

Revised Chapter 61 Program

Information provided by Nathan L'Etoile – Massachusetts Farm Bureau
Chapter 394 of the Official Acts of 2006 will take effect on March 22, 2007

Subject (section of bill)	Pre March 22, 2007	Post March 22, 2007
<i>Tax Rate</i> under Chapter 61 (section 1, and 12) and Chapter 61A (section 20) Chapter 61B (Section 40)	All land under chapter 61 or 61A, because the nature of such land was commercial, had to be taxed (in towns with a split tax rate) at the Class Three Commercial Property Tax Rate.	A town may choose, by adopting this section (in towns having a split tax rate) to tax land under chapters 61 or 61A at the Class Two Open Space Property Tax Rate.
<i>Definition of "Forest Land"</i> under Chapter 61 (Section 2)	"land that is at least sixteen and seven-tenths per cent stocked, that contains at least seven and five-tenths square feet of basal area per acre by forest trees of any size; or that formerly had such tree cover and is not currently developed for non-forest use; or that is a plantation containing at least five hundred trees per acre."	"land devoted to the growth of forest products. Upon application, the state forester may allow accessory land devoted to other non-timber uses to be included in certification."
<i>Definition of "Forest Products"</i> under Chapter 61 (Section 3)	"wood, timber, Christmas trees, other tree forest growth and any other hardwood product produced by forest vegetation."	Removes the word "hardwood" allowing for a wide variety of products to be counted.
<i>Definition of "Owner"</i> under all three chapters (Section 4)	Previously ownership was restricted to "person or persons".	Expanded with "or another legal entity holding title to a parcel . . ."
<i>Definition of "Parcel"</i> under Chapter 61 (Section 5)	Could not include land on which there was a subdivision plan on file.	This restriction has been removed.
<i>Stumpage Tax</i> under Chapter 61 (Section 6, 10)	A tax was owed based on a percentage of the value of all timber harvested.	The stumpage tax has been eliminated.
<i>State Forester Review</i> under chapter 61 (Section 7)	It was unclear as to if a town could determine that land did not meet the requirement of "Forest Land", and if there was "Forest Production"	"The state forester will have sole responsibility for review and certification with regard to forest land and forest production."
<i>Fee for State Forester Review</i> under Chapter 61 (Section 8)	There was an application fee collected by the state forester for review of the application	The fee has been struck.
<i>Filing Deadline</i> under Chapter 61 (Section 9)	The application deadline was September 1 st .	Made the same as 61A – October 1 st .

<p><i>Inspection of Land for Prior Cutting</i> under Chapter 61 (Section 11)</p>	<p>Land was inspected for cutting within two years prior to entry into the Chapter and the stumpage value was taxed as if the land had been under the chapter.</p>	<p>With the removal of the stumpage tax, the need for this inspection has been removed, and the requirement to pay a stumpage tax based on the previous harvest has been removed as a condition of classification.</p>
<p><i>Valuation of Land</i> under Chapter 61 (Section 13)</p>	<p>5% of a fair cash valuation under the provisions of MGL Chapter 59, with a \$10.00/acre minimum</p>	<p>Like Chapter 61A, the valuation of the land will be “the value that the land has for forest production purposes”. The assessors shall use the list of ranges published by the Farmland Valuation Advisory Commission and their personal knowledge, but all factors shall be limited specifically to data specific to forest production similar to chapter 61A.</p>
<p><i>Application for Abatement</i> under Chapter 61 (Section 13) Chapter 61A (Sec. 37)</p>	<p>Due within 60 days of receiving a notice of the tax.</p>	<p>Due within 30 days of receiving a notice of the tax.</p>
<p><i>Valuation of; All Buildings, and Land used Regularly for Family Living</i> under Chapter 61 (Section 14)</p>		<p>Taxed by the same methods, procedures and standards of other taxable property</p>
<p>Betterment Assessments under Chapter 61 (Section 15) Chapter 61A (Sections 33, 34, 35 ad 36)</p>	<p>Are subject to betterment assessments, however any assessment other than water pipes become due and payable at the time the land is removed from classification.</p>	<p>A betterment may only be assessed to the proportion that it finances a service or facility that is used to improve the forest production use capability of the land, or the personal benefit of the owner. Payment and interest are due in accordance with MGL § 13 Chapter 80 upon a change of use, however interest shall only be computed from the date of the change in use.</p>
<p><i>Conveyance Tax</i> under Chapter 61 (Section 16)</p>	<p>There was no Conveyance Tax</p>	<p>This does not apply to any land under classification under chapter 61 before this date until it is conveyed to a new owner. There is now a conveyance tax if property is sold for another use within ten years of it’s date of earliest uninterrupted use or it’s acquisition by the current owner. The tax shall be 10% (minus 1% for every year the property has been used or owned) of the value of the property. The assessment is only in proportion in the proportion that the land whose use has changed. In the case of eminent domain takings, there is still a conveyance tax, however the conveyance tax must be added to value determined under MGL Chapter 79 (the amount paid by law to the landowner)</p> <p><i>(continued on next page...)</i></p>

		<p>There is no conveyance tax (but the restriction carries forward) if:</p> <ul style="list-style-type: none"> • the land is acquired for a natural resource purpose by the government or a nonprofit conservation organization • transactions between family where no consideration is given • there is a foreclosure • the land meets the definitions of forest, agricultural, horticultural or recreational land under § 1 and 3 of 61A, or § 2 and 3 of 61A, or § 1 of 61B (but does not need to be enrolled.) <p>Any sale with an avadavat signed by the new landowner stating that the use of the land will not change within the next ten years removes the liability from the seller. If there is then a subsequent change in the following ten year period, the conveyance will be due and payable at that time</p>
<p><i>Roll Back Taxes</i> under Chapter 61 (Section 17)</p>	<p>A roll back tax, with significant interest, compounded daily was due upon unenrollment from the chapter. This was the difference between taxes paid and the taxes that would have been paid if the property was not enrolled in Chapter 61. There were no provisions for proportional removal.</p>	<p>The Roll Back tax will only look back 5 years, and will have a flat 5% interest rate compounded annually. The tax is only proportional to the amount of land whose use is changed. No Roll Back Tax will be assessed if the land meets the definitions of forest, agricultural, horticultural or recreational land under § 1 and 3 of 61A, or § 2 and 3 of 61A, or § 1 of 61B (but does not need to be enrolled.)</p>
<p><i>Notice of Intent to Sell or Convert</i> under Chapter 61 (Section 18), Chapter 61A (Section 31)</p>	<p>Land cannot be sold or converted to another use without giving a notice to the town of the intent to sell or convert while being taxed under the chapter. This provides notice to the town under their right of first refusal of their opportunity to buy the property.</p>	<p>Land cannot be sold or converted for another use within one year of being taxed under the chapter without giving the town a notice to sell or convert. With the notice the landowner shall also provide:</p> <ul style="list-style-type: none"> • a statement of intent to sell or convert , a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner. AND a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter (for an intent to sell.) <p><i>(continued on next page.....)</i></p>

		<ul style="list-style-type: none"> The Purchase and Sale Agreement may not be dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use. <p>This provides notice to the town under their right of first refusal of their opportunity to buy the property.</p>
<p><i>Decision Period</i> under Chapter 61 (Section 18) Chapter 61A (Section 31)</p>	<p>The 120 day decision period begins on the latest date of deposit in US Mail of the Notice of intent to sell or covert. A town must hold a public hearing before assigning it's right of first refusal to a non profit.</p>	<p>The decision period is staying at 120 days. No assignment or decision to exercise may be made in the affirmative until after a public hearing, with notice given in accordance with MGL § 23B Chapter 39.</p>
<p><i>Preservation of Land Acquired Through an Assignment to a Non Profit</i> under Chapter 61 (Section 18) Chapter 61A (Section 31)</p>	<p>The non profit may not develop a "major" (greater than 50%) of the property. There is no requirement that there be protection in perpetuity on property so acquired.</p>	<p>No less than 70% of the land must be preserved and meet the definitions of forest, agricultural, horticultural or recreational land under § 1 and 3 of 61A, or § 2 and 3 of 61A, or § 1 of 61B. In no case may an assignee develop a greater proportion of the land than the offer that gave rise to the acquisition. All such land must be bound by a permanent deed restriction that meets the requirements of MGL Chapter 184.</p>
<p><i>Conversions Not Involving a Sale</i> under Chapter 61 (Section 18) Chapter 61A (Section 31)</p>	<p>Land may only be purchased under a Right of First Refusal at "full and fair market value to be determined by impartial appraisal". There are no provisions to withdraw a Notice of Intent to Convert and the subsequent Right of Refusal to the town after a value has been determined.</p>	<p>The town or it's assignee will contract (at their expense) to conduct a first appraisal. If the landowner is dissatisfied with such appraisal, the landowner, at the landowner's expense may contract for a second appraisal. If after the completion of the second appraisal the parties cannot agree on a price they may contract for a third appraisal with a mutually agree upon Appraiser, the cost to be born by both parties equally. The third appraisal is the final determination of price. It must be delivered to the parties within 90 days of the initial notice to convert. At any time in the process, the landowner may withdraw their notice to convert (and the subsequent ability of the town or it's assignee to purchase the property) with no penalty, but they may not follow through with the conversion.</p>

<p><i>Inspection of Property</i> under Chapter 61 (Section 18) Chapter 61A (Section 31)</p>	<p>Previously there were no provisions for inspection of the property.</p>	<p>During the 120-day period, the city or town or its assignees, shall have:</p> <ul style="list-style-type: none"> • the right, at reasonable times and upon reasonable notice, to enter upon said land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples. • all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.
<p><i>Closing</i> under Chapter 61 (Section 18) Chapter 61A (Section 31)</p>	<p>The town or it's assignee has a "reasonable" amount of time to close upon reaching a decision.</p>	<p>The town or it's assignee shall, prior to the end of the 120 decision period, provide "a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days" unless otherwise agreed to in writing by the landowner.</p>
<p><i>Definition of "Land in Horticultural Use" as it Relates to Forestry</i> under Chapter 61A (Section 19)</p>	<p>For land used for raising forest product, requires ". . . a program certified by the state forester to be a planned program to improve the quantity and quality of a continuous crop for the purpose of selling such products in the regular course of business. . ."</p>	<p>For land used for raising forest product, requires ". . . a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business . . ." to bring it more in line with the requirements of MGL Chapter 61.</p>
<p><i>Change of Use in the Pre-Tax Year</i> under Chapter 61A (Section 21) and Chapter 61B (Section 41)</p>	<p>A change of use after application for 61A or 61B (due October 1st) and before December 31 results in the nullification of the application.</p>	<p>A change of use after the application for 61A or 61B (due October 1st) and before June 30th results in the nullification of the application.</p>
<p><i>Use of Assessor's Personal Knowledge, Judgment and Experience</i> under Chapter 61A (Section 22)</p>	<p>Is ambiguous as to the importance of the specific type of agriculture taking place when determining the values determined.</p>	<p>Clarifies that the "factors [knowledge, judgment and experience] shall be limited to data specific to the crop or product being grown or produced"</p>
<p><i>Farmland Valuation Advisory Commission</i> under Chapter 61A and Chapter 61 (Sections 23 and 24)</p>	<p>Contains no specific direction or position for Forest Values</p>	<p>Gives specific direction to the Commission to determine forest land values and places the Commissioner of the Department of Conservation and Recreation on the Advisory Commission.</p>

<p><i>Conveyance Tax on Land Acquired Through an Assignment to a Non Profit</i> under Chapter 61 (Section 18), Chapter 61A (Section 26)</p>	<p>The Conveyance tax does not carry on to an acquiring non profit.</p>	<p>If the land is sold within five years by a non profit, then the non-profit shall be subject to the conveyance tax.</p>
<p><i>Conveyance Tax Carrying Forward to a Buyer</i> under Chapter 61A (Section 27)</p>	<p>There is no specific time frame under which the conveyance tax carries forward to a buyer when they provide an affidavit stating the use will continue.</p>	<p>If the land is not continued in the use stated in the affidavit for at least 5 consecutive years, the conveyance tax becomes due and payable and is the liability of the buyer.</p>
<p><i>Conveyance and Roll Back Taxes Exemption</i> under 61A (Section 28, 30)</p>	<p>There is debate as to if a conveyance tax or roll back tax is applicable if there is a change of use to forestry or the landowner, or subsequent owner simply stops farming but does not otherwise “convert” the property</p>	<p>No conveyance tax or roll back tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under chapter section 1 of chapter 61B.</p>
<p><i>Interest Rate on Roll Back Taxes</i> Under Chapter 61A (Section 30)</p>	<p>There is no interest on these taxes</p>	<p>Both taxes will be subject to a 5% simple interest rate per annum unless taxed under this chapter as of July 1, 2006 if it remains in the same ownership as it was on that date, or under the ownership of the original owner’s spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.</p>
<p><i>Allowance for Equine and Related Activities</i> under 61B (Sections 38 and 39)</p>	<p>Previously land must be “in substantially a natural, wild, or open condition or in a landscaped condition” and “horseback riding” is a recreational use.</p>	<p>Land can now also be in a “pastured condition” and commercial horseback riding and equine boarding” are now recreational uses.</p>
<p><i>Allowance for Forestry Activities</i> under 61B (Section 38)</p>	<p>The requirement of being “natural” or “wild” did not properly provide for forestry uses</p>	<p>Land may now be “in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester.”</p>