

Tree Growth Tax Law – A Little Bit of History & the Governor’s Executive Order



Maine Forest Service - Forest Policy and Management Division
Department of Agriculture, Conservation, and Forestry
Forester Institute - 11/12 October 2017

Forest Policy and Management Division

- Enabling statutes (all 12 M.R.S.)
 - §8002, sub-§§C, D, E, F
 - Chapter 805
- Purposes
 - Provide technical assistance, financial assistance, forest management information, and educational services to the public, forest landowners, loggers, foresters, forest products processors and marketers, municipalities, and many others.
 - Programs lay the foundation for additional economic activity in the state, including woodland owners hiring consulting foresters, loggers buying new equipment, and wood being harvested to supply Maine's forest products industry.
 - Implement the state's forest practices laws, providing outreach services and coordination of enforcement activities.
 - Anticipate and respond to forest policy issues and report to the public on the state of the forest resource.

Forest Policy and Management Division

- **Compliance issues - Our philosophy**
 - **FIRST PRIORITY:** Education and outreach - training
 - **SECOND PRIORITY:** Intervention - fix small problems, keep them from getting bigger
 - **THIRD PRIORITY:** When all else fails - enforcement action
 - **Our goal is to seek compliance and change behavior**



Tree Growth Tax Law Philosophy

- **Stability** - take the long view
- **Accountability** - legislative intent
- **Change** - not undertaken lightly
- **Focus** - help people do the right thing

TGTL purpose

- 36 MRS §572. Purpose
- ... Therefore, [the TGTL] is enacted for the purpose of taxing forest lands generally suitable for the planting, culture and continuous growth of forest products on the basis of their potential for annual wood production in accordance with the following provisions.

TGTL Issues

- Concerns about some TGTL landowners not fulfilling their responsibilities have been expressed often over the years.
 - 1989 management plan requirement
 - 1994 repeal of “personal use” exemption
 - 2008 meetings with consulting foresters
 - 2009 report to Taxation Committee
 - 2011 attestation of commercial use requirement
 - 2013 presentation to Taxation Committee
 - 2014 report to Taxation Committee

Most common concerns

- Some landowners enroll their property in TGTL with only the intention to lower their property taxes and not to manage their “primarily for growth of trees to be harvested for commercial use” (36 M.R.S. §574-B);
- Some landowners do not follow, nor do they intend to follow the recommendations to “regenerate, improve and harvest a standing crop of timber” in their forest management and harvest plan (36 M.R.S. §573 (§3-A);
- Some landowners enroll their land in TGTL as a mechanism to “park” land while awaiting opportunity to sell for development; and,
- Some landowners do not manage their land in a manner consistent with the intent of TGTL “to retain and improve their holdings of forest lands ... and to promote better forest management” (36 M.R.S. §572).

2008 – 123rd Legislature - Resolve 197

- Charge to MFS:
 - advisability of revising the timing of determining forest growth rate and whether current method of determining stumpage values should be broadened;
 - whether data supports perception that some land is being classified under TGTL that does not meet statutory requirements or the purpose of the law; and,
 - best methods for ensuring that municipalities and landowners are aware of the requirements of TGTL and availability of assistance from MFS in determining eligibility and meeting the law's requirements.

2008 – Forester meetings

- Four meetings from Gray to Houlton
- Discussed TGTL requirements and expectations of consulting foresters.
- Legislative intent, legislative history, municipal reimbursement, current issues with the law, MFS handling of municipal requests for assistance, review of case studies.

2009 – MFS report to Legislature

- “All of the problems MFS has dealt with to date concern properties in towns with large expanses of coastal frontage and/or frontage on lakes and rivers.”
- **MFS will continue to work with interests to ensure that all parties are informed about the proper roles and responsibilities of assessors, landowners, and foresters with regard to the Tree Growth Tax Law.** Problems created by a small percentage of enrolled properties would best be addressed, and the public interest better served by:
 - continued outreach efforts to assessors (roles & responsibilities);
 - strong outreach efforts to enrolled landowners and consulting foresters (responsibilities);
 - encouraging landowners not interested in active forest management to transfer to Open Space; and,
 - [assessors] removing properties from the program where it is clear that the properties are not managed consistent with the law’s requirements.
 - Considering the large valuation differences between land assessed at just value and land enrolled in Tree Growth on islands, coastal, and waterfront property, future efforts should focus on landowners who own land with these attributes. MFS will continue to monitor and assess the situation as its resources permit.
- **Did not recommend legislative action at that time.**

2008 – 2013

- Letters to consulting foresters
- Letters to towns
- Letters to TGTL landowners
- Letters to TGTL landowners in coastal towns

2012 Audit/2014 Report

- PL 2011, c. 619 - MFS to report back, including:
 - findings from the [audit], including any findings related to any differences in compliance issues based on the location of parcels, such as coastal and waterfront properties as compared to other parcels;
 - a summary of data concerning violations and enforcement activities;
 - an assessment of the effectiveness of TGTL in promoting the harvesting of fiber for commercial purposes and its impact on the fiber industry; and
 - recommendations to address any problems identified and to ensure that parcels enrolled [in TGTL] meet the requirements of the law.

2014 MFS Report

- 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 ...
- But we did find issues that need to be addressed.

2014 MFS Report

- Recommendations
 - Continued legislative authorization for MFS audit
 - MMA and/or coastal municipalities identify coastal TGTL parcels, provide to MFS for more focused review.
 - Municipalities do their own audits.
 - Amend definition of “forest management and harvest plan” to require more explicit recommendations.
 - Improve municipal understanding of town’s responsibilities and authorities.

2014 MFS Report

- Recommendations (continued)
 - Amend TGTL to require that landowners maintain a copy of their plan in their possession (primary residence) at all times.
 - Amend TGTL to require that a licensed forester attest that they have explained to the landowner the contents of a forest management and harvest plan that the forester has prepared or approved.
 - Amend TGTL to state clearly the responsibilities of foresters to write forest management plans that conform to the requirements of the TGTL.
 - Require landowners to keep expired plans on file for two years and allow municipal review of those plans.

Governor's Bill – LD 1599

- Governor submitted LD 1599, An Act To Improve the Maine Tree Growth Tax Law last spring.
- Current version as amended:
 - Minor amendment to purpose statement (add “regeneration”)
 - MFS may initiate review of TGTL parcels - significant differences between TGTL and just value; lack of harvest evidence
 - Work with landowner to help them comply (180 days for plan; 18 months for management)
 - Report findings to assessor
 - Assessor may not withdraw parcel while under review
 - Provides for minimum penalty prescribed by state constitution if parcel is withdrawn from TGTL

Governor's Bill – LD 1599

- Taxation Committee carried over bill
- Requested a group of interests to work on issues, led by UMaine
- Consulting foresters represented on the group
- Report back in January

Governor's Executive Order

- Governor issued Executive Order in late July directing MFS to reach out to municipal assessors and offer our assistance with TGTL.
- MFS also directed to assist landowners to bring them in to compliance, if possible.
- MMA communicated our message to towns in August.
- Since then, we've received several requests for assistance and are following up.



Maine's Tree Growth Tax Law

Divining Legislative Intent

Maine Forest Service
25 March 2008

TGTL – Divining Legislative Intent - 2008

What it means

Tree Growth is about:

- Encouraging forest landowners to retain and improve their forest lands and promote better forest management
- Land generally suitable for the planting, culture and continuous growth of forest products
- Taxing forest land based on its potential for annual wood production

TGTL – Divining Legislative Intent - 2008

What it doesn't mean

Tree Growth is not about:

- Enrolling non-forest land
- Enrolling land that is not used primarily for growth of trees to be harvested for commercial use
- Enrolling land to avoid just valuation of the property without providing the intended public benefits

TGTL – Questions to Ponder¹ - 2008

1. What if everybody did it?
2. Would I want to read about it in tomorrow's paper?
3. What does my conscience say?
4. What will it look like tomorrow?
5. Would I be comfortable explaining this to my 12 year old?

¹ Questions 1-4 from Patterson, A.E. 1984. Ethics in forestry: four self-help questions. In: Irland, L.C., ed. Ethics in Forestry (1994): 45-47. Question 5 is "Irland's Iron Law of Ethics."



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