



Maine Forest Products Council

The voice of Maine's forest economy

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Family Forestry
Farm Credit East
Fontaine Inc.
H.C. Haynes
Huber Resources
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Katahdin Forest Mgmt.
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Maibec Logging
ND Paper
Nicols Brothers
Pingree Associates
Pleasant River Lumber
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ReEnergy
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Sappi North America
Southern Maine Forestry
Stead Timberlands
TD Bank
Timber Resource Group
Timberstate G.
Wadsworth Woodlands
W.T. Gardner & Sons
Wagner Forest Mgt.
Weyerhaeuser

TESTIMONY IN OPPOSITION TO LD 1724 An Act To Create a Logging Dispute Resolution Board and To Require Proof of Ownership Documents To Be Available within 14 Days of Request.

Patrick J. Strauch, Executive Director
March 8, 2022

Senator Daughtry, Representative Sylvester and members of the Labor and Housing Committee, my name is Patrick Strauch and I am the Executive Director of the Maine Forest Products Council (MFPC). I am speaking in opposition to LD 1724 because MFPC believes the bill is unnecessary. Loggers working for logging contractors have access to the same laws that other workers have that protect the rights of employees and employers and this makes the dispute resolution board is redundant and confusing. Similarly, independent contractors already have legal avenues to address contract violations or defaults. Specific concerns are outlined in the following bill sections:

Section 2 & 3 Re: Notification Time Reductions.

Section 2 revises the notification provisions in the Proof of Ownership Required law:

"If proof of ownership is not provided within ~~30~~ 14 calendar days of such a request, a fine of not less the \$5,000 and not more than \$25,000 may be assessed against the employer and collected by the Commissioner of Labor."

Similarly in section 3 the notification section is revised to read:

An employer shall notify the Maine Department of Labor within ~~30~~ 14 calendar days of the of the date on which a bond worker begins work in the State ..."

In both cases the 30 day notification period was established to ensure such significant fines were set within reasonable time lines. To my knowledge there have been no violations issued by the DOL in the last ten years and this change is unreasonable and designed to be punitive.

Section 3

Section 3 contains a provision requiring any Maine employer who employs a "bond worker"—presumably a reference to H-2A visa holders—to certify that the employer "is not requiring the bond worker to engage in point-to-point hauling of forest products within the State or to otherwise violate federal cabotage laws." The terms of Section 3 relate closely to the substance of LD

188, which the Legislature passed in 2021, but which MFPC has challenged in federal court. That challenge was affirmed by the federal courts and a preliminary injunction was granted to the plaintiffs. Any prohibition adopted by the Maine Legislature on H-2A visa holders working in Maine in a manner consistent with their lawful immigration status is preempted by the Immigration and Nationality Act and violates the Equal Protection Clause of the United States Constitution. Accordingly, the proposed legislation violates the Constitution just as LD 188 does. We recommend that the committee seek verification of this court action from the Office of the Attorney General.

Section 4

Sections 1 and 4 seek to establish a Logging Dispute Resolution Board to “hear disputes related to the logging industry.” The legislation fails to address a number of fundamental questions concerning the operation of the proposed board and its jurisdiction. Specifically:

The legislation does not define what it means for the board to “hear” disputes. Is the board intended to be a forum for litigation or a regulatory body or both? The legislation does not say. The legislation later states the costs of “arbitration” are to be borne by the party against whom the board decides, but otherwise does not explain how “arbitration” fits within the board’s activities. Decisions rendered by a state board typically would not be characterized as “arbitration”; they would be administrative decisions reached pursuant to the Maine Administrative Procedures Act. Does the legislation intend for the board to compel private parties to arbitrate disputes? The legislation does not say.

The board’s seemingly open-ended authorization to “hear” any dispute “related to the logging industry” encroaches on the authority of a number of state and federal agencies, without explaining whether and to what extent such encroachment is intended. For instance, the Maine Human Rights Commission has jurisdiction over claims of workplace discrimination. Is the board intended to hear disputes on that subject when they arise in “the logging industry”? The legislation does not say. The Maine Department of Labor has jurisdiction over wage and hour issues and is empowered to take enforcement action where employers violate Maine’s wage and hour laws. Are such actions to be brought to, or even by, this board? The legislation does not say. At the federal level, OSHA, the EEOC, the U.S. Department of Labor, and the United States Department of Homeland Security (with respect to immigration), all have jurisdiction over certain employment practices. If the legislation intends to make the board the exclusive forum for employment disputes which otherwise may be brought to or heard by federal authorities, the legislation is likely preempted by federal law.

The scope of the board’s apparent jurisdiction also encroaches on the judiciary. A contract dispute between a landowner and a paper mill clearly would constitute a dispute “related to the logging industry,” but does the legislation intend for such disputes to be heard by the board rather than a Maine court? Again, the legislation does not say. Similarly, if a car accident occurs between a log truck driver and third party on Maine’s roads, that too may give rise to a dispute “related to the logging industry.” Again, the legislation does not say whether such a dispute should be heard in Maine’s courts, where they traditionally have been adjudicated, or by the board.

To the extent the board is intended to adjudicate disputes, the legislation contains no provision concerning how, or even if, one could appeal from a decision of the board, or where such an appeal would be heard and subject to what legal standard.

Wresting authority from existing state and federal agencies, including Maine's judiciary, to address the broad range of disputes which may arise in the logging industry would mark a fundamental change in numerous areas of law. The Legislature should approach such changes with great caution, rather than inadvertently triggering them through the proposed legislation.

In conclusion MFPC believes the industry is rebounding from some serious setbacks, and it is clear we need to make sure the logging and trucking sector can recover. Currently there are not enough workers to go around, particularly in Northern Maine and a continued focus on legal foreign labor as a threat is unproductive. We also believe the concept of a logging dispute resolution board is redundant to current legal processes and will only add confusion to a struggling sector of workers.

For these reasons we ask the Committee to not support LD 1724.

Thank you.