

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2142

S.P. 771

In Senate, March 5, 2020

An Act Regarding Outcome-based Forestry and the Use of Glyphosate

Submitted by the Joint Standing Committee on Agriculture, Conservation and Forestry pursuant to Resolve 2019, chapter 84, section 1.

Reference to the Committee on Agriculture, Conservation and Forestry suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 12 MRSA §8869, sub-§3-A**, as amended by PL 2013, c. 542, §3, is
3 further amended to read:

4 **3-A. Plans for outcome-based forestry areas.** Practices applied on an area created
5 pursuant to section 8003, subsection 3, paragraph Q must provide at least the equivalent
6 forest and environmental protection as provided by existing rules and any applicable local
7 regulations. At a minimum, tests of outcome-based forestry principles must address:

- 8 A. Soil productivity;
- 9 B. Water quality, wetlands and riparian zones;
- 10 C. Timber supply and quality;
- 11 D. Aesthetic impacts of timber harvesting;
- 12 E. Biological diversity;
- 13 F. Public accountability;
- 14 G. Economic considerations;
- 15 H. Social considerations; and
- 16 I. Forest health.

17 The Subject to review by the joint standing committee of the Legislature having
18 jurisdiction over forestry matters and subject to confirmation by the Legislature, the
19 Governor shall appoint a panel of at least 6 technical experts to work with the director to
20 implement, monitor and assess tests of outcome-based forestry principles. Members of
21 the technical panel appointed under this subsection serve for a term of 3 years until their
22 successors are duly appointed and qualified. The panel of technical experts must have
23 expertise in all of the principles listed in paragraphs A to I. In order to participate in an
24 outcome-based forestry project, the landowner, director and technical panel must develop
25 agreed-upon desired outcomes for the outcome-based forestry area and develop a method
26 for determining if the outcomes have been attained and a system for reporting results to
27 the public. The technical panel shall assess whether the practices applied on the
28 outcome-based forestry area provide at least the equivalent forest and environmental
29 protection as provided by rules and regulations otherwise applicable to that outcome-
30 based forestry area. The technical panel may not delegate this assessment to any other
31 person, except that the technical panel may consider information provided by the bureau,
32 the landowner or a 3rd-party forest certification program auditor.

33 **Sec. 2. 12 MRSA §8869, sub-§3-B, ¶A**, as enacted by PL 2013, c. 542, §4, is
34 amended to read:

- 35 A. Beginning March 1, 2015 and annually thereafter, the director shall submit a
36 report detailing the progress on each outcome-based forestry agreement under section
37 8003, subsection 3, paragraph Q. The report must include an assessment of the
38 landowner's progress toward attaining the outcomes under subsection 3-A and
39 beginning with the report in 2021, a summary of reports on glyphosate use and any

1 corresponding nonconformances as required under subsection 3-D. The report must
2 be presented to the joint standing committee of the Legislature having jurisdiction
3 over forestry matters at a public meeting no sooner than 30 days after submission of
4 the report to the committee.

5 **Sec. 3. 12 MRSA §8869, sub-§3-C** is enacted to read:

6 **3-C. Notification; use of glyphosate; outcome-based forestry projects.** At least
7 15 days prior to any use of glyphosate in an outcome-based forestry area designated
8 under section 8003, subsection 3, paragraph Q, the landowner shall provide written
9 notification of the intent to use glyphosate and the rationale with special consideration
10 given to the principles of outcome-based forestry under subsection 3-A for the use of
11 glyphosate to all members of the technical panel under subsection 3-A and the director.
12 The written notification must include the date of intended glyphosate use except that the
13 actual date of glyphosate use may be up to 7 days after the date on the written notification
14 if the delay is due to inclement weather or other unforeseen circumstances.

15 **Sec. 4. 12 MRSA §8869, sub-§3-D** is enacted to read:

16 **3-D. Report on use of glyphosate; outcome-based forestry projects.** Within 30
17 days of any use of glyphosate in an outcome-based forestry area designated under section
18 8003, subsection 3, paragraph Q, the landowner shall submit to all members of the
19 technical panel under subsection 3-A and the director a report that includes the following:

20 A. Pesticide application records as required by the Department of Agriculture,
21 Conservation and Forestry, Board of Pesticides Control rule relating to the use of
22 glyphosate;

23 B. An environmental and social risk assessment specific to the site on which
24 glyphosate was applied;

25 C. A description of control measures implemented for identified risks due to the use
26 of glyphosate;

27 D. A description of training and monitoring implemented to prevent, minimize and
28 mitigate the effects of the use of glyphosate. Any training and monitoring under this
29 paragraph must conform with the Department of Agriculture, Conservation and
30 Forestry, Board of Pesticides Control rule relating to the use of glyphosate;

31 E. A description of the review processes for activities described in paragraphs C and
32 D; and

33 F. A comparative environmental and social risk assessment to demonstrate that an
34 alternative to the use of glyphosate is not feasible.

35 For purposes of this subsection, "environmental and social risk assessment" means a
36 process to predict, assess and review the probable or actual environmental and social
37 effects of the use of glyphosate, evaluate alternatives and design appropriate mitigation,
38 management and monitoring measures.

39 Upon receipt of the report under this subsection, the technical panel shall evaluate
40 whether the landowner has adequately addressed the principles under subsection 3-A. If

1 the technical panel determines that the landowner has not adequately addressed the
2 principles under subsection 3-A, the panel shall report the nonconformance to the
3 director. Upon receipt of the report, if the director finds a landowner is in violation of
4 this subchapter, the director shall issue a written notice to the landowner describing the
5 violation, the required corrective action to be taken, including, but not limited to,
6 measures to repair damages to the environment or public health, and the date by which
7 the corrective action must be completed. If the landowner fails to complete corrective
8 actions by the date noted in the original notice or subsequent date specified by the
9 director, the director may terminate, suspend or refuse to renew an outcome-based
10 forestry agreement. If the director, upon receipt of the report, does not find that a
11 landowner is in violation of this subchapter, the panel's report relating to nonconformance
12 must be provided by the director to the joint standing committee of the Legislature having
13 jurisdiction over forestry matters.

14 **Sec. 5. Environmental risk advisory committee; glyphosate.** The
15 Department of Agriculture, Conservation and Forestry, Board of Pesticides Control shall
16 establish an environmental risk advisory committee to assess the environmental risks
17 associated with the use of glyphosate. The committee shall submit an interim report no
18 later than March 1, 2021 and a final report no later than February 1, 2022 with findings
19 and recommendations, including suggested legislation, to the joint standing committee of
20 the Legislature having jurisdiction over forestry matters. Following receipt and review of
21 the final report, the joint standing committee of the Legislature having jurisdiction over
22 forestry matters may submit a bill concerning the subject matter of the report to the
23 Second Regular Session of the 130th Legislature.

24 **Sec. 6. Transition provision.** Members of the panel of technical experts that
25 work with the Director of the Maine Forest Service within the Department of Agriculture,
26 Conservation and Forestry to implement, monitor and assess tests of outcome-based
27 forestry principles in the Maine Revised Statutes, Title 12, section 8869, subsection 3-A
28 serving immediately prior to the effective date of this Act continue to serve on the panel
29 until their successors are appointed pursuant to Title 12, section 8869, subsection 3-A.
30 The Governor, in making these appointments, shall, notwithstanding Title 12, section
31 8869, subsection 3-A, appoint members to terms of one, 2 and 3 years so that the terms of
32 the members of the technical panel are staggered. The Governor shall make these
33 appointments by January 1, 2023.

34 **Sec. 7. Effective date.** Those sections of this Act that amend the Maine Revised
35 Statutes, Title 12, section 8869, subsection 3-A and subsection 3-B, paragraph A and that
36 enact Title 12, section 8869, subsections 3-C and 3-D take effect January 1, 2022.

37 SUMMARY

38 This bill is reported out by the Joint Standing Committee on Agriculture,
39 Conservation and Forestry pursuant to Resolve 2019, chapter 84. The committee is
40 reporting the bill out for the sole purpose of turning the proposal into a printed bill that
41 can be referred to the committee for an appropriate public hearing and subsequent
42 processing in the normal course. The committee has not taken a position on the substance

1 of this bill and by reporting this bill out the committee is not suggesting and does not
2 intend to suggest that it agrees or disagrees with any aspect of this bill.

3 Current law requires the Governor to appoint a panel of at least 6 technical experts to
4 work with the Director of the Maine Forest Service within the Department of Agriculture,
5 Conservation and Forestry to implement, monitor and assess tests of outcome-based
6 forestry principles. The bill provides that the gubernatorial appointments are subject to
7 review by the joint standing committee by the Legislature having jurisdiction over
8 forestry matters and subject to confirmation by the Legislature.

9 The bill requires landowners to provide written notification at least 15 days prior to
10 any use of glyphosate in an outcome-based forestry area to all members of the panel and
11 the director and within 30 days of any use of glyphosate in an outcome-based forestry
12 area to submit a report to all members of the panel and the director. Upon receipt of the
13 report, the panel is required to evaluate whether the landowner has adequately addressed
14 outcome-based forestry principles under the forest practices laws. If the panel determines
15 the landowner has not adequately addressed the outcome-based forestry principles, the
16 panel is required to report the nonconformance to the director. The effective date of these
17 provisions is January 1, 2022.

18 The bill also requires the Board of Pesticides Control to establish an environmental
19 risk advisory committee to evaluate the environmental risks associated with the use of
20 glyphosate. The advisory committee is required to submit an interim report no later than
21 March 1, 2021 and a final report no later than February 1, 2022 with findings and
22 recommendations to the joint standing committee of the Legislature having jurisdiction
23 over forestry matters. The joint standing committee of the Legislature having jurisdiction
24 over forestry matters has the authority to submit a bill relating to the subject matter of the
25 report during the Second Regular Session of the 130th Legislature.