

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR  
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TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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compliance and are to be collected with interest accruing at the rate set by Title 14, section 1602-A. An appeal of the department's decision to penalize a long-term care facility does not stay the assessment of any penalties or interest as long as the long-term care facility continues to be in violation of any requirement of section 7943.

See title page for effective date.

## CHAPTER 748

H.P. 1639 - L.D. 2272

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

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

**Whereas,** a number of pending applications for the open space land program must be decided prior to April 1, 1990, based on the new guidelines established in this legislation; and

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

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

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

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

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

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

#### §1105. Valuation of farmland and open space land

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 agricultural or horticultural pur-

poses and open space land used for open space purposes. The values established ~~shall~~ must be based on such considerations as farmland rentals, farmer-to-farmer sales, soil types and quality, commodity values, topography, sales of land subject to permanent conservation restrictions, sales of land subject to enforceable deed restrictions, enhancement to unclassified appurtenant land areas under same ownership, before and after appraisals of permanently restricted land in the region and other relevant considerations. These values ~~shall~~ may not reflect development or market value purposes other than agricultural, horticultural or open space use. The values ~~shall~~ may not reflect value attributable to road frontage or shore frontage. In developing these values, local assessors may be guided by the Department of Agriculture, Food and Rural Resources as provided in section 1119 and by the State Tax Assessor as provided by section 1106.

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

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

#### §1106. Powers and duties; State Tax Assessor

The State Tax Assessor, working with representatives of municipal officials, appraisers and conservation organizations, shall prepare guidelines for valuation of open space and shall also establish recommended current use values by county for each classification of open space land established in section 1102, subsection 6. The municipal assessors ~~shall be~~ are required to use the values recommended, but must be prepared in any appeal to explain 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.

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

**3. Open space qualification.** The owner or owners of land who believe that the owners' land falls within the definition of open space land contained in section 1102, subsection 6 shall submit a signed schedule in duplicate on or before April 1st of the year in which that land first

becomes subject to taxation under this subchapter to the assessor on a form prescribed by the State Tax Assessor that must contain a description of the land, a general description of the use to which the land is being put and such other information as the assessor may require to aid in determining whether the land qualifies for such classification. 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 public benefit, as required in section 1102, subsection 6, the assessor shall consider all facts and circumstances pertinent to the land and its vicinity. Factors appropriate to one application may be irrelevant in determining the public benefit of another application. A single factor, whether listed below or not, may be determinative of public benefit. Among the factors to be considered are:

A. The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;

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

C. The opportunity of the general public to appreciate significant scenic values of the land;

D. The opportunity for regular and substantial use of the land by the general public for recreational or educational use;

E. The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;

F. The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;

G. Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;

H. The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic or open character;

I. The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;

J. The likelihood that protection of the land will contribute to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;

K. The existence on the land of habitat for rare, endangered or threatened species of animals, fish or plants, or of a high quality example of a terrestrial or aquatic community;

L. The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management or recreation in the region;

M. The identification of the land or of outstanding natural resources on the land by a legislatively mandated program, on the state, local or federal level, as particular areas, 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, sections 7651 and 7652; the laws governing the State's rivers under Title 12, chapter 200; the natural resource 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

N. Whether the land contains historic or archeological resources listed in the National Register of Historic Places or is determined eligible for such a listing by the Maine 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.

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

**Sec. 5. 36 MRSA §1109, sub-§7 is enacted to read:**

**7. Transition.** Municipalities with land already classified as open space under this subchapter shall notify the owner or owners of any such land, on or before January 1, 1991, that they must reapply for open space classification on the land and must meet the new public benefit test to qualify for reclassification. If an owner who has been notified in accordance with this section fails to

reapply on or before April 1, 1991, the land is deemed to have been voluntarily withdrawn from classification and the appropriate recapture penalty provided in section 1112 applies. If land, for which a reapplication is timely filed, is determined to have failed to meet the open space public benefit test required by this subchapter, the land is removed from classification as of April 1, 1991 and no penalty may be imposed.

**Sec. 6. 36 MRSA §1112, 3rd ¶**, as amended by PL 1989, c. 555, §19, is further amended to read:

¶ 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 and is accepted for classification as timberland under subchapter II-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, or from timberland taxation under subchapter II-A, if the owner applies for and is accepted for classification as farmland under this subchapter. 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 II-A, the period of time that the land was taxed as farmland or as open space land under this subchapter shall must be included for purposes of establishing the amount of the penalty.

**Sec. 7. 36 MRSA §1115**, as enacted by PL 1975, c. 726, §2, is amended to read:

#### §1115. Transfer of portion of parcel of land

¶ Transfer of a portion of a parcel of land farmland subject to taxation under this subchapter shall does not affect the taxation under this subchapter of the resulting parcels unless they do not meet the minimum acreage requirements of this subchapter. Transfer of a portion of a parcel of open space land subject to taxation under this subchapter does not affect the taxation under this subchapter of the resulting parcels unless either or both of the parcels no longer provide a public benefit as required in section 1102, subsection 6. Each resulting parcel shall must be taxed to the owners under this subchapter until such a parcel is withdrawn from taxation under this subchapter; in which case, the penalties provided for in section 1112 shall apply only to the owner of such that parcel. If a parcel of farmland resulting from such sale is the transfer of less than the minimum acreage requirement of this subchapter or, if a parcel of open space land

resulting from a transfer no longer provides public benefit, such that parcel shall must be considered as withdrawn from taxation under this subchapter as a result of such sale the transfer and subject to penalties as provided.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 30, 1990.

## CHAPTER 749

### H.P. 1610 - L.D. 2226

#### An Act to Amend the Laws Governing the Military and Naval Children's Home

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

**Sec. 1. 34-B MRSA §6253**, as enacted by PL 1985, c. 503, §12, is repealed.

**Sec. 2. 34-B MRSA §6253-A** is enacted to read:  
**§6253-A. Bath Children's Home**

1. Chief administrative officer. The chief administrative officer of the Bath Children's Home is the director. The director must have sufficient education and experience to administer a facility providing services to children in need of treatment.

2. Duties of the director. The director shall:

A. Be responsible for the shelter, care and related services of all persons received into or receiving services from the Bath Children's Home; and

B. Have direct supervision, management and control of the grounds, buildings, property, officers and employees of the Bath Children's Home, subject to the approval of the commissioner.

3. Purpose. The purpose of the Bath Children's Home is to provide shelter and care for children of this State who are in need for one or more of the following reasons:

A. Lack of appropriate alternative shelter and care;

B. Potential or actual abuse and neglect; or

C. Family crisis and upheaval.

4. Veterans' preference. Preference in admission to the Bath Children's Home must be given to the children of veterans of this State who have served in wars in which the United States has been involved.