

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1441

S.P. 439

In Senate, March 5, 2001

An Act to Provide Private Landowners Incentives for Conservation and Public Access.

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 KILKELLY of Lincoln.
Cosponsored by Representative DUNLAP of Old Town and
President MICHAUD of Penobscot, Senator SMALL of Sagadahoc, Representatives:
ETNIER of Harpswell, GREEN of Monmouth, KOFFMAN of Bar Harbor, McLAUGHLIN of
Cape Elizabeth, NASS of Acton, Speaker SAXL of Portland.

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

2
4 **Sec. 1. 36 MRSA §1102, sub-§6**, as amended by PL 1989, c. 748, §1, is further amended to read:

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

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

20 **Sec. 2. 36 MRSA §1102, sub-§10** is enacted to read:

22 **10. Wildlife habitat open space.** "Wildlife habitat open
24 space" means an area of open space land that has on it important:

26 A. Wildlife habitat and is designated by the Department of
Inland Fisheries and Wildlife as important wildlife habitat
or as a resource protection area in a comprehensive plan,
28 zoning ordinance or zoning map;

30 B. Habitat for the life cycle of any species of wildlife as
identified by the Department of Inland Fisheries and
32 Wildlife; or

34 C. Natural vegetation communities as identified by the
Department of Conservation.

36 **Sec. 3. 36 MRSA §1106-A, sub-§2, ¶E**, is enacted to read:

38 E. Wildlife habitat open space land is eligible for the
40 reduction set in paragraph A, B, C or D and an additional
25%. The cumulative total of eligible reductions may not
42 reduce the valuation by more than 95%.

44 **Sec. 4. 36 MRSA §1106-A, sub-§3**, as enacted by PL 1993, c.
46 452, §9, is amended to read:

48 **3. Definition of land eligible for additional percentage**
reduction. The following categories of open space land are
50 eligible for the additional percentage reduction set forth in
subsection 2, paragraphs B, C and D and E.

2 A. Permanently protected open space is an area of open
4 space land that is eligible for an additional cumulative
6 percentage reduction in valuation because that area is
8 subject to restrictions prohibiting building development
10 under a perpetual conservation easement pursuant to Title
12 33, chapter 7, subchapter VIII-A or as an open space
14 preserve owned and operated by a nonprofit entity in
16 accordance with section 1109, subsection 3, paragraph H.

18 B. Forever wild open space is an area of open space land
20 that is eligible for an additional cumulative percentage
22 reduction in valuation because it is permanently protected
24 and subject to restrictions or committed to uses by a
26 nonprofit entity in accordance with section 1109, subsection
28 3, paragraph H that ensure that in the future the natural
resources on that protected property will remain
substantially unaltered, except for:

- 20 (1) Fishing or hunting;
- 22 (2) Harvesting shellfish in the intertidal zone;
- 24 (3) Prevention of the spread of fires or disease; or
- 26 (4) Providing opportunities for low-impact outdoor
28 recreation, nature observation and study.

30 C. Public access open space is an area of open space land,
32 whether ordinary, permanently protected or forever wild,
34 that is eligible for an additional cumulative percentage
36 reduction in valuation because public access is by
38 reasonable means and the applicant agrees to refrain from
40 taking action to discourage or prohibit daytime,
42 nonmotorized and nondestructive public use. The applicant
may permit, but is not obligated to permit as a condition of
qualification for public access status, hunting,
snowmobiling, overnight use or other more intensive outdoor
recreational uses. The applicant, without disqualifying
land from status as public access open space, may impose
temporary or localized public access restrictions to:

- 44 (1) Protect active habitat of endangered species
46 listed under Title 12, chapter 713, subchapter V;
- 48 (2) Prevent destruction or harm to fragile protected
natural resources under Title 38, chapter 3, subchapter
I, article 5-A; or

2 (3) Protect the recreational user from any hazardous
area.

4 D. Wildlife habitat open space is an area of open space
6 land identified by the Department of Inland Fisheries and
8 Wildlife or the Department of Conservation that is subject
10 to a written management agreement between the landowner and
12 either appropriate department to ensure that the habitat
14 benefits provided by this land are not lost. Management
agreements may be revised or updated by mutual consent of
both parties at any time. These management agreements must
be renewed at least every 10 years. Wildlife open space
land may be included in a municipal comprehensive plan or an
area zoned for resource protection.

16 **Sec. 5. 36 MRSA §1108, sub-§1**, as amended by PL 1999, c. 731,
Pt. Y, §3, is further amended to read:

18 **1. Organized areas.** The municipal assessors shall adjust
20 the 100% valuations per acre for farmland for their jurisdiction
22 by whatever ratio or percentage of current just value is then
24 being applied to other property within the municipality to obtain
26 the assessed values. For any tax year, the classified farmland
28 value must reflect only the current use value for farm or open
space purposes and may not include any increment of value
reflecting development pressure. Commencing April 1, 1978, land
in the organized areas subject to taxation under this subchapter
must be taxed at the property tax rate applicable to other
property in the municipality, which rate must be applied to the
assessed values so determined. The State Tax Assessor shall make
payments to a municipality by the same method as in section 578,
subsection 1 for all lands enrolled as open space under this
subchapter.

34 **Sec. 6. 36 MRSA §1109, sub-§3, ¶¶M and N**, as enacted by PL
36 1989, c. 748, §4, are amended to read:

38 M. The identification of the land or of outstanding natural
40 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
Areas under Title 5, chapter 312; the laws governing
wildlife sanctuaries and management areas under Title 12,
46 sections 7651 and 7652; the laws governing the State's
rivers under Title 12, chapter 200; the natural resource
48 protection laws under Title 38, chapter 3, subchapter I,
article 5-A; and the Maine Coastal Barrier Resources Systems
under Title 38, chapter 21; or

50

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

10 **Sec. 7. 36 MRSA §1109, sub-§3, ¶O** is enacted to read:

12 O. The written agreement between the landowner and the
14 Department of Inland Fisheries and Wildlife or the
Department of Conservation, for wildlife habitat open space
land.

16 **Sec. 8. 36 MRSA §5219-U** is enacted to read:

18 **§5219-U. Credit for land conveyed for conservation and**
20 **preservation purposes**

22 A taxpayer is allowed a credit against tax imposed by this
Part to be computed and subject to the provisions of this section.

24 **1. Definitions.** As used in this section, unless the
26 context otherwise indicates, the following terms have the
following meanings.

28 A. "Cooperating entity" has the same meaning as in Title 5,
30 section 6209.

32 B. "Interest in real property" means any right in real
34 property, including access to or improvements on the
property, or water, including, but not limited to, fee
36 simple; an easement, including a conservation easement,
provided that the interest complies with the requirements of
38 the United States Internal Revenue Code, Section 170(h);
partial interest; a mineral right; a remainder or future
interest; or other interest or right in real property.

40 C. "Land" means real property, with or without
42 improvements; rights-of-way, water and riparian rights;
easements; privileges and all other rights or interests in
44 any land, relating to or connected with real property.

46 D. "Public access" means that the public's ability to enter
48 onto the land meets the requirements set forth in section
1106-A, subsection 3.

50 **2. Value of credit.** The tax credit allowed under this
section is equal to 40% of the fair market value of any land or
interest in land located in this State that is conveyed for the

2 purpose of open space, natural resource or wildlife conservation
3 or land, agricultural or watershed preservation.

4 A. The taxpayer is allowed an additional credit equal to
5 10% of the fair market value of the donated land or interest
6 in land if the taxpayer allows public access to the land.

8 B. The amount of the credit that may be claimed by a
9 taxpayer may not exceed \$100,000 for individuals and
10 \$250,000 for corporations.

12 C. In any one tax year, the credit used may not exceed the
13 amount of individual or corporate income tax otherwise due.
14 Any portion of the credit that is unused in any one tax year
15 may be carried over for a maximum of 20 consecutive tax
16 years following the tax year in which the credit originated
17 until fully expended.

18 **3. Qualified donations.** Qualified donations include the
19 conveyance in perpetuity of a fee interest in real property or a
20 less-than-fee interest in real property, or a watershed
21 preservation restriction.

24 The use and protection of land or interest in land for open
25 space, natural area protection, wildlife habitat conservation,
26 land preservation, agricultural preservation or similar use and
27 purpose of that property must be ensured in perpetuity.

28 The fee interest or less-than-fee interest must qualify as a
29 charitable contribution deduction under the United States
30 Internal Revenue Code, Section 170(h).

32 Dedications of land for open space to fulfill density
33 requirements to obtain subdivision or building permits are not
34 qualified donations.

36 **4. Fair market value.** The fair market value of qualified
37 donations made under this section must be substantiated by a
38 qualified appraisal.

40 **5. Land recipient.** Qualified donations are eligible for
41 the tax credit if those donations are made to the State or a
42 cooperating entity as that term is defined in Title 5, section
43 6201, subsection 2.

46 **6. Transfer of credit.** A taxpayer claiming a tax credit
47 under this section may transfer, for consideration, all or a
48 portion of any unexpended tax credit that may be available to
49 another taxpayer for use by that other taxpayer, as transferee,
50 to apply as a credit against tax imposed by this Part. Notice of

2 this transfer and the amount of the tax credits transferred in
3 this manner must be filed with the transferee's and transferor's
4 tax returns, pursuant to rules adopted to implement this
5 subsection.

6 7. Limitations. A taxpayer claiming a tax credit under
7 this section may not claim a credit under any similar law for
8 costs related to the same project.

10 8. Use by trust, estate, partnership, limited liability
11 corporation or partnership, limited partnership, subchapter S
12 corporation or other fiduciary. Any tax credits claimed under
13 this section and made by a pass-through tax entity such as a
14 trust, estate, partnership, limited liability corporation or
15 partnership, limited partnership, subchapter S corporation or
16 other fiduciary must be used either by that entity in the event
17 it is the taxpayer on behalf of that entity or by the member,
18 manager, partner, shareholder or beneficiary, as the case may be,
19 in proportion to the member's, manager's, partner's,
20 shareholder's or beneficiary's interest in that entity in the
21 event that income, deductions and tax liability pass through the
22 entity to that member, manager, partner, shareholder or
23 beneficiary. Tax credits under this section may not be claimed
24 by both the entity and the member, manager, partner, shareholder
25 or beneficiary for the same donation.

26 9. Rules. Rules adopted pursuant to this section are
27 routine technical rules as defined in Title 5, chapter 375,
28 subchapter II-A.

30 10. Construction. No part or segment of this section may
31 be interpreted to in any way alter or amend any permit
32 requirements, reporting requirements, allocation procedures or
33 other requirements set forth in any other provision of state law.

36 **Sec. 9. Effective date.** This Act takes effect June 1, 2002.

38 SUMMARY

40 This bill allows a reduction in local property tax
41 assessments for land that is wildlife habitat open space. It
42 also reimburses municipalities for lands enrolled as open space,
43 including wildlife habitat open space.

46 The bill also creates a tax credit for state income taxes
47 for the donation of land or interest in land that is preserved
48 for conservation or public access purposes. The bill stipulates
certain requirements that these donations must meet to ensure

2 that they are bona fide donations and are made in the public
 interest.