

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1473

S.P. 471

In Senate, March 11, 1997

An Act to Amend the Laws Regarding Forest Practices.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CASSIDY of Washington.
Cosponsored by Representative BARTH of Bethel and
Senators: BENOIT of Franklin, CAREY of Kennebec, KIEFFER of Aroostook, KILKELLY
of Lincoln, Representatives: BERRY of Livermore, CAMPBELL of Holden, GOOLEY of
Farmington, LANE of Enfield.

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

2
4 **Sec. 1. 12 MRSA §8868, sub-§2-A** is enacted to read:

6 2-A. Landowner. "Landowner" means an individual, firm,
association, organization, partnership, cotenant, joint tenant,
trust, company, corporation, state agency or other legal entity.

8
10 **Sec. 2. 12 MRSA §8869, sub-§§2-A, 2-B, 2-C and 2-D** are enacted
to read:

12 2-A. Maximum area clear-cut limit; forest land ownerships
equal to or greater than 100,000 acres. When forest lands owned
14 by the same landowner total 100,000 acres or more statewide, the
maximum of that land area to be clear-cut in any year is limited
16 to:

18 A. Not more than 0.25% of the landowner's total statewide
land area ownership, plus any unused qualifying acres that
20 may be carried over for up to 3 years; and

22 B. Not more than an additional 0.75% of the ownership's
total statewide land area, as long as every acre clear-cut
24 in excess of the 0.25% limit referenced in paragraph A is
matched with an acre of land that was planted or
26 precommercially thinned, mechanically or with nonchemical
manual methods, in the previous year. During the period
28 from January 1, 1998 to December 31, 1998, landowners may
only exercise this option using the greatest number of acres
30 that were planted or precommercially thinned, mechanically
or with nonchemical manual methods, during any one of the
32 calendar years 1995, 1996 or 1997, as reported to the Maine
Forest Service under the reporting requirements of section
34 8885, subsection 2. Beginning January 1, 1999, unused
qualifying acres may be carried over for up to 3 years.

36 2-B. Maximum area clear-cut limit; forest land ownerships
38 of more than 500 acres but less than 100,000 acres. When forest
lands owned by the same landowner total more than 500 acres but
40 less than 100,000 acres statewide, the maximum of that land area
to be clear-cut in any year is limited to the greater of either
42 100 acres or 10% of the land area of any parcel. Both
alternatives must be calculated on a rolling basis to ensure that
44 clear-cuts do not occupy more than 100 acres or 10% of the
parcel, whichever is greater.

46 2-C. Maximum individual clear-cut size. For a landowner
48 who owns more than 500 acres, an individual clear-cut may not
exceed 50 acres in total area.

50

2 2-D. Clear-cut separation zones. Clear-cut harvest areas
3 must be separated by a defined area equal to the area contained
4 within the perimeter of the clear-cut. Each defined area must be
5 identified with a specific clear-cut area.

6 **Sec. 3. 12 MRSA §8869, sub-§8,** as enacted by PL 1995, c. 122,
7 §1 and affected by §2, is amended to read:

8 **8. Relationship to municipal rules and regulations.**
9 Nothing in this subchapter may be construed to preempt or
10 otherwise limit the existing authority of municipalities to
11 regulate harvesting, except that municipalities regulating timber
12 harvesting shall adopt definitions for forestry terms used in
13 their ordinances that are consistent with forestry terms adopted
14 by the commissioner pursuant to this subchapter. A municipality
15 may not adopt or amend an ordinance that regulates timber
16 harvesting unless the following process set out in this
17 subsection is followed in the development and review of the
18 ordinance+.

19 A. A licensed professional forester must participate in the
20 development or amendment of the ordinance+.

21 B. A face-to-face meeting must take place in the
22 municipality during the development or amendment of the
23 ordinance between representatives of the department and
24 municipal officers and other municipal officials involved in
25 developing or amending the ordinance. Discussion at the
26 meeting must include, but is not limited to, the timber
27 harvesting forest practices goals of the municipality+. At
28 this meeting and subsequently, the department must provide
29 guidance to the municipality on how the municipality may use
30 sound forestry practices to achieve the municipality's
31 forest practices goals.

32 C. The municipality shall hold a public hearing to review a
33 proposed ordinance or ordinance amendment at least 45 days
34 before a vote is held on the ordinance. The municipality
35 shall provide public notice of the hearing according to the
36 method ~~the municipality uses for its regular public~~
37 meetings+ and same general requirements of posted and
38 published notice for zoning ordinance public hearings as
39 provided by Title 30-A, section 4352, subsection 9.

40 In addition, when a municipality proposes to adopt or amend
41 a timber harvesting ordinance pursuant to its home rule
42 authority as provided by Title 30-A, section 3001, the
43 municipality shall mail notice of the hearing by first-class
44 mail at least 14 days before the hearing to all landowners
45 in the municipality at the last known address of the person

2 on whom a property tax on each parcel is assessed. In the
4 case of a timber harvesting ordinance or amendment that
6 applies only to certain zones or land use districts in the
8 municipality, the municipality may meet the requirements of
10 this subsection by mailing notice only to those landowners
12 whose land is in a zone or land use district or immediately
14 abutting the affected zone or land use district.

16 Mailed notice to individual landowners is not required under
18 this subsection for any type of amendment to an existing
20 local land use ordinance merely to conform that ordinance to
22 the minimum timber harvesting guidelines required by Title
24 38, section 439-A, as those guidelines may be subsequently
26 amended, or to conform any timber harvesting ordinance to
28 the definitional compliance required by this section when
30 the amendments proposed to accomplish definitional
32 compliance do not substantially change any previously
34 established timber harvesting standards adopted pursuant to
36 home rule authority.

38 The municipal officers shall prepare and file with the
40 municipal clerk a written certificate indicating those
42 landowners to whom the notice was mailed and at what
44 addresses, when it was mailed, by whom it was mailed and
46 from what location it was mailed. The certificate
48 constitutes prima facie evidence that notice was sent to
50 those landowners named in the certificate.

Any action challenging the validity of the adoption or
amendment of a municipal timber harvesting ordinance based
on the municipality's alleged failure to comply with the
landowner notice requirement must be brought in Superior
Court within 30 days after the adoption of the ordinance or
amendment. The Superior Court may invalidate an ordinance
or amendment only if the landowner demonstrates that the
landowner was entitled to receive a notice under this
section, that the municipality failed to send the notice as
required, that the landowner had no knowledge of the
proposed ordinance or amendment and that the landowner was
materially harmed by that lack of knowledge.

D. The municipality municipal clerk shall notify the
department of the time, place and date of the public hearing
and provide the department with a copy of the proposed
ordinance or ordinance amendment that will be reviewed at
the hearing at least 30 days before the date of the hearing.

E. At the public hearing, representatives of the Department
of Conservation must be provided an opportunity to present
and discuss for the municipality's information any reports,

2 articles, treatises or similar materials published by
3 acknowledged experts in the field of sound forestry or
4 silvicultural management to the extent such information
5 might apply to the proposed ordinance or ordinance amendment.

6 The proposed ordinance or ordinance amendment may be revised
7 after the public hearing. The ordinance or amendment must
8 be submitted to the legislative body of the municipality in
9 accordance with the procedures the municipality uses for
10 adopting ordinances.

11 F. Municipal timber harvesting ordinances or amendments to
12 those ordinances may not be unreasonable, arbitrary or
13 capricious and must employ means appropriate to the
14 protection of public health, safety and welfare.

15 G. All direct costs incurred by a municipality associated
16 with landowner notification requirements and other required
17 public notice must be reimbursed to the municipality by the
18 Department of Conservation in a timely manner upon
19 presentation of satisfactory documentation verifying the
20 direct municipal costs actually incurred.

21 ~~The proposed ordinance may be revised after the public hearing.~~
22 ~~The revised ordinance or the proposed ordinance, if no changes~~
23 ~~are made following the public hearing, must be submitted to the~~
24 ~~legislative body of the municipality in accordance with the~~
25 ~~procedures the municipality uses for adopting ordinances.~~

26 ~~The department must provide a municipality guidance on how the~~
27 ~~municipality may use sound forestry practices to achieve its~~
28 ~~timber harvesting goals.~~

29 **Sec. 4. 12 MRSA §8869, sub-§9, as enacted by PL 1989, c. 555,**
30 **§10, is repealed.**

31 **Sec. 5. 12 MRSA §8869, sub-§9-A is enacted to read:**

32 **9-A. Centralized listing of municipal ordinances.** The
33 bureau shall maintain for informational purposes a statewide
34 centralized listing of municipal ordinances that specifically
35 apply to forest practices. Within 30 days after the legislative
36 body of the municipality votes on a timber harvesting ordinance
37 or amendment to that ordinance developed according to the
38 procedures of subsection 8, the clerk shall notify the bureau of
39 the outcome and shall file a copy of the ordinance or amendment
40 to that ordinance with the bureau.

41 **Sec. 6. 12 MRSA §8869, sub-§13 is enacted to read:**

42

2 13. Forest practices seminars. The Department of
3 Conservation shall hold 14 seminars per year, 2 at each of the 7
4 campuses of the Maine Technical College System, to educate
5 landowners and harvesters regarding forest practices.

6 **Sec. 7. Appropriation.** The following funds are appropriated
7 from the General Fund to carry out the purposes of this Act.

	1997-98	1998-99
10 CONSERVATION, DEPARTMENT OF		
12 Division of Forest Management		
14		
16 Positions - Legislative Count	(8,000)	(8,000)
17 Personal Services	\$237,784	\$359,936
18 All Other	86,008	70,336
20 Provides funds for 8 21 additional Forester I 22 positions.		
24 DEPARTMENT OF CONSERVATION		
25 TOTAL	<u>\$323,792</u>	<u>\$430,272</u>

26

28 **SUMMARY**

30 This bill amends the laws governing forest practices by
31 limiting the maximum land area that may be clear-cut in any year
32 and by providing that an individual clear-cut may not exceed 50
33 acres in total area for forest ownerships of more than 500 acres.

34 The bill amends the provisions governing the process by
35 which a municipality may propose to adopt or amend a timber
36 harvesting ordinance. The bill adds 8 foresters to the Maine
37 Forest Service in the Department of Conservation and requires the
38 department to hold 14 seminars per year, 2 at each of the 7
39 campuses of the Maine Technical College System, to educate
40 landowners and harvesters regarding forest practices.