

1 Introduced by House Committee on Natural Resources, Fish, and Wildlife

2 Referred to Committee on

3 Date:

4 Subject: Taxation; use value appraisal; wildlands

5 Statement of purpose of bill as introduced: This bill proposes to authorize

6 enrollment of conserved natural forestland in the use value appraisal program

7 as a new type of managed forestland.

8 An act relating to eligibility of conserved natural forestland for enrollment
9 in the use value appraisal program

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. 32 V.S.A chapter 124 is amended to read:

12 CHAPTER 124. AGRICULTURAL AND FOREST, AND OPEN SPACE

13 LANDS

14 §3750. STATUTORY PURPOSES

15 The statutory purpose of the Vermont Use Value Appraisal Program in

16 chapter 124 of this title is to preserve the working landscape and the rural

17 character of Vermont.

18 § 3751. STATEMENT OF PURPOSE

1 The purpose of this subchapter is to encourage and assist the maintenance
2 of Vermont's productive agricultural and land, forestland, biodiversity; to
3 encourage and assist in their conservation and preservation for future
4 productive use and for the protection of natural ecological systems; to protect
5 wildlife habitat and wildlife corridors; to prevent the accelerated conversion of
6 these lands to more intensive use by the pressure of property taxation at values
7 incompatible with the productive capacity of the land; to achieve more
8 equitable taxation for undeveloped lands; to encourage and assist in the
9 preservation and enhancement of Vermont's scenic natural resources; to assist
10 in carbon sequestration; to prevent help reduce forest fragmentation; and to
11 enable the citizens of Vermont to plan its orderly growth in the face of
12 increasing development pressures in the interests of the public health, safety,
13 and welfare.

14 § 3752. DEFINITIONS

15 As used in this subchapter:

16 (1) "Agricultural land" means any land, exclusive of any housesite, in
17 active use to grow hay or cultivated crops, pasture livestock, cultivate trees
18 bearing edible fruit, or produce an annual maple product, and that is 25 acres
19 or more in size, except as provided in this subdivision (1). Agricultural land
20 shall include buffer zones as defined and required in the Agency of
21 Agriculture, Food and Markets' Required Agricultural Practices rule adopted

1 under 6 V.S.A. chapter 215. There shall be a presumption that the land is used
2 for agricultural purposes if:

3 (A) it is owned by a farmer and is part of the overall farm unit; or

4 (B) it is used by a farmer as part of his or her farming operation

5 under written lease for at least three years; or

6 (C) it has produced an annual gross income from the sale of farm
7 crops in one of two, or three of the five, calendar years preceding of at least:

8 (i) \$2,000.00 for parcels of up to 25 acres; and

9 (ii) \$75.00 per acre for each acre over 25, with the total income
10 required not to exceed \$5,000.00.

11 (iii) Exceptions to these income requirements may be made in
12 cases of orchard lands planted to fruit-producing trees, bushes, or vines that are
13 not yet of bearing age. As used in this section, the term “farm crops” also
14 includes animal fiber, cider, wine, and cheese, produced on the enrolled land or
15 on a housesite adjoining the enrolled land, from agricultural products grown on
16 the enrolled land.

17 * * *

18 (4) “Commissioner” means the Commissioner of Taxes.

19 (5) “Development” means, for the purposes of determining whether a
20 land use change tax is to be assessed under section 3757 of this chapter, the
21 construction of any building, road, or other structure, or any mining,

1 excavation, or landfill activity. “Development” also means the subdivision of a
2 parcel of land into two or more parcels, regardless of whether a change in use
3 actually occurs, where one or more of the resulting parcels contains less than
4 25 acres each; but if subdivision is solely the result of a transfer to one or more
5 of a spouse, ex-spouse in a divorce settlement, parent, grandparent, child,
6 grandchild, niece, nephew, or sibling of the transferor, or to the surviving
7 spouse of any of the foregoing, then “development” shall not apply to any
8 portion of the newly created parcel or parcels that qualify for enrollment and
9 for which, within 30 days following the transfer, each transferee or transferor
10 applies for reenrollment in the use value appraisal program. “Development”
11 also means the cutting of timber on property appraised under this chapter at use
12 value in a manner contrary to a forest or conservation management plan as
13 provided for in subsection 3755(b) of this title during the remaining term of the
14 plan, or contrary to the minimum acceptable standards for forest management
15 if the plan has expired; ~~or~~ a change in the parcel or use of the parcel in
16 violation of the conservation management standards established by the
17 Commissioner of Forests, Parks and Recreation; or a violation of standards for
18 conserved natural forestland. “Development” also means notification of the
19 Director by the Secretary of Agriculture, Food and Markets under section 3756
20 of this title that the owner or operator of agricultural land or a farm building is
21 violating the water quality requirements of 6 V.S.A. chapter 215 or is failing to

1 comply with the terms of an order issued under 6 V.S.A. chapter 215,
2 subchapter 10. The term “development” shall not include the construction,
3 reconstruction, structural alteration, relocation, or enlargement of any building,
4 road, or other structure for farming, logging, forestry, or conservation
5 purposes, but shall include the subsequent commencement of a use of that
6 building, road, or structure for other than farming, logging, or forestry
7 purposes.

8 * * *

9 (9) “Managed forestland” means:

10 (A) any land, exclusive of any house site, that is at least 25 acres in
11 size and that is under active long-term forest management for the purpose of
12 growing and harvesting repeated forest crops in accordance with minimum
13 acceptable standards for forest management. Such land may include eligible
14 ecologically significant treatment areas in accordance with minimum
15 acceptable standards for forest management and as approved by the
16 Commissioner; or

17 (B) any land, exclusive of any house site, that is:

18 (i) certified under 10 V.S.A. § 6306(b);

19 (ii) is owned by an **organization** that was certified by the

20 Commissioner of Taxes as a qualified organization as defined in 10 V.S.A. §
21 6301a and for at least five years preceding its certification was determined by

1 the internal revenue service to qualify as a Section 501(c)(3) organization

2 which is not a private foundation as defined in 26 U.S.C. § 509(a); and

3 (iii) is under active conservation management in accord with
4 standards established by the Commissioner of Forests, Parks and Recreation.

5 (C) any land exclusive of any house site that:

6 (i) has been designated under the Agency of Natural Resources’
7 Vermont Conservation Design tool as an area of the State that is of the highest
8 priority for maintaining or enhancing ecological function;

9 (ii) is subject to permanent conservation easement requiring that
10 the land be maintained as conserved natural forestland;

11 (iii) the permanent conservation easement holder is held by a
12 qualified holder, as that term is defined in 10 V.S.A. § 821(3); and

13 (iv) is being managed according to standards establishing by the
14 Commissioner of Forests, Parks and Recreation.

15 (10) “Owner” means the person who is the owner of any land or the
16 lessee under a perpetual lease as defined in subsection 3610(a) of this title,
17 provided the term of the lease is for a minimum of 999 years exclusive of
18 renewals. When enrolled land is mortgaged, the mortgagor shall be deemed
19 the owner of the land for the purposes of this subchapter until the mortgagee
20 takes possession, either by voluntary act of the mortgagor or foreclosure, after
21 which the mortgagee shall be deemed the owner.

1 the private agricultural sector; two shall represent the private forestry sector;
2 two shall represent the interests and benefits of designated conserved natural
3 forestland; one shall be experienced in agricultural and forestry property
4 appraisal and valuation techniques; one shall be a representative of local
5 government; one shall be a selectboard member; and one shall be a lister.

6 Fifty-one percent or more of the Board membership shall be persons who do
7 not own enrolled land, and have no spouse, child, or parent who owns enrolled
8 land. These members shall be appointed for three-year terms, beginning
9 February first of the year in which the appointment is made, except that the
10 initial appointment of three of the members shall be for a two-year term.

11 Vacancies shall be filled in the same manner as the original appointment for
12 the unexpired portion of the term vacated.

13 * * *

14 § 3755. ELIGIBILITY FOR USE VALUE APPRAISALS

15 (a) Except as modified by subsection (b) of this section, any agricultural
16 land, managed forestland, and farm buildings that meet the criteria contained in
17 this subchapter and in the rules adopted by the Board shall be eligible for use
18 value appraisal.

19 (b) Managed forestland shall be eligible for use value appraisal under this
20 subchapter chapter only if:

1 (1) The land is subject to a forest management plan, ~~or~~ subject to a
2 conservation management plan in the case of lands certified under 10 V.S.A. §
3 6306(b), or subject to a conserved natural forestland plan that is filed in the
4 manner and form required by the Department of Forests, Parks and Recreation
5 and that:

6 (A) Is signed by the owner of the parcel.

7 (B) Complies with subdivision 3752(9) of this title.

8 (C) Is approved by the Department of Forests, Parks and Recreation.

9 (D) Provides for continued conservation management or forest crop
10 production on the parcel for 10 years or provides for permanent conservation
11 of forestland. An initial forest management plan ~~or~~ conservation management
12 plan, or conserved natural forestland plan must be filed with the Department of
13 Forests, Parks and Recreation on or before October 1 and shall be effective for
14 a 10-year period beginning the following April 1. Prior to expiration of a 10-
15 year plan and on or before April 1 of the year in which the plan expires, the
16 owner shall file a new conservation or forest management plan for the next
17 succeeding 10 years to remain in the program.

18 (E) The Department may approve a forest management plan that
19 provides for the maintenance and enhancement of the tract's wildlife habitat
20 where clearly consistent with timber production and with minimum acceptable

1 standards for forest management as established by the Commissioner of
2 Forests, Parks and Recreation.

3 (F) The Department, upon giving due consideration to resource
4 inventories submitted by applicants, may approve a conservation management
5 plan, consistent with conservation management standards, so as to include
6 appropriate provisions designed to preserve: areas with special ecological
7 values; fragile areas; rare or endangered species; significant habitat for
8 wildlife; significant wetlands; outstanding resource waters; rare and
9 irreplaceable natural areas; areas with significant historical value; public water
10 supply protection areas; areas that provide public access to public waters; and
11 open or natural areas located near population centers or historically frequented
12 by the public. In approving a plan, the Department shall give due
13 consideration to: the need for restricted public access where required to protect
14 the fragile nature of the resource; public accessibility where restricted access is
15 not required; facilitation of appropriate, traditional public usage; and
16 opportunities for traditional or expanded use for educational purposes and for
17 research.

18 (G) The Department shall approve a conserved natural forestland
19 management plan if the plan:

20 (i) is consistent with management standards adopted by the
21 Commissioner of Forests, Parks, and Recreation;

1 (ii) permanently prohibits subdivision of the land and prohibits the
2 construction of any building, road, or other structure, or any mining,
3 excavation, or landfill activity on the land; and

4 (iii) ensures that natural resources on the land will remain
5 substantially unaltered, except for timber harvest, cutting, or other land
6 management necessary to prevent the spread of fires or disease.

7 (2) A management report of whatever activity has occurred, signed by
8 the owner, has been filed with the Department of Taxes' Director of Property
9 Valuation and Review on or before February 1 of the year following the year
10 when the management activity occurred.

11 (3) There has not been filed with the Director an adverse inspection
12 report by the Department stating that the management of the tract is contrary to
13 the forest management plan ~~or~~, conservation management plan, or conserved
14 natural forestland management plan or contrary to the minimum acceptable
15 standards for forest or conservation management. The management activity
16 report shall be on a form prescribed by the Commissioner of Forests, Parks and
17 Recreation in consultation with the Commissioner of Taxes and shall be signed
18 by all the owners and shall contain the tax identification numbers of all the
19 owners. All information contained within the management activity report shall
20 be forwarded to the Department of Forests, Parks and Recreation, except for
21 any tax identification number included in the report. If any owner satisfies the

1 Department that he or she was prevented by accident, mistake, or misfortune
2 from filing an initial or revised management plan that is required to be filed on
3 or before October 1, or a management plan update that is required to be filed
4 on or before April 1 of the year in which the plan expires, or a management
5 activity report that is required to be filed on or before February 1 of the year
6 following the year when the management activity occurred, the owner may
7 submit that management plan or management activity report at a later date;
8 provided, however, no initial or revised management plan shall be received
9 later than December 31, and no management plan update shall be received later
10 than one year after April 1 of the year the plan expires, and no management
11 activity report shall be received later than March 1.

12 (c) The Department of Forests, Parks and Recreation shall periodically
13 review the management plans and each year review the management activity
14 reports that have been filed.

15 (1) At intervals not to exceed 10 years, that Department shall inspect
16 each parcel of managed forestland qualified for use value appraisal to verify
17 that the terms of the management plan have been carried out in a timely
18 fashion.

19 (2) The Department shall have the ability to enter parcels of managed
20 forestland for the purpose of inspections. The Department may bring any other
21 staff from the Agency of Natural Resources that have the expertise to evaluate

1 compliance with this chapter or staff that may be required to ensure the safety
2 of the Department while conducting the inspections.

3 (3) If that Department finds that the management of the tract is contrary
4 to the conservation plan, conserved natural forestland land, or forest
5 management plan, or contrary to the minimum acceptable standards for
6 conservation or forest management, it shall file with the owner, the assessing
7 officials, and the Director an adverse inspection report within 30 days after the
8 conclusion of the inspection process.

9 (d) After managed forestland has been removed from use value appraisal
10 due to an adverse inspection report under subsection 3756(k) of this title, a
11 new application for use value appraisal shall not be considered for a period of
12 five years, and then the forest management plan shall be approved by the
13 Department of Forests, Parks and Recreation only if a compliance report has
14 been filed with the new forest management plan, certifying that appropriate
15 measures have been taken to bring the parcel into compliance with minimum
16 acceptable standards for forest or conservation management.

17 (e) Any applicant for appraisal under this subchapter bears the burden of
18 proof as to his or her qualification. Any documents submitted by an applicant
19 as evidence of income shall be held in confidence by any person accepting or
20 reviewing them pursuant to provisions of this subchapter, and shall not be

1 made available for public examination, whether or not such person is subject to
2 the provisions of 1 V.S.A. § 317(c)(6).

3 * * *

4 (g) Any applicant for a use value appraisal or any beneficiary of a use value
5 appraisal must be in good standing with the Department of Taxes pursuant to
6 subsection 3113(g) of this title.

7 § 3756. QUALIFICATION FOR USE VALUE APPRAISAL

8 (a)(1) The owner of eligible agricultural land, farm buildings, or managed
9 forestland, or open space land shall be entitled to have eligible property
10 appraised at its use value provided the owner shall have applied to the Director
11 on or before September 1 of the previous tax year, on a form approved by the
12 Board and provided by the Director. A farmer, whose application has been
13 accepted on or before December 31 by the Director of the Division of Property
14 Valuation and Review of the Department of Taxes for enrollment for the use
15 value program for the current tax year, shall be entitled to have eligible
16 property appraised at its use value, if he or she was prevented from applying on
17 or before September 1 of the previous year due to the severe illness of the
18 farmer.

19 (2) The owner of land enrolled in the program as managed forestland
20 under subdivision 3752(9)(A) for long term forest management or under
21 3752(9)(B) as managed forestland for conservation, may elect to enroll the

1 land as conserved natural forestland under 3752(9)(C) provided that the land
2 satisfies the eligibility requirements under this chapter and the Commissioner
3 of Forests, Parks and Recreation approves the transfer of the enrollment of the
4 land on or before August 1 of the previous tax year.

5 * * *

6 (c) The Director shall notify the applicant no later than April 15 of his or
7 her decision to classify or refusal to classify his or her property as eligible for
8 use value appraisal by delivery of such notification to him or her in person or
9 by mailing ~~such~~ notification to his or her last and usual place of abode. In the
10 case of a refusal, the Director shall state the reasons therefor in the notification.

11 (d) The assessing officials shall appraise qualifying agricultural and
12 managed forestland and farm buildings at use value appraisal as defined in
13 subdivision 3752(12) of this title. If the land to be appraised is a portion of a
14 parcel, any portion not receiving a use value appraisal shall be valued at its fair
15 market value as a stand-alone parcel, and, for the purposes of the payment
16 under section 3760 of this chapter, the entire parcel shall be valued at its fair
17 market value as other similar parcels in the municipality.

18 (e) Once a use value appraisal has been applied for and granted under this
19 section, such appraisal shall remain in effect for subsequent tax years pursuant
20 to the provisions of subsection (f) of this section, and until the property
21 concerned is transferred to another owner or is no longer eligible under

1 provisions of section 3752 or 3755 of this chapter, or due to a change of use or
2 as otherwise provided in section 3757 of this chapter. If enrolled property is
3 transferred to another owner, the new owner shall be entitled to continue to
4 have the eligible property appraised at its use value, provided the property
5 remains eligible and provided the new owner shall elect the continuation of use
6 value appraisal on the property transfer tax return at the time of transfer and,
7 within 30 days after the property transfer tax return has been received by the
8 municipality for recording, has applied to the Director and paid the fees
9 described in this subsection. The grant of use value appraisals of agricultural
10 land, forestland, conserved natural forestland, and farm buildings shall be
11 recorded in the land records of the municipality by the clerk of the
12 municipality. Applications shall include the fees specified in subdivision
13 1671(a)(6) or subsection 1671(c) of this title, and a fee of \$70.00 for deposit in
14 a special fund established and managed pursuant to subchapter 5 of chapter 7
15 of this title. The Fund shall be available as payment for the fees of the clerk of
16 the municipality and to offset the costs of administering the application and
17 managing the program.

18 (f) Each year the Director shall determine whether previously classified
19 property is still eligible for use value appraisal and whether the amount of the
20 previous appraisal is still valid. If the Director determines that previously
21 classified property is no longer eligible, or that the property has undergone a

1 change in use such that the use change tax may be levied, in accordance with
2 section 3757 of this chapter, or that the use value appraisal should be fixed at a
3 different amount than the previous year, he or she shall thereafter notify the
4 property owner of that determination by delivery of the notification to him or
5 her in person or by mailing such notification to his or her last and usual place
6 of abode.

7 (g) The Director shall execute such other forms and the board shall adopt
8 such other procedures and regulations rules, as are needed to assure a fair
9 opportunity for owners to qualify under this subchapter and to assure
10 compliance with the provisions of this chapter.

11 (h) By March 15, the Director shall mail to each municipality a list of
12 property in the municipality which that is to be taxed based on its use value
13 appraisal. The list shall include the owners' names, a grand list number or
14 description of each parcel of land to be appraised at use value, the acreage to
15 be taxed on the basis of use value, the use values to be used for land, and the
16 number and type of farm buildings to be appraised by the assessing officials at
17 use value. The assessing officials shall determine the listed value of the land to
18 be taxed at use value and its estimated fair market value, and fill in these
19 values and the difference between them on the form. This form shall be used
20 by the Treasurer or the collector of current taxes to make up tax bills such that
21 the owner is billed only for taxes due on his or her property not enrolled in the

1 program, plus taxes due on the use value of property enrolled in the program.

2 The assessing officials shall submit the completed form to the Director by July
3 5.

4 (i)(1) After providing 30 days' notice to the owner, the Director shall
5 remove from use value appraisal an entire parcel of managed forestland and
6 notify the owner when the Commissioner of Forests, Parks and Recreation has
7 not received a required management activity report or has received an adverse
8 inspection report, unless the lack of conformance consists solely of the failure
9 to make prescribed planned cutting. In that case, the Director may delay
10 removal from use value appraisal for a period of one year at a time to allow
11 time to bring the parcel into conformance with the plan.

12 * * *

13 § 3757. LAND USE CHANGE TAX

14 (a) Land ~~which~~ that has been classified as agricultural land or managed
15 forestland pursuant to this chapter shall be subject to a land use change tax
16 upon the development of that land, as defined in section 3752 of this chapter.
17 The tax shall be at the rate of 10 percent of the full fair market value of the
18 changed land determined without regard to the use value appraisal. If changed
19 land is a portion of a parcel, the fair market value of the changed land shall be
20 the fair market value of the changed land as a separate parcel, divided by the
21 common level of appraisal. **Such The** fair market value shall be determined as

1 of the date the land is no longer eligible for use value appraisal. This tax shall
2 be in addition to the annual property tax imposed upon such property. Nothing
3 in this section shall be construed to require payment of an additional land use
4 change tax upon the subsequent development of the same land, nor shall it be
5 construed to require payment of a land use change tax merely because
6 previously eligible land becomes ineligible, provided no development of the
7 land has occurred.

8 (b) Any owner of eligible land who wishes to withdraw land from use
9 value appraisal shall notify the Director, who shall in turn notify the local
10 assessing official. In the alternative, if the Director determines that
11 development has occurred, the Director shall notify the local assessing official
12 of his or her determination. Thereafter, land which has been withdrawn or
13 developed shall be appraised and listed at its full fair market value in
14 accordance with the provisions of chapter 121 of this title and subsection
15 3756(d) of this title, according to the appraisal model and land schedule of the
16 municipality.

17 (c) For the purposes of the land use change tax, the determination of the
18 fair market value of the land shall be made by the local assessing officials in
19 accordance with the provisions of subsection (b) of this section and divided by
20 the municipality's most recent common level of appraisal as determined by the
21 Director. The determination shall be made within 30 days after the Director

1 notifies the local assessing officials of the date that the owner has petitioned
2 for withdrawal from use value appraisal or that the Director or local assessing
3 official has determined that development has occurred. The local assessing
4 officials shall notify the Director and the owner of their determination, and the
5 provisions for appeal relating to property tax assessments in chapter 131 of this
6 title shall apply.

7 (d) The land use change tax shall be due and payable by the owner 30 days
8 after the tax notice is mailed to the taxpayer. The tax shall be paid to the
9 Commissioner who shall remit to the municipality the lesser of one-half the tax
10 paid or \$2,000.00. The Director shall deposit three-quarters of the remainder
11 of the tax paid in the Education Fund, and one-quarter of the remainder of the
12 tax paid in the General Fund. The Commissioner shall issue a form to the
13 assessing officials ~~which~~ that shall provide for a description of the land
14 developed, the amount of tax payable, and the fair market value of the land at
15 the time of development or withdrawal from use value appraisal. The owner
16 shall fill out the form and shall sign it under the penalty of perjury. After
17 receipt of the completed and signed form, the Commissioner shall furnish the
18 owner with one copy, shall retain one copy, and shall forward one copy to the
19 local assessing officials, one copy to the register of deeds of the municipality
20 in which the land is located, and one copy to the Secretary of Agriculture,

1 Food and Markets if the land is agricultural land and in all other cases to the
2 Commissioner of Forests, Parks and Recreation.

3 (e) The owner of any classified land receiving use value appraisal under
4 this subchapter shall immediately notify the Director, who in turn shall notify
5 the local assessing officials and the Secretary of Agriculture, Food and
6 Markets if the land is agricultural land, and in all other cases the Commissioner
7 of Forests, Parks and Recreation, of:

8 (1) The development of the land, as defined in section 3752 of this
9 chapter.

10 (2) Any change or discontinuance of use of the classified land so that it
11 is no longer eligible for use value appraisal or is eligible for a different use
12 value appraisal under this subchapter.

13 (3) Any transfer of ownership. A transfer of ownership, alone, will not
14 affect eligibility of the parcel, and no new maps will be required solely because
15 of a transfer, but failure to provide maps, a new application, or transfer
16 information to the Division of Property Valuation and Review within 30 days
17 of a request being sent by certified mail by the Director will result in removal
18 of the parcel from the program.

19 * * *

1 (i) Nothing in this section shall be construed as permitting an owner to
2 engage in the development of land in violation of any conservation restriction
3 in effect on said land.

4 * * *

5 § 3758. APPEALS

6 (a) Whenever the Director denies in whole or in part any application for
7 classification as agricultural land or managed forestland or, farm buildings, or
8 grants a different classification than that applied for, or the Director or
9 assessing officials fix a use value appraisal or determine that previously
10 classified property is no longer eligible or that the property has undergone a
11 change in use, the aggrieved owner may appeal the decision of the Director to
12 the Commissioner within 30 days of the decision, and from there to Superior
13 Court in the county in which the property is located.

14 (b) Any owner who is aggrieved by the determination of the fair market
15 value of classified land for the purpose of computing the land use change tax
16 may appeal in the same manner as an appeal of a grand list valuation.

17 * * *

18 (d) Any owner who is aggrieved by a decision of the Department of
19 Forests, Parks and Recreation concerning the filing of an adverse inspection
20 report, a denial of approval of a management plan may appeal to the
21 Commissioner of Forests, Parks and Recreation within 60 days of the filing of

1 the adverse inspection report, the decision to deny approval, or the certification
2 to the Director. **An appeal of this decision of the Commissioner** may be taken
3 to the Superior Court in the same manner and under the same procedures as an
4 appeal from a decision of a Board of Civil Authority, as set forth in chapter
5 131, subchapter 2 of this title.

6 * * *

7 Sec. 2. EFFECTIVE DATE

8 This act shall take effect on ?