LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

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ONE HUNDRED AND SIXTEENTH LEGISLATURE

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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

2. Unlawful sexual contact is a Class D crime, except that a violation of subsection 1, paragraph C or G is a Class C crime, and a violation of this section when the actor has 2 or more prior Maine convictions for violations of this section is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of an offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. 3. 17-A MRSA §556, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. Incest is a Class D crime, except that a violation of this section when the actor has 2 or more prior Maine convictions for violations of this section, is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of an offense is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

See title page for effective date.

CHAPTER 452

H.P. 907 - L.D. 1222

An Act to Amend the Maine Tree Growth Tax Law and the Farm and Open Space Tax Laws

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

Sec. 1. 36 MRSA §573, sub-§3, ¶C, as amended by PL 1981, c. 711, §3, is further amended to read:

C. Deed restrictions, restrictive covenants or organizational charters ~~which~~ that prevent commercial harvesting of trees or require a primary use of land other than commercial harvesting and ~~which~~ that were effective prior to January 1, 1982; or

Sec. 2. 36 MRSA §573, sub-§3, ¶D, as amended by PL 1981, c. 711, §3, is repealed.

Sec. 3. 36 MRSA §574-B, sub-§1, as amended by PL 1989, c. 637, §4, is further amended to read:

1. Forest management and harvest plan. A forest management and harvest plan has been prepared for the parcel and updated every 10 years. The landowner shall file a sworn statement with the municipal assessor in a municipality or the State Tax Assessor for parcels in the unorganized territory that a management plan has been prepared for the parcel. A landowner with a parcel taxed pursuant to this subchapter on September 30, 1989 has until April 1, 1999~~;~~ to comply with this requirement and until the plan is prepared or April 1, 1999, whichever is earlier, will be subject to the applicability provisions under this section as it existed on April 1, 1982~~;~~.

A landowner with a parcel taxed pursuant to this subchapter for a property tax year beginning before April 1, 1994 when the parcel was less than 100 acres and the sole use of the land was harvesting of trees for personal use shall:

A. By April 1, 1995, file a sworn statement that a revised management plan has been prepared for the parcel of forest land;

B. Apply for classification under the open space laws pursuant to section 1106-A; or

C. Notwithstanding section 581, withdraw from tree growth classification pursuant to this paragraph for the 1994 tax year.

For withdrawal from tree growth classification under this paragraph, the entire parcel subject to that classification in 1993 must be withdrawn from classification for the 1994 tax year. Persons electing to withdraw under this paragraph shall notify the assessor before April 1, 1994 and pay a penalty equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the property was first classified, preceding such withdrawal had such real estate been assessed in each of those years at its fair market value on the date of withdrawal less all taxes paid on that real estate over the preceding 5 years and interest at the legal rate from the date or dates on which those amounts would have been payable. If there is a change in use of the property before April 1, 1999, an additional penalty must be assessed equal to the difference between the back taxes paid under this paragraph and the amount that would have been assessed if the land had been withdrawn on April 1, 1994 under section 581 plus interest at the legal rate from April 1, 1994. The procedure for withdrawal provided in this paragraph is intended to be an alternative to the procedure in section 581;

Sec. 4. 36 MRSA §578, sub-§1, as amended by PL 1989, c. 857, §76, is further amended by amending the 3rd paragraph to read:

In tax years beginning on or after April 1, 1988, the State Tax Assessor shall determine annually the amount of acreage in each municipality that is classified and taxed in accordance with this subchapter. A municipality actually levying and collecting municipal property taxes and within whose boundaries this acreage lies is entitled to annual payments from money ~~so~~ appropriated by the Legislature provided it submits an annual return in accordance with section 383 and it achieves the appropriate minimum assessment ratio described in section 327. For the property tax year based on the status of property on April 1, 1988, the per acre reimbursement amount increases from 15¢ to 24¢. For property tax years based on the status of property on April 1, 1989~~,~~ or thereafter, the per acre reimbursement is 90% of the per acre tax revenue lost as a result of this subchapter. For purposes of this section, the tax lost is the tax that would have been assessed, but for this subchapter, on the classified forest lands if they were assessed according to the undeveloped acreage valuations used in the state valuation then in effect, or according to the current local valuation on undeveloped acreage, whichever is less, minus the tax that was actually assessed on the same lands in accordance with this subchapter. A municipality that fails to achieve the minimum assessment ratio established in section 327 loses 10% of the reimbursement provided by this section for each one percentage point the minimum assessment ratio falls below the ratio established in section 327.

Sec. 5. 36 MRSA §581, 5th ¶, as amended by PL 1977, c. 509, §9, is further amended to read:

~~Such~~ The penalties ~~shall~~ for withdrawal must be paid to the tax collector as additional property taxes upon withdrawal. Penalties may be assessed and collected as supplemental assessments in accordance with section 713-B.

Sec. 6. 36 MRSA §713-B is enacted to read:

§713-B. Penalties assessed as supplemental assessments

Penalties imposed under section 581 or 1112 may be assessed as supplemental assessments pursuant to section 713 regardless of the number of years applicable in determining the penalty.

Sec. 7. 36 MRSA §1105, as amended by PL 1989, c. 748, §2, is further amended to read:

§1105. Valuation of farmland

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 purposes ~~and open space land used for open space purposes~~. The values established 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 may not reflect development or market value purposes other than agricultural~~;~~ or horticultural ~~or open space~~ use. The values 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% valuation per acre for farm woodland within a parcel classified as farmland under this subchapter 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~~;~~ or horticultural land ~~or open space~~ located within any parcel of farmland ~~or open space~~ classified under this subchapter are valued on the basis of just value.

Sec. 8. 36 MRSA §1106, as amended by PL 1991, c. 508, §1, is repealed.

Sec. 9. 36 MRSA §1106-A is enacted to read:

§1106-A. Valuation of open space land

1. Valuation method. For the purposes of this subchapter, the current use value of open space land is the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies under section 1102, subsection 6, adjusted by the certified ratio.

2. Alternative valuation method. Notwithstanding any other provision of law, if an assessor is unable to determine the valuation of open space land under the valuation method in subsection 1, the assessor may value that land under the alternative method in this subsection. The assessor may reduce the ordinary assessed valuation of the land, without regard to conservation easement restrictions and as reduced by the certified ratio, by the cumulative percentage reduction for which the land is eligible according to the following categories.

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

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

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

D. Public access open space land is eligible for the applicable reduction set in paragraph A, B or C and an additional 25%.

Notwithstanding this section, the value of forested open space land may not be reduced to less than the value it would have under subchapter II-A, and the open space land valuation may not exceed just value as required under section 701-A.

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.

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 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 713, subchapter V;

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

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

Sec. 10. 36 MRSA §1109, sub-§3, as repealed and replaced by PL 1989, c. 748, §4, is amended by amending the first paragraph to read:

3. Open space land 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 as open space land and for which valuation categories set forth in section 1106-A the land is eligible. 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~~ for which classification is sought 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:

Sec. 11. 36 MRSA §1109, sub-§3, as repealed and replaced by PL 1989, c. 748, §4, is amended by amending the last paragraph to read:

~~In the event that any~~ If a 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 pre-

scribed 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. For the purposes of this section, if any of the buildings or improvements are located within shoreland areas as defined in Title 38, chapter 3, subchapter I, article 2-B, the excluded parcel must include the minimum shoreland frontage required by the applicable minimum lot standards under the minimum guidelines established pursuant to Title 38, chapter 3, subchapter I, article 2-B or by the zoning ordinance for the area in which the land is located, whichever is larger. The shoreland frontage requirement is waived to the extent that the affected frontage is part of a contiguous shore path or a beach for which there is or will be, once classified, regular and substantial use by the public. The shoreland frontage requirement may be waived at the discretion of the legislative body of the municipality if it determines that a public benefit will be served by preventing future development near the shore or by securing access for the public on the particular shoreland area that would otherwise be excluded from classification.

Sec. 12. 36 MRSA §1112, last ¶, as enacted by PL 1989, c. 555, §19, is amended to read:

For land classified as open space under this subchapter, the penalty ~~shall be~~ is the same as that imposed ~~on tree growth~~ for withdrawal from tree growth classification in section 581 and may be assessed and collected as a supplemental assessment in accordance with section 713-B.

Sec. 13. 36 MRSA §1112, as amended by PL 1989, c. 748, §6, is further amended by adding at the end a new paragraph to read:

Notwithstanding other provisions of this section, an owner of open space land that is classified under this subchapter and withdrawn from classification for the 1994 tax year may elect to withdraw subject to the conditions specified in this paragraph. For withdrawal under this paragraph, the entire parcel subject to open space classification in 1993 must be withdrawn from classification for the 1994 tax year. Persons electing to withdraw land from classification under this paragraph shall notify the assessor before April 1, 1994 and pay a penalty equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the property was first classified, preceding the withdrawal had that real estate been assessed in each of those years at its fair market value on the date of withdrawal less all taxes paid on that real estate over the preceding 5 years and interest at the legal rate from the date or dates on which those amounts would have been payable. If there is a change in use of the property before April 1, 1999, an additional penalty must be assessed equal to the difference between the back taxes paid under this paragraph and the amount that would have been assessed if the land had been withdrawn on April 1, 1994 under this section plus interest at the legal rate from April 1, 1994. The procedure for withdrawal provided in this paragraph is intended to be an alternative to the procedure in other provisions of this section. Assessors shall send an information packet prepared by the State Tax Assessor to all owners of land subject to open space classification as of April 1, 1993.

Sec. 14. 36 MRSA §1118, as amended by PL 1985, c. 764, §20, is further amended to read:

§1118. Appeals and abatements

The denial of an application or an assessment made under this subchapter is subject to the abatement procedures provided by section 841. Appeal from a decision rendered under section 841 or a recommended current use value established under section ~~1106-shall~~ 1106-A must be to the State Board of Property Tax Review.

Sec. 15. 36 MRSA §2724, sub-§2, as amended by PL 1987, c. 497, §43, is further amended to read:

2. Commercial forest land. "Commercial forest land" means land ~~which~~ that is classified or ~~which~~ that is eligible for classification as forest land pursuant to the Maine Tree Growth Tax Law, chapter 105, subchapter II-A, except that "commercial forest land" does not include land described in section 573, subsection 3, paragraph B; or C ~~or D~~ when all commercial harvesting of forest products is prohibited. In determining whether land not classified under the Maine Tree Growth Tax Law is eligible for classification under that law, all facts and circumstances ~~shall~~ must be considered, including whether the landowner is engaged in the forest products business and the land is being used in that business or there is a forest management plan for commercial use of the land or a particular parcel of land has been harvested for commercial purposes within the preceding 5 years.

See title page for effective date.

CHAPTER 453

H.P. 823 - L.D. 1109

An Act to Amend the Sexual Assault Laws

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

Sec. 1. 17-A MRSA §255, sub-§1, ¶F, as amended by PL 1989, c. 401, Pt. A, §6, is further amended to read:

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or