



Maine Forest Products Council

The voice of Maine's forest economy

Testimony Neither For Nor Against LD 1953

"An Act to Ensure Public Access to Conservation Land by Providing Protections from Liability to Landowners"

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Krysta West, Deputy Director

Good afternoon, Senator Talbot Ross, Representative Pluecker and distinguished members of the ACF Committee. My name is Krysta West. I live in Readfield, and I am the Deputy Director of the Maine Forest Products Council. I am submitting testimony today neither for nor against LD 1953.

For 65 years, the Maine Forest Products Council has served as the voice of Maine's forest economy, representing more than 300 members from all facets of the forest products industry. Our members include pulp and paper mills, sawmills, secondary wood processors, foresters, loggers, and truckers. We also represent commercial landowners sustainably managing more than 8 million acres of forestland.

This legislation proposes to provide permanent liability protection to a landowner or easement holder who provides a permanent easement for public recreation and harvesting activities. Our major concern is that liability protection is only provided by statute, which can be amended as future legislatures are not bound by a prior legislature. If the liability law changes or is repealed, there would no longer be the same liability protection. So, a landowner would grant a permanent easement for public use in exchange for liability protection that is not permanent.

To provide some legal symmetry to this law, an easement grantor should be able to limit uses and terminate the easement when the liability law changes. Another way this protection could be provided is through indemnification of the landowner for liabilities that arise under easement.

We also have the following questions about this legislation:

This legislation proposes to grant permanent liability protection to a landowner or easement holder who provides a permanent easement for *any* public recreation and harvesting activities.

Q: Does this mean that the easement must allow any and all recreation and harvesting activities?

Q: Does the right have to be granted to the public or can the right be granted to a holder who then allows public access?

Q: Does the landowner's right to post, gate or close during mud season or other specified timeframes, or the requirement that the public adhere to rules and regulations mean that access is not guaranteed?

Q: Does the liability protection only apply to the activities allowed by the easement?

The definition of “recreation and harvest activities” in the statute has no boundaries.

Q: Does “harvesting” in this context mean the non-commercial harvesting of minor non-timber forest products?

Q: Can a landowner and conservation easement holder negotiate a specific suite of allowed public uses for a protected property?

If the public uses go beyond those allowed by the easement, the landowner will have to sue the easement holder.

Q: Who must hold the easement on behalf of the public?

Q: How would they control the public uses to conform to the easement?

CONCLUSION

We are pleased that this issue is being acknowledged. In conservation easement negotiations, landowners can be asked to provide perpetual public access rights, but there is no perpetual guaranty of protection under Maine’s landowner liability law. Creating a legal backstop would be welcome. However, the language proposed here is very general in nature, giving rise to numerous questions around its specific application to actual, negotiated conservation easements. Different properties, different landowners, and different easement holders will lead to different easement concepts and language regarding the appropriate extent of public use of the property to be protected. This bill would benefit by more precisely articulating that:

1. Public access provisions under conservation easements vary broadly.
2. To the extent that a landowner agrees to provide perpetual public access under a conservation easement for certain uses (which may be very broad or quite limited), then this law would extend to the landowner prevailing Maine landowner liability law protections in relation to members of the public on the protected property under said public access provisions.

Thanks for your consideration. We would be happy to answer any questions you may have.