

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Agriculture, Conservation and Forestry
From: Karen S. Nadeau, Legislative Analyst
Date: March 16, 2021
Subj: **LD 125 An Act To Prohibit the Aerial Spraying of Glyphosate and Other Synthetic Herbicides for the Purpose of Silviculture**

This bill prohibits the aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control after a timber harvest.

TESTIMONY

Proponents: *Environmental Priorities Coalition; Conservation Law Foundation; Maine Organic Farmers and Gardeners Association; Wood Prairie Farm; Defend Our Health; Natural Resources Council of Maine; Residents of Allagash, Saco, Reed Plantation, Fayette*

Written only: Resident of Lexington Township, Brooksville, Waldoboro, Westmanland, Jefferson, Canaan, Solon, Hammond, New Sharon, Gorham, Poland, Liberty, Hancock, Waterboro, Nobleboro, and Holden; Maine Public Health Association; Sierra Club Maine Chapter; Maine Organic Milk Producers; Maine Wilderness Guides Organization; Beech Hill Farm; Physicians for Social Responsibility Maine Chapter; Maine Unitarian Universalist Advocacy Network; and Maine Youth for Climate Justice

Opponents: *Maine Forest Service; Pingree Associates; Irving Woodlands; Weyerhaeuser; Seven Islands Land Company; Maine Forest Products Council; Huber Resources*

Written only: Foresters from Waterville, Fort Kent, Raymond, Easton, and Bangor; Aroostook Partnership; American Forest Management; Bayer US Crop Science; LandVest, Inc; Retired UMaine professor of forest resources; CropLife America; Responsible Industry for a Sound Environment; North Maine Woods Inc; Acadian Timber-Katahdin Forest Management; Residents of South Portland and Eddington.

NFNA: *Maine Professional Guides Association*

RECENT LEGISLATION:

129th Maine Legislature – LD 1691, AA To Ban Use of Aerial Herbicide Spraying for the Purpose of Deforestation

- Majority report (7 members) – required the BPC to work with representatives of the forest products industry to monitor aerial application of herbicides through a neutral 3rd party entity determined by the board and at the cost of the forest products industry. Finally passed as Resolve 2019, chapter 84.
- Minority report (6 members) – prohibited the aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control after a timber harvest. Identical to LD 125.
 - Fiscal note for minority report – minor cost increase to the GF; any additional costs to DACF as a result of a prohibition on the aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture are anticipated to be minor and can be absorbed within existing budgeted resources.

TECHNICAL ISSUES:

- Section 1 of the bill: 7 MRSA §606, subsection 3 – prohibition in clear
- Section 2 of the bill: 12 MRSA §8869, sub§1 – directs the commissioner to adopt rules to incorporate the prohibition while T. 7 expressly prohibits w/o rulemaking.
 - Does this mean w/o the rule, it may not be prohibited?
 - Could the rule modify the prohibition in T. 7?
- Section 3 of the bill: 12 MRSA §8869, sub 7-A – if you include section 2 of the bill then should include section 3 since w/o it, it could suggest that an exemption is allowed given that we've pulled the prohibition in by rule in section 2 of the bill.

By pulling in T. 12 provisions and not other provisions that may relate to timber harvesting, does this suggest that the T. 7 prohibition may not apply to other provisions?

Suggestion to achieve the same thing in a clearer way:

Sec. 1. 7 MRSA §606, sub-§3 is enacted to read:

3. Aerial spraying of glyphosate and other synthetic herbicides. A person may not conduct an aerial application of glyphosate or other synthetic herbicides for the purpose of silviculture, including reforestation, regeneration or vegetation control after any timber harvest, including but not limited to a timber harvesting activity conducted in accordance with Title 12, chapter 805, subchapter 3-A.

Another alternative – less ideal:

Sec. 2. 12 MRSA §8869, sub-§1, as enacted by PL 1989, c. 555, §10, is amended to read:

1. Standards for regeneration after harvests. The commissioner shall adopt rules to ensure adequate regeneration of commercial tree species on a site within 5 years of completion of any timber harvest. Rules to implement this requirement shall ~~shall~~ must include identification of commercial tree species, minimum stocking standards ~~and~~ and methods to mitigate inadequate regeneration. ~~and a prohibition on the aerial application of glyphosate or other synthetic herbicides pursuant to~~ The rules may not allow the aerial application of glyphosate or other synthetic herbicides prohibited under Title 7, section 606, subsection 3. In developing regeneration standards, the commissioner shall take into consideration regional differences in forest types, tree species and physiographic conditions.

PRELIMINARY FISCAL IMPACT STATEMENT: *Not yet received.*