

1 H.162

2 Introduced by Representative Condon of Colchester

3 Referred to Committee on

4 Date:

5 Subject: Taxation; Use Value Program; land use change tax

6 Statement of purpose of bill as introduced: This bill proposes to eliminate the
7 land use change tax for purposes of the Use Value Program and replace it with
8 a tiered benefit structure that would reward landowners who have kept land in
9 the Use Value Program for longer periods of time.

10 An act relating to creating a tiered benefit structure in the Use Value
11 Program

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

13 Sec. 1. 32 V.S.A. § 3752(1) and (5) are amended to read:

14 * * *

15 (1) "Agricultural land" means any land that has not been subject to
16 development, exclusive of any housesite, in active use to grow hay or
17 cultivated crops, pasture livestock, ~~or~~ to cultivate trees bearing edible fruit or
18 to produce an annual maple product, and which is 25 acres or more in size
19 except as provided below. There shall be a presumption that the land is used
20 for agricultural purposes if:

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

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

3 under written lease for at least three years; or

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

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

7 (ii) \$75.00 per acre for each acre over 25, with the total income
8 required not to exceed \$5,000.00;

9 (iii) exceptions to these income requirements may be made in
10 cases of orchard lands planted to ~~fruit-producing~~ fruit-producing trees, bushes,
11 or vines which are not yet of bearing age. For the purposes of this section, the
12 term "farm crops" also includes animal fiber, cider, wine, and cheese produced
13 on the enrolled land or on a housesite adjoining the enrolled land from
14 agricultural products grown on the enrolled land.

15 * * *

16 (5) "Development" means, ~~for the purposes of determining whether a~~
17 ~~land use change tax is to be assessed under section 3757 of this chapter, the~~
18 construction of any building, road, or other structure, or any mining,
19 excavation, or landfill activity. "Development" also means the subdivision of
20 a parcel of land into two or more parcels, regardless of whether a change in use
21 actually occurs, where one or more of the resulting parcels contains less than

1 25 acres each; but if subdivision is solely the result of a transfer to one or more
2 of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of
3 the transferor; or to the surviving spouse of any of the foregoing, then
4 “development” shall not apply to any portion of the newly-created parcel or
5 parcels which qualifies for enrollment and for which, within 30 days following
6 the transfer, each transferee or transferor applies for reenrollment in the ~~use~~
7 ~~value appraisal program~~ Use Value Program. “Development” also means the
8 cutting of timber on property appraised under this chapter at use value in a
9 manner contrary to a forest or conservation management plan as provided for
10 in subsection 3755(b) of this title during the remaining term of the plan, or
11 contrary to the minimum acceptable standards for forest management if the
12 plan has expired; or a change in the parcel or use of the parcel in violation of
13 the conservation management standards established by the ~~commissioner of~~
14 ~~forests, parks and recreation~~ Commissioner of Forests, Parks and Recreation.
15 Enrolled land is also considered “developed” under this section if a wastewater
16 system permit has been issued for the land pursuant to 10 V.S.A § 1973 and
17 the ~~commissioner of forests, parks and recreation~~ Commissioner of Forests,
18 Parks and Recreation has certified to the director that the permit is contrary to
19 a forest or conservation management plan or the minimum acceptable
20 standards for forest management; use of the parcel would violate the
21 conservation management standards; or after consulting with the ~~secretary of~~

1 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets, the
2 ~~commissioner~~ Commissioner certifies that the permit is not part of a farm
3 operation. The ~~commissioner of forests, parks and recreation~~ Commissioner of
4 Forests, Parks and Recreation may develop standards regarding circumstances
5 under which land with wastewater system and potable water permits will not
6 be certified to the ~~director~~ Director. The term “development” shall not include
7 the construction, reconstruction, structural alteration, relocation, issuance of a
8 wastewater system permit under 10 V.S.A § 1973, or enlargement of any
9 building, road, or other structure for farming, logging, forestry, or conservation
10 purposes, but shall include the subsequent commencement of a use of that
11 building, road, structure, or wastewater system permit for other than farming,
12 logging, or forestry purposes.

13 Sec. 2. 32 V.S.A. § 3755(b)(4) is added to read:

14 (4) the land has not been subject to development, as defined in
15 subdivision 3752(5) of this title.

16 Sec. 3. 32 V.S.A. § 3756 is amended to read:

17 § 3756. QUALIFICATION FOR USE VALUE APPRAISAL

18 (a) The owner of eligible agricultural land, farm buildings, or managed
19 ~~forest land~~ forestland shall be entitled to have eligible property appraised at its
20 use value provided the owner shall have applied to the ~~director~~ Director on or
21 before September 1 of the previous tax year, on a form approved by the ~~board~~

1 Board and provided by the ~~director~~ Director. A farmer, whose application has
2 been accepted on or before December 31 by the ~~director of the division of~~
3 ~~property valuation and review of the department of taxes~~ Director of the
4 Division of Property Valuation and Review of the Department of Taxes for
5 enrollment for the ~~use value program~~ Use Value Program for the current tax
6 year, shall be entitled to have eligible property appraised at its use value, if he
7 or she was prevented from applying on or before September 1 of the previous
8 year due to the severe illness of the farmer.

9 (b) ~~{Deleted.}~~ For the first year that land is enrolled in the Use Value
10 Program, the owner of eligible agricultural land, farm buildings, or managed
11 forestland shall be entitled to 50 percent of the tax benefit that would result
12 from valuing the land and buildings at use value instead of fair market value.
13 For each subsequent consecutive year the land is enrolled, the owner shall be
14 entitled to an additional five percent of the tax benefit that would result from
15 valuing the land and buildings at use value instead of fair market value, up to a
16 total of 100 percent of the tax benefit after the land has been enrolled in the
17 Use Value Program for ten consecutive years.

18 * * *

19 (e) Once a use value appraisal has been applied for and granted under this
20 section, such appraisal shall remain in effect for subsequent tax years pursuant
21 to the provisions of subsection (f) of this section, and until the property

1 concerned is transferred to another owner or is no longer eligible under
2 provisions of section 3752 or 3755 of this chapter, ~~or due to a change of use or~~
3 ~~as otherwise provided in section 3757 of this chapter.~~ If enrolled property is
4 transferred to another owner, the new owner shall be entitled to continue to
5 have the eligible property appraised at its use value, provided the property
6 remains eligible and provided the new owner shall elect the continuation of use
7 value appraisal on the property transfer tax return at the time of transfer and,
8 within 30 days after the property transfer tax return has been received by the
9 municipality for recording, has applied to the ~~director~~ Director and paid the
10 fees described in this subsection. The grant of use value appraisals
11 of agricultural ~~forest land~~ forestland and farm buildings shall be recorded in
12 the land records of the municipality by the clerk of the municipality.
13 Applications shall include the fees specified in subdivision 1671(a)(6) or
14 subsection 1671(c) of this title, and a fee of \$30.00 for deposit in a special fund
15 established and managed pursuant to subchapter 5 of chapter 7 of this title.
16 The fund shall be available as payment for the fees of the clerk of the
17 municipality and for the improvement of the management of the ~~program~~
18 Program.

19 (f) Each year the ~~director~~ Director shall determine whether previously
20 classified property is still eligible for use value appraisal and whether the
21 amount of the previous appraisal is still valid. If the ~~director~~ Director

1 determines that previously classified property is no longer eligible, ~~or that the~~
2 ~~property has undergone a change in use such that the use change tax may be~~
3 ~~levied, in accordance with section 3757 of this chapter,~~ or that the use value
4 appraisal should be fixed at a different amount than the previous year, he or
5 she shall thereafter notify the property owner of that determination by delivery
6 of the notification to him or her in person or by mailing such notification to his
7 or her last and usual place of abode.

8 * * *

9 (h) By March 15, the ~~director~~ Director shall mail to each municipality a list
10 of property in the municipality which is to be taxed based on its use value
11 appraisal. The list shall include the owners' names, a grand list number or
12 description of each parcel of land to be appraised at use value, the acreage to
13 be taxed on the basis of use value, the use values to be used for land, the
14 number of consecutive years the parcel has been enrolled in the Use Value
15 Program, the percentage of tax benefit that applies to the parcel, 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, and calculate any
20 discount due to the number of consecutive years the land has been enrolled in
21 the Use Value Program. This form shall be used by the treasurer or the

1 collector of current taxes to make up tax bills such that the owner is billed only
2 for taxes due on his or her property not enrolled in the program, plus taxes due
3 on the use value of property enrolled in the ~~program~~ Program. The assessing
4 officials shall submit the completed form to the ~~director~~ Director by July 5.

5 (i) The ~~director~~ Director shall remove from ~~use value appraisal~~ the Use
6 Value Program an entire parcel of managed ~~forest land~~ forestland and notify
7 the owner in accordance with the procedure in ~~subsection (b)~~ subdivision (c) of
8 this section when the ~~department of forests, parks and recreation~~ Department
9 of Forests, Parks and Recreation has not received a management activity report
10 or has received an adverse inspection report, unless the lack of conformance
11 consists solely of the failure to make prescribed planned cutting. In that case,
12 the ~~director~~ Director may delay removal from use value appraisal for a period
13 of one year at a time to allow time to bring the parcel into conformance with
14 the plan.

15 * * *

16 Sec. 4. 32 V.S.A. § 3757 is amended to read:

17 § 3757. LAND USE CHANGE ~~TAX~~ REQUIREMENTS

18 (a) ~~Land which has been classified as agricultural land or managed forest~~
19 ~~land pursuant to this chapter shall be subject to a land use change tax upon the~~
20 ~~development of that land, as defined in section 3752 of this chapter. Said tax~~
21 ~~shall be at the rate of 20 percent of the full fair market value of the changed~~

1 ~~land determined without regard to the use value appraisal; or the tax shall be at~~
2 ~~the rate of 10 percent if the owner demonstrates to the satisfaction of the~~
3 ~~director that the parcel has been enrolled continuously more than 10 years. If~~
4 ~~changed land is a portion of a parcel, the fair market value of the changed land~~
5 ~~shall be the fair market value of the changed land prorated on the basis of~~
6 ~~acreage, divided by the common level of appraisal. Such fair market value~~
7 ~~shall be determined as of the date the land is no longer eligible for use value~~
8 ~~appraisal. This tax shall be in addition to the annual property tax imposed upon~~
9 ~~such property. Nothing in this section shall be construed to require payment of~~
10 ~~an additional land use change tax upon the subsequent development of the~~
11 ~~same land, nor shall it be construed to require payment of a land use change~~
12 ~~tax merely because previously eligible land becomes ineligible, provided no~~
13 ~~development of the land has occurred.~~

14 (b) ~~Any owner of eligible land who wishes to withdraw land from use value~~
15 ~~appraisal shall petition for a determination of the fair market value of the land~~
16 ~~at the time of the withdrawal. Thereafter land which has been withdrawn shall~~
17 ~~be appraised and listed at its full fair market value in accordance with the~~
18 ~~provisions of chapter 121 of this title. Said determination of the fair market~~
19 ~~value shall be used in calculating the amount of the land use change tax that~~
20 ~~shall be due when and if the development of the land occurs.~~

1 ~~(e) The determination of the fair market value of the land as of the date the~~
2 ~~land is no longer eligible for a use value appraisal, or as of the time of the~~
3 ~~withdrawal of the land from use value appraisal, shall be made by the director.~~
4 ~~The determination shall be made within 30 days after the date that the owner or~~
5 ~~assessing officials petition for the determination and shall be effective on the~~
6 ~~date of dispatch to the owner.~~

7 Subsection (d) retroactively effective July 1, 2011; see note set out below.

8 ~~(d) The land use change tax shall be due and payable by the owner 30 days~~
9 ~~after the tax notice is mailed to the taxpayer unless, in the case of land use~~
10 ~~change tax due with respect to development occurring as a result of the~~
11 ~~issuance of a wastewater system permit, the landowner enters into a payment~~
12 ~~agreement with the commissioner of taxes. The tax shall be paid to the~~
13 ~~commissioner for deposit into the general fund. The commissioner shall issue a~~
14 ~~form to the assessing officials which shall provide for a description of the land~~
15 ~~developed, the amount of tax payable, and the fair market value of the land at~~
16 ~~the time of development or withdrawal from use value appraisal. The owner~~
17 ~~shall fill out the form and shall sign it under the penalty of perjury. After~~
18 ~~receipt of payment, the commissioner shall furnish the owner with one copy,~~
19 ~~shall retain one copy and shall forward one copy to the local assessing officials~~
20 ~~and one to the register of deeds of the municipality in which the land is l~~

1 ~~located. Thereafter, the land which has been developed shall be appraised and~~
2 ~~listed at its full fair market value in accordance with the provisions of chapter~~
3 ~~121 of this title.~~

4 ~~(e) The owner of any classified land receiving use value appraisal under this~~
5 ~~subchapter shall immediately notify the director of:~~

6 ~~(1) the development of the land, as defined in section 3752 of this~~
7 ~~chapter;~~

8 ~~(2) of any change or discontinuance of use of the classified land so that it~~
9 ~~is no longer eligible for use value appraisal or is eligible for a different use~~
10 ~~value appraisal under this subchapter; and~~

11 ~~(3) of any transfer of ownership. A transfer of ownership, alone, will not~~
12 ~~affect eligibility of the parcel, and no new maps will be required solely because~~
13 ~~of a transfer, but failure to provide maps, a new application, or transfer~~
14 ~~information to the division of property valuation and review within 30 days of~~
15 ~~a request being sent by certified mail by the director will result in removal of~~
16 ~~the parcel from the program.~~

17 ~~(f) The application for use value appraisal of agricultural and forest land,~~
18 ~~once approved by the state, shall be recorded in the land records of the~~
19 ~~municipality and shall constitute a lien to secure payment of the land use~~
20 ~~change tax to the state upon development. The landowner shall bear the~~
21 ~~recording cost. The land use change tax and any obligation to repay benefits~~

1 ~~paid in error shall not constitute a personal debt of the person liable to pay the~~
2 ~~same, but shall constitute a lien which shall run with the land. All of the~~
3 ~~administrative provisions of chapter 151 of this title, including those relating to~~
4 ~~collection and enforcement, shall apply to the land use change tax.~~

5 ~~(g) Upon application, the commissioner may abate a use change tax levy~~
6 ~~concerning agricultural land found eligible for use value appraisal under~~
7 ~~subdivision 3752(1)(A) of this title, in the following cases:~~

8 ~~(1) if a disposition of such property resulting in a change of use of it~~
9 ~~takes place within five years of the initial assessment at use value because of~~
10 ~~the permanent physical incapacity or death of the individual farmer owner or~~
11 ~~farmer operator of the property.~~

12 ~~(2) if a disposition of the property was necessary in order to raise funds~~
13 ~~to continue the agriculture operation of the seller. In this case, the~~
14 ~~commissioner shall consider the financial gain realized by the sale of the land~~
15 ~~and whether, in respect to that gain, payment of the use change tax would~~
16 ~~significantly reduce the ability of the seller to continue using the remaining~~
17 ~~property, or any part thereof, as agricultural land.~~

18 ~~(h) Land condemned as a result of eminent domain or sold voluntarily to a~~
19 ~~condemning authority in anticipation of eminent domain proceedings is exempt~~
20 ~~from the levy of a land use change tax under this section.~~

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 ~~(j) Land transferred to the United States Forest Service is exempt from the~~
5 ~~levy of a use change tax under this section, provided all of the following apply:~~

6 ~~(1) land transferred is eligible for use value appraisal at the time of the~~
7 ~~transfer;~~

8 ~~(2) the transfer is in consideration for the receipt from the United States~~
9 ~~Forest Service of land of approximately equal value, as determined by the~~
10 ~~commissioner; and~~

11 ~~(3) the landowner has submitted to the commissioner in writing a~~
12 ~~binding document that would substitute the land received for the land~~
13 ~~transferred to the Forest Service, for the purposes of this chapter.~~

14 ~~(k) Conservation and preservation rights and interests held by an agency of~~
15 ~~the United States or by a qualified holder, as defined in chapter 34 of Title 10,~~
16 ~~shall be exempt from the levy of a use change tax. Upon request of the agency~~
17 ~~or qualified holder, the commissioner may petition the director to release the~~
18 ~~conservation and preservation rights and interests from any lien recorded~~
19 ~~pursuant to this chapter.~~

1 The owner of any classified land receiving use value appraisal under this
2 subchapter shall immediately notify the Director of:

3 (1) the development of the land, as defined in section 3752 of this
4 chapter;

5 (2) any change or discontinuance of use of the classified land so that it is
6 no longer eligible for the Use Value Program or is eligible for a different use
7 value appraisal under this subchapter; and

8 (3) any transfer of ownership. A transfer of ownership alone will not
9 affect eligibility of the parcel, and no new maps will be required solely because
10 of a transfer, but failure to provide maps, a new application, or transfer
11 information to the Division of Property Valuation and Review within 30 days
12 of a request being sent by certified mail by the Director will result in removal
13 of the parcel from the Program.

14 Sec. 5. 32 V.S.A. § 3758(b) is amended to read:

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

18 [Deleted.]

1 Sec. 6. EFFECTIVE DATE AND TRANSITION RULES

2 (1) This act shall take effect on July 1, 2013.

3 (2) Sec. 3 of this act shall apply only to land that is enrolled in the Use
4 Value Program after the effective date of this act. Notwithstanding any other
5 provision of this act, land that was enrolled in the Use Value Program prior to
6 the effective date of this act shall continue to receive the full tax benefit that
7 would result from valuing the land and buildings at use value instead of fair
8 market value.

9 (3) Secs. 1, 2, 4, and 5, and this section shall apply to land enrolled in the
10 Use Value Program regardless of the date the land was initially enrolled.