

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1888

S.P. 666

In Senate, March 16, 1999

**An Act to Amend the Laws Relating to Development and Centralized
Listing of Municipal Ordinances that Apply to Forestry 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 KILKELLY of Lincoln.
Cosponsored by Representative COWGER of Hallowell and
Senators: CASSIDY of Washington, MITCHELL of Penobscot, NUTTING of Androscoggin,
Representatives: DUNLAP of Old Town, GOOLEY of Farmington, PIEH of Bremen,
POVICH of Ellsworth, TRUE of Fryeburg.

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 must meet this standard of compliance with definitions no
18 later than January 1, 2000.

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
municipal officers and officials involved in developing the
34 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 shall provide guidance to the municipality on how
38 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.

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2 In addition, when a municipality proposes to adopt or amend
3 a timber harvesting ordinance pursuant to its home rule
4 authority as provided by Title 30-A, section 3001, the
5 municipality shall mail notice of the hearing by first-class
6 mail at least 14 days before the hearing to all landowners
7 in the municipality at the last known address of the person
8 on whom a property tax on each parcel is assessed. In the
9 case of a timber harvesting ordinance or amendment that
10 applies only to certain zones or land use districts in the
11 municipality, the municipality may meet the requirements of
12 this paragraph by mailing notice only to those landowners
13 whose land is in a zone or land use district or immediately
14 abutting the affected zone or land use district.

15 Mailed notice to individual landowners is not required under
16 this subsection for any type of amendment to an existing
17 local land use ordinance merely to conform that ordinance to
18 the minimum timber harvesting guidelines required by Title
19 38, section 439-A, as those guidelines may be subsequently
20 amended, or to conform any timber harvesting ordinance to
21 the requirements of this section for conformity of
22 definitions when the proposed amendments do not
23 substantially change any previously established timber
24 harvesting standards adopted pursuant to home rule authority.

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

32 Any action challenging the validity of the adoption or
33 amendment of a municipal timber harvesting ordinance based
34 on the municipality's alleged failure to comply with the
35 landowner notice requirement must be brought in Superior
36 Court within 90 days after the adoption of the ordinance or
37 amendment. The Superior Court may invalidate an ordinance
38 or amendment only if the landowner demonstrates that the
39 landowner was entitled to receive a notice under this
40 section, that the municipality failed to send the notice as
41 required, that the landowner had no knowledge of the
42 proposed ordinance or amendment and that the landowner was
43 materially harmed by that lack of knowledge.

44 D. The municipality municipal clerk shall notify the
45 department of the time, place and date of the public hearing
46 and provide the department with a copy of the
47
48

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
experts in the field of sound forestry or silvicultural
management to the extent such information is relevant to the
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
accordance with the procedures the municipality uses for
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
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
municipality in order to comply with this subsection for the
amendment of ordinances adopted before September 1, 1990
must be paid to the municipality in accordance with a
distribution schedule established under Title 30-A, section
5685, subsection 5.

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

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

44 **Sec. 2. 12 MRSA §8869, sub-§9, as enacted by PL 1989, c. 555,**
46 **§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 **SUMMARY**

11
12 This bill amends the laws relating to development of
13 municipal timber harvesting ordinances by requiring the
14 ordinances to be consistent with the definitions of forestry
15 terms established in the Maine Revised Statutes, Title 12,
16 section 8868 as well as those in rules adopted by the Department
17 of Conservation. It also specifies a 90-day period within which
18 the validity of the adoption of a timber harvesting ordinance may
19 be challenged based on an alleged failure to comply with certain
20 notice requirements. It also makes minor changes to the notice
21 and hearing procedures for adopting municipal timber harvesting
22 ordinances.