

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1648

H.P. 1060

House of Representatives, April 13, 2023

An Act to Make Changes to the Farm and Open Space Tax Law

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative BOYLE of Gorham.
Cosponsored by Representative ZEIGLER of Montville, Senator LAWRENCE of York and
Representatives: BABIN of Fort Fairfield, GERE of Kennebunkport, Senator: PIERCE of
Cumberland.

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

2 **Sec. 1. 36 MRSA §1102, sub-§1-A** is enacted to read:

3 **1-A. Carbon conservation management plan.** "Carbon conservation management
4 plan" means a written agreement between the landowner and the Department of
5 Agriculture, Conservation and Forestry that describes strategies to be used on a parcel of
6 land at least 10 acres in size to increase carbon storage or improve carbon conservation and
7 that meets the requirements of section 1106-B, subsection 3, paragraph A, subparagraph
8 (1).

9 **Sec. 2. 36 MRSA §1102, sub-§10**, as enacted by PL 2003, c. 619, §1 and amended
10 by PL 2011, c. 657, Pt. W, §5, is further amended to read:

11 **10. Wildlife habitat management plan.** "Wildlife habitat management plan" means
12 land that is subject to a written management agreement between the landowner and either
13 the Department of Inland Fisheries and Wildlife or the Department of Agriculture,
14 Conservation and Forestry to ensure that the habitat benefits provided by the land are not
15 lost and that meets the requirements of section 1106-B, subsection 3, paragraph A,
16 subparagraph (2). Management agreements may be revised or updated by mutual consent
17 of both parties at any time. Management agreements must be renewed at least every 10
18 years. "Wildlife habitat" must also meet one of the following criteria:

19 A. The land is designated by the Department of Inland Fisheries and Wildlife as
20 supporting important wildlife habitat;

21 B. The land supports the life cycle of any species of wildlife as identified by the
22 Department of Inland Fisheries and Wildlife;

23 C. The land is identified by the Department of Agriculture, Conservation and Forestry
24 as supporting a natural vegetation community; or

25 D. The land is designated as a resource protection area in a comprehensive plan, zoning
26 ordinance or zoning map.

27 **Sec. 3. 36 MRSA §1106-A**, as amended by PL 2017, c. 288, Pt. A, §43, is repealed.

28 **Sec. 4. 36 MRSA §1106-B** is enacted to read:

29 **§1106-B. Valuation of open space land**

30 For purposes of this subchapter, open space land is valued according to and subject to
31 the provisions of this section.

32 **1. Open space valuation determined.** The State Tax Assessor shall determine the
33 100% open space valuation for each county by adding the 100% valuation per acre for each
34 forest type for each county obtained pursuant to section 576 and multiplying the sum by
35 2/3.

36 **2. Additional reduction.** A landowner may apply for up to 2 of the following
37 additional reductions in valuation specified in this subsection except that, notwithstanding
38 any provision of law to the contrary, the value of forested open space land may not be
39 reduced to less than the value it would have if enrolled in the Maine Tree Growth Tax Law
40 and the open space valuation may not exceed just value as determined pursuant to section
41 701-A.

1 A. Public access open space is eligible for a 25% reduction in the open space valuation
2 if the landowner agrees to refrain from taking action to discourage or prohibit daytime,
3 nonmotorized and nondestructive public use of that land. The landowner may permit,
4 but is not obligated to permit as a condition of qualification under this paragraph,
5 hunting, snowmobiling, overnight use or other more intensive outdoor recreational
6 uses. The landowner, without disqualifying land under this paragraph, may impose
7 temporary or localized public access restrictions to:

8 (1) Protect active habitat of endangered species listed under Title 12, chapter 925,
9 subchapter 3;

10 (2) Prevent destruction or harm to fragile protected natural resources under Title
11 38, chapter 3, subchapter 1, article 5-A; or

12 (3) Protect a recreational user from any hazardous area.

13 B. Permanently protected open space is eligible for a 25% reduction in the open space
14 valuation. For purposes of this paragraph, "permanently protected open space" is an
15 area of open space land that is subject to restrictions prohibiting building development
16 under a perpetual conservation easement pursuant to Title 33, chapter 7, subchapter 8-
17 A or as an open space preserve owned and operated by a state or federal natural
18 resource agency or a nonprofit entity in accordance with section 1109, subsection 3,
19 paragraph H.

20 C. Open space that is the subject of a wildlife habitat management plan is eligible for
21 a 25% reduction in the open space valuation as long as the requirements of subsection
22 3 are met.

23 D. Open space that is the subject of a carbon conservation management plan is eligible
24 for a 25% reduction in the open space valuation as long as the requirements of
25 subsection 3 are met.

26 **3. Management plans.** A landowner seeking an additional reduction in the open space
27 valuation for a parcel pursuant to subsection 2, paragraph C or D shall comply with this
28 subsection.

29 A. The landowner shall have prepared a carbon conservation management plan or a
30 wildlife habitat management plan for the parcel for which the landowner is seeking an
31 additional reduction pursuant to subsection 2 that complies with the following.

32 (1) For a carbon conservation management plan, the plan must describe strategies
33 to be used on a parcel of land at least 10 acres in size to increase carbon storage or
34 improve carbon conservation. The plan must be signed by a licensed forester or
35 soil scientist and submitted to the Department of Agriculture, Conservation and
36 Forestry for approval. A carbon conservation management plan may be revised or
37 updated by mutual agreement between the landowner and the department. A
38 carbon conservation management plan must be renewed by the landowner at least
39 once every 10 years.

40 (2) For a wildlife habitat management plan, the plan must describe strategies to
41 ensure that the habitat benefits provided by the land are not lost. The plan must be
42 submitted to either the Department of Agriculture, Conservation and Forestry or
43 the Department of Inland Fisheries and Wildlife for approval. Wildlife habitat
44 management agreements may be revised or updated by mutual consent of both

1 parties at any time. A wildlife habitat management agreement must be renewed at
2 least once every 10 years.

3 B. The landowner shall file a sworn statement with the municipal assessor for a parcel
4 in a municipality or with the State Tax Assessor for a parcel in the unorganized territory
5 that a carbon conservation management plan, if seeking an additional reduction under
6 subsection 2, paragraph D, or a wildlife habitat management plan, if seeking an
7 additional reduction under subsection 2, paragraph C, has been prepared for the parcel.

8 C. The landowner shall comply with the relevant management plan prepared pursuant
9 to paragraph A and shall submit every 10 years to the municipal assessor in a
10 municipality or the State Tax Assessor for parcels in the unorganized territory a
11 statement from the state agency with which the agreement was made that the landowner
12 is managing the parcel according to schedules in the plan prepared pursuant to
13 paragraph A.

14 D. When a parcel of land taxed under this subchapter is transferred to a new owner,
15 within one year of the date of transfer, the new landowner must file with the municipal
16 assessor or the State Tax Assessor for land in the unorganized territory one of the
17 following:

18 (1) A sworn statement indicating that a new management plan has been prepared
19 and approved pursuant to paragraph A; or

20 (2) A sworn statement that the land is being managed in accordance with the
21 management plan prepared for the previous landowner.

22 **4. Municipal reimbursement.** The State Tax Assessor shall distribute reimbursement
23 under this subsection to each municipality in proportion to the product of the reduced open
24 space valuation of the municipality multiplied by the property tax burden of the
25 municipality.

26 As used in this subsection, unless the context otherwise indicates, the following terms have
27 the following meanings.

28 A. "Average value of undeveloped land" means the current regional per acre
29 undeveloped land value as determined for state valuation purposes, or the current local
30 per acre undeveloped land value as determined for state valuation purposes, whichever
31 is less.

32 B. "Property tax burden" means the total real and personal property taxes assessed in
33 the most recently completed municipal fiscal year, except the taxes assessed on
34 captured value within a tax increment financing district, divided by the latest state
35 valuation certified to the Secretary of State.

36 C. "Reduced open space valuation" means the difference between the average value
37 of undeveloped land and the average value of classified open space land multiplied by
38 the total number of acres of classified open space lands.

39 D. "Undeveloped land" means rear acreage and unimproved nonwaterfront acreage
40 that is not:

41 (1) Classified under the laws governing a current use program;

42 (2) A base lot; or

1 (3) Wasteland.

2 **Sec. 5. 36 MRSA §1109, sub-§3**, as amended by PL 2011, c. 240, §8 and c. 657,
3 Pt. W, §5, is further amended to read:

4 **3. Open space land qualification.** The owner or owners of land who believe that land
5 is open space land as defined in section 1102, subsection 6 shall submit a signed schedule
6 on or before April 1st of the year in which that land first becomes subject to taxation under
7 this subchapter to the assessor on a form prescribed by the State Tax Assessor that must
8 contain a description of the land, a general description of the use to which the land is being
9 put and other information required by the assessor to aid the assessor in determining
10 whether the land qualifies for classification as open space land and for which of the
11 ~~valuation categories~~ additional reductions set forth in section ~~1106-A~~ 1106-B the land is
12 eligible. The assessor shall determine whether the land is open space land as defined in
13 section 1102, subsection 6 and, if so, that land must be classified as open space land and
14 subject to taxation under this subchapter. In determining whether the restriction of the use
15 or preservation of the land provides a public benefit in one of the areas set forth in section
16 1102, subsection 6, the assessor shall consider all facts and circumstances pertinent to the
17 land and its vicinity. A factor that is pertinent to one application may be irrelevant in
18 determining the public benefit of another application. A single factor, whether listed below
19 or not, may be determinative of public benefit. Among the factors to be considered are:

- 20 A. The importance of the land by virtue of its size or uniqueness in the vicinity or
21 proximity to extensive development or comprising an entire landscape feature;
- 22 B. The likelihood that development of the land would contribute to degradation of the
23 scenic, natural, historic or archeological character of the area;
- 24 C. The opportunity of the general public to appreciate significant scenic values of the
25 land;
- 26 D. The opportunity for regular and substantial use of the land by the general public for
27 recreational or educational use;
- 28 E. The importance of the land in preserving a local or regional landscape or resource
29 that attracts tourism or commerce to the area;
- 30 F. The likelihood that the preservation of the land as undeveloped open space will
31 provide economic benefit to the town by limiting municipal expenditures required to
32 service development;
- 33 G. Whether the land is included in an area designated as open space land or resource
34 protection land on a comprehensive plan or in a zoning ordinance or on a zoning map
35 as finally adopted;
- 36 H. The existence of a conservation easement, other legally enforceable restriction, or
37 ownership by a nonprofit entity committed to conservation of the property that will
38 permanently preserve the land in its natural, scenic or open character;
- 39 I. The proximity of other private or public conservation lands protected by permanent
40 easement or ownership by governmental or nonprofit entities committed to
41 conservation of the property;

- 1 J. The likelihood that protection of the land will contribute to the ecological viability
 2 of a local, state or national park, nature preserve, wildlife refuge, wilderness area or
 3 similar protected area;
- 4 K. The existence on the land of habitat for rare, endangered or threatened species of
 5 animals, fish or plants, or of a high quality example of a terrestrial or aquatic
 6 community;
- 7 L. The consistency of the proposed open space use with public programs for scenic
 8 preservation, wildlife preservation, historic preservation, game management or
 9 recreation in the region;
- 10 M. The identification of the land or of outstanding natural resources on the land by a
 11 legislatively mandated program, on the state, local or federal level, as particular areas,
 12 parcels, land types or natural resources for protection, including, but not limited to, the
 13 register of critical areas under Title 12, section 544-B; the laws governing wildlife
 14 sanctuaries and management areas under Title 12, section 10109, subsection 1 and
 15 sections 12706 and 12708; the laws governing the State's rivers under Title 12, chapter
 16 200; the natural resource protection laws under Title 38, chapter 3, subchapter 1, article
 17 5-A; and the Maine Coastal Barrier Resources Systems under Title 38, chapter 21;
- 18 N. Whether the land contains historic or archeological resources listed in the National
 19 Register of Historic Places or is determined eligible for such a listing by the Maine
 20 Historic Preservation Commission, either in its own right or as contributing to the
 21 significance of an adjacent historic or archeological resource listed, or eligible to be
 22 listed, in the National Register of Historic Places; or
- 23 O. Whether there is a written management agreement between the landowner and the
 24 Department of Inland Fisheries and Wildlife or the Department of Agriculture,
 25 Conservation and Forestry as described in section ~~1102, subsection 10.~~ 1106-B,
 26 subsection 3, paragraph A, subparagraph (1) or (2); or
- 27 P. Whether the land is currently enrolled in the Maine Tree Growth Tax Law.

28 If a parcel of land for which the owner or owners are seeking classification as open space
 29 contains any principal or accessory structures or any substantial improvements that are
 30 inconsistent with the preservation of the land as open space, the owner or owners in their
 31 schedule shall exclude from their application for classification as open space a parcel of
 32 land containing those buildings or improvements at least equivalent in size to the state
 33 minimum lot size as prescribed by Title 12, section 4807-A or by the zoning ordinances or
 34 zoning map pertaining to the area in which the land is located, whichever is larger. For the
 35 purposes of this section, if any of the buildings or improvements are located within
 36 shoreland areas as defined in Title 38, chapter 3, subchapter 1, article 2-B, the excluded
 37 parcel must include the minimum shoreland frontage required by the applicable minimum
 38 lot standards under the minimum guidelines established pursuant to Title 38, chapter 3,
 39 subchapter 1, article 2-B or by the zoning ordinance for the area in which the land is located,
 40 whichever is larger. The shoreland frontage requirement is waived to the extent that the
 41 affected frontage is part of a contiguous shore path or a beach for which there is or will be,
 42 once classified, regular and substantial use by the public. The shoreland frontage
 43 requirement may be waived at the discretion of the legislative body of the municipality if
 44 it determines that a public benefit will be served by preventing future development near the

1 shore or by securing access for the public on the particular shoreland area that would
2 otherwise be excluded from classification.

3 **Sec. 6. 36 MRSA §1114**, as enacted by PL 1975, c. 726, §2, is amended to read:

4 **§1114. Application**

5 ~~No person can apply for classification for more than an aggregate total of 15,000 acres~~
6 ~~under this subchapter.~~ The classification of farmland or open space land ~~hereunder shall~~
7 ~~continue under this chapter continues~~ until the municipal assessor, or State Tax Assessor
8 in the unorganized territory, ~~determine~~ determines that the land no longer meets the
9 requirements of such classification.

10 **Sec. 7. 36 MRSA §1118**, as amended by PL 1993, c. 452, §14, is further amended
11 to read:

12 **§1118. Appeals and abatements**

13 The denial of an application or an assessment made under this subchapter is subject to
14 the abatement procedures provided by section 841. Appeal from a decision rendered under
15 section 841 or a recommended ~~current use value~~ valuation or additional reduction
16 established under section ~~4406-A~~ 1106-B must be to the State Board of Property Tax
17 Review.

18 **Sec. 8. Application.** This Act applies to property tax years beginning on or after
19 April 1, 2024.

20 **SUMMARY**

21 This bill establishes a new method for the valuation of land under the farm and open
22 space tax law. It extends eligibility for a reduced valuation to land managed under a carbon
23 conservation management plan, which is a written agreement between the landowner and
24 the Department of Agriculture, Conservation and Forestry that describes strategies to be
25 used on a parcel of land at least 10 acres in size to increase carbon storage or improve
26 carbon conservation.

27 It removes the requirement that wildlife habitat land meet specific criteria to be eligible
28 for a reduced valuation, such as being designated by the Department of Inland Fisheries
29 and Wildlife as supporting important wildlife habitat or identified by the Department of
30 Agriculture, Conservation and Forestry as supporting a natural vegetation community.
31 Instead, such land is eligible for a reduced valuation if the landowner establishes and
32 complies with a written management agreement between the landowner and either the
33 Department of Inland Fisheries and Wildlife or the Department of Agriculture,
34 Conservation and Forestry to ensure that the habitat benefits provided by the land are not
35 lost.

36 This bill establishes specific criteria for management plans, including requiring them
37 to contain specific strategies for compliance, be sworn to and complied with by the
38 landowner and renewed at least once every 10 years.

39 This bill requires the State Tax Assessor to reimburse municipalities for revenue lost
40 as a result of being enrolled under the farm and open space tax law in a manner similar to
41 the method of reimbursement under the Maine Tree Growth Tax Law.

1 This bill also removes the provision limiting to no more than 15,000 acres the amount
2 of land that may be enrolled by a landowner under the farm and open space tax law.