

WORKING WATERFRONT PROTECTION THROUGH TAX POLICY: A TRANSFERABILITY ANALYSIS OF TAX-FOCUSED PORTIONS OF THE “ACCESSING THE MAINE COAST” WEBSITE

Agnieszka A. Pinette
University of Maine School of Law

June 26, 2012

RESEARCH OVERVIEW

The purpose of this document is to assess the extent of legal research that will be needed to transfer the tax policy content of the “Accessing the Maine Coast” website¹ to other coastal and Great Lakes states, with particular focus on the five states that have already adapted the Maine access website. Specifically, this document focuses on evaluating the transferability of the following tax tools for funding a working waterfront conservancy and for providing tax relief for working waterfront uses:

Tax Tools That Help to Fund Working Waterfront Conservancies

Working waterfront conservancies are typically created through non-tax tools such as land banking, purchases of development rights (PDRs), or transfers of development rights (TDRs). However, a variety of tax tools can be used to help fund these conservancies. Specifically, taxes can be used as a means of raising funds that the public can invest in the acquisition of public access through voluntary conveyance and acquisition tools or through eminent domain. This document focuses on the following tax-funding tools:

- Qualifying working waterfront land donations for federal and state charitable deduction status;
- Dedicated sales and excise taxes;
- Real estate transfer tax (RETT) programs; and
- Fixed state and local appropriations (bond financing).

Tax Tools That Offer Relief for Working Waterfront Uses

Working waterfront protection efforts can also benefit from a variety of programs that offer income, sales, and property tax relief to working waterfront users. Reducing the tax rates of working waterfront owners and businesses can reduce the costs of sustaining commercial water-dependent uses on the waterfront and thereby alleviate the pressure of converting working waterfronts to other uses. This document focuses on the following tax-relief tools:

¹ “Using Tax Policy for Access” at http://www.accessingthemainecoast.com/coastal_access_toolkit/using_taxation_for_access.shtml; “What new tax-related programs could be developed or used together for access?” at http://www.accessingthemainecoast.com/coastal_access_toolkit/new-tax-tools.shtml.

- Federal and state income tax exemptions, credits, and deductions (including seed capital credits and conservation credits);
- State current use taxation (use-value assessment) programs; and
- Other property-related tax tools, such as tax deferral, abatement, windfall and fee-based programs.

These tax tools were identified in prior research as possible means of preserving the working waterfront, in the context of a broader evaluation of the impediments and opportunities related to working waterfront preservation in state and federal tax law.² This prior research was then used as the informational basis from which the Maine access website was developed.

The prior research also identified many policies that may, in coordination with or separate from these tax tools, enhance working waterfront protection (e.g., planning and zoning schemes, eminent domain efforts, quasi-taxation tools such as special assessments, impact fees, and exactions) or fail to enhance protection (e.g., tax increment financing³). Although this document does not evaluate such non-tax policies, coastal and Great Lakes states are nonetheless encouraged to investigate them. In particular, the following non-tax issues are key to establishing any working waterfront preservation scheme:

- *The Nature of Legal Ownership Recognized Within Wet Sand Areas:* Is ownership of the intertidal area owned by the public, or is it owned by private parties whose land-side property adjoins the intertidal?
- *Defining the Working Waterfront:* Does consensus exist (or can it be easily created) around which waterfront uses ought to be protected? Does a working waterfront definition exist? Is it consistent with the elements of effective working waterfront definitions, namely: (1) a purpose statement; (2) locally/regionally tailored description of place; (3) examples of included/excluded uses; and (4) provisions addressing water-related, water-enhanced, and water-dependent uses?⁴
- *The Type of Access Sought:* Access to the waterfront may consist of (1) access to cross private property (“perpendicular access”); (2) access to traverse the intertidal area (“horizontal access”); and/or (3) use of the waterfront—i.e., use of private property adjacent to water (e.g., for parking, gas station, etc.), and use of the intertidal area for working waterfront-related purposes (e.g., piers/docks, commercial fishing). The nature of access sought is therefore controlled by the access needs of working waterfront uses that merit protection.
- *The Method of Establishing a Working Waterfront Conservancy:* Is it feasible to create a land bank or a system land use policies and rules (e.g., transferable development rights) to preserve the working waterfront?

² Michael Dixon, *Tax-Based Opportunities and Challenges for Working Waterfront Protection* (Memorandum to Maine Sea Grant & Working Waterfront Tax Policy Grant Advisory Committee, July 14, 2010) [hereinafter, Dixon Memo].

³ For information regarding tax increment financing programs (TIFs), as well as alternatives to property tax increment finance programs (e.g., sales, income, and non-property TIFs), see Lauren Ashley Smith, *Alternatives to Property Tax Increment Finance Programs: Sales, Income, and Nonproperty Tax Increment Financing*, 41 URBAN LAWYER 705-24 (2009) (covering state TIF laws, including the 14 state laws that allow non-property taxes to be used in repaying development costs, and the 11 states that allow TIF districts to structure the tax increment to include non-property taxes in combination with, or in lieu of, property taxes).

⁴ See Dixon Memo, *supra* note 2, at 3-5.

While this document focuses only on the transferability of the identified tax tools for funding a working waterfront conservancy and providing tax relief for working waterfront uses, it does identify a number of programs and policies to which a working waterfront protection program might be easily appended. Although these programs and policies are not directly related to working waterfront preservation, they can serve as a foundation from which to build upon.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The overwhelming majority of the tax policy content of the “Accessing the Maine Coast” website, presenting both existing and new tax tools for funding a working waterfront conservancy and providing tax relief for working waterfront uses, is fully transferable to the five coastal states that have already adapted the Maine access website, and is likely transferable to most other coastal and Great Lakes states. In only two instances—namely, the web content related to Maine’s Real Estate Transfer Tax (RETT) program and Maine’s Current Use Taxation programs—is the tax policy information specific to Maine. Nonetheless, even information about these Maine-specific programs can serve as a model for other states. These two sections of the Maine access website will need to be slightly redrafted so as to be relevant to other states.

While information about all of the tax tools discussed on the Maine access website is technically transferable, state-specific legal, economic, and political variables will dictate the feasibility of utilizing these tools to help preserve working waterfronts. Policymakers of each coastal and Great Lakes state should therefore evaluate each of these tools carefully in light of their state’s cultural and political environment before taking any specific legislative or political action. Accordingly, the purpose of this document is to provide some basic state-specific information about existing regulations and programs to assist policymakers in these evaluations.

Research Matrix

The following tables identify the existing regulations and programs related to the tax tools that are the subject of this research for each of the five states that have adapted the Maine access website. The rightmost column identifies sample regulations and programs specific to other coastal and Great Lakes states, as well as secondary sources which may be used for additional state-by-state research on any given tax tool.

TAX TOOLS THAT HELP TO FUND WORKING WATERFRONT CONSERVANCIES

Qualifying Working Waterfront Land Donations for Charitable Deduction Status (Federal)

The idea behind a working waterfront conservancy is to create a private, nonprofit corporation that is exempt from taxation under §501(c)(3) of the Internal Revenue Code (IRC). The §501(c)(3) status is granted to charitable organizations that provide specified public benefits. Like a traditional land trust, a working waterfront conservancy could purchase or accept donations of working waterfront lands in fee, or purchase or accept donations of restrictive easements on working waterfront lands. A qualifying §501(c)(3) organization has the benefit of tax-exempt status; likewise, a qualifying land donation, as set forth in §170(h) of the IRC, benefits from its charitable deduction status.⁵ Accordingly, federal tax policy can be used to incentivize the sale or donation of property to land conservancies.

The IRC will likely need to be amended, however, to allow working waterfront land to qualify for charitable deduction status. To date, working waterfront is not recognized as a public benefit. To qualify for charitable deduction purposes, a land or easement donation must be “exclusively for conservation purposes,” which the IRC articulates to include a variety of public uses (e.g., public recreation or education; protection of fish, wildlife or plants; conservation of property with demonstrable historic value; or preservation of open space, farmland or forest), but not working waterfront uses. Additional research is also needed to determine whether nonprofit working waterfront conservancies would constitute charities for purposes of the IRC status.

Qualifying land donations for charitable deduction status (federal)	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
	<p style="text-align: center;">← Web content transferable to all states →</p> <p>Information about how federal income tax policies could incentivize the funding of working waterfront conservancies and thereby help address access needs is found on the “working waterfront conservancy” page.⁶ Because this tax tool is based on federal tax policy, the web content is transferable to all coastal and Great Lakes states.</p>						

⁵ See 26 U.S.C. §170(h); 26 C.F.R. §1.170A-14 (“qualified conservation contributions”).

⁶ See also Dixon Memo, *supra* note 2, at 25-27.

Qualifying Working Waterfront Land Donations for Charitable Deduction Status (State)

Similar to the federal income tax deduction, some states have enacted income tax incentives for the donation of land or easements to qualifying organizations. In many cases, the programs piggyback on the IRC requirements of §§501(c)(3) and 170(h). In addition, many states exempt from property taxation land held by qualifying charitable organizations.

To date, no state tax codes have specifically recognized working waterfront land donations; however, as with the federal code, state codes could be amended to allow such donations to qualify for charitable deduction status. It is noteworthy that tax exemption for land conservation is a hot topic under both federal and state tax policy. Legislative findings in a bill introduced in New Jersey are illustrative of the policy concerns: “. . . [W]hile the dedication of privately-owned open space to public use and enjoyment is a significant governmental interest, there needs to be a *balance between the tax incentives granted to encourage that dedication and the burden placed on municipalities that lose that tax revenue . . .*”⁷

Moreover, charitable purposes must be viewed in light of a prohibition on private benefit. Consequently, profit-making enterprises such as working waterfront fisheries face the added hurdle of establishing that they are beneficial to the community without also serving private trust purposes.⁸ Nonetheless, a growing number of states have tax programs designed to facilitate the purchase of easements on qualifying lands. Such programs, particularly PACE (Purchase of Agricultural Conservation Easement) Programs, can serve as a foundation for instituting tax credits designed to help preserve working waterfronts.

The table below highlights several programs that offer income tax credits for certain types of qualifying land donations. The table also summarizes each state’s property tax exemptions, and identifies states that have adopted PILOT programs to offset property tax losses granted to charitable organizations. PILOTs are “payments in lieu of taxes.” A few states explicitly authorize or engage municipalities and exempt charities to enter into “voluntary” PILOT agreements, whereby a percentage of property, or certain types of charitable property owners, provide payments in lieu of property taxes in order to defray some of the costs of local government services. Even without explicit authorization, however, the practice is found in many states.⁹

Qualifying land donations for charitable deduction status (state)	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
	<p style="text-align: center;">← Web content transferable to all states →</p> <p>Information about how state income and property tax policies could incentivize the funding of working waterfront conservancies and thereby help address access needs is found on the “working waterfront conservancy” page.¹⁰ Because this tax tool is based on general state taxation principles, the web content is transferable to all coastal and Great Lakes states.</p>						

⁷ A.D. 3065, 212th Leg. (N.J. 2006), available at www.njleg.state.nj.us/2006/Bills/A3500/3065_11.pdf (emphasis added); see also Evelyn Brodyal, *All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others*, 44 NEW ENG. L. REV. 621, 636 (2010).

⁸ See Evelyn Brodyal, *All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others*, 44 NEW ENG. L. REV. 621, 636-38 (2010).

⁹ See *id.* at 659-60.

¹⁰ See also Dixon Memo, *supra* note 2, at 25-27.

	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
State income tax credit programs for land donations	None found	None found	None found	Credit for priority conservation sites & riparian corridors ¹¹	None found	Credit for agricultural or forest use, conservation, open space, etc. ¹²	Programs exist in many coastal & Great Lakes states ¹³
Charity property tax exemptions ¹⁴	Constitution mandates exemption; law exempts all property owned and used by benevolent & charitable institutions ¹⁵	Constitution mandates exemption; law exempts, in part, most property for “purposes purely charitable” ¹⁶	Constitution silent on exemption; property taxes determined locally	Constitution grants exemption authority to Legislature; law partially exempts property of any nonprofit “charitable society” ¹⁷	Constitution mandates exemption ¹⁸	Constitution grants limited exemption authority to Legislature; law exempts specific classes of property ¹⁹	Charity property tax exemptions vary significantly from state to state ²⁰
PILOT programs	Makes partial PILOTs on account of some nonprofit property	None found	None found	None found	None found	None found	

¹¹ Miss. Code. Ann. §27-7-22.21 (Natural Heritage priority conservation or Scenic Streams land donations).

¹² Va. Code. Ann. §§58.1-512 (Land preservation tax credits for individuals and corporations).

¹³ For example, such statutes exist in California (Cal. Pub. Res. Code. §§37000-37042); Delaware (Del. Code. Ann. tit. 30 §§1801-1807); Georgia (Ga. Code Ann. §48-7-29.12); Maryland (Md. Code Ann. §10-723); North Carolina (N.C. Gen. Stat. §§105-130.34, 105-151.12); and South Carolina (S.C. Code Ann. §12-6-3515). *See also* National Timber Tax Website: Land Donation Tax Credits, www.timbertax.org/statetaxes/landdonationtaxcredits, *last visited* May 16, 2012; American Farmland Trust, Farmland Information Center, www.farmlandinfo.org, *last visited* May 16, 2012.

¹⁴ With or without a constitutional mandate, every state exempts charitable property. However, only eleven states define charity in the tax statutes and, even though charitable organizations are defined under common law, states have varied multi-factor tests in their statutes. As a result, a state-by-state comparison of charity property tax exemptions does not allow for easy comparison. Frequently, specific constitutional or statutory provisions apply to such entities as nonprofit schools, hospitals, nursing homes, libraries, assisted or affordable living facilities, art galleries, and open/conservation space. Property tax statutes are often complex and detailed—some statutes even name specific organizations. *See Evelyn Brodya, All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others*, 44 NEW ENG. L. REV. 621 (2010).

¹⁵ 36 M.R.S. §652.

¹⁶ Ala. Code §40-9-1.

¹⁷ Miss. Code Ann. §27-31-1.

¹⁸ New Jersey exempts, in part, “all buildings actually used for colleges, schools, academies or seminaries . . . ; all buildings actually used for historical societies, associations or exhibitions, when . . . located on land owned by an educational institution which derives its primary support from State revenue; all buildings actually and exclusively used for public libraries . . . ; all buildings actually used in the work of associations and corporations organized exclusively for religious purposes . . . ; all buildings actually used in the work of associations and corporations organized exclusively for hospital purposes . . . ; [and] all buildings owned by a corporation . . . subject to the provisions of Title 15 . . . or Title 15A of the New Jersey Statutes and actually and exclusively used in the work of one or more associations or corporations organized exclusively for charitable or religious purposes. . . .” N.J. Stat. Ann. § 54:4-3.6 (West).

¹⁹ The Legislature may repeal or modify, but not extend. *See* Va. Code Ann. §58.1 -3606; *see also* Va. Code Ann. §58.1-3651(B) (process for exemption).

²⁰ *See Evelyn Brodya, All Charities Are Property-Tax Exempt, But Some Charities Are More Exempt Than Others*, 44 NEW ENG. L. REV. 621 (2010).

Dedicated Sales and Excise Taxes

A dedicated sales or excise tax is a tax on the manufacture, sale, or a business license or charter that may be levied by federal, state, or local governments. These taxes are most commonly applied to items like alcohol, tobacco, and gasoline, but federally-imposed excise taxes also exist on items such as rods and reels, sport-fishing boats, and guns and bullets. Likewise, funds for a working waterfront conservancy at either federal or state levels might be raised through related sales and excise taxes.

Although most states impose some type of dedicated sales or excise taxes, the tax rates and the items subject to taxation tend to vary from state to state. These rates may be an indicator of a state's willingness to levy taxes to fund efforts such as a working waterfront conservancy. Accordingly, the table below identifies the general sales tax rates for each state, as well as the tax rates for several common excise taxes.

Dedicated Sales & Excise Taxes (State)	MAINE ²¹	ALABAMA ²²	HAWAII ²³	MISSISSIPPI ²⁴	NEW JERSEY ²⁵	VIRGINIA ²⁶	OTHER COASTAL AND GREAT LAKES STATES
	← Web content transferable to all states →						
	Information about how dedicated sales and excise taxes by the federal, state, or local government could help fund working waterfront conservancies and thereby help address access needs is found on the " new tax tools " page. ²⁷ Because this tax tool is based on general tax principles, the web content is transferable to all coastal and Great Lakes states.						
General Sales Tax	5%	4%	4%	7%	7%	4%	Most states impose some type of dedicated sales or excise taxes ²⁸
Cigarette Tax	100 mills per cigarette	21.25 mills per cigarette	9¢ per cigarette	3.4¢ per cigarette	13.5¢ per cigarette	1.5¢ per cigarette	
Gasoline Tax	29.5¢ per gallon	16¢ per gallon	16¢ per gallon, plus county rates	18¢ per gallon	10.5¢ per gallon	17.5¢ per gallon	
Use Tax	Yes (variable)	4%	4%	Same rate as sales tax	7%	3.5%	
Liquor Tax	Yes	Yes	Yes	Yes	Yes	Yes	
Gambling Tax	None	None	None	3% state	8% of gross revenues	Yes	

²¹ See 36 M.R.S. §§1811 (general sales tax); 4365 (cigarette tax); 2903 (gasoline tax); 1861 & 1811 (use tax); 1811 (liquor tax).

²² See Ala. Code §§40-23-2 (general sales tax); 40-25-2 (cigarette tax); 40-717-31 & 220 (gasoline tax); 40-23-61 & 63 (use tax); 28-3-200, 201, & 28-7-16 (liquor tax).

²³ See HRS §§237-13 & 23(a)(4) (general excise tax, Hawaii's principal source of government revenue; exemptions are available for charitable organizations); 245-3 (cigarette tax); 243-4,5 (gasoline tax); 238-2 (use tax); 244D-4 (liquor tax; rates adjusted semi-annually).

²⁴ See Miss. Code Ann. §§27-65-17 (general sales tax); 27-69-13 (cigarette tax); 27-55-11 (gasoline tax); 27-67-5 (use tax); 27-71-7 & 201 & 307 & 67-1-41 (liquor tax); 37-7-15 (gambling tax).

²⁵ See N.J. Stat. Ann. §§54:32B-3 (general sales tax); 54:40A-8 (cigarette tax); 54:39-27 (gasoline tax); 54:32B-6 (use tax); 54:43-1 (liquor tax); 5:12-144 (gambling tax).

²⁶ See Va. Code Ann. §§58.1-603 (general sales tax); 58.1-1001 (cigarette tax); 58.1-2217 (gasoline tax); 58.1-608 (use tax); 4.1-234 & 236 (liquor tax); 54.1-833 & 59.1-392 (gambling tax; rates vary based on nature of gambling activity).

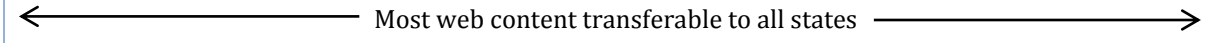
²⁷ See also Dixon Memo, *supra* note 2, at 13-14.

²⁸ See generally RICHARD A. LEITER, NATIONAL SURVEY OF STATE LAWS, 782-83 (6th ed.).

Real Estate Transfer Tax (RETT)

A real estate transfer tax is a tax levied by state or local governments on the sale or transfer in ownership of real property. The most common transfer tax is split evenly by both buyer and seller, and the resulting revenues can be applied to a variety of uses, including funding land banks. Both Massachusetts and Washington have used RETTs to either fund land banks or purchase waterfront lands.

Although many states have RETT programs in place, the program purposes and transfer fee rates vary from state to state. These programs may be an indicator of a state's willingness to expand existing RETT programs or reassign portions of the existing transfer fee rate to fund efforts such as a working waterfront conservancy. Accordingly, the table below identifies the existing RETT programs for each state.

	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
Real Estate Transfer Tax (RETT)							
	Information about how RETT programs could help fund working waterfront conservancies and thereby help address access needs is found on the “new tax tools” and “case studies” pages. ²⁹ While most of this web content is transferable to all coastal and Great Lakes states, parts discussing Maine’s RETT program would need to be redrafted to be relevant to other states.						
Existing RETT Programs (transfer fee rates in parentheses) ³⁰	\$2.20 per \$500 of property value (0.44%)	Deeds \$0.50 per \$500 of property value (0.1%)	\$0.10 to \$1 per \$100 of property value (0.1-1.0%); \$0.15 to \$1.25 per \$100 without homeowner exemption (0.15-1.25%)	None	Variable based on price, tax status, and value (0.4-1.21%, plus surtax for high-value property); up to 0.1% additional county fee	\$0.50 per \$500 of property value (0.33%); mortgage tax \$0.25 per \$100 plus surtax for high-value property; local option for 1/3 more of state tax	RETT programs exist in many other coastal and Great Lakes states

²⁹ See also Dixon Memo, *supra* note 2, at 9-11.

³⁰ See National Conference of State Legislatures, Commerce Clearing House State Tax Guide, *NCSL Table: Real Estate Transfer Taxes*, (Aug. 2010), available at www.ncsl.org/issues-research/budget/real-estate-transfer-taxes.aspx, last visited May 25, 2012.

Fixed State and Local Appropriations (Bond Financing)

Many land banks rely on the channeling of fixed amounts of appropriations for a fixed period of time through a government agency. These fixed appropriations, typically in the form of bond financing, do not specify a sustainable source of funding, but they are nonetheless a common first response to the purchase and protection of working waterfronts. All fifty states and their local governments (including cities, counties, villages, school districts, authorities and special districts) can and do issue municipal bonds.³¹ However, state laws, administrative rules, and court interpretations can restrict levels of municipal indebtedness and otherwise impose controls on bond financing.³² Moreover, the financial climate and economic status of states may implicate the feasibility of bond financing. Although bonds typically have very low investor risks, the 2009 mortgage crisis has strained state and local finances and raised the risk of municipal and state defaults, thereby potentially making bond financing costlier. These and other state-specific legal, economic, and political variables determine the feasibility of using bonds to finance working waterfront projects. To help assess the viability of using bond financing to secure funding, the table below highlights recent bond financing programs focused on conservation land acquisitions. Additionally, Appendix A to this document lists all recent bond financing efforts of each of the five states of focus.

	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
Fixed State & Local Appropriations (Bond Financing)	← Web content transferable to all states →						
	Information about bond financing as a tool to fund working waterfront conservancies is limited to a paragraph about the Town of Tremont in Maine, found on the "case studies" page. ³³ This content is transferable to all coastal and Great Lakes states.						
Sample bond financing programs focused on land banking ³⁴	1987 to 2010 \$126M total bonds for land banking (Land for Maine's Future); municipalities can issue general obligation bonds	Municipalities & counties can issue bonds for land banking; governing bodies have discretion to hold bond approval elections ³⁵	Counties & cities can issue general obligation bonds; every county in Hawaii has a dedicated fund for land conservation	Local governments can use general obligation bonds to fund parks & open space purchases	1961 to 1995: \$1.4B total bonds for open space, & farmland acquisition; 1998 constitutional amendment for up to \$1B revenue bonds	Most land banking financed by 1992 & 2002 general obligation bonds	Bond financing programs exist in all coastal and Great Lakes states ³⁶

³¹ See Philip Wandschneider, Ronald Faas, & Douglas Young, *How a Community Decides to Issue Bonds*, Municipal Bond Series (Dec. 1982), available at http://wrdc.usu.edu/files/publications/publication/pub_683514.pdf, last visited May 25, 2012. Borrowing proposals are typically selected by the Legislature, may need Governor approval, and usually must be presented to the public as part of a statewide election to authorize or reject the proposals. If approved, the Treasurer structures and issues the bonds and makes payments from state revenues to bond purchasers until the debt is paid. *Id.*

³² *Id.* State controls typically include limits on the amount of debt municipalities may incur, restrictions on the amount of revenue that may be committed to service debt, requirements for voter approval, and constraints on the nature of the debt instrument. *Id.* For example, Alabama has a constitutional prohibition against the creation of new debt. Ala. Const. Art. 11, §213.

³³ See also Dixon Memo, *supra* note 2, at 8-9.

³⁴ See generally Trust for Public Lands, *Conservation Almanac*, available at www.conservationmanac.org/secure/almanac/index.shtml, last visited May 25, 2012.

³⁵ *Id.*; see also Ala. Code §§11-81-51, 52, 80, & 81. Counties and municipalities do not need state legislative approval to issue general obligation bonds if they have sufficient revenue to pay the debt service and their property tax rates are within the established limits. If the jurisdiction does not have sufficient revenue, it could look to increase sales or property tax. *Id.*

³⁶ *Id.* For example, Palm Beach County voters in Florida authorized a \$50M general obligation bond for financing acquisition, construction, and improvements to waterfront access (Nov. 2, 2004). *Id.*

TAX TOOLS THAT OFFER RELIEF FOR WORKING WATERFRONT USES

Income Tax Exemptions, Credits and Deductions (Federal & State)

Both federal and state authorities have long used income tax exemptions, credits, and deductions to promote public policy. Although there is presently no tax provision at either the federal or state level to promote working waterfront protection, a wide range of income tax credits, deductions, and exemptions exist that promote business development and expansion. For example, a number of states have enacted conservation credit programs, which offer state income tax credits to landowners who voluntarily preserve land through the donation of a conservation easement or fee title. The table below highlights programs that offer such conservation credits, as well as programs that offer other types of income tax benefits to qualified businesses, such as “seed capital” credits (credits for capital investments).

	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
Income Tax Exemptions, Credits, & Deductions	← Web content transferable to all states →						
	Information about how income tax policies could reduce the costs of sustaining commercial water-dependent uses on the waterfront and thereby ease the pressure of converting working waterfronts to other uses is found on the “ new tax tools ” page. ³⁷ This content is transferable to all coastal and Great Lakes states.						
Conservation credit programs	None found	None found	None found	National Heritage Priority Conservation Program ³⁸	None found	Virginia Land Conservation Incentives Program ³⁹	At least twelve states have conservation credit programs ⁴⁰
Sample business & development tax benefits	Pine Tree Development Zones ⁴¹ ; seed capital tax credits ⁴²	Tax credits for new businesses & business expansions ⁴³	Capital goods excise tax credit ⁴⁴	Tax credits for qualified businesses ⁴⁵	Business retention & relocation tax credits ⁴⁶	Green job creation tax credit; enterprise zones ⁴⁷	Many states offer business & development tax credits ⁴⁸

³⁷ See also Dixon Memo, *supra* note 2, at 16-17.

³⁸ Miss. Code Ann. §27-7-22.21 (2003 program crediting up to \$10,000 (lifetime cap) for landowners who donate qualifying conserved land).

³⁹ Va. Code Ann. §§58.1-510 (1999 program crediting up to \$100,000 per year for landowners who donate qualifying conserved land).

⁴⁰ See Debra Pentz, Conservation Resource Center, *State Conservation Tax Credits: Impact & Analysis* (Mar. 2007) available at www.taxcreditexchange.com/documents/realfinalversion.pdf (describing conservation credit programs in California, Colorado, Connecticut, Delaware, Georgia, Maryland, Mississippi, New Mexico, New York, North Carolina, South Carolina, & Virginia).

⁴¹ 30-A M.R.S. §§245 et seq.; 36 M.R.S. §§1760, 2529, & 5215-W (deductions and credits on business income).

⁴² 10 M.R.S. §110-T; 36 M.R.S. §5215 et seq.

⁴³ Ala. Code §§40-18-190 to 40-18-203 (asset purchases); amended by 2012 Ala. Laws Act 2012-436 (H.B. 59).

⁴⁴ HRS §235-110.7 (capital goods excise tax credit).

⁴⁵ Miss. Code Ann. §27-7-22 (qualified business tax credit, enterprise zones).

⁴⁶ N.J. Stat. Ann. §§34:1B-112 to 120.1 (business retention and relocation assistance act).

⁴⁷ Va. Code Ann. §§58.1-439.12:05 (green job creation tax credit) & 58.1-3245.6 to 58.1-3245.12 (enterprise zones).

⁴⁸ See generally LEXIS 50 State Comparative Legislation/Regulations: Business & Development Tax Credits (Sept. 2011).

State Current Use Taxation (Use-Value Assessment)

Many states have reduced tax assessments on property dedicated to a particular recognized use by restricting the basis of property valuation to its current use rather than its “just” or “highest and best use” value. The table below identifies sample current-use taxation programs. However, although current use valuation is an accepted mechanism for lowering property tax assessments, such restrictions must be constitutionally recognized. Accordingly, even though most states have some form of current use taxation in place, their state constitutions would need to be amended in order to pass enabling legislation to create such a program for working waterfront land.⁴⁹

State Current Use Taxation (Use-Value Assessment)	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES
	<p>Information about how current use taxation could reduce the costs of sustaining commercial water-dependent uses on the waterfront and thereby ease the pressure of converting working waterfronts to other uses is found on the “using taxation for access” page.⁵⁰ While most of this web content is transferable to all coastal and Great Lakes states, parts discussing Maine’s current use programs may need to be redrafted to be relevant to other states.</p>						
Sample Current Use Programs	Working waterfront tax ⁵¹ ; tree growth tax ⁵² ; open space & farmland tax ⁵³	Real property valued at fair & reasonable market value ⁵⁴	Real property taxation is generally the purview of counties ⁵⁵	None found	Tree growth tax ⁵⁶	None found ⁵⁷	A number of other states have adopted current use taxation programs ⁵⁸

⁴⁹ See, e.g., Fl. Const. Art. 12 §30 (Florida’s constitutional amendment assessing working waterfront property based on current use); N.C. Const. Art. 5 §2(2) (North Carolina’s constitutional designation of working waterfront property assessment based on present use rather than true value); Me. Const. Art. 9 §8(2) (Maine’s constitutional amendment assessing waterfront land that is used for or supporting commercial fishing activities based on current use); see also 36 M.R.S. §1131 et seq. (Maine’s taxation statute establishing current use valuation of certain working waterfront land).

⁵⁰ See also Dixon Memo, *supra* note 2, at 18-21.

⁵¹ 36 M.R.S. §§1131-1140 (working waterfront land assessed based on sale price in the marketplace for such continuing use).

⁵² 36 M.R.S. §§571-584 (forestlands assessed on basis of their potential for annual wood production).

⁵³ 36 M.R.S. §§1101-1121 (land used for farming, agriculture & horticulture assessed based on agricultural enterprise income stream & market data; land used for publicly beneficial open space assessed based on municipal determination, considering sale price in the open space market or alternatively reducing fair market value by cumulative percentage based on eligibility criteria).

⁵⁴ See Ala. Code §§40-7-15 & 40-11-1 (mineral, coal, oil, gas, timber, and turpentine interests severed in ownership from the soil are assessed separately); see also Ala. Code §§9-13-80 to 108 (forest products privilege & severance taxes).

⁵⁵ Hi. Const. Art. VII, §3 (exemptions from real property taxation are not a matter of statewide concern).

⁵⁶ N.J. Stat. Ann. §54:4-3.28 (real property value is not enhanced for commercially planted & growing crops, trees, shrubs or vines while in the ground).

⁵⁷ Va. Code Ann. §58.1-3200 et seq.

⁵⁸ See generally LEXIS Real Estate - State Taxation of Real Property Interests.

Other Property-Related Tax Tools (tax deferral, abatement, windfall, & fee-based programs)

A variety of other property-related tax tools can be used to reduce the costs of sustaining working waterfronts, including property tax deferrals (interest-accruing postponements of property tax payments) and abatements (credits or reimbursements that forgive all or part of a landowner’s property tax obligation). Both property tax deferrals and abatements can be granted by state or municipal officials. For example, Florida offers property tax deferrals on working waterfront lands,⁵⁹ as does North Carolina.⁶⁰ Although no specific property tax abatement program for working waterfront lands appears to have been enacted by any state to date, there are numerous models in place.⁶¹

Likewise, windfall (land gains) taxes discourage capital gains resulting from the rapid purchase and sale of property. By imposing financial penalties, such a tax could discourage short-term land speculation that could drive up waterfront land values. Presently, the only state requiring in-state reinvestment of certain capital gains is Vermont.⁶² However, states appear to have the right to tax in-state built-in gains upon ultimate sale of out-of-state replacement property, without any need to reconcile multiple state taxing regimes.⁶³

In addition, fee-based mechanisms can be used to generate funds to cover the cost of property tax relief for landowners who protect coastal access or the working waterfront status of their lands. Such programs, similar to the PILOTs presented above as part of “Qualifying Working Waterfront Land Donations for Charitable Deduction Status (State),” are designed to allow state or local governments to arrange for alternative funding mechanisms that cover all or part of the property tax costs of qualifying land, often in exchange for a conservation easement on that land. Maine’s Voluntary Municipal Farm Support Program is just such a model, allowing municipalities to arrange for funding mechanism to cover all or part of property taxes of qualifying farmland in exchange for farmland easement.⁶⁴

Other property-related tax tools (deferral, abatement, windfall, & fee-based programs)	MAINE	ALABAMA	HAWAII	MISSISSIPPI	NEW JERSEY	VIRGINIA	OTHER COASTAL AND GREAT LAKES STATES ⁶⁵
	<p style="text-align: center;">← Web content transferable to all states →</p> <p>Information about how property-related tax tools could reduce the costs of sustaining commercial water-dependent uses on the waterfront and thereby ease the pressure of converting working waterfronts to other uses is found on the “new tax tools” page.⁶⁶ This content is transferable to all coastal and Great Lakes states. In addition, information about Maine’s Voluntary Municipal Farm Support Program is found on the “case studies” page.⁶⁷ Although this content is Maine-specific, it is transferable to all coastal and Great Lakes states as a model property tax funding mechanism.</p>						

⁵⁹ Fla. Stat. Ann. §197.2524 (tax deferral for recreational and commercial working waterfront properties and affordable rental housing property).

⁶⁰ N.C. Gen. Stat. Ann. §105-277.14 (deferred taxes payable when property no longer qualifies as working waterfront).

⁶¹ See, e.g., Mont. Admin. R. §42.4.4114 (Montana property tax abatement for new investment in conversion, transport, manufacture, research, development of renewable energy, clean coal energy, carbon dioxide equipment & facilities).

⁶² Specifically, Vermont imposes a tax on gains from the sale or exchange of land held for investment for less than six years by individuals, pass-through-entities, and corporate sellers. See Louis S. Weller & Gregory A. Marques, *State Income Tax Conformity—Or Not—With IRC Section 1031*, J. MULTISTATE TAXATION & INCENTIVES (2008).

⁶³ *Id.*

⁶⁴ See 7 M.R.S. §§60, 60-A (2009); Me. Dept. of Agric. 01-001 CMR Ch. 37.

⁶⁵ See generally LEXIS Real Estate - State Taxation of Real Property Interests.

⁶⁶ See also Dixon Memo, *supra* note 2, at 21-22.

⁶⁷ *Id.* at 14.