STATE OF MAINE
116TH LEGISLATURE

Final Report
of the

SUBCOMMITTEE OF THE JOINT STANDING COMMITTEE ON TAXATION TO REVIEW CHANGES IN TREE GROWTH AND OPEN SPACE LAWS

to the
Joint Standing Committee on Taxation
November 1994

Members:
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INTRODUCTION

Ch. 576, PL 1993 established the Subcommittee of the Joint Standing Committee on Taxation to Review Changes in Tree Growth and Open Space Laws. As its name implies, the subcommittee was charged with making any recommendations necessary to improve the Tree Growth and Open Space Tax Laws.

During the fall of 1994, the subcommittee met 5 times at several locations across the state to gather comments and information about these laws. The subcommittee focused its review of the current requirements of the Tree Growth Tax Law and how it is administered. The subcommittee reviewed a number of potential recommendations which ranged from leaving the law unchanged to repealing it in its entirety.

After considering the information gathered during the review process, the subcommittee has agreed on several recommendations to change the Tree Growth Tax Law. These recommendations are intended to address certain inequities and inconsistencies without significantly disrupting the overall purpose, requirements and administration of the current law.

This report will briefly describe the provisions of the Tree Growth Tax Law, the legislative and funding history of the law and the recommendations decided on by the subcommittee.

DESCRIPTION OF THE TREE GROWTH TAX LAW

The purpose of the Tree Growth Tax Law (36 MRSA §571 et. seq.) is to provide a statewide tax policy which allows forest land to be taxed on the basis of productivity. The current Tree Growth Tax Law is intended to administer a provision in the Maine Constitution (Article IX, section 8) which allows the valuation of certain types of property on the basis of productivity. In essence, the Tree Growth Tax Law allows landowners to have their forested property taxed at a lower rate which accurately reflects the eventual value of the wood products which will be produced or gathered from these properties. This lower tax rate allows the landowner to grow forest products over time without being subject to the immediate and inequitable financial pressures represented by the fair market value if that property were to be used in a different and more developed fashion.

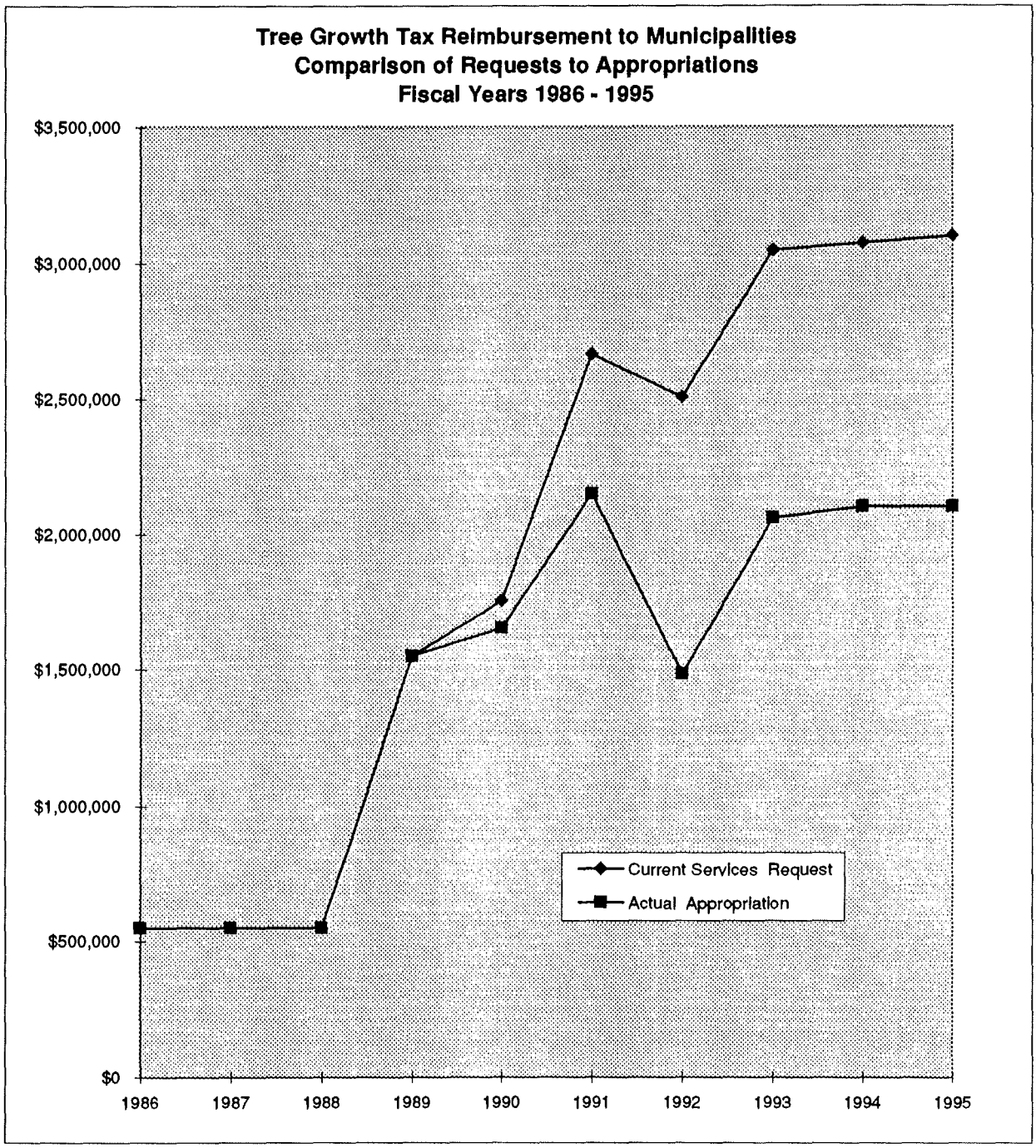
Under the provisions of the Tree Growth Tax Law, the State Tax Assessor is authorized to determine the 100% valuation per acre for each forest type by county or region on an annual basis. These valuations are published by the State Tax Assessor and are used by municipal tax assessors to determine the property tax of property declared as tree growth by landowners. Any parcel of forest land of 10 acres or more may be classified under the Tree Growth Tax Law.

Most who have had property classified under the Tree Growth Tax Law on or before September 30, 1989 must prepare a Forest Management and Harvest Plan and submit a sworn statement to that effect by April 1, 1999. The landowner who has had property classified as Tree Growth since the 1989 date must meet the management plan requirement upon classification. In addition, with the exception of certain types of deeds, transfer of property classified as Tree Growth must meet the management plan requirement within one year.

Based on recent legislative changes, the Tree Growth Tax Law allowed landowners with parcels of 100 acres or less to qualify under the Tree Growth Tax Law when the harvest of wood products was intended for personal use. However, this particular provision will be discontinued on April 1, 1996. By that date, landowners with property classified under the personal use provision will have to make one of three choices:

- the parcel must be reclassified under the commercial use provision with a management plan to be prepared by April 1, 1996; or
- apply for (and be accepted) for classification under either the Farm Land and Open Space Tax Laws; or
- withdraw from classification under the Tree Growth and Tax Law; landowners withdrawing under this option will have to pay the back taxes owed, plus interest, for the property as if it had been assessed at full market value minus taxes paid reflecting its tree growth valuation during that 5 year period.

One other prominent feature of the Tree Growth Tax Law is the provision which requires the state to reimburse municipalities for tax revenues lost from lower tree growth valuations under current law [35 MRSA §578(1)]. For property classified as tree growth since April 1, 1989, the state is obligated by statute to reimburse 90% of the per acre tax revenues lost. However because of the state's budgetary difficulties in recent years, the amounts appropriated for Tree Growth Reimbursement has not kept pace with the actual tax loss experienced by municipalities. Most recently, in fiscal years 1993 and 1994, the amount appropriated for Tree Growth Reimbursement has been approximately 2/3's of the lost revenue actually experienced by municipalities. Appropriations from the General Fund since fiscal year 1982 are compared to the "certified" or actual revenues lost by municipalities in the following graph:


Tree Growth Tax Reimbursement to Municipalities
Comparison of Requests to Appropriations
Fiscal Years 1986 - 1995
$3,500,000
$3,000,000
$2,500,000
$2,000,000
$1,500,000
$1,000,000
$500,000
$0
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
Current Services Request
Actual Appropriation

RECOMMENDATIONS

1. Amend current law to include definitions of "commercial harvesting" and "forest products that have commercial value."

During the review process, the subcommittee received a significant number of comments suggesting that current law is lacking a definition of "commercial harvesting." Much of the current Tree Growth Tax Law is predicated on the concept of commercial harvesting of wood products yet there is no current statutory definition of what activities or products are covered by the use of this term. The subcommittee found that the current lack of definition has led to considerable confusion, particularly when the concept of "commercial harvesting" is used as the mandated alternative to "personal use", which will be disallowed in 1995. The subcommittee is recommending that a definition of 'commercial harvesting" which specifies that commercial harvesting means the harvest of forest products that have commercial value be included in law. In addition, the subcommittee is further recommending that the phrase, "Forest products that have commercial value" be defined in law to specifically include a wide range of forest products.

2. Amend current law to create one date by which most forest management and harvest plans must be prepared.

Current law includes several different deadlines under which forest management and harvest plans must be prepared. First, the majority of landowners with property classified as tree growth have until April 1, 1999 to file a sworn statement with the municipal assessor that a forest management and harvest plan has been prepared. Second, landowners with tree growth parcels of 100 acres or less with the sole use of the land was the harvesting of trees for personal use must comply with the management plan requirement by April 1, 1996. Finally, if property that is currently classified as tree growth is transferred to a new owner, the management plan requirement must be fulfilled in one year's time.

The subcommittee found that the Tree Growth Tax Law could be made more consistent and easier for municipalities to administer by amending the law to repeal the April 1, 1996 requirement for the 100 acres or less "personal use" landowners. These landowners would be included under the April 1, 1999 requirement for all tree growth owners other than those who have recently purchased land that was already in tree growth.

3. Amend current law to allow landowners with "personal use" tree growth parcels of less than 100 acres to withdraw from tree growth classification by paying any back taxes, without interest, that would have been owed for the previous 5 years at fair market value.

Those landowners who currently have property of less than 100 acres in tree growth for personal use, are required to either withdraw their property from tree growth classification or transfer their property to Farm and Open Space Tax Laws. If the land is removed from tree growth, these landowners are required to pay any back taxes that would have been owed for the previous 5 years at full market value plus interest. Upon review, the subcommittee found that since these landowners were being "forced" out of Tree Growth, it is unreasonable to penalize them by requiring interest to be paid on these back taxes. Therefore, the subcommittee is recommending that current law be amended to eliminate the current interest penalty for withdrawal.

4. Amend current law to allow landowners with "personal use" tree growth parcels who choose to withdraw from the program to pay the back taxes owed in up to 5 equal annual payments with interest to be calculated 60 days after the date of assessment.

During the review process the subcommittee heard from many landowners with "personal use" parcels who stated that the 5 year "penalty" of back taxes represented a significant one-time financial hardship, and that many landowners could not afford to withdraw from Tree Growth. The subcommittee found that the impact of 5 years of back taxes owed for fair market value assessment would represent a sizable financial obligation for many landowners and that these landowners should be provided with the option of paying these back taxes over a period of time. Therefore, the subcommittee is recommending that current law be amended to allow landowners, with "personal use" parcels who elect to withdraw from Tree Growth classification, to pay the back taxes owed in 5 equal annual payments with interest to be calculated 60 days after the date of assessment.

APPENDIX A
STUDY LEGISLATION

PL 1993, C. 576

APPROVED	CHAPTER
MAR 31 '94	576
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-FOUR

H.P. 1349 - L.D. 1815

An Act to Amend the Tree Growth Tax and Open Space Voluntary Withdrawal Laws

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

Whereas, Public Law 1993, chapter 452 made significant changes to the tree growth and open space tax laws affecting owners of small woodlots and small parcels of land; and

Whereas, these changes have created confusion and misunderstanding and require further study and clarification; and

Whereas, the current law requires certain landowners with fewer than 100 acres to declare their intentions as to whether to stay in tree growth, transfer to open space or withdraw from the program by April 1, 1994; 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 §574-B, sub-§1, as amended by PL 1993, c. 452, §3, 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~~ is 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~~ 1995 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~~ 1996, 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~~ 1995 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~~ 1995 tax year. Persons electing to withdraw under this paragraph shall notify the assessor before April 1, ~~1994~~ 1995 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~~ that withdrawal had ~~such~~ the 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. 2. Committee study. A subcommittee of the Joint Standing Committee on Taxation must be appointed by the presiding officers to study and review the changes made in the tree growth and open space laws in Public Law 1993, chapter 452. All committee members must be appointed by June 1, 1994. Committee membership must include representatives of the Legislature, owners of small and large parcels of land, municipal assessors, the forest product industry, municipal government, the Department of Conservation, the Bureau of Taxation and other individuals and organizations interested in tree growth. Staff assistance, including assistance in preparing any recommended legislation, may be requested from the Legislative Council.

The subcommittee shall report to the joint standing committee of the Legislature having jurisdiction over taxation matters any recommendations that the subcommittee believes would improve the tree growth and open space laws by November 1, 1994. The joint standing committee of the Legislature having jurisdiction over taxation matters may report any necessary implementing legislation to the First Regular Session of the 117th Legislature. Members of the subcommittee are not entitled to per diem or expenses for participation in this study.

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

APPENDIX B
LEGISLATIVE HISTORY OF
THE TREE GROWTH TAX LAW

LEGISLATIVE HISTORY

• 1953 - The so-called "Chase Amendment" was enacted as a part of Maine law (36 MRSA §§563-564). This law declared that the public policy of the State was "...to encourage by the maintenance of adequate incentive the operation of all forest lands on a sustained basis by their owners, and to establish and maintain uniformity in methods of assessment for the purposes of taxation according to the productivity of the land". As enacted, this law did not include any specific criteria by which forest land could be assessed for its productivity value nor did it include any enforcement provisions;

• 1970 - Article IX of the Maine Constitution was amended by voter referendum to authorize the Legislature to enact laws to allow certain real property to be assessed according to current use. This constitutional provision also requires that any implementing legislation approved by the Legislature shall specify that a higher use of forest land and certain other real property shall result in certain financial penalties, "...upon such reasonable and equitable basis as the Legislature shall determine";

• 1971 - The Legislature enacted the first version of the Tree Growth Tax Law (36 MRSA §§571 et. seq.). In this earliest version all forest land parcels of more than 500 acres were subject to the current use assessment requirements; parcels of less than 500 acres and more than 10 acres could be classified as "tree growth" at the owners discretion. As a result of the passage of this law, by 1976 over 10 million acres had been classified as "tree growth" with 74% of this total in the unorganized territory;

• 1981 - A number of significant changes were made to the Tree Growth Tax Law. These changes included the repeal of the mandatory 500 acre classification requirement; tightened eligibility requirements; required that annual valuations take place and changed the town reimbursement formula;

• 1987 - The Tree Growth Tax Law was amended to exclude from tree growth eligibility those parcels larger than 100 acres in which the value of a recreational use lease exceeds the value of tree growth;

• 1989 - PL 1989, Ch. 555 amended the Tree Growth Tax Law to require that landowners with property classified as "tree growth" were required to develop a forest management and harvest plan and to provide a statement from a licensed professional forester once every 10 years that the plan was being correctly implemented. Landowners with tree growth parcels classified prior to September 30, 1989 were required to comply with this provision by April 1, 1999; all tree growth classifications made after September 30, 1989 were required to file the forest management plan upon classification; and any change of owner requires the submission of management plan within one year;

• 1993 - The Tree Growth Tax Law was amended by PL 1993, Ch. 452 to include the following changes:

Landowners with parcels of less than 100 acres in size classified as tree growth but intended for personal use were required to comply with one of three choices:

1. They could file a sworn statement by April 1, 1995 that a revised forest management plan had been prepared; or

2. They could apply for classification under the Open Space Laws; or

3. They could remove the parcel from tree growth. Those landowners opting for this choice were required to do so by April 1, 1994 and to pay a penalty equal to the amount of property tax which would have been paid for the previous 5 years at full market value minus the amount of property tax already paid under tree growth. In addition, under this choice the landowner would have to pay all applicable interest and if there was a change in the use of the property prior to April 1, 1999 pay an additional penalty;

• 1994 - Most recently, the Tree Growth Tax Law was amended by PL 1993, Ch. 576 in the following ways:

• the 1995 deadline for tree growth owners with lots of 100 acres or less to cease "personal use" and make one of the 3 choices outlined in Ch. 452 was delayed until 1996;

• the additional penalty for a change in use prior to April 1, 1999 established by Ch. 452 was repealed; and

• the Subcommittee to Review Changes in Tree Growth and Open Space Laws was established.

APPENDIX C
PROPOSED STATUTORY CHANGES

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

Whereas, the Tree Growth Tax Law includes a number of requirements with dates by which certain landowners must comply; and

Whereas, it is necessary that this legislation be enacted as an emergency in order that certain changes which will affect these landowners take effect immediately; 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:

36 MRSA §573, is amended to read:

36 § 573. Definitions

As used in this subchapter, unless the context requires otherwise, the following words shall have the following meanings:

1. Assessor.

2. Average annual net wood production rate. "Average annual net wood production rate" means the estimated average net usable amount of wood one acre of land is growing in one year.

2A. Commercial harvesting. "Commercial harvesting" or "harvest for commercial use" means the harvest of forest products that have commercial value, as defined in sub-§ 3-B.

3. Forest land. "Forest land" means land used primarily for growth of trees to be harvested for commercial use, but does not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest product or for harvesting for commercial use even though these areas may exist within forest lands.

Land which would otherwise be included within this definition shall not be excluded because of:

A. Multiple use for public recreation;

B. Statutory or governmental restrictions which prevent commercial harvesting of trees or require a primary use of the land other than commercial harvesting;

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

D.

E. Past or present multiple use for mineral exploration.

3-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. The plan must include the location of water bodies and wildlife habitat 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, harvesting plans and recommendations for regeneration activities. The plan must be prepared by a licensed professional forester or be reviewed and certified by a licensed professional forester as consistent with this subsection and with sound silvicultural practices.

3-B. Forest products that have commercial value. "Forest products that have commercial value" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, bough material, cones or other seed products.

4. Forest type. "Forest type" means a stand of trees characterized by the predominance of one or more groups of key species which make up 75% or more of the sawlog volume of sawlog stands, or cordwood in poletimber stands, or of the number of trees in seedling and sapling stands.

5. Hardwood type. "Hardwood type" means forests in which maple, beech, birch, oak, elm, basswood, poplar and ash, singly or in combination, comprise 75% or more of the stocking.

6. Mixed wood type. "Mixed wood type" means forests in which neither hardwoods nor softwood comprise 75% of the stand but are a combination of both.

7. Softwood type. "Softwood type" means forests in which pine, spruce, fir, hemlock, cedar and larch, singly or in combination, comprise 75% or more of the stocking.

8. Stumpage value. "Stumpage value" means the average value of standing timber before it is cut expressed in terms of dollars per unit of measure as determined by the State Tax Assessor.

9. Value of the annual net wood production. "Value of the annual net wood production" means the average annual net wood production rate per acre for a forest type multiplied by the weighted average of the stumpage values of all species in the type.

36 MRSA §574, is amended to read:

36 § 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 shall 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 or county line. The election to apply shall require the unanimous consent of all owners of an interest in a parcel, except for the State, which is not subject to taxation hereunder.

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

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, is 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, 1995 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,-1996,-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 1995 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 1995 tax year. Persons electing to withdraw under this paragraph shall notify the assessor before April 1, 1995 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 that withdrawal had the 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-these-amounts would-have-been-payable~~. Persons electing to withdraw under this paragraph may pay the penalty owed in 5 equal annual installments with interest at the legal rate to begin 60 days after the date of assessment. Notwithstanding §943 the period during which the tax lien mortgage, including interests and costs, must be paid to avoid foreclosure and expiration of the right of redemption is 48 months instead of 18. The procedure for withdrawal provided in this paragraph is intended to be an alternative to the procedure in section 581;

2. Evidence of compliance with plan. The landowner must comply with the plan developed under subsection 1, and must submit, every 10 years to the municipal assessor 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 schedules in the plan required under subsection 1; and

3. Transfer of ownership. If the land is transferred to a new owner, a forest management and harvest plan must be prepared for the landowner and a sworn statement to that effect submitted within one year to the municipal assessor in a municipality or the State Tax Assessor for the unorganized territory.

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

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