

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1746

S.P. 583

In Senate, April 7, 1997

**An Act to Amend the Laws Relating to Development and Centralized  
Listing of Municipal Ordinances That Apply to Forest Practices.**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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 KILKELLY of Lincoln.  
Cosponsored by Representative GREEN of Monmouth and  
Senators: BENNETT of Oxford, CASSIDY of Washington, MITCHELL of Penobscot,  
Representatives: BARTH of Bethel, CAMERON of Rumford, MERES of Norridgewock,  
SAVAGE of Union.

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

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

6       **8. Relationship to municipal rules and regulations.**  
Nothing in this subchapter may be construed to preempt or  
8 otherwise limit the existing authority of municipalities to  
regulate harvesting, except that municipalities regulating timber  
10 harvesting shall adopt definitions for forestry terms used in  
their ordinances that are consistent with definitions in section  
12 8868 and with forestry terms adopted by the commissioner pursuant  
to this subchapter. ~~A municipality may not adopt an ordinance~~  
14 ~~that regulates timber harvesting unless the following process is~~  
~~followed--in--the--development--and--review--of--the--ordinance:~~  
16 Municipal timber harvesting ordinances adopted before September  
1, 1990 and not amended subsequently must meet this standard of  
18 compliance with definitions no later than January 1, 1999.

20 A municipality may not adopt an ordinance that is less stringent  
than the minimum standards established in this section and in  
22 rules adopted by the commissioner to implement this section. A  
municipality may not adopt or amend an ordinance that regulates  
24 timber harvesting unless the process set out in this subsection  
is followed in the development and review of the ordinance.

26  
28       A. A licensed professional forester must participate in the  
development or amendment of the ordinance;.

30       B. A ~~face-to-face~~ meeting must take place in the  
32 municipality during the development or amendment of the  
ordinance between representatives of the department and  
34 municipal officers and officials involved in developing the  
ordinance. Discussion at the meeting must include, but is  
not limited to, the ~~timber-harvesting~~ forest practices goals  
36 of the municipality; . At this meeting and subsequently,  
the department must provide guidance to the municipality on  
38 how the municipality may use sound forestry practices to  
achieve the municipality's forest practices goals.

40       C. The municipality shall hold a public hearing to review a  
42 proposed ordinance or ordinance amendment at least 45 days  
before a vote is held on the ordinance. The municipality  
44 shall ~~provide~~ post and publish public notice of the public  
hearing according to the ~~method the municipality uses for~~  
46 ~~its regular public meetings;~~ and same general requirements  
of posted and published notice for zoning ordinance public  
48 hearings as provided by Title 30-A, section 4352, subsection  
9.

2 In addition, when a municipality proposes to adopt or amend  
4 a timber harvesting ordinance pursuant to its home rule  
6 authority as provided by Title 30-A, section 3001, the  
8 municipality shall mail notice of the hearing by first-class  
10 mail at least 14 days before the hearing to all landowners  
12 in the municipality at the last known address of the person  
14 on whom a property tax on each parcel is assessed. In the  
16 case of a timber harvesting ordinance or amendment that  
18 applies only to certain zones or land use districts in the  
20 municipality, the municipality may meet the requirements of  
22 this paragraph by mailing notice only to those landowners  
24 whose land is in a zone or land use district or immediately  
26 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 requirements for conformity of definitions required by  
30 this section when the amendments proposed to accomplish  
32 compliance with required definitions do not substantially  
34 change any previously established timber harvesting  
36 standards adopted pursuant to home rule authority.

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

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

48 D. The municipality municipal clerk shall notify the  
50 department of the time, place and date of the public hearing  
52 and provide the department with a copy of the

2 proposed ordinance that will be reviewed at the hearing at  
least 30 days before the date of the hearing.

4 E. At the public hearing, representatives of the department  
6 must be provided an opportunity to present and discuss for  
8 the municipality's information any reports, articles,  
10 treatises or similar materials published by acknowledged  
12 experts in the field of sound forestry or silvicultural  
14 management to the extent such information is relevant to the  
16 proposed ordinance or ordinance amendment.

12 The proposed ordinance or ordinance amendment may be revised  
14 after the public hearing. The ordinance or amendment must  
16 be submitted to the legislative body of the municipality in  
18 accordance with the procedures the municipality uses for  
20 adopting ordinances.

18 F. Municipal timber harvesting ordinances may not be  
20 unreasonable, arbitrary or capricious and must employ means  
22 appropriate to the protection of public health, safety and  
24 welfare.

24 G. All direct costs incurred by a municipality associated  
26 with landowner notification requirements and other required  
28 public notice must be paid to the municipality in accordance  
30 with a distribution schedule established under Title 30-A,  
32 section 5685, subsection 5. All direct costs incurred by a  
34 municipality associated with the amendment of ordinances  
36 adopted before September 1, 1990, and not subsequently  
38 amended, in order to comply with this section must be paid  
40 to the municipality in accordance with a distribution  
42 schedule established under Title 30-A, section 5685,  
44 subsection 5.

34 ~~The proposed ordinance may be revised after the public hearing.~~  
36 ~~The revised ordinance or the proposed ordinance, if no changes~~  
38 ~~are made following the public hearing, must be submitted to the~~  
40 ~~legislative body of the municipality in accordance with the~~  
42 ~~procedures the municipality uses for adopting ordinances.~~

42 ~~The department must provide a municipality guidance on how the~~  
44 ~~municipality may use sound forestry practices to achieve its~~  
46 ~~timber harvesting goals.~~

46 **Sec. 2. 12 MRSA §8869, sub-§9, as enacted by PL 1989, c. 555,**  
48 **§10, is repealed and the following enacted in its place:**

48 **9. Centralized listing of municipal ordinances.** The bureau  
shall maintain for informational purposes a statewide centralized

2 listing of municipal ordinances that specifically apply to forest  
3 practices.

4 A. Within 30 days after the legislative body of the  
5 municipality votes on a timber harvesting ordinance  
6 developed according to the procedures of subsection 8, the  
7 clerk shall notify the bureau of the outcome and shall file  
8 a copy of the ordinance with the bureau.

10  
11  
12

**SUMMARY**

13 This bill amends the laws relating to development of  
14 municipal timber harvesting ordinances by requiring the  
15 ordinances to be consistent with the definitions for forestry  
16 terms established in the Maine Revised Statutes, Title 12,  
17 section 8868 as well as those in rules adopted by the Department  
18 of Conservation. It also specifies a 30-day period within which  
19 the validity of the adoption of a timber harvesting ordinance may  
20 be challenged based on an alleged failure to comply with certain  
21 notice requirements. It also makes minor changes to the notice  
22 and hearing procedures for adopting municipal timber harvesting  
ordinances.