



Maine Forest Products Council

The voice of Maine's forest economy

Companies represented on the MFPC Board

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BBC Lands LLC
Bradbury Forest Mgmt.
Columbia Forest Prod.
Cross Insurance
Family Forestry
Farm Credit East
Fontaine Inc.
H.C. Haynes
Huber Resources
Innovative Natural
Resource Solutions
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Key Bank
LandVest Inc.
Limington Lumber
Louisiana Pacific
Maibec Logging
ND Paper
Nicols Brothers
Pingree Associates
Pixelle Specialty Sol.
Pleasant River Lumber
Prentiss & Carlisle
ReEnergy
Richard Wing & Son
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Sappi North America
Southern Maine Forestry
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TD Bank
Timber Resource Group
Timberstate G.
Wadsworth Woodlands
Wagner Forest Mgt.
Weyerhaeuser

Testimony opposing LD 489 RESOLUTION, Proposing an Amendment to the Constitution of Maine To Establish a Right to a Healthy Environment

March 15, 2021

Patrick Strauch, Executive Director

Senator Brenner, Representative Tucker, and distinguished members of Environment and Natural Resources, I am Patrick Strauch, executive director of the Maine Forest Products Council. I am speaking today in opposition to LD 489.

Since 1961, the Maine Forest Products Council has represented our state's diverse forest products community, including logging contractors, sawmills, paper mills, biomass energy facilities, pellet manufacturers, furniture manufacturers, and the owners of about nine million acres of commercial forestland in Maine. This proposed amendment to the Maine Constitution has three basic components:

(1) **Maine citizen's right to a clean and healthy environment:**

The people of the State have the right to a clean and healthy environment, including pure water, clean air and healthy ecosystems, and to the preservation of the natural, cultural, recreational, scenic and healthful qualities of the environment. The State may not infringe upon these rights by action or inaction or through the action of others.

(2) **State as trustee of natural resources:**

The State, including each branch, agency and political subdivision, shall serve as trustee of the natural resources of the State, among them its waters, air, flora, fauna, ecosystems and public lands. The State shall conserve, protect and maintain these resources for the benefit of all the people, including generations yet to come.

(3) **Inalienable rights**

The rights stated in this section are inherent, inalienable and indefeasible and are among those rights reserved to all the people and are on par with other protected inalienable rights.

Similar versions of this proposed Constitutional amendment appear in a few State Constitutions (see attached list). These provisions were typically adopted in the early 1970s in order to provide a broad basis for environmental regulation

by the State. Courts in other states have interpreted these provisions to uphold environmental laws, and provide some limitations on State management of natural resources.

This proposed constitutional amendment raises many legal questions about the effect on Maine government, law and citizens. The Maine Legislature should carefully review this proposal to understand its ramifications, especially as it would be sent to the voters for referendum where people will need to understand how it will change the law and their lives.

Right to a clean and healthy environment

This component of this proposed amendment raises at least the following questions:

- Does this create a citizen right of action against state and municipal government to challenge actions or laws that do not adequately protect the environment?
- How does this right relate to the State police power to regulate activities that may harm the environment?
- Does this right affect common law rights and duties for nuisance and property?
- How does this right impact current environmental protection laws?
- Does it create new legal basis for appeal of permitting decisions?
- How does this right affect municipal home rule authority under the Maine Constitution to adopt ordinances that protect the environment, to the extent not limited by State law?
- How would a Court interpret this Constitutional provision to decide whether the laws or actions under law meet the constitutional standard?
- How much is government required to do?
- How clean and healthy must the environment be?
- How much preservation is required?

Public Trust

The second component creates a public trust of natural resources. Many resources are privately owned property – e.g., land, plants, minerals, groundwater. So declaring these resources to be under a public trust could give rise to claims of taking private property for public purpose without compensation, in violation of the Maine Constitution and U.S. Constitution. Even if not a public taking of private property, the extent of the state trust rights and responsibilities is unclear, and raises a number of questions:

- Does this codify the common law principle of public trust or go beyond?
- Which resources are covered by this trust?
- Does ecosystems include everything?
- Does it include privately owned resources?
- What must the State do as trustee?
- How do all people benefit if only some people use the resource, or people are harmed by other use of the resource?

- Does this allow leasing of public land and water to private parties?
- Does this allow any depletive use of finite resources such as public land and minerals?
- Who are all the people – Maine citizens, people outside the state?
- Does this allow any person to challenge the State control of these resources?

Inalienable Rights

- Who are all the people that hold these rights - do these rights only apply to Maine residents?
- How does this change common law rights and responsibilities that currently exist?
- Who decides the extent of these rights – the Maine Legislature or Supreme Court?

Overall, we must ask ourselves how does this proposed amendment change existing Maine Constitution and common law principles of torts, private property and public trust, which provide the basis for our laws. We must then evaluate whether these changes are needed and adding appropriate value to our legal system, when balanced against the practical interpretation and application of this amendment.¹

¹ *State Constitutional Environmental Rights of other states, Page 4*

State Constitutional Environmental Rights

Hawaii Const. art. XI, § 9:

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law. (Effective Jan. 1, 1979.)

Illinois Const. art. XI, § 2:

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. (Effective July 1, 1971.)

Massachusetts Const. article of amendment XLIX:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment. (Effective Nov. 7, 1972.)

Montana Const. art II, § 3:

All persons are born free and have certain inalienable rights. They include the right to a healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health, and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities. (Effective July 1, 1973.)

Pennsylvania Const. art. I, § 27:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. ... (Effective May 18, 1971.)

Rhode Island Const. art 1, § 17:

The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state. (Effective January 20, 1987).