



Maine Organic Farmers and Gardeners Association

Common Ground Country Fair

April 22, 2021

Good morning and happy Earth Day Senator Dill, Representative O'Neil and members of the Joint Standing Committee on Agriculture, Conservation and Forestry. My name is Heather Spalding and I'm deputy director of the Maine Organic Farmers and Gardeners Association. MOFGA opposes LD 1407 - *An Act To Provide That a Forestry Operation That Conforms to Accepted Practices May Not Be Declared a Nuisance*.

This bill clearly springs from the American Legislative Exchange Council (ALEC), which seeks to roll back environmental regulations in state legislatures across the country. I've attached a copy of their template to my testimony. Like at least three ALEC bills introduced in recent years in Maine's Legislature, LD 1407 has the ignoble intent of preempting municipal ordinances that communities throughout the state have developed thoughtfully over the past thirty plus years. Many communities have local policies that go above and beyond "normal forest practices" because they want to ensure protection of local water resources and vegetative cover to prevent erosion, and they want to protect human and environmental health from exposure to toxic chemicals used in forestry and agriculture.

If LD 1407 were to pass, it would require Maine's Forestry Department to define generally accepted forest management practices and would prevent any municipality from regulating those generally accepted practices. Effectively, the same department that condones spraying about 15,000 acres of forest land each year with carcinogenic glyphosate, would prohibit communities from enacting local pesticide ordinances.

Maine already has laws in place to ensure that communities work respectfully and collaboratively with forest land owners when creating municipal ordinances (12 M.R.S. §8869 (8-9)). Existing requirements include: working with a licensed forester; meeting with the Department and municipal officials to discuss the municipality's forest practices goals; holding a public hearing; providing the Department with 30-day advance notice of the hearing and the opportunity to present at the hearing; providing all landowners in the municipality with 14-day advance notice of the hearing; scheduling a vote on the ordinance at least 45 days after the hearing; and ensuring that the ordinance is not unreasonable, arbitrary or capricious. Given the extensive requirements for any community considering adoption of a forestry ordinance, LD 1407 is superfluous at best, but more likely a sneak attack on home rule.

Maine communities have a right to protect themselves and their surrounding ecosystems from harmful chemicals and extractive industries that pollute the water, cause soil erosion, and threaten wildlife populations. LD 1407 is an affront to democracy, sent to Maine by a lobbying entity that represents the fossil fuel and energy industry, the pharmaceutical industry, the tobacco and alcohol industry, Koch Industries and other out-of-state corporate interests. The ACF should vote - Return to Sender! - on LD 1407.

About MOFGA

The Maine Organic Farmers and Gardeners Association (MOFGA) started in 1971 and is the oldest and largest state organic organization in the country. We're a broad-based community that educates about and advocates for organic agriculture, illuminating its interdependence with a healthy environment, local food production, and thriving communities. We have a staff of just under 50 employees, a membership of more than 10,000, and an amazing community of about 2500 volunteers, many of whom we rely on to host our annual Common Ground Country Fair.

Since our beginning we have advocated for policies that reduce all farmers' and homeowners' reliance on pesticides, and all citizens' exposures to pesticides in their diets and in the air and drinking water. We believe that the dramatic increases since the 1950s in childhood and adult cancer rates, as well as immune system and reproductive abnormalities, are directly related to the toxins that increasingly contaminate our environment and threaten the very existence of the pollinators on which our food systems rely.

MOFGA is a statewide organization that has experienced significant growth over the past couple of decades. By the year 2030, we aim to increase the number of certified organic growers from 550 to 750 and the amount of organically managed land from 7% to 10% of the state's agricultural land. We offer an introductory farm apprenticeship program, beginning farmer training through our two-year Journey person program, and a Farm Resilience Program for farmers in years 5-10 of their business when they're statistically the most likely to experience business failure. MOFGA Certification Services (MCS) is our USDA accredited organic certification program. MCS also administers MOFGA's Certified Clean Cannabis program for medicinal and adult cannabis use in Maine. MCS certifies more than 70,000 acres of farmland in Maine, representing more than \$60 million in organic farm product sales. MOFGA-certified operations are run by Maine businesspeople for whom economic health and environmental health are interdependent. While we envision a future of healthy ecosystems, communities, people and economies sustained by the practices of organic agriculture, we attribute our success to collaboration and outreach to growers across the management spectrum. We are members of the Agricultural Council of Maine and, while we don't always agree on all policy measures, we recognize and wholeheartedly agree that farmers must be financially successful if we expect to have a healthy Maine agriculture.

THE RIGHT TO PRACTICE FORESTRY ACT

Policy Status

Date Finalized: January 1, 2005

Date Amended: January 28, 2013

Issues

- Agriculture

Task Forces

- Energy, Environment and Agriculture

Tags

- Forestry

THE RIGHT TO PRACTICE FORESTRY ACT

Summary

This bill asserts that forestry operations may not be considered a nuisance if the forestry operation adheres to customary forestry management practices.

Bill Information

The Right to Practice Forestry Act counteracts local governments from restricting existing forestry operations and to prevent frivolous lawsuits against such operations.

Model Legislation

Section 1. {Short Title.}

This bill may be cited as The Right to Practice Forestry Act.

Section 2. {History of Issue.}

Under most state laws, if a business, property, or action of a person creates a public nuisance, the party damaged by that nuisance can bring an action for the damages caused by the nuisance or to abate the nuisance. A county or municipality may bring an action to abate a public nuisance, such as a place where a controlled substance is illegally distributed, sold, or manufactured.

This bill provides that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Under the bill, forestry operations include removal of vegetation or dead trees, noise from forestry equipment, and use of chemicals that are normally used in forestry operations. In addition, the bill provides that a forestry operation that conforms to generally accepted forestry management practices is not a nuisance as a result of any of the following:

1. Change in ownership or size of a forest.
2. Interruption of forestry operations.
3. Enrollment of part or all of the forest in governmental forestry programs.
4. Adoption of a new forestry technology.

The bill also allows a person who is alleged to commit the nuisance to receive his or her costs, including attorney fees, if he or she prevails in the action alleging a nuisance.

Under this bill, no political subdivision may enact a zoning ordinance that prohibits forestry operations that are in accordance with generally accepted forestry management practices.

The people of the state of {InsertState}, represented in senate and assembly, do enact as follows;

Section 3. {Definitions.}

(A) "Department" means the {insert name of state department with jurisdiction over forestry operations}.

(B) "Forest" means a parcel of land in which at least 80% of the parcel is producing or is capable of producing at least 20 cubic feet of merchantable timber per acre per year {or as defined by state statute}.

(C) "Forestry operation" means activity related to the harvesting, reforestation, and other forest management activities, including thinning, pest control, fertilization, and wildlife management.

(D) "Generally accepted forestry management practices" means forestry management practices that promote sound management of a forest, as determined by the department by rule {as defined by state statute}.

(E) "Nuisance" means an action that annoys or disturbs a person in possession of his or her property and makes the use or occupation of that property physically uncomfortable {as defined by state statute}.

(F) "Unit of Local Government" means any county, city, or town located in the state as defined by {insert state}.

Section 4. {Actions Against Forestry Operations}

(A) Forestry operation is not a nuisance if the forestry operation alleged to be a nuisance conforms to generally accepted forestry management practices.

(B) This section does not apply if a nuisance results from the negligent operation of a forestry operation.

(C) A forestry operation that conforms to generally accepted forestry management practices is not a nuisance as a result of any of the following:

1. A change in ownership or size of a forestry operation.
2. Cessation or interruption of forestry operations.
3. Enrollment of all or part of the forest in governmental forestry or conservation programs.
4. Adoption of new forestry technology.
5. A visual change due to removal of timber or vegetation.
6. Normal noise from forestry equipment.
7. The proper application of pesticides and fertilizers.

(D) In any action in which a forestry operation is alleged to be a nuisance, if the party who was alleged to commit the nuisance prevails, the court may award that party the actual and necessary costs incurred in the action and reasonable attorney fees.

Section 5. {Regulations and Restrictions by Local Governments}

Units of local governments are prohibited from enacting ordinances that may hinder forestry operations that are in accordance with generally accepted forestry management practices as defined by this Act and rules promulgated by the department.

Section 6. {Effective Date}

This shall become effective _____.

Section 7. {Repealer Clause}

All laws and parts of laws in conflict with this Act are repealed.

Approved by ALEC Board of Directors in 2005.

Reapproved by ALEC Board of Directors on January 28, 2013.

Reapproved by ALEC Board of Directors on November 16, 2017.