restricted land in the region and other relevant considerations.
These values shall may not reflect development or market value
38 purposes other than agricultural, horticultural or open space
use. The values shall may not reflect value attributable to road
40 frontage or shore frontage. In developing these values, local
assessors may be guided by the Department of Agriculture, Food
42 and Rural Resources as provided in section 1119 and by the State
Tax Assessor as provided by section 1106.

44 The 100% ~~valuations~~ valuation per acre for farm and-open
46 space woodland within a parcel classified as farmland under this
subchapter shall ~~be~~ is the 100% valuation per acre for each
48 forest type established for each county pursuant to subchapter
II-A. Areas other than woodland, agricultural land,
50 horticultural land or open space located within any parcel of
farmland or open space classified under this subchapter shall ~~be~~
52 are valued on the basis of just value.

2 **Sec. 3. 36 MRSA §1106**, as enacted by PL 1975, c. 726, §2, is
amended to read:

4
6 **§1106. Powers and duties; State Tax Assessor**

8 The State Tax Assessor, working with representatives of
10 municipal officials, appraisers and conservation organizations,
12 shall prepare guidelines for valuation of open space and shall
14 also establish recommended current use values by county for each
16 classification of open space land established in section 1102,
18 subsection 6, based on the particular use the open space serves.
20 The municipal assessors shall are not be required to use the
22 values recommended, but must be prepared in any appeal to explain
24 their systems of 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~~ means the
valuation sale price per acre which that a particular parcel of
land would command in the marketplace if it were required to
remain henceforth in an open space qualifying use. When
applicable, this value is adjusted by the valuation ratio then
current in the municipality.

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

28 **3. Open space qualification.** The owner or owners of land
30 who believe that the owners' land falls within the definition of
32 open space land contained in section 1102, subsection 6, shall
34 submit a signed schedule in duplicate on or before April 1st of
36 the year in which that land first becomes subject to taxation
38 under this subchapter to the assessor on a form to be prescribed
40 by the State Tax Assessor that must contain a description of the
42 land, a general description of the use to which it is being put
44 and such other information as the assessor may require to aid in
46 determining whether the land qualifies for such classification.
48 The assessor shall determine whether the land falls within the
 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 significant
public benefit, as required in section 1102, subsection 6, the
assessor shall consider all facts and circumstances pertinent to
the land and its vicinity. Among the factors to be considered
are:

50 A. The likelihood that development of the land would
52 contribute to degradation of the scenic, natural, historic
 or archeological character of the area;

- 2 B. The opportunity of the general public to appreciate
significant scenic values of the land;
- 4 C. The opportunity for regular and substantial use of the
land by the general public for recreational or educational
6 use;
- 8 D. The importance of the land in preserving a local or
regional landscape or resource that attracts tourism or
10 commerce to the area;
- 12 E. Whether the land is included in an area designated as
open space land on a comprehensive plan or in a zoning
14 ordinance or on a zoning map as finally adopted;
- 16 F. The existence of a conservation easement, other legally
enforceable restriction, or ownership by a nonprofit entity
18 committed to conservation of the property that will
permanently preserve the land in its natural, scenic or open
20 character;
- 22 G. The proximity of other private or public conservation
lands protected by permanent easement or ownership by
24 governmental or nonprofit entities committed to conservation
of the property;
- 26 H. The likelihood that protection of the land will
contribute to the ecological viability of a local, state or
28 national park, nature preserve, wildlife refuge, wilderness
area or similar protected area;
- 30 I. The existence on the land of habitat for rare,
endangered or threatened species of animals, fish or plants,
32 or of a high quality example of a terrestrial or aquatic
34 community;
- 36 J. The consistency of the proposed open space use with
public programs for scenic preservation, wildlife
38 preservation, historic preservation, game management or
recreation in the region;
- 40 K. The identification of the land or of outstanding natural
resources on the land by a legislatively mandated program,
42 on the state, local or federal level, as particular areas,
44 parcels, land types or natural resources for protection
including, but not limited to, the Register of Critical
46 Areas under Title 5, chapter 312; the laws governing
wildlife sanctuaries and management areas under Title 12,
48 sections 7651 and 7652; the laws governing the State's
rivers under Title 12, chapter 200; the natural resource
50 protection laws under Title 38, chapter 3, subchapter I,

2 article 5-A; and the Maine Coastal Barrier Resources Systems
3 under Title 38, chapter 21; and

4 L. Whether the land contains historic or archeological
5 resources listed in the National Register of Historic Places
6 or is determined eligible for such a listing by the Maine
7 Historic Preservation Commission, either in its own right or
8 as contributing to the significance of an adjacent historic
9 or archeological resource listed, or eligible to be listed,
10 in the National Register of Historic Places.

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

24 **Sec. 5. 36 MRSA §1115**, as enacted by PL 1975, c. 726, §2, is
25 amended to read:

26 **§1115. Sale of portion of parcel of land**
27

28 Sale of a portion of a parcel of land farmland subject to
29 taxation under this subchapter shall does not affect the taxation
30 under this subchapter of the resulting parcels unless they do not
31 meet the minimum acreage requirements of this subchapter. Sale
32 of a portion of a parcel of open space land subject to taxation
33 under this subchapter does not affect the taxation under this
34 subchapter of the resulting parcels unless, because of a change
35 in use on a resulting parcel that causes its removal from
36 classification, preservation or restriction of the other
37 resulting parcel no longer provides a public benefit as required
38 in section 1102, subsection 6. Each resulting parcel shall must
39 be taxed to the owners under this subchapter until such a parcel
40 is withdrawn from taxation under this subchapter, in which case
41 the penalties provided for in section 1112 shall apply only to
42 the owner of such parcel. If a parcel of farmland resulting from
43 such sale is less than the minimum acreage requirement of this
44 subchapter or, if protection or restriction of a parcel of open
45 space land resulting from sale no longer provides public benefit
46 because of a disqualifying change in use in the other resulting
47 parcel, such that parcel shall must be considered as withdrawn
48 from taxation under this subchapter as a result of such the sale
49 or attendant loss of public benefit and subject to penalties as
50 provided.
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STATEMENT OF FACT

This bill addresses the potential for abuse existing in current law by requiring that "public benefit" be derived from preservation of land that otherwise meets the definition of open space in the Maine Revised Statutes, Title 36, section 1102, subsection 6. In order to guide assessors in determining "public benefit," specific guidelines are added to Title 36, section 1109, subsection 3. These guidelines are derived from regulations of the United States Treasury, 26 Code of Federal Regulations, Section 1.170A-14(d)(2), (3), (4)(iv) and (5), used to determine whether a conservation easement provides public benefit. It is intended that no single factor be determinative of public benefit. Factors appropriate to one application may be irrelevant in determining the public benefit of another application. Among the factors enumerated are designation of the land or its features in a governmental policy of preservation, with the intent that the more specific the governmental policy with respect to the land or its particular features, the more likely the governmental decision will establish public benefit. Title 36, section 1115 is amended to prevent owners from continuing to receive the benefits of open space taxation when sales and removal of lots from classification has so reduced the volume, continuity or importance of the remaining restricted parcel that no public benefit is served by its continued protection. Title 36, section 1109, subsection 3 is amended so that portions of land that include buildings or substantial improvements inconsistent with open space preservation are not classified as open space.

This bill also addresses difficulties in valuing open space. Title 36, section 1105 is amended so that the acreage values currently established for open space woodland are uncoupled from the tree growth values. These values have proven to be extremely low in relation to the actual value of permanently restricted open space land and have posed a hardship on municipalities. Section 1105 is also amended to provide local assessors with guidance by the State Tax Assessor based on evolving expertise in the area of appraising restricted land. In lieu of imposing raw land values on towns, Title 36, section 1106 is amended to provide guidelines and recommended values of open space acreage based on the use to which the particular parcel is put. This is similar to Title 36, section 1119, which applies only to farmland valuation.