

OFFICE OF FISCAL AND PROGRAM REVIEW

Date: March 28, 2012

To: Members, Joint Standing Committee on Taxation

From: Elizabeth Cooper, Legislative Analyst

Re: **UPDATE on L.D. 1138**

An Act To Amend the Maine Tree Growth Tax Law and Open Space Tax Law

Below is a summary of the Committee amendment. The amendment includes a mandate preamble as voted by the Committee.

A. Required reductions in tree growth classification – For applications submitted for enrollment or proof of updated plan submitted on or after August 1, 2012:

- 1) *Minimum Lot Size* – For parcels containing structures for which a minimum lot size is required exclude the area of land containing the structures, which may not be less than ½ acre of land;
- 2) *Shoreland Areas* – For parcels containing residential structures in shoreland areas exclude the area of land containing the structures, which may not be less than ½ acre of land and 100 feet of shoreland frontage or the minimum required by the zoning for the area, whichever is larger.

B. Attestation regarding use of land – For applications submitted for enrollment or proof of updated plan submitted on or after August 1, 2012:

- 1) Landowners will attest that the primary use of the enrolled land is to grow trees to be harvested for commercial use or that the land is described in Title 36 section 573, subsection 3, paragraph A, B, C or E. The existence of multiple uses does not render it inapplicable for classification under tree growth.
- 2) Language for the attestation will be included in the tree growth application and required when the plan is updated.

C. Notice and penalty related to 10-year plan update - For applications submitted for enrollment or proof of updated plan submitted on or after August 1, 2012:

- 1) No earlier than 185 days prior to the deadline for the landowner to update the forest management and harvest plan, if the owner hasn't complied, withdrawn or transferred the parcel, the assessor shall by certified mail notify the landowner of the deadline and consequences for failure to meet the deadline.
- 2) If the landowner fails to meet the deadline, the assessor shall:
 - a) assess a supplemental assessment of \$500 and notify the landowner by certified mail that the landowner has 6 months to comply with requirements of tree growth, or transfer to open space; and
 - b) include in the notice a statement that if they have not complied with the plan or transferred to open space in the specified timeframe that a second supplemental assessment of \$500 will be assessed.
- 3) If the landowner has not complied with or transferred to open space at the end of the 6 months period, the assessor shall assess the \$500 supplemental assessment and notify the landowner that they have an additional 6 months in which to comply or transfer to open space before their land is withdrawn from tree growth.

- 4) If the landowner still hasn't complied by the end of the second 6-month period, the parcel is withdrawn from tree growth, penalties under the tree growth law are applied and the parcel is assessed at just value for the upcoming tax year.

D. Transfer from tree growth to open space

- 1) Under current law, a landowner may transfer land from the tree grow program to the open space program and then out of the open space program paying the open space penalty.
- 2) The Committee amendment would make the recapture penalty for withdrawal from open space within 10 years of a transfer from tree growth the same as the tree growth penalty; after that the penalty would be the normal open space penalty. This is consistent with provisions in the farmland current use program.

E. Change to open space law

- 1) This creates a managed forest open space category as an incentive for forest management when land is categorized as open space under the alternative valuation method.
- 2) Under current law:
 - a. To qualify for open space, the assessor (upon application by the landowner) determines whether the land provides a public benefit by conserving scenic resources, enhancing public recreation opportunities, promoting game management or preserving wildlife or wildlife habitat.
 - b. The open space program has 2 valuation methodologies that include determining the fair market value of the land considering the restrictions of the open space category for which it qualifies or the "alternative valuation method."
 - c. Generally open space land is eligible for a reduction of 20% for the ordinary assessed valuation of land under the alternative valuation method, which also provides additional cumulative reductions for "permanently protected" open space (30%), "forever wild" open space (20%) and public access to open space (25%).
 - d. Forested land may not be reduced below tree growth values.
- 3) This new managed forest open space category under the alternative valuation method would provide an additional 10% reduction for landowners showing proof of and complying with a forest management and harvest plan.
 - a. The additional cumulative reduction could be combined with the ordinary (20%), permanently protected (30%) and public access open space (25%), but not forever wild open space (20%).
 - b. The language is similar to the Tree Growth Tax Law and has many of the same elements of the Tree Growth Tax Law. However, it is not tied to the Tree Growth Tax Law by statute and does not include some requirements such as the primary use of commercial harvesting.
 - c. Failure to comply and update the management plans would result in the loss of the additional percentage reduction for a period of 10 years.
- 4) As drafted in the Committee amendment, the forest management and harvest plan is confidential.
 - a. In the Freedom of Access Laws review of public records exceptions, the Judiciary Committee advised that the plan should not be confidential for the new managed forest open space category under the Farm and Open Space laws.

- b. While the Taxation Committee respects the advice of the Judiciary Committee and considered alternatives, changing the confidential status of the forest management plan was unacceptable to some interested parties. Therefore, the Committee chooses to keep the plans confidential under the managed forest open space program as they currently are in the Tree Growth Tax Law Program.

F. Certain properties in unorganized territory covered by legislation in 124th

- 1) Background - PL 2009, 577 waived penalties assessed, provided refunds of penalties paid and returned land to tree growth classification for landowners of certain properties in the unorganized territory that had been withdrawn from taxation under the Maine Tree Growth Tax Law between September 20, 2007 and July 1, 2010 if the landowner demonstrated the parcel was in compliance by April 1, 2011.
- 2) The Committee amendment would “deem” these parcels as not having been withdrawn from tree growth classification.
- 3) The goal of this amendment is to make it clear that these properties should be treated as though they never left tree growth classification and, therefore, for the purposes of calculation of the penalty (should the property be withdrawn in the future) they would get to count all the years they were in the program.

OTHER BACKGROUND INFORMATION

Original Bill Summary: This original bill does two things:

1. It requires the State Tax Assessor to impose a \$100 administrative penalty on a landowner enrolled in the Maine Tree Growth Tax Law program.
 - a) The penalty applies if the landowner fails to file a forest management and harvest plan by the later of the end of the 10 year period and the end of the 120 day notice period given by the assessor to notify the landowner that a plan is needed.
 - b) If the landowner still does not file a plan within one year of the end of the 10 year deadline, then the assessor is required to withdraw the land from the tree growth tax program and assess a withdrawal penalty.
2. It repeals the 15,000 acre cap on land enrolled in the farm and open space tax law program.

Section proposed for repeal - MRSA 36 §1114. Application

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

Public Hearing (April 29, 2011):

Proponents - included the Small Woodland Owners Association, the Nature Conservancy, the Maine Forest Council, and a consulting forester; the Maine Forest Service offered partial support for the bill – favoring the administrative penalty in section 1 of LD 1138, but opposing the repeal of the 15,000 acre cap in section 2 of the bill.

Opposed – included Maine Municipal Association, a selectman from Surry, and the chair of the Lamoine Board of Assessors; Maine Audubon offered support for section 1 of LD 1138, but had significant concerns with the repeal of the 15,000 acre cap in section 2 of the bill.

NFNA – none

Work Sessions were held on the following dates:

- May 11, 2011 - This bill was carried over to the 2nd Regular Session
- January 24, 2012
- January 26, 2012
- February 2, 2012
- March 7, 2012
- March 8, 2012
- March 12, 2012 – FOA Review by Joint Standing Committee on Judiciary
- March 15, 2012 – Briefed Committee on FOA Review
- March 22, 2012 – Reconsidered – Voted – OTPA/ONTP