

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1230

S.P. 399

In Senate, April 8, 1993

An Act to Clarify the Farm and Open Space Tax Law.

(EMERGENCY)

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUTLAND of Cumberland.
Cosponsored by Senators: PEARSON of Penobscot, SUMMERS of Cumberland,
Representatives: COLES of Harpswell, MARSH of West Gardiner, OTT of York, REED of
Falmouth, SPEAR of Nobleboro, TARDY of Palmyra, WALKER of Blue Hill.

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

4 Whereas, the current law provides little guidance on tax
6 rates and is susceptible to inappropriate application and costly
challenges that this Act seeks to remedy; and

8 Whereas, the deadline for applications for current use
10 taxation is April 1st of the taxation year and there is a need
for clarification of the law for the current year; and

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

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

20 **Sec. 1. 36 MRSA §1105**, as amended by PL 1989, c. 748, §2, is
22 further amended to read:

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

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

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

2 **Sec. 2. 36 MRSA §1106**, as amended by PL 1991, c. 508, §1, is
4 repealed.

6 **Sec. 3. 36 MRSA §1106-A** is enacted to read:

8 **§1106-A. Valuation of open space; alternative method**

10 **1. Percentage reductions.** The municipal assessor, chief
12 assessor or State Tax Assessor for the unorganized territory
14 shall value land classified as open space under this subchapter,
16 unless the alternative valuation method described in subsection 3
18 is applied, by reducing the ordinary assessed valuation of the
land, without regard to conservation easement restrictions, as
reduced by the municipal ratio, by the cumulative percentage
reduction for which the land area under classification is
eligible, according to the following.

20 A. All open space land is eligible for a reduction of 20%.

22 B. Permanently protected open space is eligible for the
reduction set in paragraph A and an additional 30%.

24 C. Forever wild open space is eligible for the reduction
set in paragraphs A and B and an additional 20%.

26 D. Public access open space is eligible for the reduction
set in paragraphs A, B and C and an additional 25%.

30 Notwithstanding this subsection, the value of forested open space
land may not be reduced to less than the value it would have
32 under subchapter II-A and the open space valuation may not exceed
the just value of permanently protected property as determined
34 under subchapter V, section 701-A.

36 **2. Eligibility for additional percent reduction.** The
38 following classifications are eligible for additional percent
reductions.

40 A. An area of open space is permanently protected and
42 therefore eligible for an additional cumulative percent
reduction in valuation if the area is subject to
44 restrictions prohibiting building development under a
perpetual conservation easement pursuant to Title 33,
46 chapter 7, subchapter VIII-A or if it is owned and operated
as a preserve by a nonprofit conservation organization and
48 therefore eligible automatically for both permanently
protected and forever wild status.

50 B. An area of open space is forever wild and therefore
52 eligible for another additional cumulative percent reduction
in valuation if it is permanently protected and subject to

2 restrictions that ensure that, in the future, the natural
3 resources on the protected property will remain
4 substantially unaltered, except for fishing or hunting,
5 except for harvesting in the intertidal zone, except to
6 prevent the spread of fire or disease, or except to provide
7 opportunities for low-impact outdoor recreation, nature
8 observation and study; or if it is owned and operated as a
9 preserve by a nonprofit conservation organization.

10 C. An area of open space, whether ordinary or permanently
11 protected, is public access open space and therefore
12 eligible for an additional cumulative percent reduction in
13 valuation if the general public can access it by reasonable
14 means and the applicant agrees to refrain from taking action
15 to discourage or prohibit daytime, nonmotorized and
16 nondestructive public use. The applicant may, but is not
17 obligated as a condition of qualification for public access
18 status to, permit hunting, snowmobiling, overnight use or
19 other more intensive outdoor recreational uses. The
20 applicant, without disqualifying land from treatment as
21 public access open space, may impose temporary or localized
22 public access restrictions in order to protect active
23 habitat of species listed under Title 12, chapter 713,
24 subchapter V or as necessary to prevent destruction or harm
25 to fragile protected natural resources under Title 38,
26 chapter 3, subchapter I, article 5-A.

27 3. Alternative valuation. The assessor is not required to
28 use the statutory valuation method under this section, but must
29 be prepared in any appeal to explain the system of arriving at
30 current use values and has the burden of proving the statutory
31 valuation method to be in error regarding the parcel or parcels
32 of land in question. For the purposes of this section, "current
33 use" means the sale price that the particular open space parcel
34 would command in the marketplace if it were required to remain in
35 an open space qualifying use.

36
37 **Sec. 4. 36 MRSA §1109, sub-§3, as repealed and replaced by PL**
38 **1989, c. 748, §4, is amended by amending the first paragraph to**
39 **read:**

40
41 **3. Open space qualification.** The owner or owners of land
42 who believe that the owner's or owners' land falls within the
43 definition of open space land contained in section 1102,
44 subsection 6 shall submit a signed schedule in duplicate on or
45 before April 1st of the year in which that land first becomes
46 subject to taxation under this subchapter to the assessor on a
47 form prescribed by the State Tax Assessor that must contain a
48 description of the land, a general description of the use to
49 which the land is being put and such other information as the
50 assessor may require to aid in determining whether the land
51 qualifies for such classification and for which valuation

2 categories under section 1106-A the land is eligible. The
3 assessor shall determine whether the land falls within the
4 definition of open space land contained in section 1102,
5 subsection 6 and, if so determined, that land must be classified
6 as open space land and subject to taxation under this
7 subchapter. In making the determination that the restriction or
8 preservation of land under--open-space-classification for which
9 classification is sought provides a public benefit, as required
10 in section 1102, subsection 6, the assessor shall consider all
11 facts and circumstances pertinent to the land and its vicinity.
12 Factors appropriate to one application may be irrelevant in
13 determining the public benefit of another application. A single
14 factor, whether listed below or not, may be determinative of
15 public benefit. Among the factors to be considered are:

16 **Sec. 5. 36 MRSA §1109, sub-§3**, as repealed and replaced by PL
17 1989, c. 748, §4, is amended by adding before the last paragraph
18 a new paragraph to read:

19 Notwithstanding that the restriction or preservation of a
20 particular parcel of land for which classification is sought
21 would provide public benefit under one or more of the factors
22 under this subsection, the assessor is not required to classify
23 the parcel as open space if there is an overriding and clearly
24 delineated public purpose for having the particular parcel
25 devoted to land uses that are inconsistent with its preservation,
26 evidenced by the adoption of a policy by the legislative body of
27 the municipality at the recommendation of the conservation
28 commission, if any, and the municipal reviewing authority before
29 the date of the first application for classification and after
30 substantial planning efforts have been made, including the
31 provision of an adequate opportunity for the public to be heard
32 and due consideration of the applicable conservation concerns
33 raised.

34
35 **Sec. 6. 36 MRSA §1109, sub-§3**, as repealed and replaced by PL
36 1989, c. 748, §4, is amended by amending the last paragraph to
37 read:

38
39 ~~In the event that~~ If any parcel of land, for which the owner or
40 owners are seeking classification as open space, contains any
41 principal or accessory structures or any substantial improvements
42 that are inconsistent with the preservation of the land as open
43 space, the owner or owners in their schedule shall exclude from
44 their application for classification as open space a parcel of
45 land containing those buildings or improvements at least
46 equivalent in size to the state minimum lot size as prescribed by
47 Title 12, section 4807-A, or by the zoning ordinances or zoning
48 map pertaining to the area in which the land is located,
49 whichever is larger; and if any of those buildings or
50 improvements are located within 250 feet of the shore, the owner
51 or owners in their schedule shall exclude from their application,
52

2 as part of the excluded parcel referred to above, the minimum
3 shorefront feet required by the applicable minimum lot standards
4 under Title 38, chapter 3, subchapter I, article 2-B or by the
5 zoning ordinance for the area in which the land is located,
6 whichever is larger. The shore frontage requirement is waived
7 to the extent that the affected shorefront is part of a
8 contiguous shore path or a beach for which there is, or will be,
9 once classified, regular and substantial use by the general
10 public. The shore frontage requirement may be waived at the
11 discretion of the town if it determines that a public benefit
12 will be served by preventing future development near the shore or
13 by securing access for the public on the particular shoreline
14 area that would otherwise be excluded from classification.

15 **Sec. 7. 36 MRSA §1109, sub-§7, as enacted by PL 1989, c. 748,**
16 **§5, is repealed.**

17 **Sec. 8. 36 MRSA §1109, sub-§8 is enacted to read:**

18 **8. Transition; withdrawal.** This subchapter applies to all
19 land classified under this subchapter as of the effective date of
20 this subsection regardless of the date of application or
21 classification; except that, within 2 years of the effective date
22 of this subsection, any owner of land classified as open space
23 may voluntarily withdraw land from classification. If such a
24 withdrawal occurs, it is effective retroactively to April 1st of
25 the year in which the rate changes imposed under this amendment
26 were first applied by the taxing authority and a penalty may not
27 be imposed except for the recapture of the taxes that would have
28 been owed retroactively to the effective date of withdrawal had
29 the land had not been classified under this subchapter, less all
30 taxes that were actually paid during that period, plus interest
31 at the rate set by the town on delinquent taxes during those
32 years. A land area classified as open space under this
33 subchapter that must be removed from classification in order to
34 comply with the minimum shorefront requirement under subsection 3
35 is removed from classification without the imposition of a
36 penalty.

37 **Sec. 9. 36 MRSA §1112, first ¶, as repealed and replaced by PL**
38 **1987, c. 728, §9, is amended to read:**

39 Any change in use disqualifying land for classification
40 under this subchapter shall--cause results in a penalty to be
41 assessed as a supplemental assessment under section 713 by the
42 assessors of the municipality in which the land is located, or by
43 the State Tax Assessor if the land is not within a municipality,
44 in addition to the annual tax in the year of disqualification
45 except when the change is occasioned by a transfer resulting from
46 the exercise or the threatened exercise of the power of eminent
47 domain.
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Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved.

STATEMENT OF FACT

This bill provides solutions to 3 problems in current law:
the absence of available guidelines for the valuation of open
space land, the possibility that an owner of a residence in the
shoreland zone may frustrate the purposes of this law by
classifying as open space the land between the residence and the
shore, and the possibility that a open space classification would
frustrate an overriding and clear local policy encouraging more
intensive uses for the land.