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Legislative Document

No. 1407

S.P. 457

In Senate, April 12, 2021

**An Act To Provide That a Forestry Operation That Conforms to
Accepted Practices May Not Be Declared a Nuisance**

Received by the Secretary of the Senate on April 8, 2021. Referred to the Committee on Agriculture, Conservation and Forestry pursuant to Joint Rule 308.2 and ordered printed.

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

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BLACK of Franklin.

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

2 **Sec. 1. 12 MRSA c. 810** is enacted to read:

3 **CHAPTER 810**

4 **THE RIGHT TO PRACTICE FORESTRY ACT**

5 **§9801. Short title**

6 This Act may be known and cited as "the Right To Practice Forestry Act."

7 **§9802. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms
9 have the following meanings.

10 **1. Department.** "Department" means the Department of Agriculture, Conservation
11 and Forestry.

12 **2. Forest.** "Forest" means a parcel of land in which at least 80% of the parcel is
13 producing or is capable of producing at least 20 cubic feet of merchantable timber per acre
14 per year.

15 **3. Forestry operation.** "Forestry operation" means an operation that involves forest
16 management activities for which generally accepted forest management practices have
17 been established by the department by rule under section 9806.

18 **4. Local unit of government.** "Local unit of government" means a county, city or
19 town located in the State.

20 **§9803. Forestry operation not a nuisance**

21 **1. Generally accepted forest management practices.** A forestry operation may not
22 be considered a public or private nuisance under Title 17, chapter 91:

23 A. If the forestry operation alleged to be a nuisance is in compliance with generally
24 accepted forest management practices established by the department by rule under
25 section 9806. This paragraph does not apply if an activity associated with a forestry
26 operation alleged to be a nuisance is found to be the result of negligence; or

27 B. Solely as a result of the occurrence of any of the following:

28 (1) Change in ownership or size of the forestry operation;

29 (2) Cessation or interruption of the forestry operation;

30 (3) Enrollment of all or part of the forestry operation in a governmental forestry
31 or conservation program;

32 (4) Adoption of new forestry technology by the forestry operation;

33 (5) Visual change due to removal of timber or vegetation;

34 (6) Normal noise from forestry equipment;

35 (7) Application of pesticides in a manner consistent with rules for pesticide
36 application adopted by the Board of Pesticides Control within the department; or

1 (8) Application of fertilizers in a manner consistent with applicable laws and rules.

2 §9804. Recovery of costs

3 In any court action in which a forestry operation is alleged to be a nuisance, if the
4 person that was alleged to commit the nuisance prevails, the court may award that person
5 the actual and necessary costs incurred by the action and reasonable attorney's fees.

6 §9805. Violation of ordinances

7 A local unit of government that allows a forestry operation to operate in that local unit
8 of government may not regulate that forestry operation in a manner that limits or prohibits
9 any generally accepted forest management practices established by the department by rule
10 under section 9806.

11 §9806. Rules

12 The department shall by rule establish generally accepted forest management practices.
13 Rules adopted pursuant to this section are routine technical rules as defined in Title 5,
14 chapter 375, subchapter 2-A.

15 **SUMMARY**

16 This bill enacts the Right To Practice Forestry Act. The bill provides that a local unit
17 of government that allows a forestry operation to operate in that local unit of government
18 may not regulate that forestry operation in a manner that limits or prohibits any generally
19 accepted forest management practices, which the bill requires the Department of
20 Agriculture, Conservation and Forestry to establish by rule.