Testimony of

DANA A. DORAN
Executive Director
Professional Logging Contractors of Maine

Before the Committee on Labor and House regarding LD 1459– An Act to Expand Application of the Maine Agricultural Marketing and Bargaining Act of 1973 to Harvesters and Haulers of Forest Products

Monday, April 28, 2019
9:00 A.M. – Cross Building – Room 202

Senator Bellows, Representative Sylvester and members of the Committee on Labor and Housing, my name is Dana Doran and I am the Executive Director of the Professional Logging Contractors of Maine. The Professional Logging Contractors of Maine (PLC) is a trade association that represents logging and associated trucking contractors throughout the state of Maine. The PLC was formed in 1995 to give independent contractors a voice in a rapidly changing forest industry.

As of 2018, logging and trucking contractors in Maine employed over 4,900 people directly and were indirectly responsible for the creation of an additional 3,300 jobs. This employment and the investments that contractors make contributed $900 million into the state's economy. Our membership employs over half of the individuals who work in this industry and is also responsible for about 75% of Maine's annual timber harvest.

Thank you for providing me the opportunity to testify on behalf of our membership neither for nor against LD 1459, An Act to Expand Application of the Maine Agricultural Marketing and Bargaining Act of 1973 to Harvesters and Haulers of Forest Products.

As I stand before you today, I want to be very clear as to the PLC's opinion with respect to this bill. While we are very concerned with the way the forest products harvesters and haulers are treated, compared with other agricultural industries, LD 1459 was not specifically requested by our organization so I cannot signal our support nor our contempt for the bill at this time. That said, we have looked at the current law and compared it to this legislation, and we have also conducted our own review of federal anti-trust law and would like to offer a very honest assessment of what we feel is positive about this legislation but also what we believe goes too far.

First, I would like to begin with a review of the authority provided by Congress over the last 115 years with respect to cooperatives as I believe it is important to provide context about where Maine's 1973 law is both sufficient and deficient.

Congress has enacted a series of statutes, six in all, which grant agricultural producers the right to combine into associations and to engage in cooperative functions without violating the antitrust laws. From inception in 1914, the Clayton Act stated that , "nothing contained in the antitrust laws shall be construed to forbid the existence and operation of ... agricultural or horticultural organizations, instituted for the purposes of mutual help ...". Again in 1922, the Capper-Volstead Act (1922) reaffirmed this by granting certain agricultural cooperatives limited immunity from the

antitrust laws where members may: 1) act jointly to process, prepare for market, handle, and market their products; 2) membership must be limited to producers of agricultural products; 3) a coop must operate "for the mutual benefit of [its] members"; 4) a coop either must limit each member to one vote, regardless of amount of stock or capital owned, or must limit dividends; and 5) the value of products handled by coop for nonmembers must be less than handled for members. The Cooperative Marketing Act of 1926 authorized agricultural producers and associations to acquire and exchange "past, present and prospective" pricing, production, and marketing data. Internal payments by cooperatives to their members are exempt from the Robinson-Patman Act (1936), which prohibits discriminatory pricing and promotional payments. The Agricultural Marketing Agreement Act of 1937 exempts from antitrust laws marketing agreements between the Secretary of Agriculture and processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product. And finally, the Agricultural Fair Practices Act of 1967 makes it unlawful for "handlers" defined to include processors and producer associations, to coerce any producer in deciding whether to join a cooperative.

With all of this federal statutory authority in mind, the state of Maine enacted the Agricultural Marketing and Bargaining Act of 1973 in Title 13, Chapter 85 to codify Maine's ability to create cooperatives for agricultural commodities. Since 1973, when Maine adopted the Maine Agricultural and Bargaining Act, the suppliers in Maine's agricultural industry have had statutory authority to collectively bargain for the sale of their products, giving them immunity from any anti-trust accusations and the ability to secure higher prices for their products. However, forest products were specifically excluded from the Act, most likely because of the influence of a vertically integrated pulp and paper/landowner industrial sector at the time, but this was also a clear recognition that forest products harvesters and haulers were indeed "agricultural" as a result of this inclusion in the law. As a result of this exclusion from the Act, this has forced harvesters and haulers to bargain alone and without any power. Thus, for the last 46 years, forest products harvesters and haulers have been excluded from Maine's law, even though it had been reaffirmed by federal law on six separate occasions.

As we review the proposed law before us in this bill, let me be clear that there are parts of it that we could live with, but there are also areas that we could not. For instance, we do not object to Section 1, §1774; Section 2. 13 MRSA , §1953; or Section 3, 13 MRSA as these sections simply provide harvesters and haulers the same opportunities that farmers and fisherman have under Maine law and that which were provided by Congress on six separate occasions. With this in mind, we do not agree with all of Section 6 as we do not believe that this section is necessary, and it could go too far to establish what is legislative intent and why it is in the public interest to do so.

In closing, let me state very clearly that the PLC is not in favor of unionization, but the fact is that employees of contractors already have the right to join labor unions under Maine law and the legislation before you today is not about collective bargaining on behalf of unionized labor. With that said, the PLC feels strongly that the question of equal protection under the law is indeed a question that must be decided with respect to this legislation. In the end, this legislation is not a panacea and is certainly not something that we could support or oppose as is currently written. However, at a minimum, the PLC feels strongly that loggers and truckers must be treated equally with their counterparts in farming and fishing and should not be excluded. Since 1914, and on five other occasions, Congress has reaffirmed the opportunity for cooperatives to exist. Maine attempted to follow suit in 1973 and before another year goes by, it should determine whether all are being treated fairly under the law and if a change needs to occur, then if so, it should do so now before another year goes by.

Thank you for the opportunity to provide the opinion of our membership before you today and I would be happy to answer any questions you may have.