



Maine Municipal Association

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Testimony of the Maine Municipal Association

Neither For Nor Against

LD 1407 - An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance

April 22, 2021

Senator Dill, Representative O'Neill, and members of the Agriculture, Conservation and Forestry Committee, my name is Rebecca Graham, and I am testifying neither for nor LD 1407 at the direction of our 70-member Legislative Policy Committee.

Municipal officials enact ordinances in consultation with their community residents who are the ones that decide what regulatory needs that suits their specific municipality. As drafted, LD 1407 is a preemption of municipal home rule authority and strips those taxpayers of their ability to decide many practices which benefit the forest industry as well as limit it.

Ordinances allow residents to live in harmony as good neighbors in a shared community. Respecting local community desire can enhance acceptance of forestry practices that may intersect with other areas of local regulations. It is this relationship building piece that will be eliminated by this bill.

Just because something is an accepted industry practice does not mean it is well suited everywhere. It is this uniformity of state-wide need that courts have accepted as a threshold for preempting municipal regulatory authority and land use is not uniform in its application or impact.¹

While certain activity may be an appropriate industry practice the state currently recognizes that geography, environmental conditions, and proximity place limits on all land uses. The state defines the bare minimum thresholds for activity and allows communities to enact more appropriate location-informed restrictions where necessary.

Additionally, 40 communities have additional federal and state environmental permit obligations that require the retention of more vegetation to protect certain impaired streams or require planting of replacement vegetation to offset removal of vegetation with a greater economic value. It is often for these reasons that municipalities must enact deeper setbacks than normal forestry practices would recommend and adopt more stringent regulation of the types of chemicals or fertilizer allowed to be discharged to those waters. This bill would disallow that localized option putting communities on the hook for stream

¹ *Schwanda v. Bonney*, 418 A. 2d 163 - Me: Supreme Judicial Court 1980

degradation and removing the one tool that assists them in meeting their obligations at the expense of all property taxpayers.

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. Historically, spraying pesticides in an acceptable manner for forestry management has caused other businesses such as certified organic farms that receive overspray from the application to lose their certification and thus their livelihood.

Should the committee choose to move forward with this bill, that department will need to develop rules for forestry practice in permitted communities with more stringent environmental obligations, protection for pesticide and fertilizer application that is land business adjacent sensitive practices, and retention of federal scenic byways designation, as well as local historic preservation priorities. The department will also need to be the entity that reviews compliance with these regulations on the ground or fund the expanded duties for municipalities who have the option to do so by choice now.

Municipal officials feel that preemption of home rule in this instance places a greater burden on the state to cooperate with other agencies and understand the intersection with other regulatory requirements on the ground. If LD 1407 should pass, officials will work with the department to ensure that all rules proposed protect existing community interests and do not leave communities on the hook for non-compliance of other regulation requirements. This will require both enforcement and review to be assumed by the department entirely as the intent of the bill is to force the state to occupy the entire regulatory field for forestry practice. For these reasons, officials are neither for nor against LD 1407.