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Testimony of Rep. Stephan Bunker introducing
**LD 261, An Act Regarding the Authority of Municipalities to
Regulate Timber Harvesting**

Before the Joint Standing Committee on Agriculture, Conservation and Forestry

Senator Talbot Ross, Representative Pluecker and distinguished members of the Agriculture, Conservation and Forestry Committee, I am Representative Stephan Bunker and I am here today to introduce my bill, LD 261, An Act Regarding the Authority of Municipalities to Regulate Timber Harvesting.

This bill has an interesting history. It is the same bill, sponsored then by Senator Black, which this Committee supported in the 130th Legislature and unanimously voted to approve during the 131st legislative session. Despite the support of this committee in two different legislative sessions, neither time was the bill allowed to be voted on by the full Legislature, and thus died upon adjournment.

The premise of the bill is quite simple. There is an existing statute, which has been on the books for more than twenty years, outlining the process municipalities must follow if they wish to adopt a local timber harvesting ordinance. The statute does not prevent a municipality from doing so, nor does it limit how they can regulate timber harvesting. It simply outlines a logical public process that must be followed.

Unfortunately, there have been numerous existing municipal ordinances put in place since the statute was adopted that did not follow the required procedure. The bill before you is based upon the recommendations that came from a stakeholder group this committee required the Maine Forest Service to convene to address this issue in 2021. These recommendations were reached by consensus of the group after discussion and input by the public.

I should note that this bill is the same language that this committee reviewed, and approved, in the 130th and 131st legislative sessions. Even the title of the bill is the same.

Those that follow me will provide more details on the history, intent and problems this legislation would solve.

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

~~Sec. 1. 12 MRSA §8868, sub §5, as amended by PL 2011, c. 699, §8, is further amended to read:~~

~~5. **Timber harvesting activities.** "Timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. "Timber harvesting activities" does not include activities that result, within 5 years of the completion of such activities, in a change of land use as defined by the bureau by rule.~~

Sec. 2. 12 MRSA §8869, sub §8, as amended by PL 2003, c. 335, §3, is further amended to read:

8. Relationship to municipal rules and regulations. Nothing in this subchapter may be construed to preempt or otherwise limit the existing authority of municipalities to regulate timber harvesting activities, except that municipalities regulating timber harvesting activities shall adopt definitions for forestry terms used in their ordinances that are consistent with definitions in section 8868 and with forestry terms adopted by the commissioner pursuant to this subchapter. Municipal timber harvesting ordinances adopted before September 1, 1990 must meet this standard of compliance with definitions no later than January 1, 2004 2028.

A municipality may not adopt an ordinance that is less stringent than the minimum standards established in this section and in rules adopted by the commissioner to implement this section and section 8867-B. A municipality may not adopt or amend an ordinance that regulates timber harvesting activities unless the process set out in this subsection is followed in the development and review of the ordinance. Municipal ordinances subject to review by the bureau are limited to ordinances that regulate timber harvesting activities. Municipal ordinances developed to address activities that result in a change of land use, as defined by the bureau in rule, are not subject to review under this subsection.

A municipal timber harvesting ordinance adopted on or after September 1, 1990 and before January 1, 2026 must meet the process requirements of this subsection by June 30, 2029.

A municipal timber harvesting ordinance adopted on or after January 1, 2026 must meet the process requirements of this subsection.

- A. A licensed professional forester must participate in the development or amendment of the ordinance.
- B. A meeting must take place in the municipality during the development or amendment of the ordinance between representatives of the department and municipal officers and officials involved in developing the ordinance. Discussion at the meeting must include, but is not limited to, the forest practices goals of the municipality. At this meeting and subsequently, the department shall provide guidance to the municipality on how the municipality may use sound forestry practices to achieve the municipality's forest practices goals.
- C. The municipality shall hold a public hearing to review a proposed ordinance or ordinance amendment at least 45 days before a vote is held on the ordinance. The municipality shall post and publish public notice of the public hearing according to the same general requirements of posted and published notice for zoning ordinance public hearings as provided by Title 30-A, section 4352, subsection 9.

In addition, when a municipality proposes to adopt or amend a timber harvesting ordinance pursuant to its home rule authority as provided by Title 30-A, section 3001, the municipality shall mail notice of the hearing by first-class mail at least 14 days before the hearing to all landowners in the municipality at the last known address of the person on whom a property tax on each parcel is assessed. In the case of a

Commented [MM1]: This deletion is intended to leave the MFS definition of "timber harvesting activities" unchanged, so that other portions of Title 12 that reference this definition are not impacted.

Commented [MM2]: This added language is to accomplish the original intent, i.e. that subsection 8 does not apply to municipal ordinances that deal with clearing of forests for development or other nonforest uses. MFS Chapter 20 rules include this definition: "Change of Land Use means that following timber harvesting the subsequent use for a particular area does not include growing forest products. Change of land use may include, but is not limited to, conversion to farm pasture, site for growing agricultural crops, residential dwelling unit, development site, or gravel pit. The division of forest land into smaller units does not by itself automatically constitute a change of land use."

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timber harvesting ordinance or amendment that applies only to certain zones or land use districts in the municipality, the municipality may meet the requirements of this paragraph by mailing notice only to those landowners whose land is in a zone or land use district or immediately abutting the affected zone or land use district.

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

The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those landowners to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. The certificate constitutes prima facie evidence that notice was sent to 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 90 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 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 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 must be provided an opportunity to present and discuss for the municipality's information any reports, articles, 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.

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

E-1. A municipal timber harvesting ordinance may be adopted only after certification by the bureau that the municipality adopted the timber harvesting ordinance in accordance with this subsection.

E-2. A municipal timber harvesting ordinance must be pursuant to and consistent with a comprehensive plan adopted by the legislative body of the municipality.

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

G. All direct costs incurred by a municipality associated with landowner notification requirements and other required public notice must be paid to the municipality in accordance with a distribution schedule established under Title 30-A, 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.

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Sec. 3. 12 MRSA §8869, sub-§9, as repealed and replaced by PL 1999, c. 263, §2 and amended by PL 2011, c. 657, Pt. W, §7 and PL 2013, c. 405, Pt. A, §23, is further amended to read:

9. Centralized listing of municipal ordinances. The bureau shall maintain for informational purposes a statewide centralized listing of municipal ordinances that specifically apply to ~~forest practices~~ timber harvesting activities.

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

C. The clerk of a municipality that has a timber harvesting ordinance on January 1, 2026 shall provide the bureau with notice and a copy of the ordinance by April 30, 2026.

D. The clerk of a municipality that is developing a timber harvesting ordinance after January 1, 2026 shall provide the bureau with notice and a copy of the ordinance at least 7 days prior to the meeting of the legislative body of the municipality or the public hearing at which adoption of the ordinance will be considered. The clerk shall notify the bureau within 30 days after adoption of the ordinance.

E. A provision of an ordinance that specifically applies to timber harvesting activities does not take effect unless properly adopted in accordance with subsection 8 and filed with the bureau in accordance with this subsection.

SUMMARY

This bill clarifies that the definition of "timber harvesting activities" under the forest practices laws does not include activities that result, within 5 years of the completion of such activities, in a change of land use.

The bill provides that a municipal timber harvesting ordinance must adopt definitions for forestry terms that are consistent with definitions in the Maine Revised Statutes, Title 12, section 8868 and with forestry terms adopted by the Commissioner of Agriculture, Conservation and Forestry pursuant to Title 12, chapter 805, subchapter 3-A.

The bill provides that municipal ordinances subject to review by the Department of Agriculture, Conservation and Forestry, Bureau of Forestry are limited to ordinances that regulate timber harvesting activities. The bill provides that a timber harvesting ordinance adopted on or after September 1, 1990 and prior to January 1, 2026 must meet the requirements of Title 12, section 8869, subsection 8 by June 30, 2029.

The bill provides that a municipal timber harvesting ordinance may be adopted only after certification by the bureau that the municipality adopted the timber harvesting ordinance in accordance with Title 12, section 8869, subsection 8. The bill also requires a municipal timber harvesting ordinance to be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body.

The bill clarifies that the centralized listing of municipal ordinances maintained by the bureau applies to ordinances that specifically apply to timber harvesting activities and updates certain requirements of the clerk of a municipality to report timber harvesting ordinances to the bureau.