

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

S.P. 458 - L.D. 1072

**An Act to Amend the Laws Governing the Land for Maine's Future Program
and to Authorize the Use of Options to Purchase at Agricultural Value**

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 5 MRSA §6200, 3rd ¶, as enacted by PL 1987, c. 506, §§1 and 4, is amended to read:

The Legislature declares that the future social and economic well-being of the citizens of this State depends upon maintaining the quality and availability of working lands for farming, commercial fishing and forestry and natural areas for recreation, hunting and fishing, conservation, wildlife habitat, vital ecologic functions and scenic beauty and that the State, as the public's trustee, has a responsibility and a duty to pursue an aggressive and coordinated policy to assure that this Maine heritage is passed on to future generations.

Sec. A-2. 5 MRSA §6201, sub-§2-A is enacted to read:

2-A. Interest in property. "Interest in property" means both fee and less-than-fee simple interest and includes, but is not limited to, conservation easements, access easements, scenic easements, other permanent interests in land and long-term leases of at least 99 years as long as the interest is primarily in natural lands meeting the criteria set forth in this chapter.

Sec. A-3. 5 MRSA §6203-A, sub-§2, as repealed and replaced by PL 2023, c. 284, §5, is amended to read:

2. Grants; matching funds. The board may make grants to state agencies and ~~designated~~ cooperating entities for the purposes identified in subsection 3. For each grant made under this subsection, the board shall require the grant recipient to provide matching funds at least equal to the amount of the grant. Grants must be made according to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. A-4. 5 MRSA §6203-B, sub-§2, as enacted by PL 2011, c. 266, Pt. B, §3, is amended to read:

2. Grants. The board may make grants to state agencies and ~~designated~~ cooperating entities for the purposes identified in subsection 3. Grants are made according to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-5. 5 MRSA §6203-C, sub-§2, as enacted by PL 2021, c. 135, §4, is amended to read:

2. Grants. The board may make grants to state agencies and ~~designated~~ cooperating entities for the purposes identified in subsection 3. Grants are made according to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. A-6. 5 MRSA §6203-E, sub-§2, as enacted by PL 2023, c. 284, §9, is amended to read:

2. Grants; matching funds. The board may make grants to state agencies and ~~designated~~ cooperating entities for the purposes identified in subsection 3. For each grant made under this subsection, the board shall require the grant recipient to provide matching funds at least equal to the amount of the grant. Grants must be made according to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. A-7. 5 MRSA §6203-F, sub-§2, as enacted by PL 2023, c. 284, §10, is amended to read:

2. Grants; matching funds. The board may make grants to state agencies and ~~designated~~ cooperating entities for the purposes identified in subsection 3. For each grant made under this subsection, the board shall require the grant recipient to provide matching funds at least equal to the amount of the grant. Grants must be made according to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter 2-A.

Sec. A-8. 5 MRSA §6206-A, as amended by PL 1993, c. 728, §9, is further amended to read:

§6206-A. Nominations Public notice of final award

~~Prior to taking an action to designate land for negotiation for acquisition, the board shall send by certified mail or otherwise deliver a notice of this intention to the owner or owners of land within the area proposed by the board for acquisition, as the identity and address of such owner or owners is shown on the tax maps or other tax records of the municipality in which the land is located. If the land is located within the unorganized territory, notice must be sent to the owner or owners as shown on the tax maps or other tax records of the State Tax Assessor. After the completion of negotiations determining a final award, the board shall publish a notice of its intent to designate land for acquisition fund the purchase of land offered for acquisition in a newspaper or newspapers of general circulation that identifies the land proposed by the board for acquisition funding and that notifies the residents of the area that the board will accept public comments on the proposed acquisition award.~~

~~Any owner of land that has been nominated for acquisition and is subject to the notice requirements of this section may submit a properly sworn affidavit to the board indicating~~

~~the owner's unwillingness to sell. The affidavit is notice to the board that continued evaluation of that land is inappropriate and, unless the board intends to acquire an interest in the land through the use of eminent domain pursuant to section 6207-A, the board may not consider that land for acquisition.~~

Sec. A-9. 5 MRSA §6207, sub-§2, as amended by PL 2023, c. 284, §15, is further amended to read:

2. Determination of statewide significance. In determining whether a proposed acquisition ~~must~~ may be funded, in full or in part, by the Land for Maine's Future Trust Fund, the Conservation and Recreation Fund or the Public Access to Maine Waters Fund, the board shall consider whether the site is of statewide significance and:

A. Contains recreation lands, prime physical features of the Maine landscape, areas of special scenic beauty, farmland or open space, undeveloped shorelines, significant undeveloped archeological sites, wetlands, fragile mountain areas or lands with other conservation, wilderness or recreation values;

B. Is habitat for plant or animal species or natural communities considered rare, threatened or endangered in the State;

C. Provides nonmotorized or motorized public access to recreation opportunities or those natural resources identified in this section;

D. Provides public water supply protection when that purpose is consistent and does not conflict with the natural resource conservation and recreation purposes of this chapter; or

E. Contains deer wintering areas and satisfies all the requirements of subsection 3, paragraph A.

Sec. A-10. 5 MRSA §6207, sub-§4, ¶C, as amended by PL 1993, c. 728, §10, is further amended to read:

C. The acquisition of a fee interest in land of which the primary use ~~value~~ has been and will be as commercially harvested or harvestable forest land.

Sec. A-11. 5 MRSA §6209, as amended by PL 2023, c. 284, §§16 and 17, is further amended to read:

§6209. ~~Ownership; title; management~~ Fee title; evaluation; legislative approval; authority to encumber

1. ~~Uses of funds.~~ ~~The board may use the Land for Maine's Future Trust Fund, the Conservation and Recreation Fund and the Public Access to Maine Waters Fund to acquire real property in both fee and less-than-fee simple interest, including, but not limited to, conservation easements, access easements, scenic easements, other permanent interests in land and long-term leases of at least 99 years as long as those acquisitions are primarily natural lands meeting the criteria set forth in this chapter.~~

2. Title Fee title. Title Fee title to all lands interests in land acquired pursuant to this chapter must be ~~vested solely in the State. Management responsibilities for the acquired lands may be contracted by the land-owning state agency to cooperating entities, subject to appropriate lease arrangements, upon the recommendation of the agency's commissioner~~

and approval of the board clear to ensure that the State's interests in funding the acquisition are protected.

3. Matching funds. ~~When matching funds for a project include cash not derived from a bond request, an allocation of up to 20% of the appraised value of the acquired land or the amount of cash, whichever is less, may be put into the stewardship account of the state agency holding title to the land.~~

4. Payments. ~~Payments from the fund may be made to cooperating entities for qualifying lands acquired on behalf of the State, provided that a state agency has issued to the cooperating entity a letter of intent requesting assistance in the acquisition. Upon submission to the state agency of a cooperating entity's direct expenses for acquisition and related costs of an authorized acquisition, the board shall authorize payment of those expenses, provided that the total of all expenses does not exceed the appraised value of the acquired property. Expenses must be paid at intervals during the acquisition process, as determined by the board.~~

5. Land evaluated. All lands interests in property acquired with money from the Land for Maine's Future Trust Fund, the Conservation and Recreation Fund or the Public Access to Maine Waters Fund must be evaluated for rare, threatened or endangered species of plants and animals, exemplary natural communities, features of historic significance and other high priority natural features and ecologic functions as determined by the board, with reference to the best inventory data available to the State. Subsequent management by state agencies holding properties found to have such important features and functions must reflect the objective of maintaining and protecting those features and functions.

6. Legislative Fee title legislative approval. Except as provided in subsection 7, fee interests in land acquired under this chapter and held by the State may not be sold or used for purposes other than those stated in this chapter, unless approved by a 2/3 majority of the Legislature.

7. Conveyance of an access easement across a rail trail. Notwithstanding any other provision of law to the contrary, the Director of the Bureau of Parks and Lands within the Department of Agriculture, Conservation and Forestry, with the approval of the Governor and the Commissioner of Agriculture, Conservation and Forestry, may sell or otherwise convey in accordance with Title 12, section 1814-A access rights by easement across a rail trail acquired under this chapter.

For the purposes of this subsection, "rail trail" means a former railroad right-of-way in which the Department of Agriculture, Conservation and Forestry holds an ownership interest and that is:

- A. No longer used for rail service; and
- B. Managed by the Department of Agriculture, Conservation and Forestry for use as a recreational trail.

Sec. A-12. 5 MRSA §6210, first ¶, as enacted by PL 1989, c. 485, §3, is amended to read:

If the board transfers in writing to any local or federal agency any written information acquired by the board under this chapter concerning any land, the board ~~shall~~ may, upon transfer, notify the landowner of the transfer by certified mail.

PART B

Sec. B-1. 33 MRSA c. 6-B is enacted to read:

CHAPTER 6-B

OPTIONS TO PURCHASE AT AGRICULTURAL VALUE

§141. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Option to purchase at agricultural value. "Option to purchase at agricultural value" means any agreement in recordable form between the fee owner of working farmland property and one or more qualified holders that permits a qualified holder to control, either directly or indirectly, the purchase price of the working farmland property for the primary purpose of making available and affordable, and preserving the permanent availability and affordability of, that property for working farmland.

2. Qualified holder or holder. "Qualified holder" or "holder" means:

A. A governmental entity authorized to hold an interest in real property;

B. A nonprofit organization organized under state law whose purposes include the permanent protection of working farmland or the enlargement of working farmland opportunities for farmers; or

C. A nonprofit organization organized under state law whose purposes or powers include retaining or protecting working farmland or providing access to working farmland.

3. Third-party right of enforcement. "Third-party right of enforcement" means a right provided in an option to purchase at agricultural value to enforce any of its terms granted by the grantor and holder of the option to purchase at agricultural value to a governmental entity or nonprofit organization that meets the qualifications of a holder.

4. Working farmland or working farmland property. "Working farmland" or "working farmland property" has the same meaning as in Title 5, section 6201, subsection 4-A.

§142. Creation; conveyance; acceptance; duration; filing

1. Option to purchase at agricultural value. Except as otherwise provided in this chapter, an option to purchase at agricultural value may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other options to purchase real property created by written instrument. An option to purchase at agricultural value may include a 3rd-party right of enforcement and may be incorporated into an agricultural easement or be an independent document suitable for recording.

2. Right or duty. A right or duty in favor of or against a qualified holder may not arise under an option to purchase at agricultural value unless it is accepted in writing by the qualified holder.

3. Limitation. Except as provided in this chapter, an option to purchase at agricultural value is unlimited in duration unless a change of circumstances renders the option to purchase at agricultural value no longer in the public interest as determined in an action under section 143, subsection 2.

4. Filing. An option to purchase at agricultural value must be recorded in the county registry of deeds, and a copy of the recorded option to purchase at agricultural value must be filed with the Department of Agriculture, Conservation and Forestry together with a map showing with specificity the location of the affected property on the form or forms that the department requires.

5. Other interest. An interest in real property in existence at the time an option to purchase at agricultural value is created is not affected by the option to purchase at agricultural value unless the fee owner of the interest is a party to the option to purchase at agricultural value or consents to the option to purchase at agricultural value.

6. Right to enter real property. The written instrument creating an option to purchase at agricultural value must designate how and when representatives of the holder of an option to purchase at agricultural value are entitled to enter the real property to ensure compliance.

§143. Judicial actions

1. Fee owners; qualified holders. An action affecting an option to purchase at agricultural value may be brought or intervened in by:

- A. A fee owner of an interest in the real property burdened by the option to purchase at agricultural value;
- B. A qualified holder of the benefit of the option to purchase at agricultural value;
- C. The municipality in which the real property burdened by the option to purchase at agricultural value is located; or
- D. The Attorney General.

2. Power of court. The court has the following powers.

- A. The court may enforce an option to purchase at agricultural value by injunction or other proceeding at law or in equity.
- B. Acting in accordance with charitable trust principles, the court may modify, terminate or deny equitable enforcement of an option to purchase at agricultural value in an action brought by a party under subsection 1. In taking such an action, the court must find that, due to a change in circumstance, the option to purchase at agricultural value no longer serves the public interest in protecting or enhancing the protection of working farmland or related businesses of the State. The Attorney General must be made a party to any action under this paragraph, and written notice must be provided to the Commissioner of Agriculture, Conservation and Forestry.
- C. If the court modifies, terminates or denies equitable enforcement of an option to purchase at agricultural value, the court may order payment by the fee owner of money or other damages to the holder or the State. The holder or the State shall apply the same in a manner consistent with the purposes of this law as approved by the court.

The fact that a working farmland property might be used for more valuable economic purposes may not be considered when determining whether an option to purchase at agricultural value is no longer in the public interest.

§144. Scope of option to purchase at agricultural value

An option to purchase at agricultural value may include any of the following agreements affecting working farmland property:

1. Resale price of working farmland property. Limitations on the resale price of working farmland property, which may include provisions for payments to the holder;

2. Amount of equity appreciation. Limitations on the amount of equity appreciation that a fee owner may derive from ownership of working farmland property;

3. Improvements to working farmland property. Limitations on the type, extent, use or dollar value of improvements that may be made to working farmland property;

4. Uses to which working farmland property may be devoted. Restrictions on the uses to which working farmland property may be devoted, which must be consistent with the purposes of this chapter;

5. Options to purchase. The grant of rights of first refusal or options to purchase to qualified holders or their assigns, subject to the terms and conditions of the option to purchase at agricultural value;

6. Maintenance and insurance of working farmland property. The obligation to maintain, operate and insure working farmland property;

7. Construction and materials. The right to restrict or specify types of buildings, structures and materials that may be used in improvements on working farmland property;

8. Acts that may enhance affordability of working farmland property. The right to prohibit, limit or require other acts that may enhance or allow the affordability and availability of working farmland property over time to beginning farmers in the future. For the purposes of this subsection, "beginning farmer" means an individual who has not operated a farm for more than 10 years; and

9. Right of qualified holders to enter and inspect. In accordance with section 142, subsection 6, the right to provide qualified holders periodic entry and inspection of farmland real property at reasonable times and after reasonable notice.

§145. Validity

An option to purchase at agricultural value is valid and enforceable, notwithstanding any of the following conditions.

1. Not appurtenant to interest in real property. The option to purchase at agricultural value is not appurtenant and does not run with an interest in real property.

2. Assignable to another holder. The option to purchase at agricultural value can be or has been assigned to another qualified holder.

3. Not recognized at common law. The option to purchase at agricultural value is not of a character traditionally recognized at common law.

4. Imposes negative burden. The option to purchase at agricultural value imposes a negative burden.

5. Imposes affirmative obligations. The option to purchase at agricultural value imposes affirmative obligations upon the fee owner of an interest in the burdened property or the qualified holder.

6. Benefit does not touch or concern real property. The benefit of the option to purchase at agricultural value is held by a qualified holder who has not retained property that would benefit from enforcement of the option to purchase at agricultural value, or the benefit does not touch or concern real property in any other way.

7. No privity of estate or contract. There is no privity of estate or privity of contract.

8. Does not run to successors or assigns. The option to purchase at agricultural value does not run to the successors or assigns of the qualified holder.

9. Unreasonable restraint on alienability. The option to purchase at agricultural value may be considered to be an unreasonable restraint on alienability.

10. Violation of rule against perpetuities. The option to purchase at agricultural value may violate the rule against perpetuities.

§146. Application

1. Interest created after effective date. This chapter applies to any interest that complies with this chapter created after the effective date of this chapter, whether designated as an option to purchase at agricultural value or an equitable servitude, restriction, easement or other interest in the property.

2. Option to purchase at agricultural value created before effective date. This chapter applies to any option to purchase at agricultural value created before the effective date of this chapter if the option to purchase at agricultural value would have been enforceable had it been created after the effective date of this chapter, unless retroactive application contravenes the Constitution of Maine or the United States Constitution.

3. Chapter does not invalidate interest. This chapter does not invalidate any interest, whether designated as an option to purchase at agricultural value or an equitable servitude, restriction, easement or other interest in property, that is otherwise enforceable under other laws of this State.

PART C

Sec. C-1. 33 MRSA §479-C, as amended by PL 2017, c. 475, Pt. A, §56, is further amended to read:

§479-C. Conservation lands ~~registry~~ reporting

A For each conservation easement and each parcel owned in fee for conservation purposes in the State, the holder of a the conservation easement ~~or a~~ and the fee owner of each parcel of land for conservation purposes that is organized or doing business in the State shall annually report to the Department of Agriculture, Conservation and Forestry the book and page number at the registry of deeds for each conservation easement that it holds ~~or each parcel owned in fee for conservation purposes~~ department, the municipality, the approximate number of acres protected under each easement or parcel owned, the approximate number of acres that are exempt from taxation pursuant to Title 36, section 652 for which the municipality or county does not receive payments in lieu of taxes and such other information as the Department of Agriculture, Conservation and Forestry

department determines necessary to fulfill the purposes of this subchapter. The filing report must be made by a date and on forms in the form established by the Department of Agriculture, Conservation and Forestry department to certify the accuracy of the conservation easement holder's or fee owner's information, avoid duplicative filings when possible, provide public access to the information reported and otherwise reduce administrative burdens. The department is authorized to adopt a form of reporting that results in the creation of a geographic information system map layer that displays the information required by this section. The annual filing certification must be accompanied by an \$80 fee. The Department of Agriculture, Conservation and Forestry department shall maintain a permanent current record of the registration these reporting requirements in a form conducive to public dissemination of the information and shall report to the Attorney General any failure of a holder of a conservation easement disclosed by the filing or otherwise known to the Department of Agriculture, Conservation and Forestry department. The fees established under this section must be held by the Department of Agriculture, Conservation and Forestry department in a nonlapsing, special account to defray the costs of maintaining the registry reported information and carrying out its duties under this section. For the purposes of this section, "department" means the Department of Agriculture, Conservation and Forestry.