MAINE WOODLAND OWNERS

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Testimony of the Maine Woodland Owners before the Joint Standing Committee on Taxation Regarding LD 1599 An Act to Improve the Maine Tree Growth Tax Law

Senator Dow, Representative Tipping and members of the Committee on Taxation, my name is Tom Doak, Executive Director of the Maine Woodland Owners testifying in opposition to LD 1599.

This legislation is very similar to a number of Tree Growth Tax Law bills proposed over the last few years and soundly rejected by the Legislature. Many of the provisions in this bill were proposed and unanimously rejected by the Appropriations, Taxation and Agriculture, Conservation and Forestry Committees in the last (127th) legislative session.

Unfortunately, despite numerous reviews and audits, discussions about the Tree Growth Tax Law program seem to be driven more by assumptions and perceptions then reality.

The Tree Growth Tax Law is the single most important tax law there is for Maine's small woodland owners (generally people owning between ten and a few hundred acres of land). The program values land at its current use; growing trees, instead of its development value. It works. In fact, we believe this program keeps more land as forestland, and undeveloped, than all the past land bond issues combined.

For thousands of small woodland owners in Maine, it is what allows them to keep land as forestland in an undeveloped state and producing the public benefits of wildlife habitat, clean water, outdoor recreation opportunities and wood for the forest products industry.

Facts About the Tree Growth Tax Law Program

To qualify, and remain in the Tree Growth Tax Law program, a landowner must meet several initial and ongoing requirements. A landowner must:

1. Have at least ten forested acres capable of growing commercial forest products;
2. Agree not to develop, or change the use of the property to a non-forest use;
3. Pay a professional forester, licensed in Maine, to prepare a management plan that meets the standards spelled out in statute;
4. Pay that forester to update that plan every ten years;

5. Pay a forester to certify that the land is being managed consistent with the forest management plan and submit that certification to the tax assessor every ten years;

6. Sign an attestation on initial enrollment in the program, and every ten years thereafter, that the primary use of the land is to grow trees to be harvested for commercial use;

7. The land is subject to an audit by the assessor at any time;

8. In return, land is taxed on its value to grow trees, not its development value.

Other provisions of the Tree Growth Tax Law program:

1. When the program was created in the early 1970s, all parcels of 500 acres or more were required to enroll.

2. The program runs with the land. Upon sale or transfer of the property, the land remains covered by the program unless the new landowner removes the property and pays the penalties.

3. The landowner knows the terms when he or she enrolls, but once in the program, the terms can change and there is no "out clause" without substantial penalty.

4. The penalties are purposely high to keep people in the program. The Maine Constitution only requires a penalty of five years back taxes and interest to withdraw from the program. But, statutes require a much higher penalty. It is common that the penalty to take land out of the program costs many, many times more than the reduction in taxes the landowner receives.

Now to specific sections of the bill.

Section 2 redefines the definition of commercial forest products. It eliminates Christmas trees and Christmas wreaths as commercial forest products. Both of these are important industries in Maine. I would guess that there are landowners enrolled in the Tree Growth Tax Law program in which these products are their primary use of the land. If so, I assume they would no longer be eligible for the program and would have to remove their land and pay full penalties. If the intent is to define commercial forest products as something that can be made into paper, burned for energy or made into a building material, it is not clear why maple syrup is still listed. Regardless, anyone enrolled in the program using the current definition of forest products should be "grandfathered."

Section 3 would increase the minimum size parcel for new enrollments in the Tree Growth Tax Law program from 10 acres to 25 acres. That change would effectively eliminate about 25% of Maine's small woodland owners, who are eligible today, from being eligible in the future.

Section 6 does several things. Currently, the municipal tax assessor in organized towns and the State Tax Assessor in the unorganized areas, has final authority to determine all aspects of enrollment eligibility and compliance with the Tree Growth Tax Law program. Section 6 adds another layer of government and new management plan standards. Currently, the Maine Forest Service has the authority to assist the assessor when requested. Section 6 would allow the Maine Forest Service to independently evaluate parcels in the program, thus landowners could be subject to two different government entities. But it doesn't stop there. Paragraph B outlines minimum standards the Maine Forest Service would use to assess whether a plan meets the program requirements. Oddly the language in B.(1) does not appear as a current statutory requirement of a management plan. Another oddity, and one that could be advantageous to landowners, is that if the Maine Forest Service independently finds a plan is not in compliance there is a 90-day grace period; and if the land is not in compliance a one-year grace period. However, if an assessor determines the same finding, the landowner is subject to immediate removal. And while there is a well established appeal process for any decision by the assessor, there is no such appeal process for any determination by the Maine Forest Service. There should not be two different sets of standards and enforcement procedures.

Section 6, paragraph 3. A reads, "Consistent with the findings of the Tree Growth Tax law Audit report from the bureau to the Committee on Taxation dated February 28, 2014, the director may limit reviews under this subsection to island, coastal and waterfront parcels where there is a large difference between the valuation under this subchapter and just value." While the entire sentence, including the word may seems unnecessary, I encourage you all to read that report.

The random audit produced a small sample size of 27 waterfront parcels. The report did state that: "Harvesting had taken place on 15 of the 27 properties (56%), indicating that waterfront landowners in general appear to be actively managing their forest land. As noted earlier in this report, the information supplied by municipalities to MFS did not permit the identification of a sub-population of parcels that are truly oceanfront; therefore, the number of parcels sampled with such features is very small. Conclusions about oceanfront properties should not be drawn from this report."

Here are the recommended changes to the program made by the Maine Forest Service (MFS) in that audit report:

MFS Recommendations

Introduction

Forest management is a long term endeavor. Investments in the forest require decades to recover, and can transcend the life of the original investor. The risk of policy changes in current use taxation is a strong disincentive to landowners making long-term investments in Maine's future forests.

The Tree Growth Tax Law has stood the test of time and is one of the best examples in the nation of forest policy stability. The MFS did not find – and has not found in the past – large-scale

problems that require an overhaul of the law. MFS has found areas to improve administration of, and compliance with, the existing law, and the recommendations which follow are made with that intent.

Tree Growth Tax Law amendments

1. *The Legislature should authorize a continued Tree Growth audit function for MFS until 31 December 2015. Should the Legislature continue this authorization, MFS recommends the following methodology to better assess compliance issues on properties with waterfront and oceanfront features, as these properties appear to be the major cause of concern for municipalities.*

2. *There are 122 coastal municipalities in the organized territory. MFS recommends that either the Maine Municipal Association or the individual coastal municipalities recruit volunteers or interns to assist MFS in this portion of the study. The volunteers or interns would visit coastal municipal offices to identify all coastal parcels enrolled in the Tree Growth Tax Law program. From this population, MFS would draw a random sample of parcels to evaluate, using the same methodology as this study. MFS would focus its efforts, and a 2016 report, solely on coastal Tree Growth Tax Law issues, again along the lines of the current legislative directive. If the Maine Municipal Association and/or the municipalities provide the necessary volunteer or intern labor, MFS can accomplish this task within its existing resources.*

3. *Municipalities could consider conducting random audits similar to what MFS has done. Assessors already have the authority under 36 M.R.S. §579 to compel enrolled landowners to submit requested information. Conducting random audits would systematize the process and ensure that all enrolled landowners could be held accountable at any point during their tenure.*

4. *The Tree Growth Tax Law could be amended to clarify the existing requirements for the content of a forest management and harvest plan. Suggested language follows: 3-A. Forest management and harvest plan. "Forest management and harvest plan" means a written document that ~~outlines~~ recommends activities to regenerate, improve and harvest a standing crop of timber over a ten-year period. The plan must state clearly the type, nature, and timing of any recommended activities and the reasoning justifying the recommendation. The plan must include the location of water bodies and wildlife habitat identified by the Department of Inland Fisheries and Wildlife. If such features are not found on a parcel, the plan must explicitly state this. 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 a landowner and be reviewed and certified by a licensed ~~professional~~ forester as consistent with this subsection and with sound silvicultural practices.*

We supported giving the Maine Forest Service the authority to do further audit work they requested in the several bills regarding Tree Growth which have been brought forward by the administration.

Section 6 also includes the terms “no apparent evidence”, “reasonably sized portion”, “making a reasonable effort”, “reasonable time period”, “large difference” and “substantial compliance” all of which have no definition, which would lead to wide interpretation and confusion.

Section 7. Assessors are already required to remove any landowner they find is not in compliance with the program. Remember that a landowner must have a plan that meets all the program requirements signed by a forester licensed by the State of Maine, have that plan updated every ten years and file a statement signed by a licensed forester that the plan is being followed. Section 7 would penalize municipalities if they disagree with the findings of the Maine Forest Service.

Section 10 would require any parcel less than 25 acres, and there are more than 5,500, that changes ownership (including death of the owner) after April 1, 2018 to be removed from the program and penalties assessed even though the land is in full compliance. This kind of change is exactly what landowners enrolled in the Tree Growth Tax Law program fear most. They enroll under one set of rules, but the rules can be changed so they cannot or do not comply anymore and they are forced out of the program and subject to penalties. There is no justification for this change.

The Tree Growth Tax Law went through a major legislative review and overhaul in 2012, which the then Department of Conservation, Maine Forest Service (MFS) participated in. I believe this Committee held eight work sessions on the topic. In addition, the Forest Service was directed to do a field assessment of the program. A report released in February 2014 by the Maine Forest Service (which has already been alluded to) found, “**The Tree Growth Tax Law has stood the test of time and is one of the best examples in the nation of forest policy stability. The MFS did not find – and has not found in the past - large-scale problems that require an overhaul of the law.”** Interestingly, one of the most persistent criticisms of the Tree Growth program is that landowners are not managing their land, i.e. harvesting trees, at an appropriate rate. Stated another way, small woodland owners should be harvesting more trees. The 2014 report stated “MFS found that landowners enrolled in the Tree Growth Tax program in the organized municipalities were responsible for an average of 53% of reported harvest acres. Considering the fact that Tree Growth Tax properties comprise 44% of the total forestland acreage in organized municipalities, MFS finds that there is a consistent level of harvest activity on enrolled properties, with a harvest size larger than the average for all properties. **In short, landowners enrolled in the Tree Growth Tax program appear to be doing more than their fair share of harvesting and keeping up their end of the bargain.”**

From our point of view this proposed legislation is badly flawed. There is very little in it that we believe makes sense. This doesn’t mean the law couldn’t be improved. We have always supported making sure that people enrolled comply with the program and also that those enrolled and doing the right thing are treated properly. So we are certainly willing to sit down

with all the players, perhaps over the summer, to see if there are changes that make sense. If that is the Committees wish, here are a few areas that we think should be reviewed:

1. Should the Legislature give the Maine Forest Service temporary authority to collect additional Tree Growth data on under-sampled parcels (primarily waterfront) to better assess compliance issues on properties? This was a recommendation of the 2014 audit report and we have consistently supported it.

2. We suggest the penalty provisions of Tree Growth be reviewed. The penalties for any noncompliance with the Tree Growth Tax Law program are much higher than required by the Constitution. The penalties predate the requirement to even have a management plan for many of the parcels. The extra penalties were designed to keep people in the program and envisioned that non-compliance would be a change of use (development). The companion program for farmers (Farmland Program) allows them to remove their land at the constitutional minimum and taxes their woodland at tree growth rates without any of the tree growth requirements.

3. If there are lands in the Tree Growth Tax Law program that would be better suited for the Open Space program, we should review ways to make that transfer as a simple as possible. Should landowners be able to automatically transfer from the Tree Growth Tax Law program to the Open Space program?

4. If there are management plans on lands in the program that do not meet the minimum standards, why? All foresters are licensed by the state, so is there confusion regarding what is required in the plan? If so, that can be resolved through education. There is no reason to have a management plan that doesn't meet the statutory requirements. Landowners are counting on a licensed forester to understand the requirements.

5. If there are foresters certifying compliance with management plans, when there is evidence of non-compliance, why? Is there a misunderstanding about what constitutes compliance? If so, that needs to be fixed.

6. When this Committee did a comprehensive review of the Tree Growth Tax Law in 2012, among the changes was the additional requirement that a landowner sign an attestation at initial enrollment and every ten years after that the primary use for the forest land is to grow trees to be harvested for commercial use. This was explicitly to address concerns that there might be people in the program not intending to manage their lands. While we are only half way through the cycle of all landowners having to sign an attestation, is this an effective approach to concerns that have been raised? If not, it should be changed or deleted.