

The Working Waterfront: Incentive-based techniques for protecting the traditional waterfront worker

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Introduction

According to the U.S. Census Bureau, North Carolina has witnessed its population grow by 21.4% between 1990 and the year 2000.¹ From 2000 through July 2005, it is estimated that North Carolina's population has grown an additional 7.9%.² North Carolina's coastal counties have witnessed some of the most heavy population growth within the state. Between the years 1990 and 2000, the growth rates for the top five coastal counties were: Brunswick county with a 43.5% increase in population; Pender county with 42.4% growth; New Hanover county with 33.3% growth; Currituck county saw a 32.4% increase; and Dare county with 31.7% growth.³ See **Appendix A** for a complete table of population growth for the coastal counties and their cities.

Property values in these coastal counties have been rising along with the population, putting a financial strain on families whose employment is in the area of traditional waterfront activities. These financial burdens have caused some of the traditional waterfront workers to leave the area. The goal of our research is to suggest and analyze potential solutions for maintaining and retaining the native population along North Carolina's coastal and estuarian waterways. The main focus of our research is to analyze ways to offset the rising costs of living along the waterfronts of coastal communities.

Working Waterfront Definitions

The term "working waterfront" is often used but is rarely explained. Prior to the mid-1990s, the federal government often used the term "urban waterfront" to describe the

¹ U.S. Census Bureau, <http://www.quickfacts.census.gov/qfd/states/37000.html>

² Id.

³ Id.

same region. No matter which term is used, the literature is full of possible definitions.

Some of the more quoted definitions are:

1. "The interface between land and sea."⁴
2. "A community's front yard."⁵
3. "The abandoned doorstep, the original land-sea interface zone which now emerges as a spatial and functional vacuum, bereft of its traditional raison d'être, and perceived as a zone of decay and potential conflict."⁶
4. "The water's edge in cities and towns of all sizes."⁷
5. "Property that provides access for water-dependent commercial activities or property that provides access for the public to the public trust lands."⁸

The academic literature tends to define working waterfronts in a broad sense. The reasoning is partly due to the numerous activities traditionally associated with waterfront activity. These tend to include:⁹

- commercial fishing
- tug boat bases
- fish wholesale and retail operations
- marinas

⁴ Urban Land Institute (1983)

⁵ Petrillo, Joseph E. "Small city waterfront restoration". Coastal Management, 15 (1987).

⁶ Hoyle, B.S., Pinder, D.A., & Husain, M.S. (Eds.) Revitalizing the waterfront: International dimensions of dockland redevelopment. London: Belhaven Press, 1988.

⁷ Breen, A. & Rigby, D. Waterfronts: Cities reclaim their edge. New York: McGraw-Hill Inc., 1994.

⁸ Dave Inscoe, Stakeholder Panel: Identifying Issues and Sharing Perspectives. New Bern, 2006

- boat building and repair
- tour boat operations
- ship chandlers
- sail makers
- boat rentals
- docks
- wharves

The above activities and waterfront operations tend to be classified as water dependent activities, meaning they require direct access and use of the water as an integral part of the activity.¹⁰ Some operations, such as hotels, parks, and restaurants, are classified as water enhanced activities. Water enhanced activities do not require a location on the waterfront, but they do add to the public's use and enjoyment of the waterfront.¹¹

Thus, the problem facing state legislatures is two-fold. First, the legislature must determine how to balance the interests of water dependent and water enhanced activities so as to make a working waterfront viable. Secondly, the legislature must determine which activities receive the benefits of the legislation.

⁹ "A Profile of Florida's Working Waterfronts: A Report to the Florida Coastal Management Program", 1995.

¹⁰ *Supra*. Note 12.

¹¹ *Id.*

State Legislation

So far, two states, Maine and Florida, have passed legislation that provides a tax benefit for land used in association with a working waterfront. Both states assess working waterfront land at present-use value, which will be discussed in the next section. First, this paper will look at how each state has defined working waterfronts. Below is a look at the language used in each of their respective statutes.

MAINE

Maine has 149 coastal towns with 5,300 miles of shoreline.¹² Of all the coastline, only 25 miles are devoted to working waterfront activities.¹³ These 25 miles sustain over 26,000 fishing-related jobs, including 10,300 commercial fishermen and contribute over \$740 million dollars to Maine's economy.¹⁴ Other water dependent usage, such as boat yards and marinas, employ another 3,000 people and contribute \$85 million in wages.¹⁵

In a 2002 study by the Maine State Planning Office, 84% of the coastal communities questioned indicated that lack of shoreline access is already a problem or is expected to be a problem soon.¹⁶ Moreover, the SPO found that 75% of the access points were already in private ownership.¹⁷ Between the years of 2000-2004, 58% of all land valuation increased, reaching as high as 104% in Kennebunkport.¹⁸ Facing rising

¹² Maine Working Waterfront Coalition,
<http://www.islandinstitute.org/programs.asp?section=workingwaterfront>

¹³ Maine's Working Waterfront Initiative, <http://www.state.me.us/spo/mcp/wwi/index.php>

¹⁴ Supra note 16

¹⁵ Id.

¹⁶ Id.

¹⁷ Hugh Copperthwaite, Maine Working Waterfront Coalition, in a speech during the North Carolina's Changing Waterfronts: Coastal Access and Traditional Uses. New Bern, 2006.

¹⁸ Id.

property costs, commercial fishermen have been forced to move inland, reflected by a 10% decrease in the number of commercial fishing license and permits.¹⁹ In addition, there is over a 1,000 person waitlist for boat moorings, of which only 9% are commercial fishermen.²⁰

These trends resulted in Maine passing a present-use amendment to their constitution to allow working waterfronts to receive present-use valuation.²¹

However, the Maine statute defines a working waterfront as “A parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominately to provide access to or support the conduct of commercial fishing activities.”²²

Maine’s legislation is very narrow, essentially limiting the definition of a working waterfront to commercial fishing or those activities which support the conduct of commercial fishing, though the statute does include commercial aquaculture as part of commercial fishing activities.²³ The statute, as follows, defines what constitutes “support[ing] the conduct of commercial fishing activities”²⁴:

- A. To provide access to the water or the intertidal zone over waterfront property to persons directly engaged in commercial fishing activities; or

¹⁹ Id.

²⁰ Id.

²¹ Davis, E. “Preserving Municipal Waterfronts in Maine for Water-Dependent Uses: Tax Incentives, Zoning, and the Balance of Growth and Preservation”. 6 Ocean and Coastal Law Journal 141 (2001)

²² 36 MRS § 1142 (2004)

²³ 36 MRS § 1142(7) (2004)

²⁴ 36 MRS § 1142(8) (2004)

B. To conduct commercial business activities that provide goods or services that directly support commercial fishing activities.

Moreover, the above statute defines “predominantly” to mean that 90% or more of its business is geared towards commercial fishing and “primarily” to mean more than 50% of business is used for commercial fishing activity.²⁵

Overall, the statute essentially defines working waterfronts as the commercial fishing industry. Although the language of the statute may allow for other industries to slide into the tax benefit, the outcome will most likely hinge on a court decision rather than legislative intent.²⁶

FLORIDA

Florida recognized their problems on a much broader scale. Netting regulations in the mid-1990s had a crippling effect on Florida’s commercial fishing sector, resulting in the legislators focusing on other areas of the waterfront. Florida’s main concerns were the privatization of marinas, boatyards turning into condos, fish houses losing money, and a rise in “dockominiums”.²⁷

To combat these problems, the Florida state legislature authorized a report on the plight of the working waterfront in Florida. The report classified working waterfronts into four

²⁵ 36 MRS § 1142(9-10) (2004)

²⁶ Supra, Note 21

categories, as explained below: ports, traditional working waterfronts, military waterfronts, and modern working waterfronts.²⁸

1. Ports are the easiest to identify, because in Florida they are mandated by statute. However, among these ports are a few commercial ports operated independently.²⁹
2. Traditional working waterfronts are waterfronts that are not part of the port system that represent part of Florida's history or culture.³⁰ These are normally threatened by urban development and market forces.³¹
3. Military waterfronts are naval and air stations that are threatened by realignment.³²
4. Modern working waterfronts are areas of the coast that contain tour boats, charter boats, private marinas, and some water enhanced businesses.³³ These waterfronts are financially viable and often do not need revitalization.³⁴

The report recommended that the waterfronts most in need were traditional working waterfronts, military waterfronts planned for conversion to civilian life, and small commercial ports.³⁵

From these findings, in 2005 Florida enacted the Waterway and Waterfront Improvement Act of 2005. The act defined working waterfronts as "A parcel or parcels of real property that provide access for water-dependent commercial activities or provide access to the

²⁷ Rich Jones, Senior Marine Planner, Monroe Co. Marine Resources Dept. 2006.

²⁸ Supra, Note 30.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

public to the navigable waters of the state,³⁶ a much broader definition than the Maine statute. The legislation provided several levels of assistance:³⁷

1. Creates a tax deferral program
2. Provisions for \$1 from every vessel registration fees to be used towards public launching facilities
3. Creates a waterfront protection agency to provide assistance for revitalization projects
4. Comprehensive Planning must now include waterway access elements and preservation of recreational and communal waterfronts
5. Recreational and open space laws now include waterways
6. Coastal management now includes ways to preserve working waterfronts

Working Waterfront Toolbox

Both Maine and Florida decided to use a current-use (also called present-use) taxation system to help alleviate the financial burdens of those industries along the working waterfront. This section of the paper analyzes the current-use system as well as a few other potential incentive-based techniques which North Carolina could use.

CURRENT USE TAXATION

Normally property in North Carolina is assessed at its “true value”, more commonly referred to as its “fair market value”. The fair market value is “the price estimated in terms of money at which the property would change hands between a willing and

³⁶ Section 342.07 F.S. (2005).

financially able buyer and a willing seller”.³⁸ All relevant factors that may affect the price of the property are taken into account, such as any enforceable covenants, easements, physical depreciation or any other elements that may affect the price of the land.³⁹ In other words, property is assessed at whatever price a willing buyer would pay for the parcel of land.

The problem with fair market valuation is that outside forces can affect land value, resulting in a higher assessment although the use of the land has not changed. An example of this situation is found along the coast. The traditional waterfront worker is now paying higher taxes on their property even though the use of that land has not changed; rather, land developers desire access to the waterfront and are willing to pay higher prices for the land which drives up assessment values.

One potential solution for easing the tax burden of landowners along the coast is to use a current use (also called present-use) tax assessment program. Nearly a quarter of a century ago farmers faced a similar plight as suburbs were expanding into rural areas, increasing property values and threatening the livelihood of the farming community. Many states, including North Carolina, passed legislation to combat the problem in the form of present-use legislation. The purpose of this legislation was to tax farmland based on agricultural value, not fair market value. Agricultural value is considered “what farmers would pay to buy land in light of the net farm income they can expect to receive

³⁷ Supra, Note 31.

³⁸ N.C. Gen. Stat. § 105-283 (2006).

from it.”⁴⁰ Thus, farmland is assessed based on what it is worth as farmland and not what it could be worth as a commercial development.

Current-use assessment legislation is typically tailored to targeted industries.⁴¹ In other words, the state legislature has the power to determine criteria that landowners must meet in order to receive the tax benefits of the legislation. The criteria can range from minimum size requirements, minimum income requirements, ownership requirements, or anything else the legislature may want to include.⁴² As a result, landowners must apply to have their land participate in the system. In addition, the legislature normally lays out the assessment process for the land. Typically, the assessor can either determine the value based on its current-use, which is “the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories,”⁴³ or based on a statutory formula that deducts percentages of valuation based on the land attributes.⁴⁴

Moreover, there are three classifications of current-use legislation. The most progressive system is known as preferential assessment.⁴⁵ Under a preferential assessment system, the legislature provides a permanent tax break for landowners who qualify for the

³⁹ Davis, Elizabeth. “Preserving Municipal Waterfronts in Maine for Water-Dependent Uses: Tax Incentives, Zoning, and the Balance of Growth and Preservation”. 6 Ocean and Coastal Law Journal 141 (2001).

⁴⁰ Paster, Elisa. “Preservation of Agricultural Lands Through Land Use Planning Tools and Techniques”. 44 Nat. Resources J. 283 (2004), p. 309

⁴¹ *Supra*, note 39

⁴² *Supra*, note 40

⁴³ ME ST T. 36 § 1106-A (2005).

⁴⁴ *Supra*, note 39

⁴⁵ *Id.*

system.⁴⁶ As a result, there is no penalty for “converting land to non-eligible uses.”⁴⁷ The second, and most common, approach to current-use legislation is deferred taxation. Both preferred assessment and deferred taxation use the same methods for establishing criteria for participating in establishing a tax break, but deferred taxation contains some provision or penalty for converting land to non-eligible uses.⁴⁸ The penalty is normally repayment of all tax incentives received for a given number of years preceding the conversion. See **Appendix B** for a list detailing how legislators have handled the conversion problem. The final method is through the use of a restrictive agreement. A restrictive agreement is essentially the deferred taxation, except that the landowner must sign an agreement with the state, saying the land will remain in eligible use for a predetermined number of years.⁴⁹ The benefit to this system is that the landowner does not have to reapply every year to receive the tax benefit.⁵⁰

North Carolina uses the deferred taxation method, enacted in 1973.⁵¹ The General Assembly limited the agricultural industries who could apply for the tax break to three categories: agricultural lands, horticultural lands, and forestry lands.⁵² These lands must meet certain acreage and income requirements to qualify, as well as be individually owned and participate in a stable management plan.⁵³ In 1975, the statute was amended to allow a narrow category of business entities to claim the tax break, which was

⁴⁶ Id.

⁴⁷ Id., p. 309

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ N.C. Gen. Stat. § 105-277.2 to 277.7 (1973).

⁵² N.C. Gen. Stat. § 105-277.3 (1973).

⁵³ Id.

essentially limited to corporations consisting of family members on the board.⁵⁴ The landowner must apply to receive the tax benefit, but reapplication is not necessary unless the land is converted to a different use.⁵⁵ Once the land is converted, the landowner must repay all tax incentives received for the previous three years.⁵⁶

a) Benefits and Drawbacks

The purpose of current-use legislation is to relieve tax pressures on landowners, who are engaged in a profession that the state deems important, because developers want their land for other uses.⁵⁷ However, one of the major complaints about the whole current-use system (regardless of classification) is that in order to truly preserve land for its present-day use, such as water-dependent usage, “property tax expenses must be an important reason that water-dependent uses are leaving the waterfront.”⁵⁸ If there are other factors that are causing traditional waterfront businesses to leave then tax abatements will not solve the problem. Even with the tax relief, the benefits of selling the land cannot be greater than the benefits of retaining the land.⁵⁹ In other words, if developers continue to increase the amount they are willing to pay for property, then a current-use system may not be as effective as other means.⁶⁰ Both Maine and Florida use zoning regulations in addition to their current-use laws to ensure preservation of the working waterfronts.⁶¹

⁵⁴N.C. Gen. Stat. §105-277.2 (1975).

⁵⁵ N.C. Gen. Stat. § 105-277.4(a) (1973).

⁵⁶ N.C. Gen. Stat. § 105-277.4(c) (1973).

⁵⁷ Henke, “Preferential Property Tax Treatment for Farmland”, 53 Or. L. Rev. 117 (1974), p. 119.

⁵⁸ *Supra*, note 39, p. 152

⁵⁹ *Id.*

⁶⁰ Cordes, Mark. “Agricultural Zoning: Impacts and Future Directions”. 22 N. Ill. U.L. Rev. 419 (2002).

⁶¹ *Id.*

The ultimate goal is to preserve land, especially in fringe areas where development is taking place.⁶² State legislators see the deferred taxation system as accomplishing this goal because the tax repayment acts as a deterrent on development.⁶³ In addition, the program is viewed as a way to correct inequalities in the tax system. The property tax is a regressive form of taxation, so by giving a tax abatement to properties that need help the legislature is essentially alleviating the regressive nature of the tax.⁶⁴

Another issue with the current-use system is that municipalities lose money because their tax base is being decreased.⁶⁵ The property tax has traditionally been one of the few ways for municipalities to raise money, and the fear is that reducing the amount of taxable property will decrease a municipality's ability to provide services. This assertion has been contested, however. Maine tries to offset any potential lost revenue by refunding to their municipalities all money that would have been collected had the current-use system not been enacted.⁶⁶ However, due to state budget problems this mandate often goes unfounded.⁶⁷

In addition, voters appear to believe that it is possible to cut taxes while at the same time maintain the same level of services provided. Thirty-eight percent of California's voters believed their current levels of services would not be affected with up to a forty percent

⁶² *Supra*, note 57.

⁶³ *Id.*

⁶⁴ Goodall, Seth. "Property Tax: A Primer and a Modest Proposal for Maine". 57 *Me. L. Rev.* 585 (2005).

⁶⁵ Goodall, Clifford and Goodall, Seth. "Property Tax: A Primer and a Modest Proposal for Maine". 57 *Me. L. Rev.* 585 (2005).

⁶⁶ *Supra*, note 39

⁶⁷ *Id.*

decrease in tax revenue.⁶⁸ Likewise, eighty-two percent of the supporters of Massachusetts' Proposition 2 ½ felt that their level of services would not be impacted despite a decrease in tax revenues collected.⁶⁹ Data has also shown that farms require fewer services than residential developments or business complexes, so even though municipalities can collect more taxes on those entities, they end up spending more money proportionately.⁷⁰ Whether or not municipalities will also save expenses on working waterfronts has yet to be examined.

Another controversy revolves around the claim that the recapture penalty for converting land out of the system will ensure revenues will not be lost.⁷¹ However, this has not been the case. In fact, the “tax penalties and recaptures on sale in effect benefit a land speculator who can use them to reduce his ordinary income and capital gains from the sale in the year in which he makes the sale.”⁷² As a result, the rest of the tax base is left to make up the deficit.

Another criticism of the current-use system is that “it’s applicable to all people and all lands statewide, resulting in a tax windfall for those not financially pressed by taxes and tax reduction for land which is not the object of development pressure.”⁷³ North Carolina’s current-use legislation tries to limit this problem by implementing an ownership requirement, which is discussed further in the legality section. Yet, the fact

⁶⁸ Supra, note 60

⁶⁹ Id.

⁷⁰ 28 Envtl L. 113 (1998).

⁷¹ Supra, note 39.

⁷² IRS Code § 164 (a)(1).

⁷³ Carman and Polson. “Tax Shifts Occurring as a Result o Differential Assessment of Farmland: California, 1968-69”. 24 Nat’l Tax J. 455 (1971).

remains that large farms that qualify generally are not the farms that need this tax abatement. As a result, the wealthier farms benefit the most and farms that really do benefit from the tax abatement will still feel pressures from the developers. Moreover, the “use valuation method does not really preserve prime agricultural land near urban cities for any great length in time but instead extends development speculation for a shorter period of time.”⁷⁴ This situation is especially true for areas that use the preferential assessment method, since there is no penalty for conversion, and in states that decrease the payback penalty based on the number of years the land was a part of the system. In other words, the current-use legislation can actually work as a subsidy to real estate speculators. It is because of these speculators that most states implement a deferred tax system. Unfortunately, for the small landowner the deferred taxes are highly visible and can impose a lump sum payment of taxes at the time of conversion.⁷⁵ In addition, the pressure exerted by developers can be so great that even the tax penalties are insufficient to retain the land.

b) Legality

If North Carolina chooses to expand its current-use legislation to working waterfronts, there may be a few legal issues that arise. Maine’s working waterfront current-use law required a constitutional amendment in order to be upheld. Similarly, other states were required to pass constitutional amendments in order to allow for present-use valuation for farmlands. This section analyzes the challenges to North Carolina’s present-use statute in order to determine if any constitutional amendments or special legislation is required to expand tax abatements to working waterfronts.

⁷⁴ Henke, “Preferential Property Tax Treatment for Farmland”, 53 Or. L. Rev. 117 (1974), p. 119.

⁷⁵ *Supra*, note 60.

The North Carolina Constitution limits the power to tax in Article V, sec. 2, stating:

Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

At first glance, this “uniform rule” appears to prohibit the possibility of present-use valuation without a constitutional amendment. However, the North Carolina courts have interpreted this requirement of uniformity so as to “not prohibit reasonable flexibility and variety appropriate to reasonable schemes of State taxation.”⁷⁶ In addition, a “classification does not violate this provision if it is founded upon a reasonable distinction and bears a substantial relation to the object of the legislation. Only those which are arbitrary or capricious [...] violate Article V, Section 2.”⁷⁷ In other words, as long as the law is not arbitrary or capricious, then differences in taxing schemes are constitutional.

A challenge to the present-use statute arose in In re Consolidated Appeals of Certain Timber Co., 98 N.C. App. 412, 391 S.E.2d 503 (1990). The appellant claimed that the law violated Art. V, sec. 2 of the North Carolina Constitution because it taxed

⁷⁶ In re Appeal of Martin, 286 N.C. 66, 75, 209 S.E.2d 766, 773 (1974).

corporations differently from family farmers. The North Carolina Court of Appeals ruled that because the legislative history clearly indicated that the purpose of the law was to avoid giving a tax windfall to those less likely to need such an incentive, the law was not unconstitutional.⁷⁸ Thus, the Court of Appeals held that the constitution does allow for present-use valuation as the constitution is currently written, and that the General Assembly is allowed to set qualifications to whom can receive such abatements. Therefore, the General Assembly should be able to expand the present use tax system to working waterfronts in a similar manner.

In addition, the North Carolina present use statute has been challenged using the equal protection clause of both the North Carolina Constitution and the United States Constitution. Article I, sec. 19 of the North Carolina Constitution states:

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.

No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

The 14th amendment, sec. 1 of the United States Constitution states that no state can “deny to any person within its jurisdiction the equal protection of the laws.” Both of

⁷⁷ In re Assessment of Taxes Against Village Publishing Corp., 312 N.C. 211, 223-24, 322 S.E.2d 155, 163 (1984).

⁷⁸ In re Consolidated Appeals of Certain Timber Co., 98 N.C. App. 412, 391 S.E.2d 503 (1990).

these sections have been read as guaranteeing the same rights in North Carolina, and are normally analyzed as one.⁷⁹

Just like the U.S. Supreme Court, North Carolina applies a “two-tier” analysis for equal protection violations consisting of either strict scrutiny or the rational basis test.⁸⁰

Economic regulations, which include taxes, trigger the rational basis test, which asks “if it bears 'some rational relationship to a conceivable legitimate interest of government [...] Statutes subjected to this level of scrutiny come before the Court with a presumption of validity.”⁸¹ In other words, the relationship required does not have to be the actual relationship given by the General Assembly for the law, it just has to be a potential reason for the passing of the law.

In the case of In re Consolidated Appeals of Certain Timber Co., there was also an equal protection challenge to the present use value law as well. The North Carolina Court of Appeals also rejected this claim because the appellant “failed to negate every conceivable basis that could exist to support this legislation,” specifically that it protects undeveloped forest-land.⁸² Likewise, if the General Assembly extends the present-use value legislation to working waterfronts, they should be aware of a potential equal protection challenge. However, a challenge along equal protection lines should not stand in court because the state would have a conceivable basis for the legislation, mainly to protect

⁷⁹ S.S. Kresge Co. v. Davis, 277 N.C. 654, 178 S.E.2d 382 (1971).

⁸⁰ In Re Assessment of Taxes Against Village Publishing Corp., 312 N.C. 211, 322 S.E.2d 155 (1984).

⁸¹ Id. 312 N.C. at 221, 322 S.E.2d at 162.

⁸² In re Consolidated Appeals of Certain Timber Co., 98 N.C. App. 412, 421, 391 S.E.2d 503, 508 (1990).

working waterfronts but also to help protect undeveloped coastal lands by potentially reserving them for traditional waterfront use.

Overall, the General Assembly does not need to worry about constitutional issues in passing a present use value law for the working waterfront. The state constitution grants the General Assembly the power to establish taxing schemes, so no constitutional amendment would be necessary. Once the legislation is drafted, the General Assembly should be aware of potential pitfalls. These pitfalls include challenges to Art. V, sec. 2 of the state constitution for establishing a tax law that is arbitrary or capricious, as well as a challenge to Art. 1, sec. 19 of the state constitution under equal protection grounds. In either case, a well drafted law should prevail.

CIRCUIT BREAKERS

As previously mentioned, the property tax is a regressive tax system, meaning those with lower incomes pay more as a percent of their income than do wealthier families. Circuit breaker programs are designed to provide progressive relief.⁸³ Like the device that protects against power overloads, circuit breaker programs are designed to prevent taxpayers from paying too much in property taxes. The program “affords relief by rebating or crediting a percentage of the tax bill paid in excess of the portion of the taxpayer’s or renter’s income.”⁸⁴ In other words, once a taxpayer’s property tax exceeds a certain percentage of their income, the state gives back the excess they paid.

⁸³ Goodall, Clifford and Goodall, Seth. “Property Tax: A Primer and a Modest Proposal for Maine”. 57 Me. L. Rev. 585 (2005).

Thirty states and the District of Columbia currently use a circuit breaker program, twenty-six of which make it available to renters as well.⁸⁵ In Maine, the circuit breaker relief is available when a taxpayer's property tax exceeds four percent of their income, or twenty percent if they are a renter.⁸⁶ Once the property tax exceeds four percent, the family receives a fifty-percent refund up to the point where eight percent of their income is going towards their property tax. After that limit is reached, a 100% refund is given.⁸⁷ As a result, the most any family will pay on income taxes will be six percent of their income. The rate was determined based on historical data that found taxpayers grew upset with their legislators when their property taxes exceeded five percent of their income.⁸⁸

Although Maine implemented their program in the 1970s, in 2004 Maine's state legislators expanded the criteria for benefiting from the program. Specifically, Maine was concerned with the cost of living along the coast and used the circuit breaker tax to help defuse some of those costs.⁸⁹ The new law doubles the refund, expands the program to reach an additional 200,000 people, and raises the income level so families that make \$100,000 of income are now included in the program.⁹⁰

⁸⁴ *Id.*, p. 605

⁸⁵ *Id.*

⁸⁶ 36 M.R.S. § 6203-A (2005).

⁸⁷ Allen, Michael and Woodbury, Richard. "The Circuit Breaker Provides Relief for Maine's Property Tax Burden". *Choices*, vol. 11, no. 10 (2005).

⁸⁸ *Supra*, note 83

⁸⁹ "Larger refunds now available for popular property tax rebate program", <http://www.maine.gov/tools/whatsnew/index.php?topic=Portal+News&id=8426&v=Article-2004>

⁹⁰ *Id.*

Maine Rep. Jim Schatz, addressing the issue of rising coastal property costs, feels "By targeting relief in the Circuit Breaker program, people at a variety of income levels will see the benefits."⁹¹ In Maine, it is estimated that thirty-three percent of all households, or 120,000 homes, pay more than six percent of their income to property taxes.⁹² Before the 2004 legislation, it is estimated that the circuit breaker program would reduce that percentage to about nineteen percent.⁹³ With the expanded income requirement for the circuit breaker program, only eleven percent, or 40,000 homes, of Maine's citizens pay more than six percent of their income to their property tax, all of who make more than \$100,000.⁹⁴ Furthermore, the proportion of Maine households that pay more than twenty percent of their income to property taxes is reduced from seven percent to three percent prior to the 2004 law, and further reduced to two percent after the law passes.⁹⁵

The data reveals even more profound statistics when one analyzes relief based on income level discrepancy. Of the Maine households with incomes lower than \$30,000 a year, nearly sixty percent pay more than six percent of their income to property taxes.⁹⁶ With the new circuit breaker program, only thirteen percent of those households will pay more than six percent of their income to property taxes (this remaining thirteen percent is a result of the maximum refund given is \$2000).⁹⁷

⁹¹ Id.

⁹² Supra, note 87

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

The data tends to show that circuit breaker programs have a dramatic effect in reducing property tax payments. However, there are several problems associated with the program. The aforementioned data assumes that all eligible households apply for the circuit breaker program. In reality, less than half of all eligible households actually apply for the relief.⁹⁸ In addition, the money that is refunded comes from other revenue sources, mainly the state income tax and the sales tax.⁹⁹ As a result, the overall tax burden is only reduced slightly. Yet, the tax burden is spread slightly more evenly because most state income taxes are based on a progressive scale.

LAND CONVERSION TAX

There are two ways that land conversion taxes are used. The first way is as a tax when land is converted out of a current-use system. In Vermont, instead of paying a recapture fee when land is converted out of an eligible use in the current-use system, the landowner must pay a land use tax.¹⁰⁰ The tax is twenty percent of the fair market value, or only ten percent of the fair market value if the land was enrolled for more than ten years. Essentially, under this method, the land conversion tax is just another method in determining how much deferred taxes are due.

The other application for a land conversion tax is to build it into a restrictive agreement.¹⁰¹ To participate, a landowner signs a multiple year contract with the county in which they live. The contract states that the land can only be used for agricultural-

⁹⁸ Supra, note 87.

⁹⁹ Supra, note 89.

¹⁰⁰ Vt. Stat. Ann. Tit. 32, § 3751-3760 (Supp. 1979).

related activities. In exchange, the landowner receives a tax break. At the end of the agreement, the landowner has the option to renew the agreement. If they do not, then no penalty is paid for converting the land's use. However, if the landowner wished to opt out of the contract beforehand, a non-renewal process is triggered. Typically, this process spans several years. Each year, the tax rate will increase slightly until the final year is reached, where the tax rate is the fair market value rate. This gradual increase in taxes is considered the land conversion tax.

California's Williamson Act is an example of a land conversion tax used in conjunction with a restrictive agreement.¹⁰² The act requires a ten-year agreement with the county in order to get the tax benefit. In addition, the non-renewal process spans a nine-year period. The contract can be cancelled earlier, but the "county or municipality must make specific findings that are supported by substantial evidence," further stating that uneconomic crops or an opportunity to convert the land to a different use will not be held as sufficient.¹⁰³ In addition, the landowner must pay a cancellation fee of twelve and a half percent of the value of the property.¹⁰⁴

REVENUE CAPS

Revenue caps attack the problem of rising property taxes in a different manner. Instead of reducing the taxes paid, the goal is to reduce the tax base. This goal can be

¹⁰¹ Paster, Elisa. "Preservation of Agricultural Lands Through Land Use Planning Tools and Techniques". 44 *Nat. Resources J.* 283 (2004).

¹⁰² Cal. Dep't of Conservation, Div. Of Land Resource Protection, Williamson Act, Basic Contract Provisions, available at http://www.consrv.ca.gov/dlrp/lca/basic_contract_provisions/index.htm#Whatisthe00nonrenewalprocess.

¹⁰³ *Supra*, note 101.

¹⁰⁴ *Id.*

accomplished in several ways. One method is to use direct limits on revenue growth. Under this method, the state fixes the growth rate of local revenue generated from property taxes.¹⁰⁵ Another method is to establish a levy limit. A levy limit caps the amount of revenue that a local government may generate.¹⁰⁶ The original purpose of establishing a levy limit was to provide tax relief to homeowners who were experiencing an increase in property value due solely to inflation.¹⁰⁷ The Jarvins-Gann Initiative, which became known as Proposition 13 in California, is possibly the most famous example of a levy limit. Proposition 13 “rolled back assessment levels to 1975 values, set property tax rates at a maximum of one percent of assessed value, and limited annual reassessment rates to two percent.”¹⁰⁸ A third method is a property tax cap, which limits the maximum amount that property can actually be taxed.¹⁰⁹

Revenue caps are controversial because they affect the local government’s revenue, services, local control and funding mandates.¹¹⁰ Massachusetts recently passed revenue-limiting legislation, resulting in an eighteen percent decrease in property tax revenue.¹¹¹ While the debate over whether a decrease in funding will result in a decrease in services is true or not, it is still a primary concern for local leaders. This fear can be alleviated with the implementation of revenue shifting programs, such as circuit breaker programs or a homestead act.¹¹² Possibly the biggest fear of local leaders is the loss of local

¹⁰⁵ Goodall, Clifford and Goodall, Seth. “Property Tax: A Primer and a Modest Proposal for Maine”. 57 *Me. L. Rev.* 585 (2005).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, p. 597.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

control. Revenue caps limit the discretionary funds a municipality can dispense. As a result, they may become more dependent on state funds and, as a result, lose autonomy.¹¹³ In Maine, to combat this fear when trying to pass a revenue cap, the state legislatures granted municipal leaders a process to override state imposed limits on funding in certain situations.¹¹⁴ Yet, even with the override process, mandated funding for services such as schools will still limit further a municipality's ability to spend autonomously.¹¹⁵ Thus, the state legislature must carefully balance the need for tax relief with the goals of local municipalities.

REVENUE GENERATING TAXES

In addition to revenue caps, the state may create new taxes to further fund the municipalities for their lost revenue. One such way is through local sales, meals, and accommodation tax. These are often built into the state sales tax and then redistributed to the areas where they are charged.¹¹⁶ They are often most effective in high-tourism areas, such as the coastal communities. Another method is through a local income tax. A rarely used form of taxation, it can be applied as either a straight income tax or as a payroll tax. The local income tax can be useful when imposed on commuters who impart financial burdens into new communities.¹¹⁷ In North Carolina, a constitutional amendment would be required due to Article 2, section V of our state constitution. Finally, user fees which are also possible, are payments that go directly to the cost of the service provided. In Maine, it is used to tax residential property exempt from taxation but provides rental

¹¹³ Id.

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Id.

income. It is also used as a way to pay for harbor masters in the form of docking and launching fees, shifting the burden of payment from property owners to those affluent enough to own vessels at the harbors.¹¹⁸

HOMESTEAD EXEMPTION

Homestead exemptions are currently in place in forty-eight states and the District of Columbia.¹¹⁹ The exemption “reduces property taxes on primary residences by exempting an amount of the home’s value from taxation.”¹²⁰ The problem with homestead exemptions is that they are uniformly applied. As a result, they are highly regressive and often fail to truly help out those in need of a tax break.

In 2002 Maine changed their system to a tiered system, giving a \$5000 assessment deduction for homes worth less than \$250,000 and \$2,500 for homes worth more than \$250,000.¹²¹ This change in the law was designed to afford some relief to residents living along the coast. Unfortunately, in 2005 Maine changed the law again, reverting back to a flat, uniform deduction.¹²² As a result, less wealthy families living along the coast are still burdened by the rising cost of taxation. In order to combat the problem through a homestead exemption, a tiered system should be installed to remove the regressive nature of the tax.

¹¹⁷ Id.

¹¹⁸ Id.

¹¹⁹ Goodall, Clifford and Goodall, Seth. “Property Tax: A Primer and a Modest Proposal for Maine”. 57 Me. L. Rev. 585 (2005).

¹²⁰ Id., p. 602.

¹²¹ Id.

¹²² Id.

FEDERAL INHERITANCE PLANS

The federal government gives farmers several tax breaks to avoid paying high inheritance taxes when a family farm is passed along. A similar plan could be established for traditional working waterfront businesses that are family owned. One such benefit is special-use valuation. This system operates like the current use system, valuing land on its agricultural value. The federal code limits this provision for the estate tax by capping the maximum amount that can be deducted.¹²³ Another potential tool is through a qualified conservation easement. The federal government provides a full tax deduction for the value of the easement from the estate.¹²⁴ This provision eliminates the estate tax, but with an easement on the land it lowers the tax assessment value from the fair market value to what the land is worth with the easement. Finally, the federal government provides for an agriculture cooperative deduction. Congress allows for taxing the earnings of co-ops based on the individual earnings taken home, as opposed to the normal corporate way of taxing on the corporate earnings and then the individual dividends.¹²⁵ Although this may not be as common with coastal communities, in Maine fishermen form co-ops to help sell their catches.¹²⁶ A similar law could be expanded to help out further.

¹²³ Szlanfucht, David. "How to Save America's Depleting Supply of Farmland". 4 Drake J. Agri. 333 (1999).

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ Maine's Working Waterfront Initiative, <http://www.state.me.us/spo/mcp/wwi/index.php>