

AN ACT RELATIVE TO THE TAXATION OF FOREST, FARM, AND RECREATION LAND

Sponsor: Senator Pam Resor (D-Acton)

Challenge

As land values rise in areas facing development pressure, the disparity grows between the value of farm or forest land assessed at its "highest and best use" value-typically its development value-and its value as it is currently being used. Since local property taxes are based on highest and best use values, farmers and forest land owners often find themselves squeezed by rising property taxes.

To counter these pressures, Massachusetts has established preferential assessment programs which allow farm or forest land to be assessed at a fraction of its development value. Landowners who opt for such preferential assessment commit to retain the land in the preferred use for a specified number of years and will incur a financial penalty if they fail to do so. Current Massachusetts law provides for a reduction in property tax assessments for land enrolled in three programs: active forestry (**Chapter 61**), productive agriculture or horticulture (**Chapter 61A**), or open space and recreational uses (**Chapter 61B**).

Although all fifty states have similar preferential assessment programs, only Massachusetts gives municipalities a 120-day right of first refusal (ROFR) period to acquire Chapter lands when they are being sold. These purchase options may be assigned to a qualified private non-profit conservation organization. This Massachusetts innovation has made possible the conservation of many important forest, farm, and open space parcels across the Commonwealth. However, current statute is unclear about the process and requirements for triggering, deciding upon, and exercising ROFRs. Program inconsistencies have led to confusion regarding how each chapter works. These ambiguities have resulted in controversy and legal challenges surrounding the assertion of rights of first refusal, financial penalties, and related issues- to the detriment of municipalities, landowners, and conservation partners.

Solution

This legislation represents the result of a year of successful negotiation (1997-1998) among state agencies, landowner associations, land trusts, and assessors. The bill would:

Improve the uniformity across the three chapters

- The time period for paying roll-back taxes would be set at five years for lands enrolled under all three Chapters;
- All three Chapters would have the same provisions for paying recording fees and there would be no assessment of taxes less than \$10.

Improve the clarity of the right of first refusal option process

- Defines the landowners' and municipalities' responsibilities under the right of first refusal process, in accordance with recent litigation;
 - Defines what constitutes proper notice to municipalities and how to define the beginning and end of the 120 day period of response;
 - Specifies that roll-back taxes shall be paid on converted portions of land when acquired by the Commonwealth or a non-profit through an assignment of the ROFR.
- (over)

Improve the effectiveness of the program by closing loopholes

- Extends the ROFR provisions for two years following withdrawal from the programs;
- Improves DEM oversight of forestry land under Chapter 61A;
- Requires that a conveyance tax will be due on Chapter 61A and 61B lands if they are converted within ten years of an otherwise exempt sale;
- Exempts municipalities, state agencies, and non-profits from conveyance or roll back taxes for properties that have been acquired for public purposes.

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The accompanying chart summarizes the basic framework of current Chapter 61, 61A, and 61B programs.

Benefits

This legislation would improve the clarity of the right of first refusal option, based on the judicial interpretation in *The Trust for Public Land vs. Farmer*, 1995. Under the Court's ruling, the process would follow these steps:

1. The landowner and buyer sign Purchase and Sale agreement (P & S);
2. The landowner notifies municipal boards and state agency of intent to sell, includes full copy of P & S (all terms and conditions, no contingencies, fixed consideration, and any side agreements on non-chapter land). The 120 day clock does not start until this complete notice has been deposited in US mail;
3. Within 30 days, the municipality must notify landowner if notice was insufficient to start the clock;
4. The municipality provides the landowner with either: notice of exercise, notice of assignment, or notice of non-exercise (all to be recorded, and accompanied by a proposed P & S, if exercised);
5. If assigned, the assignee must notify landowner of intent to exercise or not, including a proposed P & S. If assigned, the assignee must retain 50% of the land in conservation.
6. Within 120 days, the municipality and assignee have the right to enter the property for inspecting;
7. If the municipality or assignee exercise, they must execute the purchase within 60 days unless otherwise agreed to in writing with the landowner;
8. No sale can be consummated unless 120 days has expired or notice of non-exercise recorded and, in any event, no sale if terms differ from original P & S have been received by the municipality.
9. The sale cannot go forward and deeds cannot be recorded until the municipality releases its lien on the property. In the case of a proposed development by the owner, the municipality may withhold a building permit until the lien has been satisfied. If the owner proceeds without permission, he risks court action.

For more information about this bill, contact Christopher Hardy, Mass Audubon's Director of Legislative Affairs, at 617-523-8448 or chardy@massaudubon.org.

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(see accompanying chart)

AN ACT RELATIVE TO LAND CONSERVATION INCENTIVES

Sponsor: Senator Stephen Brewer (D-Barre)

Summary of Current Massachusetts Preferential Assessment Program						
Chapter	Minimum Enrollment	Other Qualifications	Classification	Conveyance Tax	Rollback Tax	Assessment
61: Forestry	Not less than 10 contiguous acres; enrolled for at least 10 years	Must have 10 year forest management plan certified by state forester Must pay annual products tax equal to 8% of stumpage value of all forest products	Must file a new certified plan at least every 10 years	None	Tax due with interest for up to 10 years (years since certification, or preceding 5 years, whichever is longer). Interest is charged at delinquent rate (14%).	5 % fair market value; minimum \$10/acre
61A: Agriculture & Horticulture	No time period for enrollment; at least 5 acres devoted to agriculture or horticulture for at least 2 years preceding enrollment	Must earn \$500/year in products. In cases where land is more than 5 acres, sales must increase additional \$5/acre (except \$0.50/acre for wetland or woodland acreage)	Must apply for classification each year	Due if sold for other uses within first 10 years of enrollment. Tax is equal to 10% of sales price in first year, 9% in second year, down to 1% in tenth year. No conveyance tax if beyond tenth year.	Tax due without interest for up to 5 years. Only the greater of the rollback or conveyance tax shall be paid. No rollback taxes due if purchased for a public purpose by a municipality.	Calculation based on land values determined by Farmland Valuation Advisory Commission

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Summary of Current Massachusetts Preferential Assessment Program						
Chapter	Minimum Enrollment	Other Qualifications	Classification	Conveyance Tax	Rollback Tax	Assessment
61B: Open Space & Recreation	No time period for enrollment; at least 5 acres	Open space lands must remain in a natural, wild, or open condition to preserve wildlife and other natural resources; public access is not necessary. Recreational lands must be open to the public or members of a nonprofit for hunting, hiking, camping, golfing, skiing, or other passive uses.	Must apply for classification each year	Due if sold for non-recreational use within first 10 years of enrollment. Tax is equal to 10% of sales price in first 5 years; 5% of sales price in 6-10th year	Tax due with interest for up to 10 years. Interest is charged at delinquent rate (14%). Only the greater of the rollback or conveyance tax shall be paid. No rollback taxes due if purchased for a public purpose by a municipality.	Maximum 25% fair market value

This chart is designed to support AN ACT RELATIVE TO THE TAXATION OF FOREST, FARM, AND RECREATION LAND, sponsored by Senator Pam Resor Massachusetts Audubon Society.

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