

MAINE STATE LEGISLATURE

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L.D. 1138

Date: 3/29/12

(Filing No. H-859)

majority
TAXATION

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 844, L.D. 1138, Bill, "An Act To Prevent Unnecessary Expulsion of Landowners from the Maine Tree Growth Tax Law Program"

Amend the bill by striking out the title and substituting the following:

'An Act To Amend the Maine Tree Growth Tax Law and the Open Space Tax Law'

Amend the bill by inserting after the title and before the enacting clause the following:

'Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 36 MRSA §573, sub-§6-A is enacted to read:

6-A. Residential structure. "Residential structure" means a building used for human habitation as a seasonal or year-round residence. It does not include structures that are ancillary to the residential structure, such as a garage or storage shed.

Sec. 2. 36 MRSA §574-B, as amended by PL 2009, c. 434, §15, is further amended to read:

§574-B. Applicability

An owner of a parcel containing forest land may apply at the landowner's election by filing with the assessor the schedule provided for in section 579, except that this subchapter does not apply to any parcel containing less than 10 acres of forest land. For purposes of this subchapter, a parcel is deemed to include a unit of real estate, notwithstanding that it is divided by a road, way, railroad or pipeline, or by a municipal

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1 or county line. The election to apply requires the written consent of all owners of an
2 interest in a parcel except for the State. For applications submitted on or after August 1,
3 2012, the size of the exclusion from classification under this subchapter for each structure
4 located on the parcel and for each residential structure located on the parcel in shoreland
5 areas is determined pursuant to section 574-C.

6 A parcel of land used primarily for growth of trees to be harvested for commercial
7 use ~~shall be~~ is taxed according to this subchapter, ~~provided that as long as~~ the landowner
8 complies with the following requirements:

9 **1. Forest management and harvest plan.** A forest management and harvest plan
10 must be prepared for each parcel and updated every 10 years. The landowner shall file a
11 sworn statement with the municipal assessor for a parcel in a municipality or with the
12 State Tax Assessor for a parcel in the unorganized territory that a forest management and
13 harvest plan has been prepared for the parcel;

14 **2. Evidence of compliance with plan.** The landowner must comply with the plan
15 developed under subsection 1, and must submit, every 10 years to the municipal assessor
16 in a municipality or the State Tax Assessor for parcels in the unorganized territory, a
17 statement from a licensed professional forester that the landowner is managing the parcel
18 according to schedules in the plan required under subsection 1; ~~and~~

19 **3. Transfer of ownership.** When land taxed under this subchapter is transferred to a
20 new owner, within one year of the date of transfer, the new landowner must file with the
21 municipal assessor or the State Tax Assessor for land in the unorganized territory one of
22 the following:

23 A. A sworn statement indicating that a new forest management and harvest plan has
24 been prepared; or

25 B. A statement from a licensed professional forester that the land is being managed
26 in accordance with the plan prepared for the previous landowner.

27 The new landowner may not harvest or authorize the harvest of forest products for
28 commercial use until a statement described in paragraph A or B is filed with the assessor.
29 A person owning timber rights on land taxed under this subchapter may not harvest or
30 authorize the harvest of forest products for commercial use until a statement described in
31 paragraph A or B is filed with the assessor.

32 Parcels of land subject to section 573, subsection 3, paragraph B or C are exempt from
33 the requirements under this ~~section~~ subsection.

34 For the purposes of this subsection, "transferred to a new owner" means the transfer of
35 the controlling interest in the fee ownership of the land or the controlling interest in the
36 timber rights on the land; and

37 **4. Attestation.** Beginning August 1, 2012, when a landowner is required to provide
38 to the assessor evidence that a forest management and harvest plan has been prepared for
39 the parcel or updated pursuant to subsection 1, or when a landowner is required to
40 provide evidence of compliance pursuant to subsection 2, the landowner must provide an
41 attestation that the landowner's primary use for the forest land classified pursuant to this
42 subchapter is to grow trees to be harvested for commercial use or that the forest land is
43 land described in section 573, subsection 3, paragraphs A, B, C or E. The existence of

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1 multiple uses on an enrolled parcel does not render it inapplicable for tax treatment under
2 this subchapter, as long as the enrolled parcel remains primarily used for the growth of
3 trees to be harvested for commercial use.

4 **Sec. 3. 36 MRSA §574-C** is enacted to read:

5 **§574-C. Reduction of parcels with structures; shoreland areas**

6 If a parcel of land for which an owner seeks classification under this subchapter on or
7 after August 1, 2012 contains a structure for which a minimum lot size is required under
8 state law or by municipal ordinance, the owner in the schedule under section 579 shall
9 apply the following reduction to the land to be valued under this subchapter.

10 **1. Structures.** For each structure located on the parcel for which a minimum lot size
11 is required under state law or by municipal ordinance, the owner in the schedule under
12 section 579 shall exclude from the forest land subject to valuation under this subchapter
13 the area of land in the parcel containing the structure or structures, which may not be less
14 than 1/2 acre.

15 **2. Shoreland areas.** For each residential structure located within a shoreland area,
16 as identified in Title 38, section 435, the owner in the schedule under section 579 shall
17 exclude from the forest land subject to valuation under this subchapter the area of land in
18 the parcel containing the structure or structures, which may not be less than 1/2 acre, and
19 the excluded parcel must include 100 feet of shoreland frontage or the minimum
20 shoreland frontage required by the applicable minimum requirements of the zoning
21 ordinance for the area in which the land is located, whichever is larger. If the parcel has
22 less than 100 feet of shoreland frontage, the entire shoreland frontage must be excluded.
23 This subsection does not apply to a structure that is used principally for commercial
24 activities related to forest products that have commercial value as long as any residential
25 use of the structure is nonrecreational, temporary in duration and purely incidental to the
26 commercial use.

27 **Sec. 4. 36 MRSA §581, sub-§1-A,** as enacted by PL 2009, c. 577, §2, is amended
28 to read:

29 **1-A. Notice of compliance.** No earlier than 185 days prior to a deadline established
30 by section 574-B, if the landowner has not yet complied with the requirements of that
31 section, the assessor must provide the landowner with written notice by certified mail
32 informing the landowner that failure to comply will result in the withdrawal of the
33 property from taxation under this subchapter. The notice, at a minimum, must inform the
34 landowner of the statutory requirements that need to be met to comply with section 574-B
35 and the date of the deadline for compliance and that the consequences of withdrawal
36 could include the assessment of substantial financial penalties against the owner or by
37 which the parcel may be transferred to open space classification pursuant to subchapter
38 10. The notice must also state that if the owner fails to meet the deadline for complying
39 with section 574-B or transferring the parcel to open space classification, a supplemental
40 assessment of \$500 will be assessed and that continued noncompliance will lead to a
41 subsequent supplemental assessment of \$500. If the notice is issued less than 120 days
42 before the deadline, the owner has 120 days from the date of the notice to provide the
43 assessor with the documentation to achieve compliance with section 574-B or transfer the

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parcel to open space classification, and the notice must specify the date by which the owner must comply.

~~At the expiration of the deadline for compliance with section 574-B or 120 days from the date of the notice, whichever is later, if the landowner has failed to meet the requirements of section 574-B, the assessor must withdraw the parcel from taxation under this subchapter and impose a withdrawal penalty under subsection 3.~~

If the landowner fails to provide the assessor with the documentation to achieve compliance with section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 by the deadline specified in the notice, the assessor shall impose a \$500 penalty to be assessed and collected as a supplemental assessment in accordance with section 713-B. The assessor shall send notification of the supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the 2nd notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 and that failure to comply will result in an additional supplemental assessment of \$500 and the landowner will have an additional 6-month period in which to comply with these requirements before the withdrawal of the parcel and the assessment of substantial financial penalties against the landowner.

At the expiration of 6 months, if the landowner has not complied with section 574-B or transferred the parcel to open space classification under subchapter 10, the assessor shall assess an additional \$500 supplemental assessment. The assessor shall send notification of the 2nd supplemental assessment by certified mail and notify the landowner that, no later than 6 months from the date of the notice, the landowner must comply with the requirements of section 574-B or transfer the parcel to open space classification pursuant to subchapter 10 or the land will be withdrawn from the tree growth tax program.

If the landowner has not complied within 6 months from the date of the 2nd supplemental assessment, the assessor shall remove the parcel from taxation under this subchapter and assess a penalty for the parcel's withdrawal pursuant to subsection 3.

This subsection does not limit the assessor from issuing other notices or compliance reminders to property owners at any time in addition to the notice required by this subsection.

Sec. 5. 36 MRSA §1102, sub-§§4-A and 4-B are enacted to read:

4-A. Forest management and harvest plan. "Forest management and harvest plan" means a written document that outlines activities to regenerate, improve and harvest a standing crop of timber. A plan must include the location of water bodies and wildlife habitat as identified by the Department of Inland Fisheries and Wildlife. A plan may include, but is not limited to, schedules and recommendations for timber stand improvement and harvesting plans and recommendations for regeneration activities. A plan must be prepared by a licensed professional forester or a landowner and be reviewed and certified by a licensed professional forester as consistent with sound silvicultural practices.

4-B. Forested land. "Forested land" means land that is used in the growth of trees but does not include ledge, marsh, open swamp, bog, water and similar areas that are unsuitable for growing trees.

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Sec. 6. 36 MRSA §1106-A, sub-§2, ¶E is enacted to read:

E. Managed forest open space land is eligible for the reduction set in paragraphs A, B and D and an additional 10%.

Sec. 7. 36 MRSA §1106-A, sub-§3, as amended by PL 2003, c. 414, Pt. B, §50 and affected by c. 614, §9, is further amended to read:

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

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

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

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

C. Public access open space is an area of open space land, whether ordinary, permanently protected or forever wild, that is eligible for an additional cumulative percentage reduction in valuation because public access is by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, 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:

- (1) Protect active habitat of endangered species listed under Title 12, chapter 925, subchapter 3;
- (2) Prevent destruction or harm to fragile protected natural resources under Title 38, chapter 3, subchapter 1, article 5-A; or
- (3) Protect the recreational user from any hazardous area.

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D. Managed forest open space land is an area of open space land whether ordinary, permanently protected pursuant to paragraph A or public access pursuant to paragraph C containing at least 10 acres of forested land that is eligible for an additional cumulative percentage reduction in valuation because the applicant has provided proof of a forest management and harvest plan. A forest management and harvest plan must be prepared for each parcel of managed forest open space land and updated every 10 years. The landowner must comply with the forest management and harvest plan and must submit every 10 years to the municipal assessor for parcels in a municipality or the State Tax Assessor for parcels in the unorganized territory a statement from a licensed professional forester that the landowner is managing the parcel according to the forest management and harvest plan. Failure to comply with the forest management and harvest plan results in the loss of the additional cumulative percentage reduction under this paragraph for 10 years. The assessor or the assessor's duly authorized representative may enter and examine the forested land and may examine any information in the forest management and harvest plan submitted by the owner. A copy of the forest management and harvest plan must be made available to the assessor to review upon request. For the purposes of this paragraph, "to review" means to see or possess a copy of a forest management and harvest plan for a reasonable amount of time to verify that the forest management and harvest plan exists or to facilitate an evaluation as to whether the forest management and harvest plan is appropriate and is being followed. Upon completion of a review, the forest management and harvest plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

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Sec. 8. 36 MRSA §1112, 3rd ¶, as amended by PL 2011, c. 404, §2, is further amended to read:

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A penalty may not be assessed at the time of a change of use from the farmland classification of land subject to taxation under this subchapter to the open space classification of land subject to taxation under this subchapter. A penalty may not be assessed upon the withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as timberland under subchapter 2-A. There also is no penalty imposed when land classified as timberland is accepted for classification as open space land. A penalty may not be assessed upon withdrawal of open space land from taxation under this subchapter if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this subchapter. A penalty may not be assessed upon withdrawal of land enrolled under the Maine Tree Growth Tax Law if the owner applies for the land to be classified as and the land is accepted for classification as farmland under this chapter. The recapture penalty for withdrawal from farmland classification within 10 years of a transfer from either open space tax classification or timberland tax classification is the same imposed on withdrawal from the prior tax classification, open space or tree growth. The recapture penalty for withdrawal from farmland classification more than 10 years after such a transfer will be the regular farmland recapture penalty provided for in this section. In the event a penalty is later assessed under subchapter 2-A, the period of time that the land was taxed as farmland or as open space land under this subchapter must be included for purposes of establishing the amount of the penalty. The

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1 recapture penalty for withdrawal from open space classification within 10 years of a
2 transfer from tree growth classification occurring on or after August 1, 2012 is the same
3 that would be imposed if the land were being withdrawn from the tree growth
4 classification. The recapture penalty for withdrawal from open space classification more
5 than 10 years after such a transfer will be the open space recapture penalty provided for in
6 this section.

7 **Sec. 9. Unorganized territory property withdrawn between September**
8 **20, 2007 and July 1, 2010.** Any property within the unorganized territory that was
9 withdrawn from classification under the Maine Tree Growth Tax Law between
10 September 20, 2007 and July 1, 2010 and returned to classification under the Maine Tree
11 Growth Tax Law pursuant to Public Law 2009, chapter 577, section 3 is for all purposes
12 deemed not to have been withdrawn from the Maine Tree Growth Tax Law classification
13 during that period of time.'

14 **SUMMARY**

15 This amendment replaces the bill and changes the title. The amendment does the
16 following.

17 1. It provides that, on or after August 1, 2012, an owner seeking classification under
18 the Maine Tree Growth Tax Law program for a parcel of land that contains a structure for
19 which a minimum lot size is required under state law or by municipal ordinance, the
20 owner must exclude from the owner's schedule the area of land containing the structure,
21 which may be no less than 1/2 acre. For a parcel of land that contains a residential
22 structure in a shoreland area, the owner must exclude the area of land containing the
23 structure, which may be no less than 1/2 acre, and the excluded parcel must include 100
24 feet of shoreland frontage or the minimum shoreland frontage required by the applicable
25 minimum requirements of the zoning ordinance for the area in which the land is located,
26 whichever is larger.

27 2. It requires, beginning August 1, 2012, that landowners in the Maine Tree Growth
28 Tax Law program attest at the time of enrollment and at each update of the forest
29 management and harvest plan that the primary use of the enrolled property is commercial
30 timber harvesting or forest land that cannot be excluded from tree growth classification
31 by statute.

32 3. It creates a multiple-step process for notification and imposing penalties when a
33 landowner fails to comply with the requirement to update the forest management and
34 harvest plan every 10 years. The process requires up to 3 notifications sent by certified
35 mail. It allows the assessor to impose a \$500 fine if the landowner misses the initial
36 deadline and subsequent \$500 penalty if the landowner has not met the requirement
37 within 6 months. If the landowner has not complied with the requirement to update the
38 plan or transferred the land to open space classification within an additional 6 months, the
39 land will be withdrawn from the Maine Tree Growth Tax Law program and a penalty
40 assessed pursuant to the Maine Revised Statutes, Title 36, section 581.

41 4. It creates an additional category under the alternative valuation method of open
42 space land assessment providing for an additional reduction of 10% for a landowner who
43 provides and complies with a forest management and harvest plan. It provides that a

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landowner who fails to comply with the plan as required under the open space tax program loses the additional percentage for 10 years.

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5. It requires that, for property transferred from the Maine Tree Growth Tax Law program to the open space tax program and subsequently withdrawn from all current use tax programs entirely, the tree growth withdrawal penalty rather than the open space withdrawal penalty applies for the first 10 years after transfer.

6. It clarifies that any property within the unorganized territory that was withdrawn from classification under the Maine Tree Growth Tax Law between September 20, 2007 and July 1, 2010 and returned to tree growth classification pursuant to Public Law 2009, chapter 577, section 3 is for all purposes deemed not to have been withdrawn from tree growth classification during that period of time.

FISCAL NOTE REQUIRED
(See attached)

R OF S

Approved: 03/28/12 *MRC*



125th MAINE LEGISLATURE

LD 1138

LR 1214(02)

An Act To Prevent Unnecessary Expulsion of Landowners from the Maine Tree Growth Tax Law Program

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-859)
Committee: Taxation
Fiscal Note Required: Yes

Fiscal Note

State Mandate - Exempted
Potential future biennium savings - General Fund

State Mandates

Required Activity

Municipalities are currently required to send a notice by certified mail or personal delivery of any deficiency in complying with the requirements of the Tree Growth Tax Law Program, the deadlines for compliance and the consequences of withdrawal from that program. The bill modifies that requirement and establishes a multiple-step process for notification requiring up to three notices to be delivered by certified mail.

Unit Affected

Municipality

Local Cost

Moderate statewide

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the state from the constitutional requirement to fund 90% of the additional costs.

Fiscal Detail and Notes

The bill imposes additional restrictions that must be satisfied for owners seeking classification of property under the Maine Tree Growth Tax Law program on or after August 1, 2012. It creates a multi-step process for notification and imposes penalties when the owner fails to comply with program requirements, creates an additional category under the alternative valuation method of open space land assessment providing for an additional reduction of 10% for a landowner who provides and complies with a forest management and harvest plan, and requires that the tree growth withdrawal penalty applies rather than the open space withdrawal penalty for the first ten years after a property is transferred from the Tree Growth program to the open space tax program. These changes may lead to a future reduction in acreage enrolled in the Maine Tree Growth Tax Program and an increase in land enrolled under the Open Space Tax Program. This may, over time, lead to reduced property tax revenues for municipalities and reduced General Fund reimbursement to municipalities for revenue lost as a result of the Tree Growth Tax Program. The precise effects on municipal budgets and on required State reimbursements cannot be determined at this time, but based on past experience are estimated by Maine Revenue Services to be relatively small. Any additional administrative costs to Maine Revenue Services can be absorbed within additional resources.