

## OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Agriculture, Conservation and Forestry  
From: Karen S. Nadeau, Legislative Analyst  
Date: April 29, 2021  
Subj: **LD 1407** An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance

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- Enacts the Right To Practice Forestry Act.
- Provides that a local unit of government that allows a forestry operation to operate in that local unit of government may not regulate that forestry operation in a manner that limits or prohibits any generally accepted forest management practices.
- Requires the Department of Agriculture, Conservation and Forestry to establish by rule “generally accepted forest management practices.”

### TESTIMONY

**Proponents:** *Maine Forest Service; Professional Logging Contractors of Maine; Maine Forest Products Council; Maine Woodland Owners; written only: Resident of South Thomaston*

- The right to practice forestry and the proliferation of local ordinances regulating forestry operations is a chief concern among woodland owners nationwide.
- Local forestry ordinances can take many forms – noise ordinances, reduced weight limits on bridges, time-of-day work restrictions, permit requirements and prohibition of certain forestry practices such as clearcutting.
- Given the importance of forestry to the state’s economy and quality of life, Maine’s woodland owners should be afforded protections like those granted to farmers.
- Maine Woodland Owners is concerned about the potential impact of well-intended but faulty local ordinances and reactions to forest management activities.
- The Right to Farm Law has been in place for many years and it has worked well for the farming community and this is a concept worthy of being extended to woodland owners.

**Opponents:** *Appalachian Mountain Club; Maine Organic Farmers and Gardeners Association; Natural Resources Council of Maine; written only: Residents of Deer Isle, South Portland, Brownfield, Falmouth, Cushing, Portland, Bristol, Sedgwick, Albion, Waldoboro and Lincolnville; Wood Prairie Family Farm*

- What issue does this bill seek to solve? Not aware of instances of forestry being declared a public nuisance – stumped as to why the law is needed.
- LD 1407 directs DACF to develop rules defining “general accepted forest management practices” and specifies those rules are routine technical. Forest Practices Act – corresponding rules are major substantive. In addition, a second set of standards exist within the outcome-based forestry statute. LD 1407 would create a third set of standards.
- LD 1407 clearly springs from the American Legislative Exchange Council (ALEC) which seeks to roll back environmental regulations in state legislatures across the country.
- LD 1407 is similar to Maine’s Right to Farm law, but farm operations must be in compliance with state and federal laws, rules and regulations. “Generally accepted forest management practices” is ambiguous.
- VT Right To Conduct Forestry Operations Law – there is a presumption that an activity is not a nuisance.

**NFNA: Maine Municipal Association**

- Municipal officials feel that preemption of home rule in this instance places a greater burden on the state to cooperate with other agencies and to understand the intersection with other regulatory requirements on the ground.
- Pesticide ordinances and their application are deeply important to residents and municipal ordinances that define the application style or location are community priorities that officials feel make their residents more amenable to forestry practice in more urbanized areas.

**INFORMATION REQUESTS:**

Asked of the Maine Forest Service

1. Provide an overview of other states' laws that are similar to what is being proposed in the bill.
2. Information on when a nuisance complaint about a forestry operation is made, what is the current process for handling that complaint?
3. Provide information of the scale of the problem (nuisance complaints about forest practices) in Maine, including the number and types of complaints and where in Maine is it an issue.

**SUGGESTED AMENDMENTS:**

**Maine Forest Products Council:**

- Add a prohibition of private nuisance action against a person engaged in forestry practices in compliance with laws and rules (see commercial fishing language in T. 17 section 2807)
- Last sentence of section 9803, subsection 1, paragraph A is confusing; this provision is not in the right to farm or right to fish laws.

**PRELIMINARY FISCAL IMPACT STATEMENT:** *Not yet received.*

**Maine Constitution Article VIII. Part Second.**

**Municipal Home Rule.**

**Section 1. Power of municipalities to amend their charters.** The inhabitants of any municipality shall have the power to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character. The Legislature shall prescribe the procedure by which the municipality may so act.

**Section 2. Construction of buildings for industrial use.** For the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial and manufacturing enterprises within the physical boundaries of any municipality, the registered voters of that municipality may, by majority vote, authorize the issuance of notes or bonds in the name of the municipality for the purpose of purchasing land and interests therein or constructing buildings for industrial use, to be leased or sold by the municipality to any responsible industrial firm or corporation.