

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
112TH LEGISLATURE  
SECOND REGULAR SESSION

JOINT STANDING COMMITTEE ON  
AGRICULTURE  
ON ITS STUDY OF  
THE MAINE FARM  
AND OPEN SPACE LAW

JANUARY, 1987

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THE MAINE FARM AND OPEN SPACE LAW  
WHAT IT IS AND HOW IT WORKS: BACKGROUND

In 1971, the Maine Legislature enacted the Farm and Open Space Tax Law which allows for valuation of land on its current use as farmland, rather than at its actual or potential fair market value, commonly referred to as "highest and best" use. The law, in effect, creates a special classification for farmland to discourage the forced conversion of farmland to other uses that may occur because of economic pressure generated by increased property tax assessment. Legislative intent was clearly expressed in the purpose section 1101 of Title 36 which reads as follows:

"It is declared that it is in the public interest to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressure caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination."

In order to be eligible for the program, a Maine farmer must own a tract of land which contains at least 10 contiguous acres, and that farmland must produce a gross income per year of \$1,000 for 10 acres and \$100 per acre for each acre over 10, with the total income required not to exceed \$2,000. This income must have been produced in one of the 2 or 3 of the 5 calendar years preceding the date of application for classification. Gross income includes the value of commodities produced for consumption by the farm household.

Once land is classified, it cannot be withdrawn from its special status as protected farmland or open space without incurring a penalty. The penalty shall be an amount equal to one of the following percentages times the difference between the fair market value of the real estate on the date of withdrawal and the 100% valuation of the real estate under this law:

<u>YEARS</u> <u>CLASSIFIED</u>	<u>PERCENTAGE</u>
1 or less	10%
2	10%
3	10%
4	10%
5 or less	10%
6	20%
7	20%
8	20%
9	20%
10	30%
11	29%
12	28%
13	27%
14	26%
15	25%
16	24%
17	23%
18	22%
19	21%
20 or more	20%

Beginning April 1, 1988, the percentage for land classified for 5 years or less shall be 20%; beginning April 1, 1993, the percentage for land classified for 10 years or less shall be 30%.

For more detailed information on the farm and open space problem, consult Property Tax Bulletin No. 18 published by the Bureau of Taxation.

#### Discussion of the Problem:

In the spring of 1986, the Joint Standing Committee on Agriculture requested authority from the Legislative Council to study the Farm and Open Space Law. A major reason for this inquiry was the Committee heard complaints from a few fast growing, small towns who had recently experienced problems with the penalty provisions of the law. But even more important in the thinking of the committee was the question of why Maine farmers are reluctant to classify their land under the Farm and Open Space Program. Presently, less than 5% of the land in farms is classified, and members of the Agriculture Committee wanted to know more about the reasons farmers may have for not participating in the program.

A study subcommittee was formed shortly after the conclusion of the Second Regular Session, and it began its work by reviewing a study done in 1978 by the State Planning Office on the farmland portion of the Farm and Open Space Law. A summary of major findings from the 1978 report acted as a reliable indicator of the conclusions that were to be drawn in the present review. When the report was written almost a

decade ago reporting techniques had already improved dramatically since passage of the law in 1971. In the early years of the program, not all towns reported classified acreage so that as late as 1976 only 15,000 acres of Maine farmland could be identified as protected by the law. In 1977 the figure was 87,000 acres of classified farmland, and the Bureau of Taxation not only thought that use of the law was increasing but also predicted that landowner participation in the program would continue to accelerate in the future. That prediction did not materialize because in 1985 only 75,000 acres of farmland were classified.

It does appear, however, that the same reasons that discouraged farmers from participating in the Farm and Open Space Program in the 70's still deter land classification in the 80's. The contributors to the State Planning Office study concluded that the major reason farmers do not participate is that there is no appreciable tax benefit to be gained in most Maine communities where farmland is commonly assessed at current use value. Only in those Maine communities where development is occurring at a rapid rate does the Farm and Open Space Law appear to offer the farmer the opportunity to realize tax savings and in the process protect farmland from conversion to non-agricultural uses.

On May 27, 1986 the study subcommittee met for the first time in public session and reviewed both the State Planning Office Report and other information from the Bureau of Taxation. Julie Jones from the Office of Policy and Legal Analysis, who is the principal legislative staff person assigned to the Joint Standing Committee on Taxation, attended the meeting to answer questions the study subcommittee members had about the tax aspects of the Farm and Open Space Program. At that meeting a decision was made to specifically invite tax assessors from some of the major municipalities in Maine to a public discussion on June 25, 1986. Invitations were also extended to the Maine Municipal Association, the Bureau of Taxation, the Maine Department of Agriculture, Food and Rural Resources and several farm organizations.

It took no time at all for a clear picture to emerge at that discussion about reasons for the reluctance of farmers to classify their land. Farmers are rational economic beings who realize their land is more valuable on the open market when no restrictions inhibit the possibility for transferring the land from one private owner to another. In the absence of any heavy development pressure causing property taxes to rise and creating the clear and present danger of pushing land out of agricultural use, the farmer maximizes his/her ability to act freely in the economic world by not classifying the land. This freedom of action is especially important to the farmer because unfavorable economic conditions in the farm sector threaten the survival of many family sized operations. Furthermore, the farmer strengthens his position as an economic agent relating to other economic institutions when farm land is not classified

because the capacity to borrow money is largely affected by the condition of the farmer's net worth statement and land values comprise a major part of farm assets. Finally, the farmer avoids altogether the need to account for his or her action to any governmental authority if the land is sold to another party who does not intend to farm, and of course there is no need to pay a penalty.

Farmers also realize that they have a responsibility for stewardship of the land, and many farmers hope to transfer their land holdings to another farmer or to members of the family who may wish to carry on the farm tradition. It would appear, however, that the Farm and Open Space Law does not have much of a role to play in the transfer of farms from one farmer to another or from one generation to another except in high growth areas where development pressure has created the need for agricultural land to be classified under the protection program. Whether farmers use the Farm and Open Space Law more in the future depends on many factors, most of which seem to be more related to the economic viability of agricultural enterprises within the State than to the level of property taxation.

#### SUMMARY AND RECOMMENDATIONS

The study subcommittee discussed reasons why farmers are reluctant to classify their land under the Farm and Open Space Program. A major reason the subcommittee noted is that assessment practices in many rural towns allow for enough flexibility for farm land to be valued at roughly current use levels. The farmer, therefore, owning land in those towns is under no extraordinary pressure to seek tax relief because his or her land is not being taxed with full development potential in mind. Staying outside the restrictions imposed by the Farm and Open Space Program also gives the farmer maximum maneuvering room to sell that land whenever and to whomever he chooses without questions being asked by anyone not involved in the private transaction.

The study subcommittee has recommended two major changes in the law.

1. The first change is to allow farms with land holdings between 5 and 10 acres to classify their land under the program. This change will enable small commercial farms operating in or near urban centers to gain some tax relief while giving those farms support to maintain their land holdings in agricultural production. The income generating requirement for the new category is the stiffest imposed - no less than \$2,500.
2. The second major change is to reduce the rate determining the amount of the recapture penalty. Under current law the percentage rate escalates to 30% at 10 years of classification and then the rate declines a percentage

point a year over the next ten until it drops to 20%. The committee recommends changing the percentage rate from 30% to 20% at the ten year point and then reducing that rate 1% each year until it drops to a minimum 10%.

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§1102. Definitions - Subsection 4

4. Farmland. "Farmland means any tract or tracts of land, including woodland and wasteland of at least ~~10~~ 5 contiguous acres on which farming or agricultural activities have produced a gross income per year in one of the 2 or 3 of the 5 calendar years preceding the date of the application for classification of at least:

A. \$1,000 for tracts containing 10 acres; and 1975, c. 726, §2 (new).

B. \$100 per acre for each acre over 10, with the total income required not to exceed \$2,000, and 1975, c. 726, §2 (new).

C. \$2,500 for a tract containing at least 5 but less than 10 acres.

Gross income as used in this section includes the value of commodities produced for consumption by the farm household. Any applicant for assessment under this subchapter bears the burden of proof as to his qualification. 1975, c. 726, §2 (new).

For purposes of this subchapter, a "tract" means a unit of real estate, even if it is divided by a road, way, railroad or pipeline, or by a municipal or county line.

§1112. Recapture Penalty 2nd Paragraph

Such penalty shall be an amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates: Ten percent for land which has been taxed under this subchapter for 5 years or less, and 20% for land which has been taxed under this subchapter for more than 5 years but less than ~~10~~ 11 years. ~~and 30% for land which has been taxed under this subchapter for 10 years or more.~~ 1975, c. 726, §2.

~~Notwithstanding the percentages specified under the preceding paragraph, beginning April 1, 1988, the penalty shall not be less than 20% and beginning April 1, 1993, the penalty shall not be less than 30%. If the real estate was subject to valuation under this subchapter for more than 10 years prior to the date of withdrawal, the rate, whether calculated under this paragraph or the preceding one, shall be adjusted determined by deducting 1% from ~~30~~ 20% for each full year beyond 10 years that the real estate was subject~~



to valuation under this subchapter prior to the date of withdrawal until a minimum rate of 20 10% is reached in the 20th year. Beyond the 20 year period, the rate shall remain at 10% for real estate subject to valuation under this subchapter. In no event may the penalty be less than the minimum required by the Constitution of Maine, Article IX, Section 8. 1983, c. 400, §§2, 3 (new). (Effective April 1, 1985.)

NEW SECTION

Effective date: The effective date of §1102 sub-§4, is April 1, 1988.

STATEMENT OF FACT

This bill results from the study done by the Agriculture Committee during the interim on the Farm and Open Space Tax Law.

The study subcommittee has recommended 2 major changes in the law.

1. The first change is to allow farms with land holdings between 5 and 10 acres to gain entry into the program. This change will enable small commercial farms operating in or near urban centers to gain some tax relief while at the same time giving those farms more support to maintain their land holdings in agricultural production. The income generating requirement for the new category is the stiffest imposed - no less than \$2,500.

2. The 2nd change is to reduce the rate of the recapture penalty. Under current law, the percentage rate escalates to 30% at 10 years of classification and then the rate declines a percentage point a year over the next 10 years until it drops down to 20%. The committee recommends changing the percentage rate from 30% to 20% at the 10-year point and then reducing that rate 1% each year until it drops back down to a minimum 10%.