

# MAINE STATE LEGISLATURE

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4/3/84

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(New Draft of S.P. 623, L.D. 1768)

2

SECOND REGULAR SESSION

3

4

ONE HUNDRED AND ELEVENTH LEGISLATURE

5

6

Legislative Document

No. 2404

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8

S.P.. 889

In Senate, April 2, 1984

9

Reported by Majority Report from The Joint Select Committee on Wood Measurement and printed under Joint Rule 2.

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Original bill presented by Senator Carpenter of Aroostook and cosponsored by Representative Locke of Sebec.

11

JOY J. O'BRIEN, Secretary of the Senate

12

13

STATE OF MAINE

14

15

IN THE YEAR OF OUR LORD

16

NINETEEN HUNDRED AND EIGHTY-FOUR

17

18

AN ACT to Revise the Wood

19

Measurement Law.

20

21

Be it enacted by the People of the State of Maine as follows:

22

23

Sec. 1. 10 MRSA §2361, as repealed and replaced by PL 1977, c. 537, §1, is repealed.

24

25

Sec. 2. 10 MRSA §2361-A is enacted to read:

26

§2361-A. Definitions

27

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

28

29

1           1. Agreement of the parties. "Agreement of the  
2 parties" means the mutual agreement of the parties or  
3 their representatives, and is distinguished from a  
4 unilateral condition of employment.

5           2. Butt diameter. Except as otherwise provided  
6 by the state sealer, "butt diameter" means the diame-  
7 ter of the severed stem butt, measured outside the  
8 bark, the short way through the center, disregarding  
9 crevices and cracks.

10          3. Butt measure. "Butt measure" means the lin-  
11 eal measure of the butt end of tree length wood,  
12 without conversion to volume by any means. As may be  
13 agreed upon by the parties, this measurement may be  
14 represented with or without regard to butt diameter  
15 classes.

16          4. Butt scale. "Butt scale" means the volume  
17 measure of wood based solely on measurement of the  
18 butt end of individual trees and converted to volume  
19 by any means.

20          5. Green wood. "Green wood" means trees or  
21 parts of trees that have been freshly felled.

22          6. Oven-dried wood. "Oven-dried wood" means  
23 wood that has been oven-dried to remove its moisture  
24 content according to standards as adopted by the  
25 American Society of Testing and Materials.

26          7. Payment for services. "Payment for services"  
27 means payment made for services in or incidental to  
28 harvesting, hauling or chipping wood, and does not  
29 involve transfer of title to the wood.

30          8. Properly prepared wood. "Properly prepared  
31 wood" means wood that was required to be harvested  
32 and yarded, and was prepared as directed, according  
33 to written cutting specifications.

34          9. Sale of wood. "Sale of wood" means a trans-  
35 action involving transfer of title to wood.

36          10. Standard cord. A "standard cord" means the  
37 cubic foot measurement of 4 foot long wood, ranked  
38 and well stowed, and stacked 4 feet wide, 4 feet high

1 and 8 feet long, or its equivalent, which stack mea-  
2 sure contains 128 cubic feet of wood, bark and air  
3 space. A "standard cord" when used in connection  
4 with sawdust chips, bark or shavings means the volume  
5 contained in 128 cubic feet at the time of sale.

6 11. Wood. "Wood" means the severed but unpro-  
7 cessed fibrous derivative of trees, without regard  
8 for quality or grade and also means the chipped  
9 fibrous derivative of trees.

10 12. Wood. transactions. "Wood transactions"  
11 means the "sale of wood" or "payment for services" as  
12 those terms are defined in this section.

13 Sec. 3. 10 MRSA §2362, as repealed and replaced  
14 by PL 1977, c. 537, §2, is repealed.

15 Sec. 4. 10 MRSA §2362-A are enacted to read:

16 §2362-A. Fuel wood

17 Nothing in this subchapter supersedes or in any  
18 way modifies the measurement standards relating to  
19 fuel wood provided for in section 2302, subsection 1.

20 Sec. 5. 10 MRSA §2363, as amended by PL 1977, c.  
21 694, §174, is repealed.

22 Sec. 6. 10 MRSA §2363-A is enacted to read:

23 §2363-A. Measurement of wood

24 1. Cubic measure and standard cord. In all wood  
25 transactions the volume of wood may be measured in  
26 cubic feet or by the standard cord as provided for by  
27 the state sealer.

28 2. Weight scale. Where agreed upon by the par-  
29 ties, weight measurement may be used in all wood  
30 transactions, provided that:

31 A. The weight measurement shall not be converted  
32 to volume;

33 B. Where payment is made for services in har-  
34 vesting wood, all weight measurements shall be

1 expressed on a green wood basis. Except as oth-  
2 erwise provided by the state sealer, when the  
3 wood is not, or will not be, weighed within 10  
4 days of felling, the person performing the ser-  
5 vices may, prior to hauling, require that the  
6 wood instead be measured by butt measure, or oth-  
7 er authorized method of measurement; and

8 C. All sales of wood chips may be based on  
9 oven-dried weight, except where payment is made  
10 for harvesting wood.

11 3. Tree length wood. Butt measure shall be the  
12 standard state method for the measurement of tree  
13 length wood. Where agreed upon, the parties may use  
14 any other method of measurement authorized by this  
15 subchapter.

16 A. Butt scale measurements may be used as fol-  
17 lows.

18 (1) Where payment is made for services, the  
19 use of butt scale measurements is prohibited  
20 as of April 1, 1986. Until that date, the  
21 use of butt scale measurements is permitted  
22 for tree length wood under the following  
23 conditions.

24 (a) Prior to its usage, the parties or  
25 their authorized representatives, shall  
26 sign and date the volume table which  
27 shall designate the applicable harvest-  
28 ing area or areas.

29 (b) The parties, or their authorized  
30 representatives, shall receive a copy  
31 of the signed butt scale table prior to  
32 performance of the services.

33 (c) The volume table to which the mea-  
34 surements are applied shall reasonably  
35 represent the volume of trees being cut  
36 on the operation.

37 (2) In the sale of wood, butt scale mea-  
38 surements shall continue to be permitted for  
39 tree length wood, under the following condi-  
40 tions.

1                   (a) The applicable butt scale table  
2                   shall be provided in a written contract  
3                   agreement.

4                   (b) The volume table to which the mea-  
5                   surements are applied shall reasonably  
6                   represent the volume of trees being cut  
7                   on the operation.

8                   4. Log length stems. Log length stems shall be  
9                   measured as follows.

10                  A. The international 1/4 inch log rule shall be  
11                  the standard state rule for the measurement of  
12                  log length stems.

13                  B. Where agreed upon by the parties, cubic foot  
14                  measurement, weight measurement, butt measure or  
15                  another log rule may also be used to measure log  
16                  length stems.

17                  Sec. 7. 10 MRSA §2364-A is enacted to read:

18                  §2364-A. Accurate and verifiable measurements

19                  1. Standards. It is the intent of this subchap-  
20                  ter that any method of wood scaling or measurement  
21                  used in wood transactions shall provide an accurate  
22                  and verifiable count of the volume, quantity, dimen-  
23                  sion or weight measured, according to the standards  
24                  established by the state sealer, provided that those  
25                  standards may be efficiently and conveniently applied  
26                  in wood transactions, as defined in this subchapter.

27                  2. Measurements. In all wood transactions, no  
28                  person who scales or measures wood and no person who  
29                  makes payment to another shall represent a weight,  
30                  volume, quantity or dimension of wood which is less  
31                  than the weight, volume, quantity or dimension of  
32                  wood to be measured.

33                  A. When payment is made for services in harvest-  
34                  ing wood, all wood that is properly prepared  
35                  shall be measured in full, without regard to its  
36                  future merchantability or use. Nothing in this  
37                  subsection prevents making reasonable deductions  
38                  based on quantity factors, such as for loose pil-

1 ing, short or undersized wood or for wood that  
2 was not designated to be harvested, hauled or  
3 chipped.

4 The written cutting specifications for properly  
5 prepared tree stems shall be made available to  
6 the person providing the service and shall be  
7 signed by both the person requiring the service  
8 and by the person providing the service or his  
9 authorized representative prior to performance of  
10 the services.

11 B. When payment is made for services in hauling  
12 or trucking wood, all wood that was designated to  
13 be hauled and which was hauled, shall be measured  
14 in full.

15 C. In the sale of wood, all wood that meets the  
16 specifications of the parties shall be measured  
17 by the terms of the sales contract according to  
18 the measurement procedures set forth in section  
19 2363-A that are applicable to a sale of wood, as  
20 defined in this subchapter.

21 D. When payment is made for services, payment  
22 shall be expressed in the same unit of measure  
23 that was used in making the measurement. Nothing  
24 in this subsection may be interpreted to prohibit  
25 the use of the standard cord or butt measure.

26 3. Measurement tally sheet. When payment is  
27 made for services, the person providing the service  
28 shall promptly receive a copy of the tally sheet set-  
29 ting forth the total measure of the wood, identifying  
30 the person or persons providing the service, the lo-  
31 cation from which the wood was hauled and the date  
32 the measurements were made. When payment is made for  
33 services in harvesting wood, in no case, shall the  
34 wood be taken outside the State prior to measurement  
35 of the wood and completion of the measurement tally  
36 sheet.

37 Sec. 8. 10 MRSA §2365-A is enacted to read:

38 §2365-A. Licensing of measuring and scaling opera-  
39 tors

1           The state sealer has the authority to license all  
2 persons who measure or scale wood and has the author-  
3 ity to issue rules and establish fees for licensing.  
4 Once a licensing program is instituted then the fol-  
5 lowing provisions of this section shall be in effect.

6           Fees collected under this section shall be depos-  
7 ited in a separate account which shall not lapse and  
8 shall be used to cover the cost of administering this  
9 section.

10           1. Applications. Applications for licenses un-  
11 der this subchapter shall be made in writing on forms  
12 prescribed by the state sealer for each wood scaler.  
13 The application shall include the name of the appli-  
14 cant scaler, his qualifications, and other pertinent  
15 information as the state sealer shall require.

16           2. Violation. No person may scale or measure  
17 wood without first obtaining a proper license.

18           3. License; denial; revocation; suspension. The  
19 state sealer may take enforcement action against the  
20 licensee or may initiate proceedings in the Adminis-  
21 trative Court, pursuant to Title 5, chapter 375, to  
22 revoke or suspend a license for any of the following  
23 reasons:

24           A. The licensee has violated any condition of  
25 the license;

26           B. The licensee has obtained a license by mis-  
27 representation or failure to disclose fully all  
28 relevant facts; and

29           C. The licensee has violated any provision of  
30 the laws within this chapter.

31           Sec. 9. 10 MRSA §2366, as amended by PL 1979, c.  
32 127, §62, is repealed.

33           Sec. 10. 10 MRSA §2366-A is enacted to read:

34           §2366-A. Disputed wood

35           In case a dispute arises as to whether wood was  
36 accurately scaled or measured, the person aggrieved



1 may file a complaint with the state sealer. Any com-  
2 plaint shall be initiated within 30 calendar days of  
3 the alleged grievance. The state sealer shall inves-  
4 tigate the complaint. As part of the investigation,  
5 the state sealer or deputy state sealer may subpoena  
6 such witnesses and documents as may be necessary to  
7 determine the matter, and may cause the disputed wood  
8 to be impounded and check measured if it may be sepa-  
9 rately identified. In the event that an aggrieved  
10 party fails to file a complaint within 30 days of the  
11 alleged grievance, the aggrieved party is barred from  
12 seeking a remedy under section 2368, subsection 1.

13       Sec. 11. 10 MRSA §§2367, 2368 and 2369 are en-  
14 acted to read:

15 §2367. Rules

16       The state sealer shall, in a manner consistent  
17 with the Maine Administrative Procedure Act, Title 5,  
18 chapter 375, promulgate and adopt rules relating to:

19       1. Weight scale. Procedures for determining the  
20 weight of wood according to weight scale;

21       2. Butt measure; other measurement sys-  
22 tems. Procedures and standards for the lineal and  
23 volumetric measurement of wood;

24       3. Measurement equipment standards and toler-  
25 ances. Measurement equipment standards and toler-  
26 ances;

27       4. Complaints; investigations. Procedures for  
28 the filing and investigating of complaints and for  
29 the sampling, check scaling and check measurement of  
30 disputed wood, including verification of butt scale  
31 tables;

32       5. Designation; units of measure. The designa-  
33 tion of appropriate units of measure which can be ef-  
34 ficiently and conveniently used in wood transactions;

35       6. Dissemination; scaling and measurement tal-  
36 lies. The dissemination of the scaling and measure-  
37 ment tallies or slips as appropriate to prevent un-  
38 fair or deceptive representations of the quantity of  
39 wood measured;

1       7. Measuring and scaling operators; licens-  
2 ing. Licensing of measuring and scaling operators;  
3 and

4       8. Other standards. Other standards and rules  
5 necessary to the administration of this subchapter.

6       §2368. Violations; penalties

7       1. Civil violations. Violations of this sub-  
8 chapter or any rule promulgated pursuant to this sub-  
9 chapter shall be a civil violation punishable by a  
10 civil penalty not to exceed \$1,000 for a first of-  
11 ense and \$2,000 for each subsequent offense. These  
12 civil penalties may be recovered by the state sealer  
13 on behalf of the State in a civil action.

14       2. Private action. Any person who violates this  
15 subchapter or any rule promulgated pursuant to this  
16 subchapter shall be liable in a civil action to any  
17 person aggrieved by the violation, pursuant to the  
18 remedies set forth in Title 26, section 626-A. The  
19 civil action for damages may be brought by either the  
20 aggrieved party or, at the request of the state seal-  
21 er, by the Attorney General.

22       §2369. Transition provision

23       1. Promulgate and adopt rules. The state seal-  
24 er, in a manner consistent with the Maine Administra-  
25 tive Procedure Act, Title 5, chapter 375, shall  
26 promulgate and adopt rules pursuant to this subchap-  
27 ter within 90 days of the effective date of this sec-  
28 tion. The rules shall become effective April 30,  
29 1985.

30       Sec. 12. 10 MRSA §2753, as enacted by PL 1973,  
31 c. 91, §12 is amended to read:

32       §2753. Injunction

33       The state sealer is authorized to apply to any  
34 court of competent jurisdiction for a temporary or  
35 permanent injunction restraining any person from vio-  
36 lating any provision of this chapter or any rule  
37 promulgated pursuant to this chapter.

1           Sec. 13. 30 MRSA §3662 is repealed.

2           Sec. 14. 30 MRSA §3662-A, as enacted by PL 1965,  
3 c. 321, is repealed.

4           Sec. 15. 30 MRSA §3663 is repealed.

5  
6                                 STATEMENT OF FACT

7           This new draft revises the wood measurement law  
8 in light of the Department of Agriculture, Food and  
9 Rural Resources experience in administering it since  
the 1977 revision. This new draft:

10           1. Establishes butt measure as the standard  
11 state method for measurement of tree length wood. As  
12 agreed upon by the parties, this measurement may be  
13 represented in either the number of stems in each  
14 butt diameter class by species; or alternatively, in  
15 the cumulative sum of the butt diameters by species,  
16 expressed in inches, without regard to the butt diam-  
17 eter class;

18           2. When payment is made for services, this new  
19 draft prohibits the usage of butt scale measurements  
20 as of April 1, 1986. When payment is made for other  
21 than services, this new draft allows for the contin-  
22 ued usage of butt scale measurements under specified  
23 conditions;

24           3. When payment is made for services, this new  
25 draft prohibits the taking of deductions relating to  
26 merchantability or quality factors, but does not pro-  
27 hibit the taking of deductions relating to quantity,  
28 such as for loose piling or short wood. This prohi-  
29 bition against grading or quality deductions should  
30 prevent the use of dual measurement guidelines, one  
31 set for harvesting and another set for calculating  
32 payment;

33           4. When weight measure is used, this new draft  
34 allows for the use of alternative measurement when  
35 wood is not properly weighed;

36           5. Establishes the international 1/4 inch log  
37 rule as the state's standard for the measurement of  
38 log length stems;

1           6. When payment is made for services, this new  
2 draft prohibits the conversion of measurements from  
3 one system or unit to another;

4           7. Provides for the licensing of scaling or mea-  
5 surement operators;

6           8. Provides for the investigation of disputes  
7 under the subchapter. The investigation may include  
8 impounding and check scaling, except when the mea-  
9 sured wood has already been processed and therefore  
10 can no longer be identified;

11           9. Decriminalizes violations of the wood mea-  
12 surement law, and provides for a civil fine and dam-  
13 ages in the case of violations; and

14           10. When payment is made for services, this new  
15 draft requires that the person who provided the ser-  
16 vices promptly receive a copy of the measurement tal-  
17 ly sheet setting forth the total measure of wood,  
18 identifying the persons providing the service, the  
19 location from which the wood was hauled and the date  
20 the measurements were made. This requirement will  
21 increase the ability of the person providing the ser-  
22 vice to verify that the quantity of wood, measured in  
23 his absence, was accurately measured. Further, in  
24 the case of wood being taken out of the State, the  
25 wood must first be measured and the tally sheet com-  
26 pleted. This additional requirement will enable the  
27 state sealer to enforce the wood measurement stan-  
28 dards in the case of harvested wood that is being  
29 taken outside the State. In light of the Department  
30 of Agriculture, Food and Rural Resources' experience  
31 in administering the wood measurement law, this addi-  
32 tional requirement is necessary to maintain  
33 verifiable measurement standards. Presently, persons  
34 who are paid piece rate for harvesting wood have no  
35 meaningful recourse against violations of the wood  
36 measurement law when the wood is not measured until  
37 after it is taken outside the State.

1           11. Repeals the miscellaneous wood measurement  
2 legislation that has been superseded by or incorpo-  
3 rated into the wood measurement law codified in the  
4 Revised Statutes, Title 10, or the department's rule-  
5 making authority under that law.

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