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**STATE OF MAINE
120TH LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the**

**ROUND TABLE TO STUDY ECONOMIC
AND LABOR ISSUES RELATING TO
THE FOREST PRODUCTS INDUSTRY**

December 2001

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EXECUTIVE SUMMARY

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry was established by the 119th Legislature through Resolves 1999, chapter 124. The Round Table was given a wide-range of issues to examine, including studying key economic and labor issues related to the forest products industry with the goals of helping to keep more value-added wood processing in the State and to make logging a more respected and more attractive profession, thus benefiting the economy of rural Maine.

In examining these issues, the Round Table was instructed to assess: the import and export of round wood and other wood products as determined by the Round Table; the market forces and government policies in Maine, the United States and other countries that impact this trade; the status of value-added manufacturing; and the relationship of these issues to employment in Maine. Further, the Round Table was charged with evaluating trends in logging, including changes in mechanization, logger training and education, workers' compensation and insurance, employment relationships, types of wood measurement and means of payment. The Round Table also was charged with assessing regional variations in and seasonal capacity of the logging labor force in Maine, policies both within Maine and in nearby Canadian provinces and factors, including current and projected resource availability, transportation costs, market forces and imperfections and geographic locations, that might impact wage and employment opportunities for Maine workers.

In developing its recommendations, the Round Table was instructed to consider the impact of these recommendations on the competitive position of Maine's forest-based industry and on any specific segment of the industry and consistencies and inconsistencies with state and federal policy. The Round Table was required to report of its findings and authorized to make recommendations for policy changes.

The Round Table was comprised of 13 members representing various constituencies within the Forest Products Industry, four legislators and 3 ex-officio members representing departments and agencies of State Government. The Round Table held its organizational meeting on October 25, 2000 at the State House. The Round Table held its final meeting on November 9, 2001 at the State House.

The Round Table makes the following recommendations:

- 1. The Round Table unanimously* recommends that legislation be enacted to require an independent logging contractor to notify in writing a landowner for whom the contractor is working, and any employee of the contractor, within 3 business days of the cancellation of that contractor's workers' compensation policy. A contractor found in non-compliance of the notification requirement would be liable for a civil forfeiture not less than \$50 or more than \$100 for each day of non-compliance.**
- 2. The Round Table unanimously recommends that legislation be enacted to require the Workers' Compensation Board to study its enforcement efforts regarding**

independent logging contractors who fail to maintain workers' compensation coverage for their employees. The board shall identify ways to increase its enforcement efforts and shall report its findings and recommendations to the 121st Legislature.

3. The Round Table unanimously recommends that the Legislature reject proposals to make changes to the worker's compensation laws that would encourage litigation, such as reviving the so-called "prevail standard" and the right to sue to get additional compensation. The Round Table believes that undoing those reforms will have a significantly negative effect on the forest products industry and could result in the loss of additional businesses and jobs within the industry. Further, the Round Table recommends that the Worker's Compensation Board refocus its attention on the logging industry and develop an incentive-based system to continue efforts to reduce the number and frequency of accidents in the industry.
4. The Round Table unanimously recommends that the Legislature enact legislation to urge the Maine Congressional delegation to review Section 530 of the Revenue Act of 1978 with the IRS to ensure that its current application does not represent a barrier to the health and safety of woods workers. The Round Table further recommends that the Legislature petition the Congressional delegation to submit legislation to Congress that will clarify the application of Section 530 and other federal laws both to guide industry members in their efforts to adhere to the criteria for employing independent contractors and to assist State and Federal agencies in their efforts to determine the true nature of employer-employee relationships in the wood harvesting sector of the forest products industry, as well as in other industries that are characterized by the employment of substantial numbers of independent contractors.
5. The Round Table recommends that the Legislature petition the Maine Congressional Delegation to urge the U.S. Department of Labor to conduct a thorough examination of the current methodology for calculating the various rates reflected in the annual woods wage survey for the H-2 program, particularly the methodology for calculating hourly wage rates. Specifically, the agency should examine the methodology for its:
 - Accuracy
 - Rigor
 - Types of worker's included in the survey's universe (those woods workers designated employees as well as independent logging contractors and foreign nationals operating as independent logging contractors)**
6. The Round Table recommends that the Legislature enact legislation urging the Maine Congressional Delegation to submit legislation to Congress that will require the U.S. Department of Labor to establish heavy equipment operational rates under the H-2 program. **

- 7. The Round Table urges the Department of Economic and Community Development, in cooperation with the Maine Forest Service, Finance Authority of Maine, State Planning Office, the Maine International Trade Center, the Small Business Administration, the University of Maine, representatives from key forest product trade organizations such as the Maine Wood Products Association and other organizations such as the Small Woodlot Owners Association of Maine, and regional economic development entities, to include in DECD's current statewide assessment of technical assistance to all small businesses a particular focus on the forest products industry that specifically addresses the following:**
- **Assess the business assistance needs within each of the 3 sectors of the forest products industry (logging and primary and secondary manufacturing), documenting what needs are being met, and what needs are unfulfilled.**
 - **Document the extent, location, source and types of business assistance services that are targeted to each of the 3 sectors of the forest products industry.**
 - **Assess, through business assistance service providers, the current levels of participation-utilization of business assistance services by each sector in the forest products industry.**
 - **Identify the gaps in business assistance services, such as the BETR program, that are needed within each sector of the industry.**
 - **Identify options for improving the utilization and coordination of existing business assistance services, as well as how to fill service gaps within each sector of the forest products industry.**
 - **Work with the Finance Authority of Maine to assess the awareness within the 3 sectors of the forest products industry of the availability of financial resources through FAME's Natural Resources Division programs and to develop strategies for enhancing awareness of such programs throughout the forest products industry.*****

The Round Table further recommends that upon completion of its statewide assessment, the Department of Economic and Community Development report in writing its findings and recommendations concerning technical and business assistance for the forest products industry to the Joint Standing Committee on Agriculture, Conservation and Forestry and to the Joint Standing Committee on Business and Economic Development.***

- 8. The Round Table recommends that the Joint Standing Committee on Agriculture, Conservation and Forestry conduct a series of field hearings statewide in 2002, especially in regions of the state where logging operations are concentrated, to examine how logging contractors and their employees are paid and to explore new models of payment that provide incentives to loggers to enhance the quality of their work. Additionally, the hearings should also examine how public forest policies that promote better forestry or protect wildlife habitat could give landowners incentives (that, in part, can be passed on to loggers), rather than create increased burdens for both landowners and loggers. Further, the hearings should examine whether there**

are forest policies that give incentives for mismanagement or disincentives for improved management. At the completion of the field hearings, the Agriculture Committee should convene a “logger summit” with representatives of a broad spectrum of forestry interests with a direct relationship to the forestry community to further discuss the new payment models identified during the field hearings, to consider working examples of new approaches, and to discuss the costs and benefits of switching to these new approaches. ** Additionally, the summit should examine the incentives and disincentives of public policy identified in the field hearings. The committee also should examine State labor and educational policies that govern the creation of apprenticeship programs and identify the opportunities for and barriers to creating logger apprenticeship programs.**

***Note:** “Unanimously” means only those members present and voting at the Round Table’s November 9, 2001 meeting. Members present and voting were: Sen. Nutting; Reps. Gagne and Trahan; Brown, Cashwell, Dauphinee, Doak, Frett, Hanington, Jackson (for Hafford), Lansky, Merchant, Thurston and Wales.

****Note:** Member Thurston abstained on this recommendation.

*****Note:** Member Dauphinee abstained on these recommendations.

******Note:** Member Doak abstained on the recommendation proposing a logger summit.

1. Introduction

A. Charge to the Round Table

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry was established by the 119th Legislature through Resolves 1999, chapter 124. The Round Table was given a wide-range of issues to examine, including the following:

1. Study key economic and labor issues related to the forest products industry with the goals of helping to keep more value-added wood processing in the State and make logging a more respected and more attractive profession, thus benefiting the rural Maine economy. Issues studied must include:
 - a. An assessment of the import and export of round wood and other wood products as determined by the round table; the market forces and government policies in Maine, the United States and other countries that impact this trade; the status of value-added manufacturing; and the relationship of these issues to employment in Maine;
 - b. An evaluation of trends in logging, including changes in mechanization, logger training and education, workers' compensation and insurance, employment relationships, types of wood measurement and means of payment; and
 - c. An assessment of regional variations in and seasonal capacity of the logging labor force in Maine, policies both within Maine and in nearby Canadian provinces and factors, including current and projected resource availability, transportation costs, market forces and imperfections and geographic locations, that might impact wage and employment opportunities for Maine workers
2. Assess problems within its area of study and develop recommendations. In developing its recommendations, the round table shall consider the impact of these recommendations on the competitive position of Maine's forest-based industry and on any specific segment of the industry and consistencies and inconsistencies with state and federal policy; and provide public notice of all of its meetings. The Round Table shall issue a report of its findings and may make recommendations for policy changes. The Round Table shall advertise a public hearing to invite comment on its findings before submitting a final report to the Legislature. (*See Appendix A for the enabling legislation.*)

B. Round Table Membership

The Round Table was comprised of 13 members representing various constituencies within the Forest Products Industry, four legislators and 3 ex-officio members representing departments and agencies of State Government. Senator John Nutting served as Senate Chair of the Round Table. Former Representative Roland Sampson served as House Chair for the first 10 months of the Round Table's deliberations; Representative Rosita Gagne served as

House Chair during the concluding 4 months of the Round Table. *(See Appendix B for a list of members and interests they represent.)* Notes on Round Table membership: State Rep. Rosita Gagne replaced former State Rep. Roland Sampson as House Chair of the Round Table in August 2001; Sen. Vinton Cassidy did not participate in the Round Table meetings; after the first two meetings of the Round Table, Troy Jackson acted on Hilton Hafford's behalf for the balance of the Round Table's deliberations.

C. Study timetable and deadlines

Pursuant to its enabling legislation, The Round Table was required to meet within 30 days of the date on which appointments were completed. The Round Table was required to submit a work plan along with a proposed budget to the Legislative Council within 10 days of the date of its first meeting. The Round Table held its organizational meeting on October 25, 2000 at the State House; the Legislative Council approved the Round Table's work plan on the same day, but authorized expenses during the first year of the study for legislative members only.

Enabling legislation required the Round Table to submit a final report along with its findings and recommendations and any implementing legislation to the Legislature by December 5, 2001. The Round Table held its final meeting on November 9, 2001 and submitted its final report on December 31, 2001.

D. Round Table Study Process

At its organizational meeting, the Round Table established the following process by which it would accomplish its duties:

1. The Round Table members separated into 3 "working groups" for the purposes of trying to facilitate its work. The 3 working groups established focused on market forces, logging labor force issues, and logging trends. Senator Nutting chaired the Logging Labor Force Working Group; Representative Samson chaired the Logging Trends Working Group; and Representative Trahan chaired the Market Forces Working Group. *(See Table 1 for working group membership.)*
2. Each of the working groups was charged with examining issue areas established in the enabling legislation. *(See Appendix C for working group organization and tasks.)* The working groups would hold 3 meetings each between November 30, 2000 and December 18, 2000 hearing from a variety of speakers and reviewing a wide-range of materials related to their issues of concern. Staff would provide summaries of each working group meeting to all members of the Round Table and to interested parties.

Table 1



**The Round Table
To Study Economic & Labor Issues Relating
To The Forest Products Industry**

Working Group Members

Market Forces Working Group:

Rep. David Trahan, chair
Tom Howard, Georgia Pacific
Dr. David Field, University of Maine
Tom Doak, Maine Forest Service
Bill Dauphinee, sawmill owner
Ancyl Thurston, landowner of <1,000
Mitch Lansky, Low Impact Forestry Project
Roger Merchant, Cooperative Extension Service

Logging Labor Force Working Group:

Sen. John Nutting, chair
Ked Coffin, Irving Woodlands
Hilton Hafford/Troy Jackson, independent
loggers
John Cashwell, Seven Islands Land Co.
Tom Doak, Maine Forest Service
Rodney Wales, R.H. Wales & Son
Michael Frett, Maine Dept. of Labor
Stephen Hanington, Hanington Brothers

Logging Trends Working Group:

Former Rep. Roland Samson, chair
Former Sen. Vinton Cassidy
John Cashwell, Seven Islands Land Co.
Michael Frett, Maine Dept. of Labor
Mitch Lansky, Low Impact Forestry Project
Dean Bruce Wiersma, University of Maine
Steve Brown, municipal official with Tree Growth Tax Law expertise

3. By the completion of working group meetings, each working group would develop draft preliminary findings and recommendations and present those to the full Round Table at a meeting in January/February 2001.
4. The full Round Table would meet again in the summer of 2001 to consider the working groups' draft preliminary findings and recommendations. After developing its preliminary findings and recommendations and pursuant to the enabling legislation, the Round Table would establish the date of a public hearing on those preliminary findings and recommendations. *(See Appendix D for preliminary findings and recommendations.)*
5. Following the public hearing *(See Appendix E for a summary of public hearing testimony)*, the Round Table would reconvene to revise its preliminary findings and recommendations and to review a draft final report prepared by Round Table staff.
6. By December 5, 2001, the Round Table would submit its final report to the Legislature.

II. Issues Identified and Discussed by Round Table Working Groups

Although the working groups originally were to meet 3 times, most working groups held at least four meetings, including meetings in January and February of 2001. In addition to hearing testimony from numerous expert witnesses on issues of concern to various segments of the forest products industry, the working groups also reviewed and discussed a number of prior studies of the industry. *(See the References section at the end of this report for a list of the written materials circulated to Round Table members.)*

Listed below is a summary of the major issue areas that were addressed by the 3 working groups during their meetings: *(For additional details, see Appendix F, the summaries of each working group and Round Table meeting.)*

Market Forces Working Group

1. Import-export and wood flow, including Maine's export of sawlogs
2. Rail Transportation, including rate structures for rail lines *(See Staff Memo of 11/30/00 in Appendix G.)*
3. US-Canada Softwood Lumber Treaty
4. World pulp economy
5. Follow-up on the Task Force on Primary and Secondary Forest Products Manufacturing
6. UM Advanced Engineered Wood Composites Center/Advanced Structures and Composites Laboratory
7. Maine Wood Products Association

Logging Labor Force Working Group

1. Maine Logging Industry and the Bonded Labor Program: An Economic Analysis
2. The Maine Forest Service's annual surveys of wood harvest and consumption
3. Forest Resources Association's training program for wood dealers, forest landowners, and logging business re: their relationships with independent logging contractors
4. Variations in determinations of independent logging contractor status among state and federal agencies, including OSHA, U.S. Department of Labor, IRS, Maine Workers' Compensation Board, Maine Bureau of Insurance (*See Staff Memo of 12/10/00 in Appendix H.*)
5. Maine Workers' Compensation laws: How they apply to Canadian loggers and logging contractors and how the Workers' Compensation Board staff enforces laws regulating premature cancellation of workers' compensation policies by logging contractors (*See Correspondence from Staff and Responses in Appendix I.*)
6. Section 530 of the Revenue Act of 1978 as amended, or the so-called "Safe harbor" provisions in federal law that provide businesses relief from employment taxes (*See Appendix J.*)

Logging Trends Working Group

1. Logging harvest trends and the "cycle of logging relationships" that have existed in Maine over the past 100 years
2. Woodlot ownership trends
3. Influence of harvesting methods and patterns on the logging industry, including repeated referenda initiatives (*See Appendix K.*)
4. State forest tax policies, including the Tree Growth Tax Law
5. Federal forest tax policies, including the legal gridlock associated with timber cutting in the national forests
6. Certified Logging Professional Program
7. Maine wood harvesting markets and production trends, including aging workforce trends
8. Public Utilities Regulatory Policies Act (PURPA) and biomass waste energy (*See Staff Memo of 12/4/00 in Appendix L.*)
9. Trends in Secondary School Logging/Forestry Programs
10. Trends in logger compensation

At the conclusion of its series of meetings, each working group developed its draft preliminary findings and recommendations and shared these with the full Round Table at its August 13, 2001 meeting in Augusta. These were the bases for the final findings and recommendations developed by the Round Table and described in Section III of this report. (*Draft legislation and correspondence related to the findings and recommendations appear in Appendix M.*)

III. Findings and Recommendations

1. FINDING: The Round Table finds that lack of workers' compensation coverage for woods workers is a significant concern of the forest products industry. Of particular concern is the cancellation of workers' compensation policies by some wood independent logging contractors once those contractors have satisfied the landowner for whom they are working that they have purchased workers' compensation coverage for the contractors' employees. Among other negative effects, such actions create an uneven playing field for other logging contractors who follow the law and who maintain workers' compensation coverage for their employees. Such actions also pose a threat to the financial security of the woods worker and the worker's family and they increase the landowner's exposure to lawsuits from injured woods workers seeking compensation and payment of medical expenses. The Round Table also finds that the Workers' Compensation Board has limited ability to increase its enforcement of state workers' compensation laws among wood harvesters and logging contractors.

Recommendation: The Round Table recommends that legislation be enacted to require an independent logging contractor to notify in writing a landowner for whom the contractor is working and any employee of the contractor within 3 business days of the cancellation of that contractor's workers' compensation policy. A contractor found in non-compliance of the notification requirement would be liable for a civil forfeiture not less than \$50 or more than \$100 for each day of non-compliance.

Recommendation: The Round Table recommends that legislation be enacted to require the Workers' Compensation Board to study its enforcement efforts regarding independent logging contractors who fail to maintain workers' compensation coverage for their employees. The board shall identify ways to increase its enforcement efforts and shall report its findings and recommendations to the 121st Legislature.

Recommendation: The Round Table recommends that the Legislature reject proposals to make changes to the worker's compensation laws that would encourage litigation, such as reviving the so-called "prevail standard" and the right to sue to get additional compensation. The Round Table believes that undoing those reforms will have a significantly negative effect on the forest products industry and could result in the loss of additional businesses and jobs within the industry. Further, the Round Table recommends that the Worker's Compensation Board refocus its attention on the logging industry and develop an incentive-based system to continue efforts to reduce the number and frequency of accidents in the industry.

2. FINDING: The Round Table finds that the varying definitions of, criteria for and the application of independent contractor status by State and Federal agencies represent a significant challenge to the forest products industry. The Round Table endorses the Maine Department of Labor's initiative to develop materials that will assist the industry in understanding the various independent contractor criteria and how they are applied (*See Appendix N for a copy of the MDOL's brochure*). The Round Table also finds that the

varying definitions and applications of independent contractor status, especially in light of government agencies' unsuccessful efforts to prevail in court cases supporting their position, has led government officials at all levels to refrain from making determinations of employer-employee relationships.

The Round Table further finds that Section 530 of the Revenue Act of 1978 as amended — the so-called “safe harbor” provision that provides businesses with relief from federal employment tax obligations if they meet 3 relief requirements —represents a loophole that some employers in the forest products industry may be using to avoid paying legitimate payroll taxes. Under Section 530, a business may be relieved of employment tax obligations if that business had *a reasonable basis* for not treating its workers as employees. A “reasonable basis” includes treating the workers as independent contractors because that is how a significant segment of the industry in which the business is operating treated similar workers. A second relief requirement is *substantive consistency*; that means, the business must have treated the workers and any similar workers as independent contractors, not as employees. Finally, a third relief requirement is *reporting consistency*. The business must have filed Form 1099-MISC for each worker annually. The business is not eligible for relief if it filed 1099s for some workers, but not for others.

Although Section 530 has been amended over the last two decades to make it more specific in its application, the law still represents a barrier to determining which logging contractors truly are independent contractors and which are actually employees operating as independent contractors simply to maintain employment. Additionally, the Round Table has learned that Internal Revenue Service agents are reluctant to take any action against employers in situations where both the employer and the employee appear to be amenable to the arrangement, even when it may be demonstrated that an employer-employee relationship exists. Round Table members are concerned that Section 530 has had the effect of virtually eliminating any distinction between employer and employee in the wood-harvesting sector of the forest products industry.

Recommendation: The Round Table recommends that the Legislature enact legislation to request the Maine Congressional delegation to review Section 530 with the IRS to ensure that its current application does not represent a barrier to the health and safety of woods workers. The Round Table further recommends that the Legislature petition the Congressional delegation to submit legislation to Congress that will clarify the application of Section 530 and other federal laws both to guide industry members in their efforts to adhere to the criteria for employing independent contractors and to assist State and Federal agencies in their efforts to determine the true nature of employer-employee relationships in the wood harvesting sector of the forest products industry, as well as in other industries that are characterized by the employment of substantial numbers of independent contractors.

3. FINDING: The Round Table finds that although the federal H-2 bonded labor program, which allows logging employers to apply for and receive certification to hire bonded Canadian workers to fill timber harvesting jobs in Maine, has declined in use in recent years, the current

methodology for calculating the annual woods worker survey, which is used to set the minimum wage, piece and equipment rates for the H-2 program, should be revisited. Further, the Round Table believes that because of the increased use of mechanization in the timber harvesting business (i.e., feller-bunchers, delimiters, grapple skidders, cut-to-length processors, forwarders and loaders) a heavy equipment rate should be established under the H-2 program. The Round Table notes that a significant volume of wood is now cut by mechanical equipment other than the skidder. The U.S. Department of Labor established rates of operational reimbursement for the use of skidders nearly 30 years ago (1972). The Round Table believes that simple fairness dictates that the U.S. Department of Labor should establish rates of operational reimbursement under the H-2 program for the types of mechanized equipment currently being used in timber harvesting operations. Failure to establish these rates may adversely affect the continued viability of the logging industry in Maine.

The Round Table also finds that the Maine Department of Labor should request that the U.S. Department of Labor examine why a federally-established “prevailing wage” could decline below inflation-adjusted wages and below what would be a “free market” wage, as was suggested by the Maine Department of Labor’s 1999 study of the bonded labor program. That study indicated that in a “perfectly competitive” market logger wages should be 28% to 36% higher than the current prevailing wage levels.

Recommendation: The Round Table recommends that the Legislature petition the Maine Congressional Delegation to urge the U.S. Department of Labor to conduct a thorough examination of the current methodology for calculating the various rates reflected in the annual woods wage survey for the H-2 program, particularly the methodology for calculating hourly wage rates. Specifically, the agency should examine the methodology for its:

- Accuracy
- Rigor
- Types of worker’s included in the survey’s universe (those woods workers designated employees as well as independent logging contractors and foreign nationals operating as independent logging contractors)

Recommendation: The Round Table recommends that the Legislature enact legislation to urge the Maine Congressional Delegation to submit legislation to Congress that will require the U.S. Department of Labor to establish heavy equipment operational rates under the H-2 program.

(Note: These recommendations were supported by all Round Table members present and voting, except Member Thurston, who abstained.)

4. FINDING: The Round Table finds that a variety of agencies, institutions, and trade organizations at the state, regional and county levels provide business management and marketing assistance to Maine small businesses. It is not clear to what extent these programs are assisting and benefiting the logging, primary and secondary manufacturing sectors of the

forest products industry. In order to enact policies that support the business retention and expansion needs of these sectors, the Round Table believes that further study needs to be conducted to better understand the business assistance needs, and the gaps in business assistance services, for the key sectors of Maine's forest products industry. The Round Table also proposes that the statewide assessment of technical assistance to all small businesses that is currently being conducted by the Department of Economic and Community Development focus particularly on identifying the gaps, unmet needs, current usage of services and the coordination of such business assistance services to the forest products industry.

Recommendation: The Round Table urges the Department of Economic and Community Development, in cooperation with the Maine Forest Service, Finance Authority of Maine, State Planning Office, the Maine International Trade Center, the Small Business Administration, the University of Maine, representatives from key forest product trade organizations such as the Maine Wood Products Association and other organizations such as the Small Woodlot Owners Association of Maine, and regional economic development entities, to include in DECD's current statewide assessment of technical assistance to all small businesses a particular focus on the forest products industry that specifically addresses the following:

- Assess the business assistance needs within each of the 3 sectors of the forest products industry (logging and primary and secondary manufacturing), documenting what needs are being met, and what needs are unfulfilled.
- Document the extent, location, source and types of business assistance services that are targeted to each of the 3 sectors of the forest products industry.
- Assess, through business assistance service providers, the current levels of participation-utilization of business assistance services by each sector in the forest products industry.
- Identify the gaps in business assistance services, such as the BETR program, that are needed within each sector of the industry.
- Identify options for improving the utilization and coordination of existing business assistance services, as well as how to fill service gaps within each sector of the forest products industry.
- Work with the Finance Authority of Maine to assess the awareness within the 3 sectors of the forest products industry of the availability of financial resources through FAME's Natural Resources Division programs and to develop strategies for enhancing awareness of such programs throughout the forest products industry.

The Round Table recommends that upon completion of its statewide assessment, the Department of Economic and Community Development report in writing its findings and recommendations concerning technical and business assistance for the forest products industry to the Joint Standing Committee on Agriculture, Conservation and Forestry and to the Joint Standing Committee on Business and Economic Development.

(Note: This recommendation was supported by all Round Table members present and voting, except Member Dauphinee, who abstained.)

5. FINDING: The Round Table finds that logging in Maine is under pressure from complex global and statewide forces that impact all aspects of the forest industry from mills and landowners to logging contractors and their employees. The Round Table further finds that over the last two decades, average inflation-adjusted logger wages have fallen at a faster rate than most other forest-industry professions. This decline in real wages occurred despite major increases in productivity over the same period and in conjunction with a logger labor shortage in some regions of the state that allowed importation of foreign workers through the federal H-2 program. Additionally, public demands for improved forest practices, changes in state forest policy, and the enlightened awareness of some landowners regarding the effects from residual damage are creating increased short-term costs for landowners and increased responsibilities for loggers. The Round Table finds that landowners, while internalizing what were once external costs, are not always compensated with higher revenues for their wood. Further, loggers are not always compensated for their increased responsibilities. The Pan Atlantic study done for the Department of Labor in 1999 found that logging contractors and their employees in some parts of Maine are operating in “imperfect markets” and have little bargaining ability. Decreasing costs or increasing revenues for landowners in these markets do not always translate into benefits for loggers. Employers are finding it difficult to recruit new, young loggers into the profession. The Pan Atlantic study estimated that the average age of loggers in their survey was 43 years. This same study found that a majority of loggers and contractors, both domestic and bonds, are telling their children to not get into the logging business. Training programs are an important means of recruiting and educating new loggers. Training alone, however, is not adequate to attract sufficient new domestic workers if trained workers face falling wages and diminished power to negotiate.

Recommendations: The Round Table recommends that the Joint Standing Committee on Agriculture, Conservation and Forestry conduct a series of field hearings statewide in 2002, especially in regions of the state where logging operations are concentrated, to examine how logging contractors and their employees are paid and to explore new models of payment that provide incentives to loggers to enhance the quality of their work. Additionally, the hearings should also examine how public forest policies that promote better forestry or protect wildlife habitat could give landowners incentives (that, in part, can be passed on to loggers), rather than create increased burdens for both landowners and loggers. Further, the hearings should examine whether there are forest policies that give incentives for mismanagement or disincentives for improved management. At the completion of the field hearings, the Agriculture Committee should convene a “logger summit” with representatives of a broad spectrum of forestry interests with a direct relationship to the forestry community to further discuss the new payment models identified during the field hearings, to consider working examples of new approaches, and to discuss the costs and benefits of switching to these new approaches. Additionally, the summit should examine the incentives and disincentives of public policy identified in the field hearings. The committee also should examine State labor

and educational policies that govern the creation of apprenticeship programs and identify the opportunities for and barriers to creating logger apprenticeship programs.

(Note: The recommendation that the Agriculture Committee conduct a series of field hearings was supported by all Round Table members present and voting; the recommendation proposing a logger summit was supported by all members except Member Doak, who abstained on that proposal.)

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APPENDIX A
Enabling Legislation



RESOLVES

Second Regular Session of the 119th

CHAPTER 124 H.P. 1400 - L.D. 2005

Resolve, to Establish the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the forest products industry is an integral part of the Maine rural economy and key economic and labor issues must be reviewed to keep the industry competitive; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Round table established. Resolved: That the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry, referred to in this resolve as the "round table," is established; and be it further

Sec. 2. Round table membership. Resolved: That the round table consists of 19 members appointed or designated as follows.

1. The Speaker of the House shall appoint 8 members as follows:

- A. One landowner of less than 1,000 acres in the State;
- B. One sociologist with expertise in rural issues;
- C. One independent logger from a region of the State impacted by the H2-A Bonded Labor Program;
- D. One economist with forestry expertise;
- E. One owner or representative of a large sawmill;
- F. One owner or representative of a small sawmill; and
- G. Two members who at the time of appointment are members of the House of Representatives and serve on either the Joint Standing Committee on Agriculture, Conservation and Forestry or the Joint Standing Committee on Labor or who have experience in a forest-based industry. Appointments of House members must include at least one member of the Joint Standing Committee on Agriculture, Conservation and Forestry and at least one member of the party holding the 2nd largest number of seats in the House.

2. The President of the Senate shall appoint 8 members as follows:

- A. One municipal or county official with expertise in tree growth tax issues and the administration

of the tree growth tax law;

B. One representative of a paper company;

C. One logger residing in southern Maine;

D. One logging contractor residing and operating in northern Maine;

E. One landowner or representative of a landowner owning more than 1,000 acres in the State;

F. One representative of an environmental organization working on forestry issues; and

G. Two members who at the time of appointment are members of the Senate and serve on either the Joint Standing Committee on Agriculture, Conservation and Forestry or the Joint Standing Committee on Labor or who have experience in a forest-based industry. Appointments of Senate members must include at least one member of the Joint Standing Committee on Agriculture, Conservation and Forestry and at least one member who is not a member of the party holding the largest number of seats in the Senate.

3. The following 3 members shall also serve as voting members of the round table:

A. The Commissioner of Conservation or the commissioner's designee;

B. The Commissioner of Labor or the commissioner's designee; and

C. The Dean of the College of Natural Sciences, Forestry and Agriculture, University of Maine or the dean's designee; and be it further

Sec. 3. Chairs. Resolved: That the first Senate member named is the Senate chair of the round table and the first House member named is the House chair of the round table; and be it further

Sec. 4. Appointments; convening round table. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council must be notified by the appointing authorities once the selections have been made. The chairs shall call and convene the first meeting of the round table within 30 days of completion of all appointments; and be it further

Sec. 5. Duties. Resolved: That the round table shall:

1. Study key economic and labor issues related to the forest products industry with the goals of helping to keep more value-added wood processing in the State and make logging a more respected and more attractive profession, thus benefiting the rural Maine economy. Issues studied must include:

A. An assessment of the import and export of roundwood and other wood products as determined by the round table; the market forces and government policies in Maine, the United States and other countries that impact this trade; the status of value-added manufacturing; and the relationship of these issues to employment in Maine;

B. An evaluation of trends in logging, including changes in mechanization, logger training and education, workers' compensation and insurance, employment relationships, types of wood measurement and means of payment; and

C. An assessment of regional variations in and seasonal capacity of the logging labor force in Maine, policies both within Maine and in nearby Canadian provinces and factors, including current and projected resource availability, transportation costs, market forces and imperfections and geographic locations, that might impact wage and employment opportunities for Maine workers;

2. Assess problems within its area of study and develop recommendations. In developing its recommendations, the round table shall consider the impact of these recommendations on the competitive

position of Maine's forest-based industry and on any specific segment of the industry and consistencies and inconsistencies with state and federal policy; and

3. Provide public notice of all of its meetings. The round table shall issue a report of its findings and may make recommendations for policy changes. The round table shall advertise a public meeting to invite comment on its findings before submitting a final report to the Legislature; and be it further

Sec. 6. Staff assistance. Resolved: That upon approval of the Legislative Council the Office of Policy and Legal Analysis shall provide staffing services to the round table. The Department of Labor and the Maine Forest Service within the Department of Conservation shall also provide assistance as requested by the round table; and be it further

Sec. 7. Compensation. Resolved: That those members of the round table who are Legislators are entitled to receive legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses related to their attendance at meetings of the round table; and be it further

Sec. 8. Report. Resolved: That the round table shall submit its report, together with any recommended implementing legislation, to the 120th Legislature no later than December 5, 2001. If the round table requires an extension of time to make its report, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 9. Budget. Resolved: That the chairs of the round table, with assistance from the round table staff, shall administer the round table's budget. Within 10 days after its first meeting, the round table shall present a work plan and proposed budget to the Legislative Council for approval. The round table may not incur expenses that would result in the round table's exceeding its approved budget. Upon request from the round table, the Executive Director of the Legislative Council shall promptly provide the round table chairs and staff with a status report on the round table's budget, expenditures incurred and paid and available funds; and be it further

Sec. 10. Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

2000-01

LEGISLATURE

Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Personal Services \$880

All Other 2,800

Provides funds for the per diem and expenses of legislative members of the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry and for public meeting notices.

LEGISLATURE _____

TOTAL \$3,680

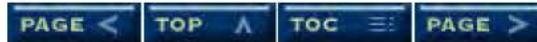
Emergency clause. In view of the emergency cited in the preamble, this resolve takes effect when

approved.

Effective May 8, 2000.

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APPENDIX B

Round Table Membership

ROUND TABLE TO STUDY ECONOMIC AND LABOR ISSUES RELATING TO THE FOREST PRODUCTS INDUSTRY

MEMBERSHIP LIST

Senate Members:

Sen. John Nutting, Senate Chair

Former Sen. Vinton Cassidy

Other Appointments by Senate President:

Steve Brown
Carthage
Municipal Official with TGTL expertise

John Cashwell
Seven Islands Land Company
Bangor
Representing landowner of >1,000 acres

Stephen Hanington, President
Hanington Brothers
Kingman
Logging contractor, northern ME

Thomas S. Howard
Georgia Pacific – Northeast Regl. Mgr.
Augusta
Representing a paper company

Mitch Lansky
Wytopitlock
Representing environmental organization

Rodney Wales
Fryeburg
Logger from southern ME

Ex Officio:

Tom Doak, Director
Maine Forest Service
Augusta

House Members:

Rep. Rosita Gagne, House Chair

Rep. David Trahan

Other Appointments by Speaker:

Ked Coffin
Irving Woodlands, Pinkham Office
Ashland
Representing owners of large sawmills

Bill Dauphinee
Guilford, ME 04442
Representing owners of small sawmills

Dr. David Field
UM, Dept. of Forest Management
Orono
Forest economist

Hilton Hafford
Allagash
Independent logger from H-2 region

Roger Merchant
Cooperative Extension Service
Dover-Foxcroft
Sociologist with expertise in rural issues

Ancyl Thurston
Chelsea
Landowner of <1,000 acres

Round Table Staff:

Christopher Spruce, Legislative Analyst
Office of Policy and Legal Analysis
Augusta

Michael Frett, Director
Bureau of Labor Standards
Maine Department of Labor
Augusta

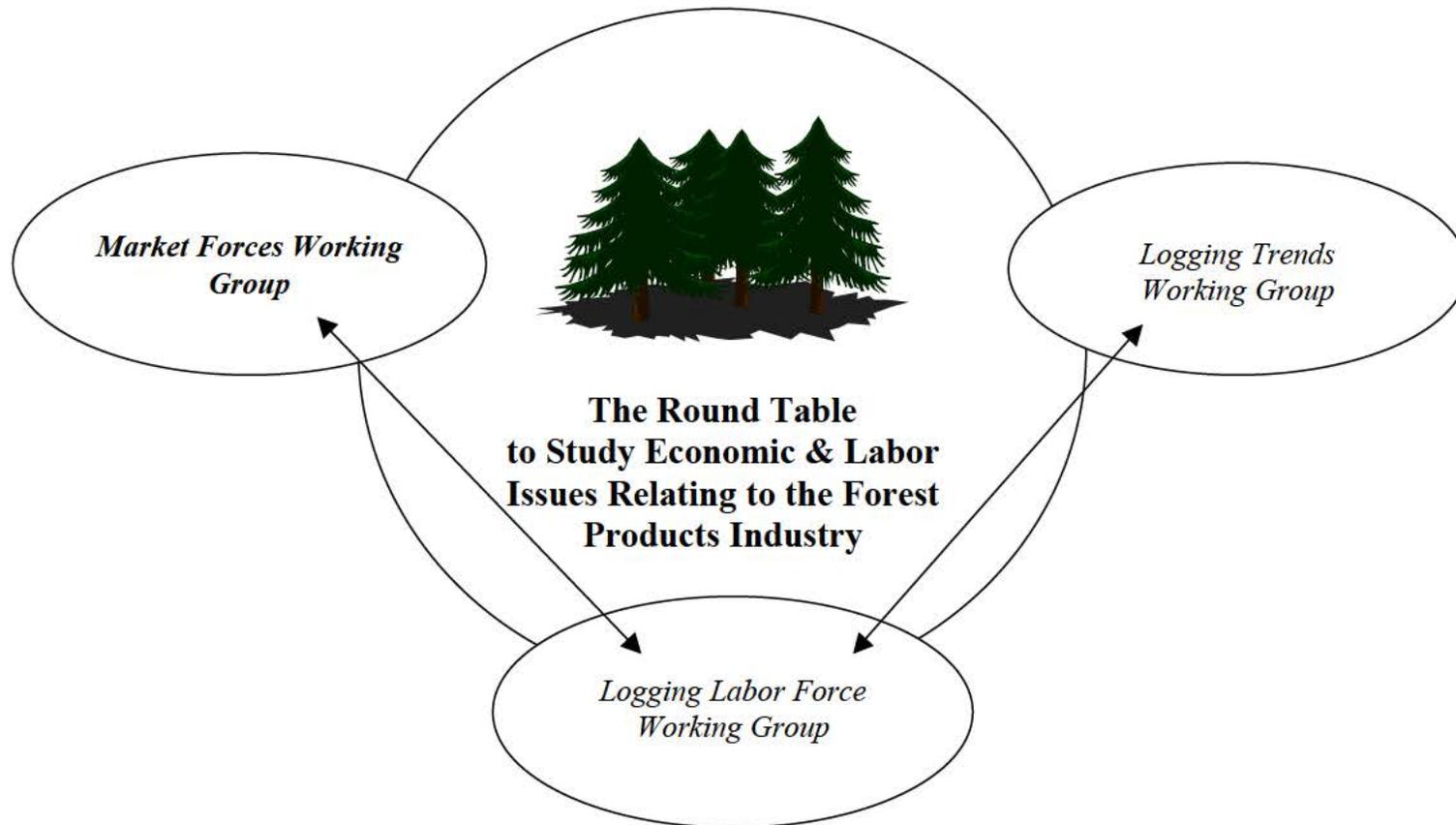
Bruce Wiersma, Dean
College of Natural Sciences, Forestry and Agriculture
Orono

Notes: Former Rep. Roland Sampson served as House Chair of the Round Table from October 2001 through July 2001. Troy Jackson of Fort Kent acted in Hilton Hafford's place following the first two meetings of the Round Table in the fall of 2000. Todd Jorgensen served as co-staff from October 2000 through July 2001.

APPENDIX C

Working Group Organization & Tasks

ORGANIZATIONAL STRUCTURE OF ROUND TABLE



Tasks for Market Forces Working Group

1. Assess import/export of roundwood and other wood products as determined by RT
2. Assess market forces and government policies in Maine, U.S. and other countries that impact FPI
3. Assess status of value-added manufacturing
4. Assess how all of the above relate to employment in Maine
5. Make preliminary findings and recommendations to RT

Tasks for Logging Labor Force Working Group

Evaluate trends in logging, including:

1. Changes in mechanization
2. Logger training
3. Worker's compensation and insurance
4. Employment relationships

5. Types of wood measurement
6. Means of payment
7. Make preliminary findings and recommendations to RT

Tasks for Logging Trends Working Group

1. Assess regional variations and seasonal capacity of logging labor force in Maine
2. Assess policies/factors in Maine and Canadian provinces that might impact wage and employment opportunities for Maine workers, including:
 - a. Current and projected resource availability
 - b. Transportation costs
 - c. Market forces and imperfections
 - d. Geographic locations
3. Make preliminary findings and recommendations to the RT

Tasks for Entire Membership of Round Table

1. Establish RT organizational structure
2. Review preliminary findings and recommendations of working groups
3. Discuss and adopt preliminary findings and recommendations
4. Hold public hearing to assist the RT assess:
 - a. Impact of RT recommendations on the competitive position of Maine's forest-based industry
 - b. Impact of Round Table recommendations on each specific segment of Maine's forest-based industry
5. Review public hearing testimony and amend preliminary findings and recommendations as needed
6. Identify consistencies and inconsistencies of RT recommendations with state and federal policy
7. Finalize findings and recommendations and issue report on same
8. Hold public hearing to receive comment on final findings and recommendations
9. Submit final report to the Legislature

APPENDIX D

Preliminary Findings and Recommendations Presented at Public Hearing

THE ROUND TABLE TO STUDY ECONOMIC AND LABOR ISSUES RELATING TO THE FOREST PRODUCTS INDUSTRY

PRELIMINARY FINDINGS AND RECOMMENDATIONS

Working Draft for Public Hearing 9/7/01

FINDING #1:

Workers' compensation coverage for woods workers' is a significant concern of the forest products industry. Of particular concern is the cancellation of workers' compensation policies by some wood independent logging contractors once those contractors have satisfied the landowner for whom they are working that they have purchased workers' compensation coverage for the contractors' employees. Among other negative effects, such actions create an uneven playing field for other logging contractors who follow the law and who maintain workers' compensation coverage for their employees. Such actions also pose a threat to the financial security of the woods worker and the worker's family and they increase the landowner's exposure to lawsuits from injured woods workers seeking compensation and payment of medical expenses. The Round Table also finds that the Workers' Compensation Board has limited ability to increase its enforcement of state workers' compensation laws among wood harvesters and logging contractors.

Recommendation #1-A: The Round Table recommends that legislation be enacted to require an independent logging contractor to notify in writing a landowner for whom the contractor is working and any employee of the contractor within 3 business days of the cancellation of that contractor's workers' compensation policy. A contractor found in non-compliance of the notification requirement would be liable for a civil forfeiture not less than \$50 nor more than \$100 for each day of non-compliance.

Recommendation #1-B: The Round Table recommends that legislation be enacted to require the Workers' Compensation Board to study its enforcement efforts regarding independent logging contractors who fail to maintain workers' compensation coverage for their employees. The board shall identify ways to increase its enforcement efforts and shall report its findings and recommendations to the 121st Legislature.

FINDING #2:

The Round Table finds that the varying definitions of, criteria for and the application of independent contractor status by State and Federal agencies represent a significant challenge to the forest products industry. The Maine Department of Labor has undertaken an effort to develop materials that will assist the industry in understanding the various independent contractor criteria and how they are applied.

The Round Table also finds that Section 530 of the Revenue Act of 1978 as amended, which provides businesses with relief from federal employment tax obligations if they meet 3 relief requirements, represents a loophole that some employers in the forest products industry may be using to avoid paying legitimate payroll taxes. Under Section 530, a business may be relieved of employment tax obligations if that business had a *reasonable basis* for not treating its workers as employees. A “reasonable basis” includes treating the workers as independent contractors because that is how a significant segment of the industry in which the business is operating treated similar workers. A second relief requirement is *substantive consistency*; that means, the business must have treated the workers and any similar workers as independent contractors, not as employees. Finally, a third relief requirement is *reporting consistency*. The business must have filed Form 1099-MISC for each worker annually. The business is not eligible for relief if it filed 1099s for some workers, but not for others.

Although Section 530 has been amended over the last two decades to make it more specific in its application, the law still represents a barrier to determining which logging contractors truly are independent contractors and which are actual employees operating as independent contractors to maintain employment. Additionally, federal Internal Revenue Service agents are reluctant to take any action against employers in situations where both the employer and the independent contractor appear to be amenable to the arrangement. Round Table members are concerned that Section 530 has had the effect of virtually eliminating any distinction between employer and employee in the wood-harvesting sector of the forest products industry.

Recommendation #2: The Round Table recommends that the Legislature petition the Maine Congressional delegation to review Section 530 with the IRS to ensure that its current application does not represent a barrier to the health and safety of woods workers. The Round Table further recommends that the Legislature petition the Congressional delegation to seek changes in the application of Section 530 or other federal law that will more clearly delineate the differences between an independent contractor and an employee in the wood harvesting sector of the forest products industry.

FINDING #3

The Round Table finds that although the federal H-2 bonded labor program, which allows logging employers to apply for and receive certification to hire bonded Canadian workers to fill timber harvesting jobs in Maine, has declined in use in recent years, the current methodology for calculating the annual woods worker survey, which is used to set the minimum wage, piece and equipment rates for the H-2 program, should be revisited. Further, the Round Table believes that because of the increased use of mechanization in the timber harvesting business establishing a heavy equipment reimbursement rate should be established under the H-2 program. The Round Table notes that a significant volume of wood is now cut by mechanical equipment other than the skidder. The U.S. Department of Labor established reimbursement rates for skidders nearly 30 years ago (1972). The Round Table believes that simple fairness dictates that the U.S. Department of Labor should establish reimbursement rates under the H-2 program for the types of mechanized equipment currently being used in timber harvesting operations.

Recommendation #3-A: The Round Table recommends that the Legislature petition the Maine Congressional Delegation to urge the U.S. Department of Labor to conduct a thorough examination the current methodology for calculating the various rates reflected in the annual woods worker survey for the H-2 program, particularly the methodology for calculating hourly wage rates. Specifically, the agencies should examine the methodology for its:

- **Accuracy**
- **Rigor**
- **Types of worker's included in the survey's universe (those woods workers designated employees as well as independent logging contractors and foreign nationals operating as independent logging contractors)**

Recommendation #3-B: The Round Table recommends that the Maine Department of Labor and the Maine Congressional Delegation petition the U.S. Department of Labor to establish heavy equipment reimbursement rates under the H-2 program for all types of heavy equipment.

FINDING #4:

The Round Table finds that although the State, through its various agencies and institutions, has numerous business marketing and assistance programs, it is not clear whether those programs are assisting small businesses operating in the logging and primary and secondary manufacturing sectors of the forest products industry. Trade organizations such as the Maine Wood Products Association provide technical assistance in marketing, manufacturing and business management to the small primary and secondary wood products businesses that are its members. However, there currently is no State-sponsored marketing program for the woods products industry even though Maine has the largest specialty woods products industry in the nation. The Round Table believes that further study to understand the needs of the various sectors of the forest products industry will determine what, if any, State-sponsored business assistance and marketing programs ought to be adapted or established to assist the industry.

Recommendation #4: The Round Table recommends that legislation be enacted to require that the Department of Economic and Community Development, in cooperation with the Maine Forest Service, the University of Maine, the Finance Authority of Maine and the State Planning Office, undertake a study to determine what, if any, State-sponsored programs need to be adapted or developed to assist the various sectors in the forest products industry in marketing their services and products locally, nationally and internationally.

FINDING #5:

The Round Table finds that identifying trends of the past, present and future of the Forest Products Industry suggests a need to share these trends and related impacts with the industry and the general public. Major trend issues identified by the Round Table include:

- ✓ Wood harvesting methods
- ✓ Land ownership
- ✓ Logging labor relationship
- ✓ Forest products industry real wages
- ✓ Public policies related to Forest Products Industry

Note: There is no recommendation that corresponds with this finding.

FINDING #6:

The Round Table finds that secondary education level wood harvesting and forestry training are important to the future of the forest products industry. Maine currently has only 6 high school forestry and wood-harvesting programs in operation (in Farmington, Houlton, Lincoln, Rumford, Norway and Dover-Foxcroft) compared to 12 such programs in 1980. These programs are challenged not only by a lack of adequate training equipment, such as machines that simulate the operation of heavy equipment, but also by State educational policies that discourage some students from participating in these programs.

Recommendation #6: The Round Table recommends that barriers that exist in Maine high schools that prevent college-bound students from enrolling in wood harvesting and forestry training programs be eliminated. The Round Table will make this recommendation in writing to the Commissioner of the Department of Education.

Additional inquiry from Round Table to Public Hearing attendees:

Question: Current State law exempts self-employed logging contractors with no employees other than immediate family members from the law that requires employers to provide workers' compensation coverage.

Should the Round Table recommend that the Workers' Compensation law be amended to require that these so-called "sole proprietors" carry workers' compensation insurance on themselves and their family members?

APPENDIX E

Summary of Testimony from 9/7/01 Public Hearing

Summary of Testimony at Public Hearing on Preliminary Findings and Recommendations of the Round Table on Economic and Labor Issues Relating to the Forest Products Industry

September 7, 2001

**Richard E. Dyke Center for Family Business
Husson College**

The public hearing was opened by Rep. Rosita Gagne, House Chair of the Round Table. Staff provided those attending with a brief overview of the Round Table's structure and duties and outlined the purpose of the public hearing.

Testimony began with members of an industry panel organized by the Advanced Engineered Wood Composites Center at the University of Maine. Panelists included Jim Robbins, vice president of Robbins Lumber Co., Searsport; Jack Lutz, Resource Economist from the James W. Sewall Co.; Russ Hewett, director of Technical Assistance at Pride Manufacturing; and John Ford, president of the Maine Forest Products Council.

Mr. Robbins, who was the first panelist to testify, noted that the biggest problem for the forest products industry is the current strength of the U.S. dollar. Canadian businesses, he said, "enjoy a 36% advantage on domestic producers" as a result. The impact on the U.S. industry has been a reduction of 48% in lumber exports since 1995. During the same period, Mr. Robbins said, imports of lumber from Europe, Latin America and New Zealand have increased by 328%. Canadian businesses also have a 36% share of the U.S. lumber market, not only because of the strength of the U.S. dollar, said Mr. Robbins, but also because Canadians have free health insurance, pay much less for electricity, and very low workers' compensation rates. Additionally, most of Canada's timberlands are government-owned and "the stumpage is sold way below market rates to help the mills compete with the U.S.," resulting in a recent assessment of a 19.3% countervailing duty on Canadian lumber imports.

Beyond the many subsidies enjoyed by Canadian businesses, said Mr. Robbins, Maine's forest products industry pay extremely high taxes in comparison to other states. The combination of high taxes, high workers compensation rates, high electricity costs, and other costs of doing business in Maine has result in Maine being rated as "one of the worst states in the nation to do business in." Mr. Robbins also described Maine's referendum process as

“ridiculous” and accused those behind the referenda drives to further regulate forest practices of “try(ing) to put us out of business. If last year’s initiative had passed,” he argued, “I believe all of our wood industry would have been out of business within a year because only about one percent of the available wood would have been able to be harvested.” He charged that the current initiative process is a disincentive to additional investments in the industry. Mr. Robbins also noted that the forestry industry is the largest industry in Maine, more than twice the size of the tourism industry. “The state spends tons of money each year promoting tourism,” he observed. “How much does it spend promoting the

Finally, Mr. Robbins offered his comments on some of the Round Table’s preliminary findings and recommendations, including an additional proposed recommendation that the state not allow Canadian loggers who work in the Maine woods to collect unemployment from the state after their Maine job is over and they have moved back to Canada.

The second panelist was Jack Lutz, who observed that there were no simple solutions to the problems confronting the forest products industry. The international competition issue, he said, had put the U.S. industry in the position of not being able to raise its prices for products. Rather, he said, the industry has to try to lower its costs to remain competitive. Mr. Lutz outlined a number of advantages enjoyed by U.S. competitors in the Canadian forest products industry. These include: lower health insurance costs; lower fees to purchase Crown stumpage in western Canadian forestlands; depressed stumpage prices on private Canadian forestlands as result of the low Crown land prices; the ability of Canadian wood buyers to outbid any U.S. buyer and thus buy the best wood available in the U.S.; and provincial subsidies to help the Canadian woods products industry to purchase equipment. Mr. Lutz said the U.S. woods industry could compete against any one of these advantages, but not such advantages cumulatively.

The difficult economics of the industry, said Mr. Lutz, is compounded by a decline in the number of loggers. New Hampshire and Vermont, he noted, are worried about finding enough loggers to keep their forest products industry going. With increased mechanization of logging operations, he said, the skills to operate a feller-buncher 20 miles into the woods are the same skills needed to run a backhoe at a construction project next to Dunkin’ Donuts. Obviously, the latter job is more attractive to most people.

The third panelist, Russ Hewett, whose company operates lumber mills in Maine and Wisconsin, said all hardwood operations are under extreme price-reduction pressures from customers. These customers, he said, “have no loyalty to suppliers, only to the price they get.” A business has to have the lowest price for its product to survive, he said. Four or five wood turning business in Maine

have gone out of business recently because they could not stay ahead of the cost increases. Mr. Hewett then told the Round Table that he had compared the company's operations in Maine and Wisconsin and found 11 areas in which the Wisconsin company had a cost advantage over the Maine operation. These were: higher capital gains taxes in Maine; higher corporate income taxes; higher property taxes; higher general sales taxes; higher health insurance taxes; higher electricity taxes; higher workers' compensation costs; higher costs for logs; higher costs for trucking; higher unemployment taxes and higher personal income taxes. In calculating all of these higher costs, said Mr. Hewett, he found that it costs 25% more to produce the same product in Maine as in Wisconsin. Maine state government can be inefficient for decades, he noted, because there is no rating system that compares its efficiencies with other states. If Maine was a business, he maintained, it would have been out of business a long time ago.

Mr. Hewett also said that eliminating the personal property taxes on business equipment would help improve Maine's competitive position. In response to a question from a Round Table member, Mr. Hewett said that the industry might be amenable to an abatement of taxes on business equipment rather than a rebate as is now the case under the BETR program. However, he noted, the business equipment tax is an item that adds to the 25% production cost disparity between his company's Maine and Wisconsin operations.

The final panelist, John Ford, argued that the success of the forest products industry "depends on sound and stable forest policies" in Maine. But, he said, the environment for business in this State has been far from stable. He recited a long list of state policies over the last four decades that have contributed to the lack of stability in the industry, the latest of which are the series of referenda on forest practices. "I don't believe you can legislate good forestry," Mr. Ford said. Maine needs a strategic plan for its forests that will help stabilize the industry, including land ownership. "Additional public land ownership," he said, "is not going to help business."

Mr. Ford also suggested that the Tree Growth Tax Law should be strengthened and that the State should continue to encourage forest certification. He also said that the public should not forget that those who own, manage and harvest the forests of Maine are farmers who are working with a renewable crop. Asked by a Round Table member the type of process that he envisioned would produce a stable forest policy for Maine, Mr. Ford said it would be difficult to design such a process to include those interest groups that want to take timberland out of production because that runs counter to the needs of the industry.

Following the panel, the Round Table opened the public hearing to other testimony. Kevin Matthews, a logger from Stratton, addressed his concerns about Maine's workers' compensation laws and the competitive disadvantage they represent for Maine loggers. "It is \$5,000 cheaper per year to hire a

Canadian employee than hiring me,” he said, “and that devalues me.” Mr. Matthews specifically pointed to provisions in current Maine law that allows Canadian contractors to self-insure for worker’s compensation insurance, but requires all logging contractors, large and small, to carry worker’s compensation coverage on their employees. He also complained that current State law allows Canadian logging operations to obtain independent contractor status in Maine. As a result, he maintained, landowners can hire such Canadian logging contractors to work on their land, eliminating a need to go through the Federal bonded labor program to hire Canadian loggers.

Bud Blumenstock, a former Cooperative Extension Service educator, told the Round Table that the continued viability of the forest products industry was a very complex subject that is national, international and global in scope. In 1964, he said, a logger could go to work in the woods with a chainsaw and a pickup truck. Now, one harvesting machine can cost \$500,000. So that raises the question, said Mr. Blumenstock, is a logger a laborer or a capitalist? In the 1960s, a logger was a laborer; today, many loggers are capitalist with huge capital investments, he said. Mr. Blumenstock also said a some type of technical transfer system is needed to provide incentives to logging companies to work hard to become more competitive with loggers in other countries.

Roberta Laverty, Technical Publications/Communications Specialist at the Advanced Engineered Wood Composites Center at the University of Maine, suggested the AEWC is positioned to tie its work to Maine’s economic development efforts. Specifically, she said, AEWC leveraged a \$1.2 million investment by the State into \$14 million raised from out-of-state sources. The center employs 50 people and has brought in research and development contracts totaling \$4 million in each of the last 2 years. The center, she said, develops processed that will make use of low-grade wood and wood byproducts in wood composite products that ultimately could be manufactured in Maine. Ms. Laverty suggested that the AEWC could assist traditional forest product manufacturers in transitioning their operations to wood composite manufacturing.

Asked by Round Table members why many of the wood composite products developed by the AEWC are being manufactured in other states and in Canada and not in Maine, Ms. Laverty observed that there is no investment community in Maine to support a business wanting to manufacture the products developed by the AEWC. “Zero venture capital” was invested in the forest products industry in Maine last year, she noted.

Round Table member David Trahan, a State Representative from Waldoboro, testified next. He said his 20 years as a logger prompted him to offer the rest of the Round Table members his observations on the issues that affect the logging industry. In response to a question in the draft findings and

recommendations that inquired about the possibility of extending a requirement for worker's compensation to sole proprietor's, Rep. Trahan said: "If you do that to me, I'm done." Workers' compensation, he said, is a program for employers, but not employees. The program is supposed to protect the employer from expensive lawsuits that could be brought by injured workers.

Rep. Trahan also observed that Canada has an advantage over the U.S. in the forest products industry because its leaders recognized a long-time ago that they needed to create advantages for businesses to stay there. They did that by developing a variety of subsidy programs for their businesses. "We didn't keep up," he said. "Our industry is slowly dying." Rep. Trahan also noted that while society demands better forestry practices, the cost of those practices fall onto loggers and slowly squeezes them out of business. He suggested that those mandating these practices should be paying for those mandates. He also suggested that the public, environmentalists and the paper industry ought to develop "a real partnership" that would address the challenges faced by loggers and keep them in business.

Sandy Brawders, executive director of the Professional Logging Contractors of Maine, testified that replacements for current logging work force, where the average age is 45, would not come from the two-year or four-year high school programs. Reflecting on the failure of a post-secondary logger training program at one of the technical schools, she said low pay for loggers, the hard, physical labor that comes with working as a logger, and if a student is not brought up in the business, he or she "doesn't get it." Ms. Brawders said the reason that logging often is a six-generation family business is that "it takes that long to learn the skill base." To get a child to grow up to go into the logging business, the learning process has to start at age 5, she said.

Ms. Brawders said the models upon which to build the future of logging are family businesses. Maine already has that, she added. The Round Table, she suggested, has the power to change the public perception of what a logger is.

The next speaker was Husson College President Bill Beardsley, who also serves as vice chair for the Finance Authority of Maine. Among his observations, were the following:

- FAME may have in its natural resources division some programs that could help loggers purchase expensive mechanical harvesting equipment, but it would require FAME to amend its requirement of number of direct jobs created to some other criteria such as the economic multiplier effect of a job.

- Health insurance is an increasingly expensive item for businesses and as a result, there is an increasing pool of people seeking individual insurance policies. If group insurance was “unbundled,” perhaps others could participate in those group plans. For example, unbundling the State Employees Health Plan from Blue Cross-Blue Shield to allow others to participate.
- There is a direct relationship between value-added forestry and workers’ compensation. The higher the workers’ compensation, the lower the value-added.
- A good economic policy for the State requires that ways be found to reduce regulatory uncertainty and delay that discourages investments in Maine.
- The Round Table should look at Act 250 in Vermont, which allows certain forest practices such as clear-cutting to occur providing the logger can demonstrate no environmental pollution and other criteria.
- Overall, Maine’s environmental regulations are too prescriptive and contain few incentives.
- The fundamental, underlying issue of the debate may be whether or not a person believes in private ownership of land.

John Olson, executive secretary of the Maine Farm Bureau testified in opposition to a possible recommendation that sole proprietors be required to carry workers’ compensation coverage. “How can a sole proprietor sue himself,” Mr. Olson asked. Workers compensation, he said, exists to protect the employer against a lawsuit.

Orman Whitcomb, director of the Community Development Block Grant program at the Department of Economic and Community Development, outlined some of the programs that his agency operates that assist the forest products industry. Most of those programs, however, only help the manufacturing sector of the industry, not the logging sector, he said.

State Rep. Steve Stanley suggested the Round Table look more closely at the issue of competition with Canada. Noting that NAFTA has spawned a number of issues, Rep. Stanley said that there used to be a department within the Governor’s Office that looked at those issues. As a result, Maine has not put the effort into dealing with Canadian competition that other states have. He also noted that other issues affecting the future viability of the industry also need to be addressed, such as scheduled increases in workers’ compensation premiums, a lack of affordable programs for sawmills or small wood manufacturers to get ISO (quality control) training and certification, the retention of important railroad lines in northern Maine, and Maine’s “piecemeal tax policy,” which needs to be reformed to make it more coordinated and consistent.

Note: This summary of public hearing testimony was prepared by OPLA staff to assist the Round Table in its deliberations. Any omissions or errors in this summary should be attributed to the staff, not the Round Table members.

APPENDIX F

Working Group and Full Round Table Meeting Summaries

Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

10/25/00
Organizational Meeting
Summary

Introductions of Attendees

1. Senator Nutting – Senate Chair, member of Agriculture, Conservation, & Forestry Committee
2. Representative Samson – House Chair, member of Labor Committee
3. Roger Merchant – University of Maine Cooperative Extension, experience in rural community development, social work
4. Michael Frett – Maine Department of Labor, Director, Bureau of Labor Standards
5. Ancyl Thurston – small landowner
6. Stephen Hanington – Hanington Brothers logging contractor
7. Rodney Wales – logger from southern Maine
8. Bruce Wiersma – Dean, College of Natural Sciences, Forestry and Agriculture, University of Maine, specialist in air pollution effects on forests
9. Bill Dauphinee – small sawmill owner
10. Representative Trahan, self-employed logger
11. Mitch Lansky – environmentalist, *Low Impact Forestry Project*
12. Tom Doak – Director, Maine Forest Service
13. John Cashwell – Seven Islands Land Co, representing large landowners
14. Ked Coffin – Irving Woodlands, representing large sawmill
15. Tom Howard – government affairs for Georgia Pacific, Northeast District
16. Hilton Hafford – independent logger

Not present:

1. Senator Cassidy
2. Steve Brown
3. Dr. David Field

Duties/Subcommittee Membership

- Steve Hanington suggested that even though the Round Table might decide to use subcommittees to complete its tasks, that should not effect the necessity to view the industry as a whole.
- Mitch Lansky related his experience of working with a group as large as the Round Table, noting that that group worked together effectively to complete its tasks.

- Senator Nutting asked for feedback on concept of three working groups that the co-chairs and staff suggested as a starting point for discussion on the Round Table's organization.
- Chris Spruce outlined suggested informational/resource role for agencies re: Round Table duties.
- It was noted that Round Table members would be free to serve on more than one committee and that all working group meetings would be open to all Round Table members and the public.
- The 3 legislators attending Wednesday's meeting will chair the three working groups.
- Roger Merchant asked if it was the charge of the Round Table to present the legislature with a current snapshot of the topic or to provide a more proactive, future outlook.
- Representative Samson hopes that it will produce the whole picture, meaning both perspectives.
- Mitch Lansky related his understanding of the purpose of the RT to be an analysis of trends. A trend signifies a need for historical perspective as well as forecasting the future.
- Senator Nutting advised Round Table members that there would be a discussion at the Legislative Council regarding the Round Table budget. An effort will be made to obtain expense reimbursement for Round Table members not otherwise compensated by their employers.
- Tom Howard indicated his support for the proposal to divide the Round Table into 3 working groups.
- Senator Nutting agreed, but asserted the importance of the diversity of the entire Round Table being represented in each working group.
- Michael Frett asked staff to make sure that reports produced by the working groups be made available to the whole group prior to meetings for each member's review.

Round Table Scheduling

- John Cashwell asked if the Round Table could develop a meeting schedule that will allow members to commit to dates that will ensure their participation in Round Table meetings.
- Senator Nutting emphasized that the Round Table is not bound to the number of meetings in the legislation. He proposed that the entire Round Table meet every second Monday of the month at 10 AM for last 4-5 meetings. This will include the public hearings. These will occur from July – November, 2001, and will break-down as follows:
 - July – public hearing/RT meeting
 - August – RT meeting
 - September – RT meeting
 - October – final public hearing
 - November – final RT meeting

Working Group Scheduling

- After discussion, the Round Table developed the following Working Group schedules:

Market Forces W.G.

November 16, 10 AM – Rm 126 State House, Augusta
November 30, 10 AM – Maine Forest Service, Old Town
December 14, 10 AM – Rm 126 State House, Augusta

Logging Labor Force W.G.

November 17, 10 AM – Rm 228, State House, Augusta
December 1, 10 AM – Maine Forest Service, Old Town
December 15, 10 AM – Rm 126 State House, Augusta

Logging Trends W.G.

November 20, 10 AM – UM, TBA, Orono
December 4, 10 AM – UM, TBA, Orono
December 18, 10 AM – UM, TBA, Orono

Working Group Membership

Market Forces

Representative Trahan (Chair)
Tom Howard
Dr. David Field
Tom Doak
Ancyl Thurston
Mitch Lansky
Roger Merchant
Bill Dauphinee

Logging Labor Force

Senator Nutting (Chair)
Ked Coffin
Hilton Hafford
Michael Frett
Stephen Hanington
Rodney Wales
John Cashwell
Tom Doak

Logging Trends

Representative Samson (Chair)
Senator Cassidy
John Cashwell
Michael Frett
Mitch Lansky
Bruce Wiersma
Steve Brown

Information for Working Groups

Round Table members requested staff to gather and circulate the following studies/materials/information for the 3 working groups:

Market Forces Working Group:

1. Pan-Atlantic Study on "Maine Logging Industry and the Bonded Labor Program," 1999. (CJS has some copies and will get more from DOL)
2. Maine Forest Service, annual processor reports on import/exports (Tom Doak to provide package of related materials)
3. Value-added businesses, secondary wood manufacturers, Maine Manufacturing Extension Partnership (MMEP)
4. Any current or recent UM research on logging, wood manufacturing, wood products, etc.
5. 1996-97 Legislative study on tax breaks for secondary wood products manufacturers in Maine re: BETR program
6. 1995 Report from Commission to Study the Future of the Paper Industry in Maine (at least executive summary; OPLA study)
7. Summary of presentations of December 1999 conference hosted by Sen. Michaud and Rep. Campbell (UM?)
8. Need information on assessment of forestry policies in Canada (CJS has some; talk to D. Field)
9. U.S.-Canada softwood-lumber treaty (does not apply to Maritime Provinces (T. Howard to send to CJS)
10. FRA meetings in Quebec on U.S.-Canadian industry relationships (Pat Hackley should have and could discuss)

Logging Labor Force Working Group:

1. Pan-Atlantic Study on "Maine Logging Industry and the Bonded Labor Program," 1999.
2. Educational programs re: independent contractor relationships (IRS/OSHA etc.; Pat Hackley may have)
3. Research on logger payments and 10-year-old material on mechanization (Mitch L. has and will send to CJS)
4. Logging equipment information; get from Tim White, TimberJack, Woodstock, NB (Hackley contact info)
5. Need to try to determine how many loggers in the business and how many leaving it now (Rep. Trahan issue; Steve H. says a difficult issue to nail down; need to develop definitions of logger or come up with system to do that; IRS has 3 criteria uses to determine if someone is independent contractor)
6. Worker's Compensation: Contact Worker's Compensation Board to see if how often contractors buying a WC policy, pay 1 month and then canceling: how long do their employees go before WCB catches up with contractor and find employees no longer covered? Also, are they seeing more of this in the woods now than a year ago? (Sen. Nutting issue)
7. Need to determine what is "contractor" and what is really "labor"?
8. Need to find out more about effect of utilization efficiencies in the way wood processed now and whether that efficiency should positively impact payment

rates for loggers (Hafford) Loggers paid on an outdated scale; sawmills more efficient than they were. (Lansky)

9. Bureau of Insurance: data on loss and safety re: worker's compensation; changes from 1980s to now

Logging Trends Working Group:

1. Pan-Atlantic Study on "Maine Logging Industry and the Bonded Labor Program," 1999
2. What has changed in yield of paper over last 20-25 years? How does this impact distribution of wealth?
3. Post-WWII trends in terms of how wood cut in relationship to landowners versus mills. Cycle has swung a number of times. 50-year trend. Perhaps UM Historian (David Smith?) or Dave Field
4. Guest workers vs. bonded workers. 3 to 4 times as many GWs vs. bonds working in Maine woods last year. There were 941 Central American workers who cut brush and planted trees in Maine last year. (DOL?)
5. General trends re: land ownership. Was static for number of years and was concentrated in the industrial sector. Large parcels more recently sold to investment holdings. Need to understand this dynamic. (Ag committee report from OPLA?)
6. Another important trend is transportation costs, both truck and rail. A problem with rail freight shipment was noted. Rail shipment has proven to be costly. One problem is that rail companies do not charge a rate that coincides with a typical single shipment of product. For instance, rail companies may charge a flat rate not related to miles traveled. The typical shipment may cover 3 –4 different rail lines

Next Full Round Table Meeting

Senator Nutting said that he anticipated that the entire Round Table will reconvene in either January or February to review the progress of the Working Groups. He expects that all of the working groups will complete their work by March 1, 2001. After that date, he noted, both legislators on the Round Table and Round Table staff will be devoting virtually all of their time to the business of the First Regular Session of the 120th Legislature and will not be available again until late June.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Market Forces Working Group Meeting

Thursday, November 16, 2000
Rm. 126 State House, Augusta

Members attending: Rep. David Trahan, Chair; Sen. John Nutting; Tom Doak; Ancyl Thurston; Mitch Lansky; Roger Merchant; Tom Howard; and Bill Dauphinee.

Guests: Jim Blanck, Maine Forest Service.

1. Update on Requested Materials

Staff provided a list of materials provided thus far and asked the group to notify them if any additional copies are needed.

2. Import-Export & Woodflow Reports – Jim Blanck, Maine Forest Service: Jim Blanck reported to the group on the Forest Service's data collection process. Among his observations were:

- Trends in woodflows have been relatively stable over time.
- Maine is a net importer of forest products, consuming 6.3 million cords in 1999
- 19% of this was imported from out of state
- Maine's sawmill industry consumed 1.4 billion board feet of sawlogs
- 17% of sawlog supply was imported from out of state
- Maine's pulp and paper industry consumed 3 million cords of roundwood in 1999
- 20% of pulpwood supply was imported from out of state
- Maine landowners harvested 6.1 million cords in 1999
- 18% of harvest was exported out of state, with spruce-fir sawlogs representing the largest export component
- A large sawmill industry on the Quebec border draws significant volumes of spruce-fir logs from northern Maine. A significant part of the chips produced from those sawlogs is sold to Maine pulp mills

Blanck also provided a handout that provides background on the data collection process and woodflow estimates.

3. Transportation: The working group considered a number of issues related to transportation. Among the observations were:

- Roger Merchant cited a recent trend in which pulp/paper raw materials are moving longer distances.

- Distances as far as 200 miles are considered acceptable.
- Various rail lines have different inspection standards. This poses problems for shipments that cover more than one line.
- Another problem is the *division of rates*. This occurs when each line collects a flat switching rate. Again, this can be problematic for shipments that cover more than one line.
- Options to mitigate this situation were discussed.
- The State could invest in a pool of rail cars and make them available at a discounted rate.
- MDOT's IRAP (Industrial Rail Access Program) provides grants to improve rail industrial access in Maine.

4. **Maine's Export of Sawlogs:** Several comments were offered during a brief discussion of the export of sawlogs from Maine to Canada.

- Quebec has a large sawmill industry across Maine's border.
- Maine can learn from some of Quebec's business practices and government policies.
- Quebec has made strides in log utilization.
- Log rules are important, but accurate pricing that equitably distributes benefits to all parties is more important.

5. **US-Canada Softwood Lumber Treaty** – Tom Howard discussed the U.S.-Canada Softwood Lumber Treaty, which is scheduled to expire next March. He provided working group members with an issue brief from the Coalition for Fair Lumber Imports, which represents small and large lumber producers and associations across the country. Among Howard's points were:

- Canadian provinces own 95% of the timber in Canada and provide this timber to lumber mills below market value.
- This places US lumber mills at a significant disadvantage.
- To compensate, under the Agreement, Canada agrees to collect fees on lumber exports to the US from four provinces if shipments exceed 14.7 billion board feet.
- This has lessened but not eliminated effects on US lumber industry.
- The group discussed the possibility of recommending a legislative sentiment that would express Maine's support for renewal of the agreement.

6. **World Pulp Economy:** The group also discussed a relatively new trend in which South American pulp is being imported to the US. This pulp is made from Eucalyptus fibers. Aracruz is the biggest pulp exporter in South America. Tom Howard will provide more information on this subject from a conference he attended.

7. **Task Force on Primary and Secondary Forest Products Manufacturing:** Staff provided the working group with an update on the disposition of legislation proposed by the 1999 Task Force, of which Sen. Nutting was a member. He provided additional details regarding the status of the proposed bills and other working group members offered a variety of comments and questions in discussing the report. Among these were:

- Sen. Nutting noted that LD 1606 died in committee during the First Regular Session. Its failure may have been due to the broad wording of the title. It may have been more appropriately titled to include only primary and secondary wood products manufacturing real estate.
- He also noted that LD 1882 did not pass but another similar bill passed in the second session.
- Roger Merchant explained that rural economic development efforts need to include more employee training for small businesses. This raises the question as to whether or not the group would like to look at policy recommendations regarding employee training.
- Mitch Lansky discussed how the forest products industry is considered a maturing, and thus inefficient, industry in the US. Tax incentives tend to further distort the market so the group should look into other strategies. For instance, what can we learn from Quebec regarding efficiencies?
- Rep. Trahan would like to get more information from small businesses regarding their willingness to make future investments and whether or not the unpredictable nature of public policy influences this decision.
- Sen. Nutting asked if it is known if the number of primary and secondary wood products firms is rising or falling. Tom Doak will look into primary firms and Eric Howard of Maine Wood Products Association was suggested to get information on secondary firms.
- Roger Merchant explained that the problems of small businesses are universal and that technical assistance is essential to prevent failure. The group may wish to look into the state's available resources for technical assistance.
- Mitch Lansky pointed out that one problem is getting market information – finding out who needs wood, who has wood. A website would be useful. The Portland Fish Market has a similar site that is very successful. Rep. Trahan said he has a contact there and will look into this.

8. **Staff requests:** Working group members made several information requests of staff and asked that a number of individuals be invited to address the group at its November 30th meeting in Old Town.

Note: The next Market Forces Working Group meeting is scheduled to begin at 10 a.m. at the Chemical Engineering Building at the University of Maine, Orono. Following a tour of the wood technology lab with Prof. Habib Dahger, the group will talk briefly with Prof. Dahger and then adjourn to the Maine Forest Service Regional Office off Route 43 in Old Town. We anticipate that we will be arriving at the MFS office by noon.

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

REVISED

Summary of Logging Labor Force Working Group Meeting

**Friday, November 17, 2000
Rm. 228 State House, Augusta**

Members attending: Sen. John Nutting, working group chair; Tom Doak, Maine Forest Service; Michael Frett, Maine Department of Labor; Steve Hanington, Hanington Brothers; Ked Coffin, Irving Woodlands; John Cashwell, Seven Islands Land Co.; Rodney Wales, R.H. Wales & Son.

Guests: Alan Hinsey, Management Intervention Services; Jim Blanck, Maine Forest Service; Pat Hackley, Forest Resources Association (formerly American Pulpwood Association); Kevin Matthews, self-employed logger.

1. Alan Hinsey, former director of the Bureau of Labor Standards, MDOL, presented the working group with his observations on the U.S. DOL-funded report on the *Maine Logging Industry and the Bonded Labor Program: An Economic Analysis*, the 1999 study produced by Pan Atlantic Consultants and The Irland Group. Mr. Hinsey cautioned that his remarks represented his personal observations and should not be attributed to the King Administration or the MDOL.

Background: Mr. Hinsey said the study grew out of issues raised about the H-2 bonded labor program during protests on the Maine-Canadian border by U.S. loggers in October 1998. While the H-2 program is a federal program, MDOL administers the program in Maine. Under the program, companies apply for permission to hire Canadian workers who hold temporary visas to work in their wood harvesting operations in Maine. In 1999, approximately 40 companies (of nearly 500 logging firms operating in the Maine woods annually) requested permission to hire Canadian bonds, according to Hinsey. Following several meetings among parties involved in the bonded labor program, U.S. DOL provided MDOL a \$100,000 grant to conduct a study of the program to attempt to answer questions raised about the impact of the program on U.S. workers and the Maine economy.

Summary of findings: Mr. Hinsey also reviewed the report's key findings with the working group, offering the following comments:

- ◆ If the U.S.-Canadian border did not exist, Quebec would be a natural source of labor for the wood harvesting operations in the northern Maine woods.
- ◆ Eliminating the H-2 program would probably speed the industry's conversion to mechanical harvesting
- ◆ The MDOL's efforts to tighten enforcement of the H-2 program following the controversy of recent years also may be speeding up the move to mechanization
- ◆ The number of bonds applied for in 1999 dropped significantly from the 1998 requests (from 696 to 446), down 36%. The requests for all-around loggers dropped even more, down 50% from the prior year. In 2000, said Hinsey, the requests for all-around loggers dropped below 100.
- ◆ The report found that the actual number of bonds used has been significantly below the number requested. The requests that included so-called "bonds in the drawer," Hinsey said, may have been excessive in the past, but there is a need for some flexibility for logging contractors because once a bonded worker is replaced by a U.S. worker that bonded worker cannot be rehired under the same bond if the U.S. worker leaves that job for another one.
- ◆ The H-2 program requires that every qualified U.S. worker that applies for a job with a firm employing bonds be hired for that job during the first 50% of the contract period. Although the firm may decide to layoff ("bump") the bonded worker when it hires the U.S. worker, that is not a requirement of the program, Hinsey explained. The employer can just add the U.S. worker to the firm's existing work force. Further, the H-2 program requires the participating employer to guarantee pay to the U.S. workers it employs for 75% of the contract period. Having fulfilled those two "rules," the employer has the right to terminate any U.S. worker from the job at that point, he noted. MDOL has asked U.S. DOL if this last action is legal, said Hinsey, and U.S. DOL has confirmed that it is.
- ◆ During the last cutting season, MDOL recorded about 50 complaints from U.S. workers alleging that they were denied employment by a firm participating in the H-2 program. None of those complaints were substantiated, however, Hinsey said.

- ◆ U.S. DOL has said that as long as employers follow the basic guidelines of the H-2 program and pay U.S. workers the established prevailing wage rates, then there is no adverse affect on U.S. workers.

Legislative remedies: Mr. Hinsey remarked that although the H-2 program is a federal program, a legislatively-authorized study panel, such as the Round Table, may suggest changes to the program and bring these to the attention the state's congressional delegation, which does have the ability to propose changes to federal law. Among changes in the H-2 program that the Round Table may want to recommend are:

- ◆ The adequacy of the average hourly rate and how it is determined
- ◆ Establishing a heavy equipment reimbursement rate (U.S. DOL currently does not support this concept)
- ◆ Whether or not a union should be allowed to agree to a contract for its members at a rate that is below the prevailing wage rate (about 10% of the firms using bonds are union shops; the lower-than-prevailing-rate contract has been implemented in some cases)

Discussion: The working group members asked several questions of Mr. Hinsey during his presentation and offered a few observations of their own. These included:

- ⇒ Travel has been an issue in the use of bonded labor. Further from home work site is, less likely U.S. worker wants to work there. Ability to commute to work site is important to Maine workers
- ⇒ In laying off U.S. worker once 75% threshold has been reached by firm employing bonded labor satisfies letter of the law, but may not reflect the spirit of the law
- ⇒ Although Maine has the preponderance of Canadian bonds working in its woods, companies operating in New Hampshire and Vermont also employ some Canadian bonds in their woods operations
- ⇒ Questions have been raised about the methodology used in setting prevailing wage rates in the Annual Survey
- ⇒ U.S. DOL does not allow a finding of adverse affect in a "pocket" of a labor region; has to apply to whole region

- ⇒ Giving certain crews better stands to work in is an issue; may need to break current model of logger payment and come up with alternative such as paying on a per acre cut basis
- ⇒ There is an issue with the capability of equipment to do the job; some equipment is inadequate for the employer's needs
- ⇒ There are more than 40 Canadian-based businesses registered to operate in Maine; need to know how many are logging-related
- ⇒ Need to see trends of past years prevailing wage reports

2. Jim Blanck, Maine Forest Service, made a brief presentation on the Service's annual surveys of wood harvest and consumption, which is required under the Forest Practices Act of 1989. MFS receives reports from mills and others in the industry who buy and sell forest products to estimate annual timber harvest and wood flow. Among his observations were:

- ◇ Maine is a net importer of forest products, consuming 6.3 million cords in 1999
- ◇ 19% of this was imported from out of state
- ◇ Maine's sawmill industry consumed 1.4 billion board feet of sawlogs
- ◇ 17% of sawlog supply was imported from out of state
- ◇ Maine's pulp and paper industry consumed 3 million cords of roundwood in 1999
- ◇ 20% of pulpwood supply was imported from out of state
- ◇ Maine landowners harvested 6.1 million cords in 1999
- ◇ 18% of harvest was exported out of state, with spruce-fir sawlogs representing the largest export component
- ◇ A large sawmill industry on the Quebec border draws significant volumes of spruce-fir logs from northern Maine. A significant part of the chips produced from those sawlogs is sold to Maine pulp mills

3. Pat Hackley, Forest Resources Association, outlined the FRA's training program for wood dealers, forest landowners, and logging business concerning their relationships with independent logging contractors. The workshop focuses on those doctrines that define employer-employee relationships, said Mr. Hackley. It helps FRA members appreciate the importance, as well as the difficulty, of recognizing control factors in their operations. Degree of control, he noted, is one of the key factors in defining the employer-employee relationship. The workshop, which runs about 2-1/2

hours, is intended to assist FRA members in recognizing their potential exposure to dangers of unwanted or unintended relationships with their independent contractors. Among other criteria, the workshop references the 20 tests that the IRS employs in determining an employer-employee relationship. In addition to a handout of the slides and notes used during the workshop, Mr. Hackley also referenced two additional publications that FRA uses to help its members better understand their responsibilities. These are: "How to Stay at Peace with Your Government," published in 1993 by the American Pulpwood Association, and "What is the Fair Labor Standards Act? and what does it mean to loggers and log truckers?," published in 1997 by APA.

Discussion: Following Mr. Hackley's presentation, the working discussed the issue of independent contract at length. Working group members agreed that the independent contractor issue is important and needs to be addressed. There is a need to better define employer-employee relationship. Among the observations were:

- ⇒ Several federal and state agencies have conflicting definitions of what independent contractor is; these include IRS, OSHA, Maine Worker's Compensation Board and U.S. DOL; need to hear from each of these agencies about the bases for their definitions
- ⇒ Various federal and state definitions of independent contractor does not prohibit Maine from developing its own uniform definition of independent contractor as long as that definition does not impede on the federal definitions; Maine can define for purposes of work force control
- ⇒ Whatever definition is developed, the Round Table needs to focus on the fact that there is a serious labor shortage looming in the forest products industry
- ⇒ The use of company-hired woods crews versus independent logging contractors is cyclical; approximately every 15 years the cycle shifts from one approach to the other
- ⇒ Labor shortage may force the industry to return to company-hired woods crews to guarantee wood flow

4. Other comments: Kevin Matthews asked the Round Table needs to focus on what can be changed in state law to help level the playing field for Maine loggers. He recommended three changes, all involving the state's worker's compensation laws, that would help loggers. They are:

- Foreign workers coming into Maine should be covered by Maine worker's compensation; otherwise it's a competitive disadvantage for Maine logging firms because of the lower cost of the Canadian worker's comp insurance
- Independent contractor status should not be available to foreign nationals operating in Maine unless they obtain worker's compensation coverage in Maine. The Canadian universal health care system lowers the worker's compensation costs for Canadian logging firms because they only have to cover the cost of lost wages, not medical costs
- Maine should not allow foreign businesses that self-insure worker's compensation insurance to operate in Maine as is currently the case

5. Additional information: Staff apprised working group members of another woodworker study that is currently underway. The study, conducted by Andy Egan at the University of Maine under the auspices of the U.S. Department of Agriculture and the State, will survey loggers throughout the northern New England states. The study is expected to be completed in 2001, prior to the end of the Round Table's work. Working group members requested staff to invite represents of various federal and state agencies to the next meeting of the Logging Labor Force Working Group on Friday, Dec. 1 in Old Town. Members posed a series of questions that they want staff to pose to these agencies about independent contractor status. MFS was asked to examine its logging licensing data to attempt to determine how many loggers are actually working in the Maine woods. Tom Doak indicated MFS would try to report back by the Dec. 15, 2000 working group meeting.

**NEXT WORKING GROUP MEETING: DECEMBER 1, 2000 AT 10 A.M.,
MAINE FOREST SERVICE REGIONAL OFFICE, RTE 43, OLD TOWN**

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Summary of Logging Trends Working Group Meeting

Monday, November 20, 2000
Rm 202 Winslow Hall, UM

Working group members attending: Rep. Roland Sampson, chair; Michael Frett, MDOL; Dean Bruce Wiersma, UM; Mitch Lansky; Steve Brown; John Cashwell;

Guests: Dr. David Field, UM; Dr. Bob Wagner, UM; Kevin Matthews; Lara Gordon, PLC.

1. Logging harvest trends: John Cashwell of Seven Islands Land Co., offered his perspective on apparent trends in the industry relative to how wood has been harvested over the last 50 years; that is, whether the preponderance of the wood during any one era was being harvested by company-operated crews or independent logging contractors. Members of the working group requested that staff follow-up on John's insights and the ensuing working group discussion, endeavoring to develop written and graphic materials that will confirm the apparent "cycle of logging relationships" that have existed in Maine over the past 100 years. To the extent that staff has success in its research, this material also may indicate the reasons for the cycles, the approximate time periods of the cycles, the percentages of company crews and independent contractors operating during each period, and the types of logging contractors (e.g., small vs. large, etc.) and company crews (e.g., cutting on company-owned land or other).

2. Woodlot ownership trend: Steve Brown discussed the influence of tort laws re: landowner liability, suggesting that landowners are becoming increasingly leery of selling stumpage to contractors because of liability issues. This, said Brown, is contributing to a trend toward independent logging contractors purchasing private wood lots. Rather than buying stumpage, as was done most often in the past, these contractors buy the wood lots, cut the merchantable wood on the property and then sell the harvested properties for development. Also contributing to this trend is the desire by independent logging contractors to provide their crews with work despite the challenges associated with acquiring stumpage contracts. Mitch Lansky observed that the approach used by many of these contractors was essentially "a leveraged buyout" where the contractor uses proceeds from the sale of wood harvested from the property to cover its purchase price. These contractors generally are paying a higher price for the property than any other potential buyer, he said. Lansky also maintained that the issue is closely associated with

banking and loan policies in the industry. John Cashwell suggested that the Professional Logging Contractors Association be asked to provide the working group its perspective on this trend.

3. Influence of harvesting patterns/continuing referenda: Bob Wagner briefly discussed the impact of the various harvesting methods and patterns on future markets. Changes in harvesting patterns, such as over-harvesting some woodlots or certain species, he said, may affect the forest products' market 20 years into the future. Wagner described this as "the character of the forest issue." Another important trend, he observed, is the "referendum issue" trend. Should Maine citizens continue to vote biennially on various forest policy initiatives that may negatively impact wood supplies, then this trend will have a profound impact on the future of the Maine woods and the forest products industry.

4. State tax policies: Several working group members discussed the need to look at forest tax policies. Steve Brown noted the revenue challenge that the lower tax value placed on Tree Growth Tax Law (TGTL) land presents to rural communities that are heavily forested. He also pointed to the "inequities" in how towns are reimbursed by the State for revenue loss to the TGTL, particularly the factoring into the reimbursement calculation of the annual school subsidy that a town receives from the State. Additionally, said Brown, there is no way to enforce a requirement under the TGTL program that landowners submit an updated forest management plan. The quality of such plans, he said, is quite varied. Mitch Lansky noted that the 119th Legislature rejected a proposal to require the Maine Forest Service to conduct random audits of forest management plans for TGTL lands. (*See attached text of LD 1866.*)

5. Federal policies: Dr. David Field of UM's Department of Forest Management and a member of the Round Table, offered his perspective on a number of federal policies that influence Maine's wood products industry. Among his observations were the following:

- 46% of all softwood timber in the U.S. is standing in national forests. However, only a small amount of that softwood is going to market because of the current administration's forest policies and the legal gridlock associated with timber cutting in the national forests.
- The consumption of every timber-based product continues to rise steadily in the U.S.
- In terms of forest tax policy, a Canadian firm can take a deduction on the cost of managing an entire plantation in a single year; in the U.S., a firm cannot write off its deduction until it cuts the trees. This results in a disincentive to planting trees in the U.S.
- Maine has no favorable treatment of capital gains of any kind.
- Two factors may have been most responsible for the disbanding of company-owned woods crews and the transition to a greater reliance on independent logging contractors in the industry. These are: the high cost of worker's compensation insurance prior to reform and the efforts to unionize company woodcutting crews in the late 1970s and early 1980s.

- Short-run supply curve: Fixed investment costs put pressure on the logging contractor to keep the contractor's crews busy.
- The percentage of Maine forestland that is held by industry is the second highest percentage in the U.S. behind Oregon. However, there is a significant portion of Maine timberland that is not controlled by Wall Street (e.g., lands owned by Irving, Pingree Heirs, etc.)
- The paper industry has experienced 12 years of bad times and its response has been to monetize its timber assets. If those same companies change their policies and want to reacquire that timberland, it will be an expensive undertaking.

(We have attached copies of the Internal Revenue Service codes referenced by Dr. Field during his discussion of capital gains taxes and depletion allowances; Title 26, §631 and §1221. We also have attached a copy of the 1971 law that outlawed log drives on Maine rivers, which also was referenced by Dr. Field.)

6. **CLP Program:** Kevin Matthews, a self-employed logger, asked that the working group look at the impact of the Certified Logging Professional program on the availability of labor. Many landowners are requiring contractors to employ loggers who are CLP-certified. The program costs about \$500 and represents an additional burden on loggers without a corresponding increase in compensation, Matthews said. Rep. Samson noted that he supported unsuccessful legislation in the 119th Legislature that would have established a state-sponsored, voluntary logger certification. (*See LD 2512 attached.*)

Note: The next meeting of the Logging Trends Working Group will be held at 10 a.m. Monday, December 4, 2000 in Room 202 Winslow Hall, University of Maine. If you have not yet received parking passes for that meeting, please contact Chris at 287-1686.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Market Forces Working Group Meeting

Thursday, November 30, 2000
University of Maine, Orono

Members attending: Rep. David Trahan, Chair; Ancyl Thurston; Mitch Lansky; Roger Merchant; Jim Blanck (for Tom Doak); Dr. Dave Field, and Bill Dauphinee.

Guests: Eric Howard, Maine Wood Products Association

- 1. UM Advanced Engineered Wood Composites Center/Advanced Structures and Composites Laboratory Tour:** Dr. Habib Dagher, director of the laboratory, started the tour with a demonstration of several new products and technologies that the lab is developing. The laboratory, which opened last June, features 9 laboratories housed in a 30,000-square-foot building. Dr. Dagher noted that some of the products developed by the Laboratory since the inception of its research in 1991 using raw materials harvested in Maine's forests, developed into Oriented Strand Board (OSB) at a Maine mill, and exported to Quebec where it is manufactured. It is then shipped back to Maine and other states for sale. When asked why the product wasn't manufactured in Maine, Dr. Dagher said representatives from the firms with whom he has discussed plant location say they will not locate a plant in Maine because they cannot be guaranteed the fiber they need to support production. One company said that it can acquire a 10-year contract to harvest timber on Crown Land in Quebec Province and cannot get any such guaranteed source of fiber in Maine. Many of the same companies also complain that Maine's business climate is not as attractive as Quebec or other locales. This highlighted previous broader discussions of the group regarding Maine's inability to capture value-added opportunities and the loss of these opportunities to other states and to Quebec. (This phenomenon was dubbed "product leakage" by some working group members.) Dr. Dagher explained the lab's marketing program. The group then toured the facility. Dr. Dagher introduced various products that are being tested in the lab.

The group then convened for a debriefing session with Dr. Dagher, Dr. Heather Almquist, UM Vice President of Research, and Jake Ward, UM Director of the Department of Industrial Cooperation. Maine's ability to attract economic development opportunities was discussed. The concern is that there is an inability or unwillingness by large corporations to establish facilities in Maine to develop these kinds of products. These firms have told Dr. Dagher in the past that this is due to financial concerns. "Show me I can make money in Maine and I will go to Maine," he said was their typical response. Specific concerns of these firms that play a role in their decision process are:

- Maine's tax structure in general

- Maine’s business climate
- The personal income tax structure in particular; and
- Maine’s high cost of energy

Rep. Trahan suggested that the working group needs to find ways to share this kind of information with the public.

Mitch Lansky raised a concern that the products that the lab promotes could increase demand for wood and result in managing forests for short rotations. Dr. Dagher responded that the focus of the lab is on value-added products and creating a demand that will result in higher prices for wood other than saw wood. Dr. Field also responded that these products would provide a market for materials thinned in woodlot management and would not necessarily result in stripping land to provide fiber to produce these new products. He also noted that Maine “has room” for forest plantations.

Jake Ward noted that the university’s research efforts were focused on coming up with products in the right marketplace that will replace \$5/hour jobs with skilled manufacturing jobs.

Eric Howard suggested a couple of areas on which the legislature could focus to increase economic development opportunities. First, it could continue its support for existing programs like the Governor’s Training Initiative. This program supports training programs for local small- and medium-sized businesses. Second, it could support the need for mid-level technical college educational programs to teach value-added production skills. Jake Ward also suggested that the Maine Quality Centers, which provide training programs for specific companies, could be expanded to meet some of the training needs of the wood products industry.

One problem has been that existing tax incentive programs have supported out-of-state businesses while failing to help local small businesses. According to a recent survey, many Maine small businesses are wary of making long-term investments because of unpredictable taxation and forestry policy. Mitch Lansky said the Legislature has to come up with balanced economic development and forest policies that do not neglect local businesses while at the same time stopping the product leaks. Rep. Trahan again emphasized the need to bring these sorts of issues to the public’s attention.

2. **Eric Howard, Maine Wood Products Association (MWPA):** Eric Howard described his organization, noting that its primary customer is the small primary and secondary wood products businesses in Maine. MWPA provides technical assistance in marketing, manufacturing, and management to its member businesses. Howard said many his members included companies that make commodities (e.g., 2X4s), wholesale specialty products firms (e.g., Pride Manufacturing, Solon Manufacturing), and specialty producers that sell directly to the public. He noted that about half of his members have web pages and that web-marketing has been important to the small businesses that are specialty products manufacturers. Some discussion ensued about the lack of a state-sponsored marketing program for the woods products industry such as the marketing program operated by the Department of Marine Resources on behalf of the Maine fishing industry. Rep.

Trahan noted that despite the leading role in the Maine economy of the wood products industry, the State is not marketing itself as a wood products industry state. Dave Field noted that Maine has the largest specialty wood products industry in the nation

The group continued with a discussion of green certification. Clarification is needed as to what aspects of the logging process is certified. Ultimately, the land is certified and all aspects of the process play a role in that. However, some working group members argued that loggers should be certified because their actions have the most direct impact on whether a harvest is conducted as planned.

3. **Update on requested reports/materials:** Staff summarized the materials in the current packet and went over specific requests from the last meeting.

One of these was on rail issues. Staff shared data from the 1997 US DOT Commodity Flow Survey that show that by weight, 44% of pulp and paper products originating in Maine was shipped by rail and 5% of lumber and wood products was shipped by rail. These numbers go up if one considers distance a shipment travels. On average, rail shipments travel three times as far as truck shipments. Looking at ton-miles, 57% of pulp and paper products originating in Maine were shipped by rail and 25% of lumber and wood products were shipped by rail. Dr. Field also pointed out that rail shipments coming into Maine, particularly for the pulp and paper industry, are much greater. The Commodity Flow Survey only provides data by state of origin.

A brief summary of MDOT's Industrial Rail Access Program was provided. Approximately \$2 M has been available the last two years for freight rail infrastructure projects in Maine. Unfortunately, the program is not funded for 2001 but may return in 2002.

Dick Rushmore from BAR will provide an overview and position on the division of rates issue at the December 14 meeting.

Staff reviewed the remaining materials. Please refer to the list provided in the packet.

Note: The next Market Forces Working Group meeting is scheduled to begin at 10 a.m. in Room 126 at the State House on December 14th.

Note: Summaries of working group meetings are prepared by OPLA staff and attempt to capture the essence of each presentation and discussion. Any errors in the summaries should be brought to the attention of staff so that timely corrections may be made.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Logging Labor Force Working Group Meeting

Monday, December 1, 2000

Maine Forest Service Regional Office, Old Town

Members attending: Sen. John Nutting, John Cashwell, Tom Doak, Michael Frett, and Ked Coffin.

Guests: Pat Hackley, FRA; Tim Collins, WCB; Bill Freeman, OSHA; Frank Kimball, Bureau of Insurance; Lara Gordon, PLC; Violet Raymond, AFL-CIO.

1. Panel Discussion on Independent Logging Contractor Status: The working group heard from a panel of federal and state agency representatives regarding determination of independent logging contractor status. Among those were:

- Bill Freeman of OSHA said his agency has been dealing with the independent logging contractor issue since 1979 and had been to court on a few cases involving the issue. In each case, it has not ultimately been successful. (*Staff will provide a memo at the next working group summarizing two of the cases cited by Mr. Freeman.*) Since those cases, Mr. Freeman said his office had backed away from trying to make determinations of employer-employee relationships. The 20-question IRS test is only used by OSHA to determine which employer in a multi-employer case is a controlling employer. Safety is OSHA's primary concern, he noted, and that is what the agency is now concentrating on for the logging industry. Freeman also noted that OSHA and other state and federal agencies have had several meetings over the independent contractor status issue and at each of those IRS has insisted that the 20-question test had to be met. This has made it difficult for OSHA, MDOL and other agencies, he said. However, Freeman said IRS seems to have altered its opinion more recently. He described a meeting held earlier that week with U.S. Congressman Tom Allen at which an IRS field agent indicated that a different criteria was being used in the field. The agent advises employers that if they want to contract out employment they simply have to fill out a form, advise employees that independent contractors have to pay their own taxes etc., and that all the similar type contracted workers are being treated the same by the employer. The same agent said that if the agent were to start a business today, the agent would hire everyone for that business as an independent contractor. Instead of challenging the independent contractor designation, said Freeman, it appeared that IRS was educating employers how to fall into the so-called "safe harbor" section of the Revenue Act of 1978. (*Staff will provide information on Section 530 at next working group meeting.*)
- Tim Collier, Assistant General Counsel, Maine Workers' Compensation Board, said the WCB starts from the perspective that all employers must have workers' compensation coverage for their employees. Section 102.13 of the Workers' Compensation Act sets forth the control test

that the board uses to determine employer-employee relationships. (*See attached 39-A MRSA §102, sub-§13.*) Eight factors are used to determine substantial control of an employee by an employer, he said. In two cases involving log hauling, said Collier, the Law Court found that the wood hauler was an employee, not an independent contractor. The transportation of the logs, the Court said, was an aspect of the company's business, not just a sideline. The state's workers' compensation law allows a business to apply for and to receive from the WCB a pre-determination as an independent contractor, he noted. (*See attached 39-A MRSA §105.*) This pre-determination, he said, is rebuttable in a court case. In the case of a wood harvester, however, the law provides for a conclusive presumption of independent contractor status that is not rebuttable, said Collier. The Workers' Compensation Act (*see 39-A MRSA §102, sub-§11, ¶B-1*) provides that anyone engaged in wood harvesting is an employee unless the person meets certain exemptions. These are: hold a contract to cut timber; operate as a sole proprietor or work with a family member; and carry out all functions required to complete a wood harvest operation (e.g., cutting, loading, hauling etc.). Collier said a landowner is liable as an employer if the contractor employs persons other than family members in the operation and the contractor does not have workers' compensation coverage for those employees. To operate as an independent logging contractor with employees, the contractor must have workers' compensation coverage in place, have received a conclusive pre-determination of independent contractor status, or hold a certificate of independent contractor status from the WCB. Collier estimated that this year the WCB had processed 600-plus applications for pre-determination as an independent contractor, most of which are granted, and less than 200 applications for certification of independent contractor status.

- Frank Kimball, Director of Workers' Compensation Division, Bureau of Insurance: Kimball said his office is more concerned with issues involving workers' compensation premiums than in determining who is and who isn't an independent contractor. The office focuses on making sure that when general contractors hire an independent contractor who has employees that the independent contractor has workers' compensation coverage in place for those employees. Kimball says the bureau works under the provisions of Title 39-A of the Maine Revised Statutes Annotated.
- Michael Frett, Director of Bureau of Labor Standards, Maine Department of Labor: Frett said MDOL doesn't deal with independent contractor status for loggers other than under the federal H-2 bonded labor program. More often, said Frett, MDOL is involved in the issue for the construction industry. In that arena, he said, the department uses a scaled down version of the IRS' 20 questions or a so-called "ABC test". But MDOL doesn't get into the issue of having to investigate to determine who is an employer and who is an employee, he said. In the event that MDOL receives a complaint from an employee, according to Frett, the department only investigates to the point of asking to see the contractor's books. Frett also noted that he is coordinating two focus groups that are undertaking an examination of the independent contractor issue in Maine that he hopes will result in a comprehensive understanding of the issue. He said an educational issues focus group would examine "the universe" of the independent contractor issue, while a technical issues focus group will look at the specifics of the issue as applied by the WCB, Immigration and Naturalization Service, the Department of Labor and other state and federal agencies. The findings of the two groups will then be incorporated into a single document that is intended to help everyone better understand the application of the independent

contractor criteria for each agency. The focus groups are expected to complete their work in six months, he said, in time to provide the report to the Round Table.

2. Discussion: Following the presentations by the panel, working group members asked a number of questions. Among those were a series of questions regarding Canadian loggers and workers' compensation coverage that were asked at an early Logging Labor Force Working Group meeting. WCB's Collier and the Bureau of Insurance's Kimball provided answers to those inquiries. Working group members asked staff to ask Collier and Kimball to answer the questions in writing. (*Note: Their written responses will be distributed to Round Table members upon receipt.*) Panelists also made the following observations:

- One of the reasons contracting work out to an independent contractor occurs so frequently is that contracting work out is tax deductible. One example of a change wrought by greater use of independent contractors: paper mills used to employ a large maintenance crew. Now, maintenance is contracted out.
- There are usually two ways that the WCB finds out about cancelled workers' compensation coverage in lieu of the insurance company reporting the policy cancelled: First, someone gets hurt on the job, or, second, WCB compares its database with the MDOL's unemployment insurance database. If an employer is paying unemployment insurance, then they need to provide workers' comp coverage to their employees. In instances where the WCB discovers that an employer is paying unemployment insurance, but does not hold a workers' comp policy, it issues a complaint against the employer. Workers' Compensation law requires insurance companies to notify the WCB of cancelled policies within 30 days of their cancelled, but that provision is not always enforced because of the limited staff available at WCB to follow-up on these.
- If an effort to further protect landowners from liability in workers' compensation cases, landowners could request the independent contractor's insurance company to put a clause in their workers' compensation policy to require that the landowner be notified if the contractor's workers' comp policy lapses or is cancelled.

3. Follow-up on MDOL annual woods worker wage survey: Staff reviewed various charts and graphs developed on the six-year trends (1995-2000) in the annual woods worker wage survey conducted by the MDOL to set the minimum wage, piece and equipment rates for the H-2 program. Pat Hackley noted that he had asked that MDOL re-examine the prevailing hardwood piece rates for 2000 because the rates seemed inordinately high. Contractors are saying that if they paid those rates to workers, they would not be able to cover the costs of getting the wood to market. The contractors want MDOL to revisit its survey methodology with respect to hardwood rates, he said. Sen. Nutting requested staff to prepare a graph depicting prevailing chainsaw reimbursement rates for 1995-2000. John Cashwell asked that the wage, piece and equipment rates shown on the graphs prepared by staff also show the rated adjusted by the Consumer Price Index. The working group also discussed methods of payment by landowners to independent contractors. John Cashwell explained how Seven Islands Land Company pays its contractors and how he presumed the contractor pays his workers or subcontractors.

4. Request to staff: Sen. Nutting requested staff to check with other large landowners regarding any requirement they may have for contractors with respect to workers' compensation coverage. He also requested staff to check with Round Table members Steve Hanington and Rodney Wales on

how landowners pay them as independent contractors and how they pay their subs and workers. Sen. Nutting also requested that the IRS representative who spoke to Rep. Tom Allen and other's earlier that week be invited to the next working group meeting so that members could ask her questions concerning her statements to Rep. Allen on the independent contractor issue.

Note: The next meeting of the Logging Labor Force Working Group is scheduled for Friday, December 15, 2000 in Room 126 of the State House beginning at 10 a.m.

Note: Summaries of working group meetings are prepared by OPLA staff and attempt to capture the essence of each presentation and discussion. Any errors in the summaries should be brought to the attention of staff so that timely corrections may be made.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Logging Trends Working Group Meeting

Monday, December 4, 2000
University of Maine, Orono

Members attending: Rep. Roland Samson, Chair; John Cashwell, Michael Frett, Mitch Lansky, Dean Bruce Wiersma, Steve Brown.

Guests: Prof. Bob Rice, UM, Lara Gordon, PLC, Violet Raymond, AFL-CIO.

1. **Professor Bob Rice:** Dr. Rice presented the group with various data relating to pulp/paper and related wood harvesting markets and production. (*See attached copy of Dr. Rice's handout.*)

Highlights of the presentation included:

- US paper production has shifted to the South.
- In 1977, paper and allied products represented 6.5% of Maine's Gross State Product (GSP); in 1997, those fell to about 4.5% of GSP in Maine. Similarly, lumber and wood products fell from nearly 4% of GSP to just over 2% of GSP during the same period.
- Maine is out of step with the US in pulpwood production. It produces about 60% hardwood pulp and 40% softwood. The US average is 35% hardwood and 65% softwood. However, this underscores Maine's market niche for higher quality paper products (mainly printing and writing paper) that require hardwood pulp.
- Maine pays close to the US average in wages for the lumber and wood manufacturing industry but pays about \$5/hour higher in the paper products industry. This may be a result of the fact that the South is generally higher tech and more mechanized than Maine. Maine, on the other hand, has a higher skilled, older workforce. This is a fact that the industry watches closely when it makes relocation decisions. Maine needs to figure out how to increase mechanization while at the same time taking advantage of its skilled workforce.
- One observation that Prof. Rice shared seemed to contradict industry information supplied to the University of Maine's Wood Composites Center is the fact that a survey of wood buyers revealed that long-term contracts for fiber are not a major factor that affects delivered prices. Other sources speculate, for instance, that the ability of firms to secure long-term contracts in Quebec due to Crown-ownership is an attractive feature of doing business in Quebec.
- Maine has the highest average procurement radius for sawlogs in the US (75-100 miles). Mill location is a major contributor to this. Much of this mileage is traveled on private roads.

- In conclusion, Maine has many positive and a few negative attributes that contribute to its pulp/paper market status. Positives include its high-value market niche and highly skilled labor. Negatives include its high income and property taxes, older technology, and a relatively unattractive perception of the occupation. Younger workforce does not view the occupation as a high tech industry that requires management skills. This perception can be changed through education. Technological innovations should be highlighted while reminding the public that the forest products industry is part of Maine's heritage.

2. **Discussion** – The working group continued this discussion through lunch, focusing on how to get youth interested in the logging profession. There are technical programs in high schools, but unfortunately, these programs still carry a certain stigma. Again, efforts to make the occupation more attractive should include higher wages, less travel, and less hours. Some discussion also was held about how stressed the forest products industry is both vertically and horizontally and what challenges this presents. The stress is felt at the logging contractor level, the interrelationship level (corporate cultures are changing fast), the need for training the work force and new technology, the rising cost of land management, and the fact that logging is the largest seasonal job in the state but is discussed as if it is a year-round job.
3. **Wood Harvesting and Other Industry Cycles** – Staff presented preoliminary timelines for trends in wood harvest methods, land ownership and logging labor relationships that span the 20th century. Because the working group has been asked to examine trends in the forest products industry, the timelines represent a way of encapsulating the major trends over the last hundred years, staff noted. Working group members offered several comments on the preliminary timelines and suggested that timelines also be developed for forest products industry real wages and for forest products industry public policy initiatives. Staff indicated the working group would receive progress reports on the timelines during future meetings.
4. **PURPA and biomass** – Staff presented a memo that describes a brief history of biomass power legislation in Maine. It begins in the late 1970s with the oil crisis as the catalyst for the federal PURPA (Public Utilities Regulatory Policies Act) and Maine's SPPA (Small Power Production Act). These policies were intended to expand the use of renewable energy at a time when it was assumed that oil prices would continue to skyrocket. These forecasts artificially set prices for renewable energy at higher rates. In some cases, utilities locked into contracts with biomass energy producers at these higher than market rates. As oil prices fell, so did demand for biomass energy.

In 1994, the State guaranteed a fund to assist utilities buyout of these contracts. In 1997, the legislature enacted electrical restructuring. Restructuring was designed to further reduce electricity costs while still protecting Maine's renewable energy industry. This protection was provided through a portfolio requirement that stipulated 30% of the energy transmitted by the utility consist of renewable energy. However, this did not require that the energy be derived from biomass waste. This further diminished the market for biomass energy.

LD 2551 was enacted last session to counter this with a tax credit incentive to help mitigate transportation costs of waste from sawmills to biomass energy facilities. The aggregate amount of credits available is limited to \$500,000.

Potential policy areas for the group to explore in this area include changing DEP's waste disposal requirements, altering the portfolio requirement under restructuring, and/or increasing or changing tax credits available to address biomass waste. (*For additional details on this topic, see staff memo dated December 4, 2000.*)

Note: The next meeting of the Logging Trends Working Group will be held at 10 a.m., Monday, December 18, 2000 in Room 202, Winslow Hall, University of Maine.

Note: Summaries of working group meetings are prepared by OPLA staff and attempt to capture the essence of each presentation and discussion. Any errors in the summaries should be brought to the attention of staff so that timely corrections may be made.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Logging Labor Force Working Group Meeting

Friday, December 15, 2000
State House, Augusta

Members attending: Sen. John Nutting, Chair; Michael Frett, Tom Doak, Steve Hanington.

Guests: Shirley Pride and Christa Bishop, IRS; Lloyd Irland, Irland Associates; Lara Gordon, PLC.

- 1. Section 530 of the Revenue Act of 1978 as amended** – Following up on a discussion on independent contractor status held at the December 1st meeting of the Logging Labor Force Working Group, Shirley Pride, a revenue agent with the Internal Revenue Service, answered inquiries from members about the Section 530 of the Revenue Act of 1978 as amended. (*Note: Ms. Pride does not work specifically with the logging industry in carrying out her duties for the IRS. She was invited to the working group meeting only to explain the general effects of Section 530.*) Ms. Pride said Section 530 was created by Congress to provide businesses relief from employment taxes if they meet certain requirements. (*Please see attached IRS publication that explains the Section 530.*) Noting that Section 530 is not part of the IRS code, Ms. Pride said that Section 530 only provides protection for the business, not the employee. Christa Bishop, public affairs representative for the IRS, pointed out that Section 530 was meant as a relief to businesses, not as a classification. Ms. Bishop theorized that the section was created by Congress in response to IRS's aggressive efforts in the 1980s to reclassify independent contractors as employees of businesses that were audited by the agency. She added that Section 530 has been a burden to the IRS, but that revenue agents have no choice but to operate under its provisions. Ms. Pride noted that an employer's Section 530 status could be jeopardized in instances where employees who were on an employer's payroll "switch" to independent contractor status. However, she acknowledged, revenue agents are reluctant to take any action in such instances where both the employer and the independent contractor are happy with the situation. Sen. Nutting said that it appeared almost as if the IRS was "looking the other way" on the independent contractor determination issue. One result of this, he suggested, is that logging employers are telling their employees that they can only continue to work for them if they become independent contractors. Steve Hanington, who said he operates his logging business both as a direct employer and an independent contractor hiring subcontractors, said his concern with Section 530 relief was the loss of the social security dollars that are not being paid to the federal government by the employer because they have a contracting relationship with their loggers, not a direct employer-employee relationship that would require that they match the employee contribution.
- 2. Follow-up on Workers' Compensation issues** – Staff circulated written responses to questions that the working group posed to representatives from the Bureau of Insurance and the Workers' Compensation Board at its Dec. 1st meeting. (insert brief summaries of letters here)

In response to the letters, Michael Frett said it was not clear to him that foreign companies operating in the Maine had to have their employees covered by a workers' compensation policy purchased in Maine. He requested staff to follow-up with the Workers' Compensation Board representative on that issue. Sen. Nutting said he was concerned that the more people are educated about how to obtain independent contractor status, the more independent contractors there are and therefore the number of people not covered by workers' compensation increases. Mr. Frett said the independent contractor status is endemic to Maine across a wide-range of industries. He said the two focus groups that he chairs will work to make businesses understand the differences among various applications of the independent contractor status, as well as the differing criteria applied by specific state and federal agencies. Steve Hanington observed that the real problem with independent contractor status in the logging industry is the multi-year relationships among some landowners, independent contractors and subcontractors that deteriorate over time into a virtual employer-employee relationship that is still called a contracting relationship. Sen. Nutting referenced discussion at the last working group meeting on premature cancellation of workers' compensation coverage by independent logging contractors. He suggested that rather than require insurance companies to notify the landowner when a workers' compensation policy has been cancelled – a suggestion made at the last meeting -- that the contractor could be required to forward the notice of cancellation that the contractor receives from the insurance company to the landowner.

3. **Maine Logging Industry and Bonded Labor Program Study** – Lloyd Irland, who co-authored the “Maine Logging Industry and The Bonded Labor Program” report released last November, presented an overview of the study and answered questions from working group members. Among Mr. Irland’s observations were the following:

- The study includes the finding of more than 500 interviews and surveys, including 290 logger surveys, 80 contractor surveys and 20 strategic interviews. The research team’s objective was to interview all 40 contractors using Canadian bonds at that time; but that only 30 were reached.
- It is difficult to know how many loggers there are working in the Maine woods because the State’s published data only includes “covered employees,” that is, workers who are employed by employers paying unemployment insurance. If a worker is not a covered worker, then he is not counted.
- A significant number of loggers are engaged in the business as a family business. That means the employer-employee relationship is not an ordinary one in many cases. This family relationship may have an affect on worker hours, safety issues, and other employment issues.
- Only the number of Canadian bonds certified by the program, not the number of bonds that actually come into the state to work, are tracked by the State. Many contractors would welcome more auditing on the program for this purpose.
- The researchers started to look at logger wages in other states, but abandoned the effort after concluding the differences in the size and quality of the logs and other important factors would not allow for “an apples to apples” comparison.
- The northern Maine woods is an imperfect market, featuring a small number of actors, significant distances to work, a small number of landowners and a small number of markets

for the trees harvested; thus, the market does not reflect normal supply and demand phenomena.

- Researchers concluded that if the H-2 bonded labor program were discontinued in Maine, it would have little impact on logger wages. The one exception would be in the Allagash-St. Francis region where the Canadian and American markets overlap. Many of the woods operations are only an hour's drive from that area.
- If the H-2 program were ended, it would mean more mechanization and fewer logging jobs.

4. **Staff requests** – Staff was requested to invite an accountant who specializes in the logging industry to speak to the working group about stumpage net return trends and methodology. The working group also wanted to receive updated information on the status of the U.S.-Canadian Softwood Lumber Treaty negotiations. After staff distributed the draft Identified Issues list, working group members requested staff to develop a questionnaire that could be used by working group members to prioritize the issues the working group has considered over the past month and to indicate their preliminary recommendations to the full Round Table.

Note: Summaries of working group meetings are prepared by OPLA staff in an attempt to capture the essential elements of each presentation and discussion. Any errors in the summaries should be brought to the attention of staff so that timely corrections may be made.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Logging Trends Working Group Meeting

Monday, December 18, 2000
University of Maine, Orono

Members attending: Former Rep. Roland Samson, Chair; Michael Frett, Mitch Lansky, Bruce Wiersma, John Cashwell, Steve Brown.

Guests: Ron Hodgdon, Foster Vocational Center; Kirby Ellis, Foxcroft Academy; Lara Gordon, PLC.

1. **Secondary School Logging/Forestry Programs** – Ron Hodgdon, wood harvesting instructor at Foster Vocational Center in Farmington, and Kirby Ellis, forestry instructor at Foxcroft Academy in Dover-Foxcroft, attended the working group's meeting to answer questions relating to high school wood harvesting and forestry programs. Mr. Hodgdon noted that wood harvesting programs in Maine high schools have declined in number since 1980 when there were 12 such programs. Currently, only six such programs are in operation (in Farmington, Houlton, Lincoln, Rumford, Norway and Dover-Foxcroft), he said, adding that the lone post-secondary wood-harvesting program at Washington County Technical College also has been discontinued. Mr. Hodgdon said the programs generally vary in their curricula only slightly, offering a range of courses in light and heavy equipment safety, maintenance and operation, forestry management, timber cruising, fire and disease control and prevention, wildlife management, log scaling, and the business of logging, among others. Mr. Ellis said the Dover-Foxcroft program differs from some of the regional voc-ed programs, such as the one described by Hodgdon, in that it emphasizes forest management over wood harvesting. Mr. Hodgdon said that some of the programs have newer heavy equipment than others, such as the cut-to-length (CTL) system, but that all programs have at least one cable skidder.

The 14 students now enrolled in the wood-harvesting program at Foster, said Hodgdon, are juniors and seniors in high school. He estimated that 80% of the students come from families engaged in or associated with the forest products industry. Mr. Ellis said Foxcroft's program differed from regional voc-ed centers in that the academy's forest management program is open to any student. Traditionally, he said, sophomores who enter the program spend a year studying forest management and then participate in a two-year wood-harvesting program during their junior and senior years. Both instructors indicated that the number of students applying for and entering there programs have remained relatively consistent, declining only slightly in recent years. But other schools have seen enrollment in the forestry-wood harvesting programs drop more sharply over the last 20 years. Mr. Ellis attributed this

decline largely to the fact that overall school populations have declined in recent years, observing that this is a trend that will likely continue.

2. Discussion -- The instructors answered a number of questions from working group members. Among these observations were the following:

- The \$5 million bond issue passed two years ago has provided some funding for voc-ed programs to purchase additional wood harvesting machinery (Private and Special Laws, 1997, chapter 57).
- Although there are many new machines used in logging operations, cable skidders are still in popular use because, among other reasons, harvesters cannot be used on many landscapes. Further, a cable skidder is the machine that a new operator can afford to buy to get started in the logging business.
- A simulator machine, on which operators could be trained, would be a boon to high school voc-ed wood harvesting programs. Experience with the simulator suggests that students trained on the simulator are better operators of the real machines on ground than those who learn entirely on the job. The simulator, which costs about \$100,000, could be installed in a truck and shared among the voc-ed centers.
- Sharing other equipment is difficult because of the distance between the voc-ed centers (no center is closer than 200 miles to another).
- If there is a decline in the number of young people interested in logging as a profession, it is in part attributable to the more profitable, less dangerous and more comfortable alternative occupations available to students. It also is attributable to parents discouraging their children from entering the profession, not wanting their children to work as hard as they did.
- The profession of forestry has come a long way over the years, but has a long way still to go. The general public's opinion of forestry and logging depends on the type of logging operations they see. If they see badly managed cutting operations, they will view the industry negatively.
- Other industries promote their interests, but Maine's forest industry tends to be reactionary, only spending money when there is a crisis. The Department of Conservation should spend more to promote the forest products industry.
- Science teachers often project "an anti-harvesting" attitude in their classrooms, which may discourage students from pursuing a logging career.

3. Recommendations to help secondary wood harvesting and forestry programs – The instructors offered the following recommendations to assist their programs:

- ✓ Include forestry and wood harvesting vocational programs in Project Learning Tree to spark young students' interest in the programs.
- ✓ Remove the academic barriers in schools that prevent college-bound students from taking vocational courses, such as forestry and wood harvesting.
- ✓ More funding to help further upgrade heavy equipment and to purchase a simulator for vocational schools to share.

- ✓ Change high school academic policies to allow students taking voc-ed courses to “test out of” or get credit for math and science within the voc-ed curriculum, or, in the alternative, to establish a particular standard for science and math that voc-ed students could meet. Mr. Ellis said the students in his program essentially are taught the same science and math required in specific math and science courses, but in the context of the forestry program’s curriculum.

4. Trends in logger compensation – The working group discussed trends in logger wages in the context of attracting young people into the logging industry. Steve Brown said logger compensation should be tied to the quality of the job done, not just to the volume of wood produced, which has been the prevailing standard for many years. Including quality of the work in the compensation formula, he argued, would result in loggers cutting more carefully and safely and leaving a more attractive jobsite after the cut is completed. Loggers have not historically been compensated for the work they have done for society, said Brown. The industry needs to get the public to appreciate the logging business and its value to society. Mitch Lansky suggested that paying loggers a respectable income would help make the profession more respected. Lara Gordon announced that the Professional Logging Contractors are launching a Master Logger Program soon. The program will be performance based with third party verification. The program is meant to raise the bar of professionalism for loggers and recognize the quality of work of the good loggers. The pilot program is being launched in Maine and Wisconsin, she said, by the American Logging Council, but will eventually be expanded to other states.

5. Draft Identified Issues List and Questionnaires – Staff distributed draft identified issues lists and questionnaires to working group members. The items are intended to provide assistance to working group members in prioritizing the issues each working group has concerned itself with over the last five weeks and offering preliminary recommendations to the full Round Table for its consideration on Friday, January 12, 2001. Staff noted that the issue lists were not exhaustive and that members should add issues that were overlooked. The questionnaires are to be returned to staff by December 30, 2000. Results will be distributed to working group members for editing after that date with a final draft to be presented to the full Round Table as the working group’s preliminary report. Staff noted that all three working groups are proceeding in a similar manner, although issues vary across the three groups.

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The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Market Forces Working Group Meeting

Friday, January 12, 2001
State House Room 427, Augusta

Members attending: Rep. David Trahan, Chair; Ancyl Thurston; Mitch Lansky; Roger Merchant; Tom Doak, and Bill Dauphinee

Guests: Dave Fink & Representatives, Guilford Transportation; Alan Bartlett, MDOT Office of Freight Transportation

1. **Rail Transportation/Guilford Discussion:** Dave Fink from Guilford Transportation provided the group with an introduction to Guilford Transportation's rail operations in Maine.

He and other Guilford representatives provided general information regarding rates. Rates are negotiated with customers. Many factors contribute to rate structures including maintenance, tax, labor, infrastructure, and capital costs. The railroad line of origin usually takes the lead in packaging the rate for a customer's shipment. Price structures are usually determined on a per car basis.

Mr. Fink shared information on Guilford's mill in Mattawamkeag. This mill currently makes about 50% of Guilford's ties. Guilford's other mill in Durham, Connecticut makes the rest. Guilford has partnered with UMO Wood Composite Lab in new technologies for ties and bridges.

The group discussed how railroads were charged a sales tax on diesel fuels. Revenues from this tax go to the General Fund. Maine is one of very few states that charge a sales tax on diesel fuel used by railroads. Representative Trahan directed staff to find more information on the sales tax.

2. **MDOT's Industrial Rail Access Program (IRAP):** Alan Bartlett from MDOT's Office of Freight Transportation provided the group with an overview of the IRAP program.

The IRAP provides financial assistance for investment in rail or rail-related infrastructure. The program's intent is to stimulate economic development, preserve

existing rail service and preserve rail corridors for future uses. The program has a goal of creating a 50/50 split in match supplied by the grantee.

Aside from a limited amount of US DOT Congestion Mitigation and Air Quality (CMAQ) funds, no other State or Federal dollars are available for freight rail activities. The previous program was funded in part by a General Fund bond issue. There are no future plans for bonds.

In addition to economic development such as job creation and direct benefits to freight railroads, other benefits are created from a program like IRAP. These include savings in highway maintenance, decreased use of fossil fuels and increased air quality. It was suggested that the group might want to look into legislative recommendations that would include determining additional funding this program.

3. **Issue Ranking/Suggested Recommendations:** The group discussed draft issue rankings and suggested recommendations. It was decided that more discussion and work in this area was necessary before recommendations could be drafted for the working group.

Note: The next Market Forces Working Group meeting is scheduled for Friday, February 9, 1 p.m. in Room 216 at the State Office Building.

The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Round Table Meeting

Friday January 12, 2001
State House, Augusta, ME

Members attending: Sen. John Nutting; Former Rep. Roland Samson, co-chairs; Rep. David Trahan, Michael Frett, Tom Doak, Mitch Lansky, Steve Hanington, Fred Beck for John Cashwell, Steve Brown, Rodney Wales, Ked Coffin, Roger Merchant, Bill Dauphinee, Ancyl Thurston, Troy Jackson for Hilton Hafford.

Others attending: Sandy Brawders and Lara Gordon, PLC.

1. Preliminary Findings and Recommendations: Rep. Trahan reported on behalf of the Market Forces Working Group that the group was not ready to make preliminary findings and recommendations. The subcommittee needs additional information and time to digest that information before developing its initial findings and recommendations, he said. After some discussion, it was agreed that all three working groups needed at least one more meeting before putting forth preliminary findings and recommendations. Working group meeting dates and times were set as follows:

Logging Trends Working Group -- Friday January 26th at 1 p.m. in Augusta (subsequently postponed and moved to Friday, February 9th at 1 p.m.)

Logging Labor Force Working Group -- Friday, February 2nd at 1 p.m. in Augusta;

Market Forces Working Group -- Friday, February 9th at 1 p.m. in Augusta.

Staff indicated that the room locations of the meetings would be provided to members once the rooms were reserved.

2. Decision making: Asked about the method of decision-making to be used by the Round Table in developing its recommendations, Sen. Nutting suggested that each subcommittee attempt to achieve a consensus on its preliminary findings and recommendations. Once the Round Table reaches the point of developing its final findings and recommendations, the full group could revisit the issue, he said. Mitch Lansky suggested the working group may want to use the consensus approach but to allow individual members to note the member's objections to a particular finding or recommendation without opposing it outright.

3. Discussion of questionnaire results: Staff then reviewed the results of the working group questionnaires. The Round Table held a wide-ranging discussion on those results, focusing mainly on one major issue of concern in each working group.

4. Requests to staff: Staff was asked to follow-up on the following items:

- ✓ Contact Prof. Dahger at UM and ask him to invite to the next Market Forces meeting the industry executives that have described to him their reservations about locating a business in Maine.
- ✓ Contact Prof. Judd at UM and invite him to next meeting of Logging Trends W.G.
- ✓ Check with several large landowners on their policies regarding workers' compensation and independent contractors and report back to the Logging Labor Force W.G.
- ✓ Provide the Logging Labor Force W.G. with a copy of the relevant statutes re: landowner notification of workers' compensation policy cancellations.
- ✓ Get copy of Federal Reserve report on rail vs. truck freight that was referenced at last Market Forces W.G. meeting
- ✓ Provide Market Forces W.G. details of the Marine Resources marketing program as possible model for FPI.
- ✓ Follow-up on nature and extent of Canadian FPI subsidies for Market Forces W.G.
- ✓ Research technical assistance already available to logging and secondary wood manufacturing industries for Market Forces W.G.

Reminder: The working groups will meet at 1 p.m. on the following dates in the following locations:

2/2/01 Logging Labor Force, Room 216 Cross State Office Building

2/9/01 Logging Trends, Room 208 Cross State Office Building

2/9/01 Market Forces, Room 216, Cross State Office Building

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The Round Table to Study Economic & Labor Issues Relating to the Forest Products Industry

Summary of Market Forces Working Group Meeting

Friday, January 12, 2001
State House Room 427, Augusta

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Guests: Dave Fink & Representatives, Guilford Transportation; Alan Bartlett, MDOT Office of Freight Transportation

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The group discussed how railroads were charged a sales tax on diesel fuels. Revenues from this tax go to the General Fund. Maine is one of very few states that charge a sales tax on diesel fuel used by railroads. Representative Trahan directed staff to find more information on the sales tax.

2. **MDOT's Industrial Rail Access Program (IRAP):** Alan Bartlett from MDOT's Office of Freight Transportation provided the group with an overview of the IRAP program.

The IRAP provides financial assistance for investment in rail or rail-related infrastructure. The program's intent is to stimulate economic development, preserve

existing rail service and preserve rail corridors for future uses. The program has a goal of creating a 50/50 split in match supplied by the grantee.

Aside from a limited amount of US DOT Congestion Mitigation and Air Quality (CMAQ) funds, no other State or Federal dollars are available for freight rail activities. The previous program was funded in part by a General Fund bond issue. There are no future plans for bonds.

In addition to economic development such as job creation and direct benefits to freight railroads, other benefits are created from a program like IRAP. These include savings in highway maintenance, decreased use of fossil fuels and increased air quality. It was suggested that the group might want to look into legislative recommendations that would include determining additional funding this program.

3. **Issue Ranking/Suggested Recommendations:** The group discussed draft issue rankings and suggested recommendations. It was decided that more discussion and work in this area was necessary before recommendations could be drafted for the working group.

Note: The next Market Forces Working Group meeting is scheduled for Friday, February 9, 1 p.m. in Room 216 at the State Office Building.



APPENDIX G

Staff Memo Dated 11/30/00





Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

Memorandum

Date: November 30, 2000

To: Members, Market Forces Working Group of the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Fr: Todd Jorgensen, Legislative Analyst
Christopher Spruce, Legislative Analyst
Office of Policy and Legal Analysis

Re: Follow-up on Transportation Issues Outlined at First Meeting of the Working Group

At the first meeting of the Market Forces Working Group, three transportation issues arose from the discussion as areas in need of additional information.

1. Percentage of Forest Products Shipped by Rail

According to the 1997 Commodity Flow Survey compiled by the US DOT Bureau of Transportation Statistics, 44% (by weight) of pulp and paper products originating in Maine was shipped by rail and 5% (by weight) of lumber and wood products originating in Maine was shipped by rail. If we look at the percentage of ton-miles shipped by rail, these numbers go up because of the longer distances that shipments travel by rail; about 60% of pulp and paper products was shipped by rail and 26% of lumber and wood products was shipped by rail.

In the same year, pulp and paper products accounted for 57% of all rail freight shipments originating in Maine and lumber and wood products accounted for 25% of all rail freight shipments originating in Maine.

Please refer to the attached spreadsheets for more data related to forest product freight shipments.

2. MDOT's Industrial Rail Access Grant Program (IRAP)

The Maine Department of Transportation Office of Freight Transportation administers a grant program to encourage economic development and to promote rail as a freight transportation mode. Historically, the program made roughly \$2 M available annually in 1999 and 2000 for rail projects in the state. These projects included rehabilitation and new construction of rail siding and track improvements. Through infrastructure improvements, the program intends to benefit both railroads and shippers. Potential projects are weighted and scored according to a variety of factors that include job creation and anticipated decreases in highway maintenance and congestion. A 50% match is required.

One problem is that the 2001 program is not funded. There is potential for funding in 2002. The Freight Office is looking to a November 2001 bond issue for approximately \$1 M that could supplement other Federal dollars that

may be available. A representative from the MDOT's Freight Office will be available if the group would like more information on IRAP or freight issues in general. Please refer to the attached documents for additional information on the IRAP program.

3. Rail Freight Division of Rates

A division of rates occurs when various rail lines each collect a flat switching rate. This can be problematic for shipments that cover more than one line. Options to mitigate this situation were discussed at the last Market Forces Working Group meeting. The State could invest in a pool of rail cars and make them available at a discounted rate.

Dick Rushmore from Bangor & Aroostook Railroad has agreed to come and talk to the group at the December 14 meeting to give the railroad's perspective on the division of rates and other topics.

Forest Products Freight Shipment Originating in Maine, 1997

<i>Pulp & paper</i>	<u>Value</u>		<u>Tons</u>		<u>Ton Miles</u>		<u>Avg miles per shipment</u>
	<i>Number (million \$)</i>	<i>Percent</i>	<i>Number (thousands)</i>	<i>Percent</i>	<i>Number (millions)</i>	<i>Percent</i>	
Truck	1,670	55%	1,962,000	54%	1,416	37%	516
Rail	1,317	43%	1,605,000	44%	2,280	60%	1,430

Lumber & wood products

Truck	1,234	86%	6,511,000	95%	965	72%	286
Rail	141	10%	358,000	5%	349	26%	970

SOURCE: 1997 Commodity Flow Survey, US DOT Bureau of Transportation Statistics

Maine Rail Shipments of Forest Products, 1994

Originated in Maine

	<i>Tonnage</i>	<i>Percent of state total for rail shipments</i>
Pulp & paper	2,161,340	53%
Lumber & wood products	1,066,100	26%

Terminated in Maine

	<i>Tonnage</i>	<i>Percent of state total for rail shipments</i>
Pulp & paper	661,180	16%
Lumber & wood products	755,600	19%

SOURCE: Rail Waybill Data, compiled by US DOT Surface Transportation Board and US DOT Federal Railroad Administration

Maine Rail Shipments of Forest Products, 1997

Originated in Maine

	<i>Percent of state total for rail shipments</i>
Pulp & paper	57%
Lumber & wood products	25%

Terminated in Maine

	<i>Percent of state total for rail shipments</i>
Pulp & paper	15%
Lumber & wood products	19%

SOURCE: MDOT from American Association of Railroads

Maine Rail Shipments of Forest Products, 1998

Originated in Maine

	<i>Tonnage</i>	<i>Percent of state total for rail shipments</i>
Pulp & paper	2,376,800	53%
Lumber & wood products	1,175,900	26%

Terminated in Maine

	<i>Tonnage</i>	<i>Percent of state total for rail shipments</i>
Pulp & paper	574,160	14%
Lumber & wood products	735,560	19%

SOURCE: MDOT from American Association of Railroads



Maine Department of Transportation Office of Freight Transportation Description of the Industrial Rail Access Program

[[Home](#)] [[IRAP Application](#)]

Industrial Rail Access Program (IRAP)

The Industrial Rail Access Program has been designed by the Maine Department of Transportation to encourage economic development and increased use of the rail transportation mode. The program is funded with a combination of General Fund bond money and Congestion Mitigation/Air Quality dollars and provides a maximum of 50% of estimated project costs. Project applications are solicited from any and all interested parties and are ranked using a competitive rating scheme which focuses on economic enhancement and public benefit.

Projects are rated in the following ten categories;

1. Job creation/retention
2. New investment
3. Intermodal efficiencies
4. Private share of project cost - the greater the share the higher the rank
5. Anticipated decrease in air emissions
6. Anticipated decrease in highway maintenance costs
7. Anticipated decrease in highway congestion
8. Transportation and logistics cost savings
9. Improvements in rail service
10. Benefit-Cost ratio.

The application package defines five project categories: accelerated maintenance, rehabilitation, new siding improvements, right-of-way acquisition, and intermodal facility construction. However, the Department has, and will, entertain any project that enhances rail transportation without necessarily involving actual track work,

such as construction of systems to transfer bulk materials between rail and other transportation modes.

The Benefit-Cost methodology used in the application process is the same methodology used by the Federal Railroad Administration for the former Local Rail Freight Assistance Program. The analysis is a nine step procedure, each of which is briefly defined below.

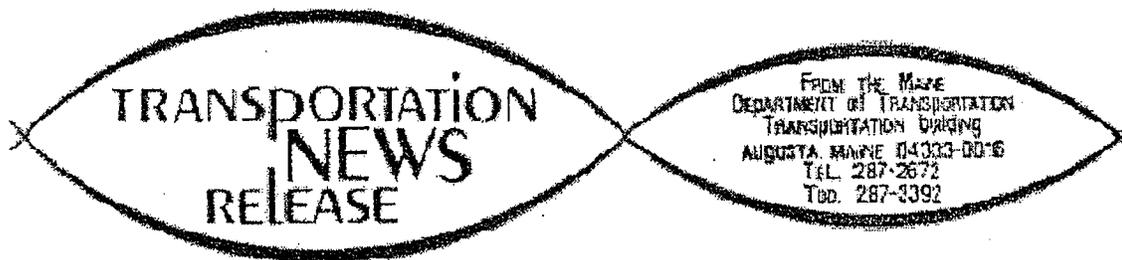
- **Establish the Project Alternative:** in this step the applicant defines the project, and should also include discussion of any alternatives that were reviewed and rejected.
- **Determine Project Costs:** the application package contains sheets for detailed project estimates, the totals of which can be used in this step.
- **Determine the Null Alternative:** the null alternative is an estimate of what will happen if the project is not undertaken and is the alternative against which the proposed project must be compared during the benefit-cost analysis.
- **Use the Standard Planning Horizon:** through two round of project solicitations, the Department has used ten years as the standard planning horizon.
- **Use a Discount Rate:** the discount rate is generally the State's cost of borrowing (general fund bonds) less the portion of the borrowing costs estimated to be caused by inflation. The discount rate is used to calculate the present value of the estimated benefits over the standard planning horizon. In the two rounds to date 6% has been used.
- **Calculate Transportation Efficiency Benefits:** these are a direct effect of project completion and generally are incurred by the operating railroad and its shippers. The application package provides examples of such benefits but each applicant is encouraged to apply any such

benefits which may be unique to the proposed project.

- **Calculate Secondary Benefits:** these benefits cover a broad spectrum of possibilities. It is up to the writer of the application to find those benefits which are an indirect consequence of project completion. One such benefit is the reduction in State spending on highway maintenance which may be attributable to the project removing truck traffic from the State's highways.
- **Calculate Salvage Value:** the project's material salvage value must be calculated for the last year of the planning horizon. The salvage value is used in the final calculations to arrive at an accurate benefit-cost ratio.
- **Calculate the Benefit-Cost Ratio:** the discount rate is used to calculate the present value of the benefits accrued over the planning horizon. The ratio is equal to the present value of the benefits divided by the project cost.

Fifteen to sixteen projects will be constructed as a result of the Department's two solicitations, having a total construction value in excess of \$4,000,000. Monitoring in future years will be an integral part of the IRAP program, to assure that results aimed for and defined in project applications are in fact occurring.

[Go back to the top of the page](#)



FOR RELEASE: Upon Receipt
WRITTEN: April 9, 1999

FOR MORE INFORMATION:
Allan Bartlett, 287-2841

MDOT TO FUND EIGHT INDUSTRIAL RAIL ACCESS PROJECTS

Rail improvement projects in Easton, Portage, Hinckley, South Portland, Winterport, Taunton, Saco and Auburn, with a total value of more than \$2-million, have been awarded funding under the Maine Department of Transportation's Industrial Rail Access Program, according to MDOT Commissioner John G. Melrose. Projects selected for funding include track rehabilitation, improvements to existing rail sidings, and construction of new sidings.

"The June 1998 transportation bond referendum approved by Maine voters included \$1.22 million for the Industrial Rail Access Program, or IRAP," Melrose explained. "The Program was designed to support and enhance rail transportation in Maine and to stimulate the economy by supporting rail infrastructure improvements that would benefit both railroads and shippers." The \$1.22- million in IRAP funds will be augmented by \$800,000 in Congestion Mitigation/Air Quality funding from MDOT for IRAP projects which also meet the CMAQ criteria. The state will fund up to half the total cost of each project, with the remainder coming from the applicant sponsoring the application.

"The winning applications were chosen from among fifteen proposals," Melrose said. "We reviewed and rated the applications with assistance from the Department of Economic and Community Development and selected eight projects for the initial round of funding.

Projects selected for funding and the amount of state funds awarded to each were:

Improvements to McCain's Siding on the Bangor and Aroostook Railroad in Easton, \$62,000;

Improvements to the Maine Woods Siding in Portage, also on the Bangor and Aroostook, \$70,000;

Siding construction on the Guilford Transportation Industries line at the SAPPI paper mill in Hinckley, \$274,000;

Siding construction at Dry Branch Kaolin Company, also on the Guilford system in South Portland, \$284,000;

Siding construction on the Bangor and Aroostook line at Lane

Construction Co. in Winterport, \$54,000;

Improvements to Plum Creek Siding on the Bangor and Aroostook line in Taunton, \$130,000;

Industrial track rehabilitation on the Guilford line in the Saco Industrial Park, \$69,000; and

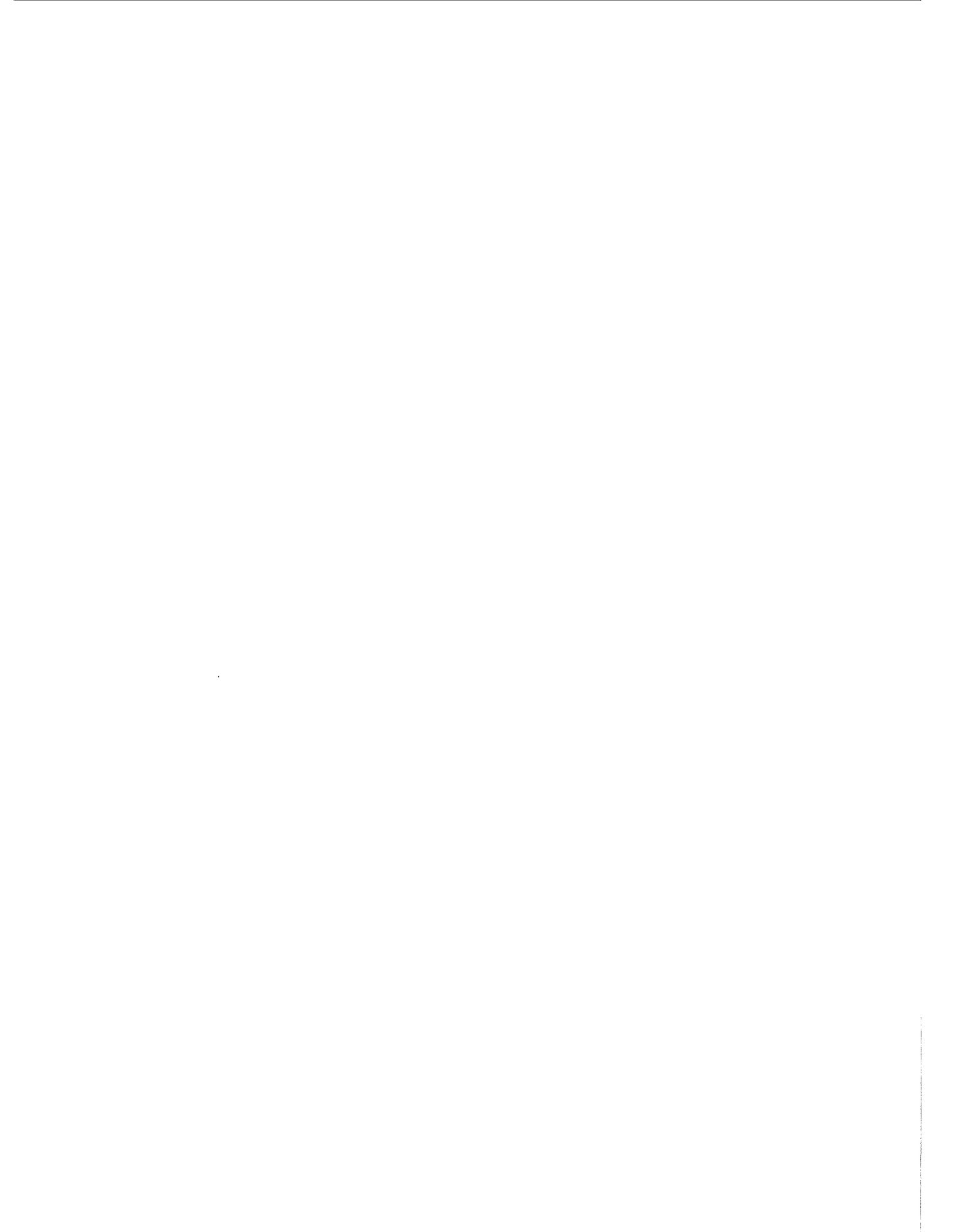
Track rehabilitation on the Lewiston-Auburn Railroad section of the St. Lawrence and Atlantic Railroad in Auburn, \$81,000.

Melrose notes that three additional projects are still being considered by MDOT. The South Portland, Winterport and Saco projects already selected qualify for CMAQ funding from MDOT, providing \$407,000 in CMAQ funds to augment \$617,000 in IRAP funds, creating a total first-round program of \$1,024,000. "And that's only half the total investment under IRAP criteria. The rest is coming from project sponsors," Melrose says.

"This first round of IRAP projects underscores our commitment to using rail transportation to stimulate the state economy while, at the same time, providing better facilities for Maine shippers and Maine railroads. It's all part of our efforts to stimulate economic and employment growth through new or expanded rail service, to preserve essential rail service where that's commercially viable, to enhance intermodal transportation, and to preserve rail corridors for future transportation use," Melrose concluded.

APPENDIX H

Staff Memo Dated 12/10/00





Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

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Telephone: (207) 287-1670
Fax: (207) 287-1275

Memorandum

Date: Dec. 10, 2000

To: Members, Logging Labor Force Working Group
All members, Round Table on the Forest Products Industry

Fr: Christopher Spruce, Legislative Analyst
Todd Jorgensen, Legislative Analyst
Office of Policy & Legal Analysis

Re: OSHA court cases on independent contractor status; Section 530 IRS *safe harbor* provision and court case

1. Attached please find copies of 2 of the OSHA court cases that Bill Freeman referred to at the Logging Labor Force W.G.'s Dec. 1 meeting. The first is the *Secretary of Labor v. Van Buren-Madawaska Corporation*, from April 1989, in which the OSHA Review Commission set aside an administrative law judge's ruling in favor of the agency and remanded the case for further proceedings. The administrative law judge had found for the Secretary by applying "an economic realities test that relied on the nature of the contract and manner in which it was negotiated instead of examining" each of the substantive elements of the test. The Review Commission found that "there are material facts still in dispute as to several of the elements" of the test. The second case is *Secretary of Labor v. Timothy Victory*, in which the Review Commission upheld the administrative law judge's decision to award Victory, the owner of a sea urchin diving operation, attorney's fees and expenses because the judge found that the Secretary of Labor's claim that Victory was not operating as an independent contractor when one of his diver's drowned while diving, was not "substantially justified."

2. Copies of Section 530 of the Revenue Act of 1978 as amended (provided by Shirley Pride of the IRS). The last page of Ms. Pride's fax gives a summary of the Section 530 "relief requirements."

3. Copies of a U.S. District Court case, *Hope Network v. U.S.*, a federal court case that deals with the application of Section 530.

Occupational Safety and Health Review Commission and Administrative Law Judge Decisions

Van Buren-Madawaska Corporation

- **Docket Number:** 87-214
 - **Standard Number:** 1910.142
 - **Case Citation:** 13 BNA OSHC 2157
 - **Company:** Van Buren-Madawaska Corporation
 - **Information Date:** 04/21/1989
-

SECRETARY OF LABOR

Complainant,

v.

Van Buren-Madawaska Corporation ,

Respondent.

OSHRC Docket No. 87-214

DECISION

BEFORE: BUCKLEY, Chairman; and AREY, Commissioner.

BY THE COMMISSION:

The Secretary of Labor cited Van Buren-Madawaska Corporation ("Van Buren") for numerous violations of the Occupational Safety and Health Act of 1970(1) (the

"OSH Act") following an inspection of twelve worksites in the woods of Northern Maine. Van Buren agrees that the cited conditions violate the Act, but contends that it was not the employer of the workers exposed to the hazards and was therefore not the proper entity to be cited. The Secretary and Van Buren subsequently agreed to a stipulated set of facts and submitted cross-motions for summary judgment on the issue of whether Van Buren was properly cited for the violations. The administrative law judge granted the Secretary's motion, denied Van Buren's, affirmed the citations, and assessed the proposed penalties. We conclude that neither party is entitled to summary judgment, set aside the judge's order, and remand the case for further proceedings.

NOTE: FOR A COMPLETE TRANSCRIPT OF THIS DECISION, PLEASE VISIT:

http://www.osha-slc.gov/REVIEW_data/D19890421.html

Occupational Safety and Health Review Commission and Administrative Law Judge Decisions

Timothy Victory

- **Docket Number:** 93-3359
 - **Case Citation:** 18 BNA OSHC 1023, 1997 CCH OSHD paragraph 31,431
 - **Company:** Timothy Victory
 - **Information Date:** 09/30/1997
-

SECRETARY OF LABOR	:	
	:	
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	:	Complainant,
	:	
	:	
v.	:	OSHRC Docket No. 93-3359
	:	
Timothy Victory,	:	
	:	
	:	
	:	Respondent.
	:	
	:	

DECISION

Before: WEISBERG, Chairman, and GUTTMAN, Commissioner.

BY THE COMMISSION:

At issue is whether Commission Judge Richard DeBenedetto erred in awarding Timothy Victory attorneys' fees and expenses under the Equal Access to Justice Act

(EAJA), 5 U.S.C. § 504, and the Commission's EAJA Rules, 29 C.F.R. Part 2204. The judge made the award because he found that the Secretary's position on the dispositive issue in the underlying case was not substantially justified. That issue was whether Mr. Victory, a boat owner who harvested sea urchins with the help of divers, was an employer, and thus subject to the requirements of the Occupational Safety and Health Act ("the Act"), 29 U.S.C. §§ 651-678. We uphold the judge's award.

NOTE: FOR A COMPLETE TRANSCRIPT OF THIS DECISION, PLEASE VISIT:

http://www.osha-slc.gov/REVIEW_data/D19970930A.html

October 30, 1996

INTRODUCTION

Historical background

Section 530 of the Revenue Act of 1978, as amended, is not part of the Internal Revenue Code (IRC). However, some publishers include its text after IRC section 3401(a). It is also reprinted in Exhibit 1-1 of this material. It was originally intended as an "interim" relief measure, but was extended indefinitely by the Tax Equity and Fiscal Responsibility Act of 1982.

Section 530 was amended by section 1706 of the Tax Reform Act of 1986 (1986-3, C.B. (Vol.1) 698). Section 530(d) denies relief for certain technically skilled workers who provide services under a three party situation. It will be discussed in detail later in this lesson.

Section 530(e) was added by section 1122 of the Small Business Job Protection Act of 1996 (H.R. 3448). Section 530(e), which is generally effective after December 31, 1996, contains a number of provisions that affect conditions under which a business will be eligible for section 530 relief. It is discussed throughout this lesson. In addition, the text of section 1122 is reproduced in Exhibit 1-2.

October 30, 1996

Exhibit 1-1
Page 1 of 2**Text of Section 530, Including Amendments****I. SECTION 530. CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF THE EMPLOYMENT TAXES.****(a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY. --****(1) In General. -- If --**

- (A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period, and**
- (B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,**

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1). -- For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

- (A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;**
- (B) a past IRS audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or**
- (C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.**

October 30, 1996

Exhibit 1-1
Page 2 of 2

- (3) **CONSISTENCY REQUIRED IN THE CASE OF PRIOR TAX TREATMENT.** - Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.
- (4) **REFUND OR CREDIT OF OVERPAYMENT.** - If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of the Act by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act.
- (b) **PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.** - No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment tax by the Department of the Treasury (including the IRS) with respect to the employment status of any individual for purposes of the employment taxes.
- (c) **DEFINITIONS.** - For purposes of this section -
- (1) **EMPLOYMENT TAX.** - the term "employment tax" means any tax imposed by subtitle C of the IRC of 1954.
- (2) **EMPLOYMENT STATUS.** - The term "employment status" means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee).
- (d) **EXCEPTION.** - This section shall not apply in the case of an individual who, pursuant to an arrangement between the taxpayer and another person, provides services for such other person as an engineer, designer, drafter, computer programmer, systems analyst, or other similarly skilled worker engaged in a similar line of work.

October 30, 1996

Exhibit 1-2
Page 1 of 3Small Business Job Protection Act

SEC. 1122. SPECIAL RULES RELATING TO DETERMINATION WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES.

(a) In General.—section 530 of the Revenue Act of 1978 is amended by adding at the end the following new subsection:

"(e) Special Rules for Application of section.—

"(1) Notice of availability of section.—An officer or employee of the Internal Revenue Service shall, before or at the commencement of any audit inquiry relating to the employment status of one or more individuals who perform services for the taxpayer, provide the taxpayer with a written notice of the provisions of this section.

"(2) Rules relating to statutory standards.—For purposes of subsection (a)(2)—

"(A) a taxpayer may not rely on an audit commenced after December 31, 1996, for purposes of subparagraph (B) thereof unless such audit included an examination for employment tax purposes of whether the individual involved (or any individual holding a position substantially similar to the position held by the individual involved) should be treated as an employee of the taxpayer,

"(B) in no event shall the significant segment requirement of subparagraph (C) thereof be construed to require a reasonable showing of the practice of more than 25 percent of the industry (determined by not taking into account the taxpayer), and

"(C) in applying the long-standing recognized practice requirement of subparagraph (C) thereof—

"(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years, and

"(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

"(3) Availability of safe harbors.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

October 30, 1996

Exhibit 1-2
Page 2 of 3

"(4) Burden of proof.—

"(A) In general.—If—

"(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section, and

"(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate,

then the burden of proof with respect to such treatment shall be on the Secretary.

"(B) Exception for other reasonable basis.—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A), (B), or (C) of subsection (a)(2).

"(5) Preservation of prior period safe harbor.—If—

"(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

"(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period,

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

"(6) Substantially similar position.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by another individual shall include consideration of the relationship between the taxpayer and such individuals."

October 30, 1996

Exhibit 1-2

Page 3 of 3

(b) Effective Dates.—

(1) **In general.—**The amendment made by this section shall apply to periods after December 31, 1996.

(2) **Notice by Internal Revenue Service.—**section 530(e)(1) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to audits which commence after December 31, 1996.

(3) Burden of proof.—

(A) **In general.—**section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

(B) **No inference.—**Nothing in the amendments made by this section shall be construed to infer the proper treatment of the burden of proof with respect to disputes involving periods before January 1, 1997.

United States District Court, W.D. Michigan.

HOPE NETWORK, Plaintiff

v.

UNITED STATES of America, Defendant.

No. 1:98-CV-771.

Feb. 16, 2000.

**OPINION AND ORDER GRANTING UNITED
STATES' MOTION TO DISMISS**

MILES, Senior J.

[Code Secs. 3401 and 7402]

*1 Income tax withholding: FICA taxes: Refund suit: Employee status: Not-for-profit organization: Training program: Clients: IRS position: Private letter rulings: Precedential effect of: Jurisdiction: Failure to state justiciable claim.--The portion of a not-for-profit organization's complaint seeking a refund of FICA taxes remitted with respect to participants in its vocational and rehabilitation training programs that alleged that the IRS violated section 530(b) of the Revenue Act of 1978 (P.L. 95-600) was dismissed for failure to state a justiciable claim. The organization argued that the change in position taken by the IRS in private letter rulings regarding the employment classification of persons similar to its clients violated section 530(b). However, the court noted that private letter rulings have no precedential effect. Moreover, section 530(b) applies only to regulations and revenue rulings, and not to private letter rulings. Back references: ¶ 33,538.503 and 41,605.0222.

In this action, plaintiff Hope Network ("Hope"), a not-for-profit organization, seeks refunds of Federal Insurance Contribution Act ("FICA") payments totaling \$287,331.65. These payments were made by Hope on behalf of persons who perform work for it--persons whom Hope deems clients or "consumers," and whom the United States deems "employees" for purposes of the FICA.

The matter is currently before the court on the United States' Motion to Dismiss (docket no. 5). [FN1] Hope has opposed the motion. For the following reasons, the court grants the motion and

hereby dismisses Hope's claim based on the alleged violation of Section 530(b) of the Revenue Act of 1978. However, Hope's claims for refund based on the alleged non-employee status of its workers, which are not the subject of the United States' motion, are not affected by this ruling.

FN1. The United States has filed two separate motions to dismiss. This decision addresses only the motion filed on March 5, 1999. The second motion to dismiss, filed on January 25, 2000, is not ripe for decision as of this writing.

FACTS

The following facts, treated as true for purposes of the present motion, are alleged in Hope's complaint. [FN2]

FN2. In an amendment to its complaint filed on December 7, 1999, Hope amended the caption and four specified numbered paragraphs of its complaint. These amendments do not impact on the present motion.

Hope is a Michigan non-profit corporation having its principal place of business in Grand Rapids, Michigan. Hope is organized and operated to provide vocational services, rehabilitation training, counseling services, transportation services, housing, and residential services to persons with developmental disabilities, behavioral disabilities, and/or physical disabilities. The services which Hope provides to its clients are designed to increase the level of independence of each client, integrate him or her into the community, provide the client with a sense of self-worth, and to provide him or her with the social and vocational skills necessary to achieve a place in the workforce which comes as closely as possible to permanent placement in competitive employment. Hope's programs take place both at Hope's principal place of business and at the places of business of various private employers in the Grand Rapids community.

*2 In each of the vocational and rehabilitation training programs which Hope offers to its clients, the client performs some amount of productive work, for which he or she receives payment. Under a certificate issued by the United States Department of Labor, the remuneration Hope pays to its clients

(Cite as: 2000 WL 637321, *2 (W.D.Mich.))

is authorized to fall below the rates established by federal and state minimum wage laws. Hope alleges that the productive work performed by its clients, most of whom receive benefits from the Social Security Administration during the period they participate in Hope's programs, is performed primarily for rehabilitative and therapeutic purposes. Specifically, Hope contends that the payments its clients receive are intended

as an incentive to remain in [Hope's] vocational and rehabilitative programs, to provide an incentive for the [client] to increase his or her level of productivity and to thereby achieve his or her rehabilitative goals, and to increase the [client's] sense of self-worth. Such remuneration is not paid by [Hope] to provide its [clients] a means to earn a living.

Complaint, ¶ 11(i). Therefore, Hope alleges, it does not establish an employer-employee relationship between itself and its clients.

Hope alleges that during the years 1992, 1993, 1994, and 1995, it withheld FICA tax from, and paid the employer excise tax on, remuneration it paid to its clients. Because these clients were not in fact employees, Hope contends, it erred in withholding FICA tax and in paying these amounts over to the Internal Revenue Service ("IRS"). Hope now seeks a refund of these amounts for each of the years in question.

Hope alleges that for each of the years in question, it filed timely claims for refund. The IRS denied in full claims for two of the years in question, and denied the bulk of the claims for the remaining two years. As the basis for its denial of the refunds, the IRS indicated that it had determined that the persons participating in Hope's programs were employees. Complaint, Exhibits C, F, J. At one point, the IRS indicated its position that once a client completes a "finite training period," if they remain in the program "for whatever reason, they are treated as employees." Complaint, Exhibit G.

On October 30, 1998, Hope filed its complaint in this action, demanding refunds totaling \$287,331.65. Hope nominally divides its complaint into four separate "counts," each representing one of the tax years in question. With respect to each of these "counts," Hope's complaint includes the following allegations, among others:

In 1965, the [IRS] issued a Revenue Ruling

(Revenue Ruling 65-165) in which it determined that individuals receiving services substantially similar to those offered by [Hope] ... are not employees for FICA tax purposes [...] (Complaint, ¶ 21; see also Complaint, ¶ s 42, 61, 71) [FN3]

FN3. In Revenue Ruling 65-165, the IRS determined, among other things, that blind individuals who were being trained in a charitable organization's sheltered workshop under a program of rehabilitation were not employees of the organization for Federal employment tax purposes. However, the Service also determined that blind individuals who, after completion of training, continued working in the sheltered workshop either temporarily while awaiting placement in industry or permanently because they were unable to compete in industry, were employees of the organization for Federal employment tax purposes.

Between 1965 and 1994, the [IRS] issued numerous private letter rulings to charitable organizations which provide vocational and rehabilitation training services similar to [Hope's]. Such private letter rulings provided that consumers of vocational and rehabilitation services are not employees for FICA tax purposes under the circumstances described [herein]. (Complaint, ¶ s 22, 43, 61, 71)

*3 Upon information and belief, the [IRS'] disallowance of [Hope's] claim for refund was based, in whole or in substantial part, on the decision of the [IRS] to cease following the interpretation of Revenue Ruling 65-165 which [it] had followed consistently between 1965 and 1994. (Complaint, ¶ 27)

More recently, Hope alleges, the [IRS] has issued private letter rulings which reflect the Service's "new position" with respect to the employment classification of persons similar to Hope's clients; now, according to Hope, the IRS requires "as a condition to a finding of non-employee status, a training period of finite duration ." Complaint, ¶ s 48, 61, 71 (emphasis supplied). Hope alleges that this "change in position" with respect to the tax classification of its clients violates Section 530(b) of the Revenue Act of 1978, Pub.L. No. 95-600, 92 Stat. 2763 (1978). Complaint, ¶ s 51, 61, 71.

ANALYSIS

In its motion, the United States argues that certain specified paragraphs of Hope's complaint are subject

(Cite as: 2000 WL 637321, *3 (W.D.Mich.))

to dismissal pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be granted. These portions of the complaint, according to the United States, fail to state a claim because even assuming that the IRS has changed the position taken in earlier private letter rulings, Section 530(b) on its face only applies to regulations and revenue rulings, and not to private letter rulings. [FN4]

FN4. At one point in its reply brief, the United States argued that Hope lacks standing to assert a claim that the private letter rulings revoked or modified Revenue Ruling 65-165. United States' Reply to Plaintiff's Response to Motion to Dismiss, at 5. Subsequently, upon discovering that Hope had received an adverse determination letter, the United States withdrew its standing argument. See generally United States' Motion to Amend its Motion to Dismiss.

Section 530(b) provides as follows:

SEC. 530. CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF THE EMPLOYMENT TAXES.

* * *

(b) Prohibition Against Regulations and Rulings on Employment Status.--No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before January 1, 1980 (or, if earlier, the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes) by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

At first blush, it seems that the parties disagree on the effect of Hope's allegations that the IRS violated Section 530(b). The United States argues that Hope has asserted two separate reasons why it is entitled to refunds for each of the periods in question: (1) because Hope's workers are not employees, and (2) because even if Hope's workers are employees, the employment taxes at issue were improperly assessed because the IRS violated Section 530(b) by issuing private letter rulings that purportedly changed the IRS' position. According to the United States, it has

not addressed its motion to Hope's first theory of recovery; more specifically, the United States has stated that it "does not dispute that the claims based on alleged non-employee status state a claim upon which relief could be granted." United States' Reply to Plaintiff's Response to Motion to Dismiss, at 2. Instead, the United States argues, it has directed its motion to Hope's second theory of recovery, which is akin to an estoppel argument based on Section 530(b).

*4 In response to the United States' motion, Hope argues that the motion, which directs itself to certain specified paragraphs of the complaint, is in reality a motion to strike under Fed.R.Civ.P. 12(f). Hope also argues that its allegations regarding violation of Section 530(b) form an integral part of its claims for each of the years in question, and therefore they cannot reasonably be stricken from the complaint. However, what Hope fails to recognize is that the court is not bound by labels which a party attaches to its complaint. Construed liberally, Hope's complaint asserts a cause of action for refund of the amounts in question, but the cause of action is based on two separate theories of recovery. That Hope has split its complaint into four "counts," each of which mingles its two theories of recovery, does not impact on the United States' ability to file a Rule 12(b)(6) motion attacking the legal sufficiency of one of the theories of recovery.

That the United States has chosen to enumerate in its motion those specific paragraphs of the complaint which are implicated in Hope's Section 530(b) theory of recovery is therefore not fatal to its request for relief. However, this may be beside the point, for even Hope has been forced to admit that its sole claim or "theory of recovery" (as Hope calls it) is that its clients--whom it calls "consumers"--are not employees under the authority of Revenue Ruling 65-165. Plaintiff's Response to United States' Reply to Plaintiff's Response to Motion to Dismiss, at 1. Hope can continue to claim this--but in doing so it cannot rely on Section 530(b).

As noted above, substantively, the United States' position is that the prohibition of Section 530(b) does not apply to private letter rulings or technical advice memoranda, and that because Hope's claim that the IRS violated the statute is based solely on various private letter rulings issued by the IRS to third parties, Hope has no claim under the statute.

Hope has not even responded to the substance of this argument.

The language of Section 530(b) is clear--it applies only to a "regulation" or "revenue ruling." No reason exists to read the statute otherwise, for it is clear that the IRS is not bound to follow, with respect to Hope, the private letter rulings on which Hope relies. "Neither the courts nor the IRS may rely on letter rulings as precedent." *Bankers Life and Casualty Co. v. United States* [98-1 USTC ¶ 50,346], 142 F.3d 973, 978 (7th Cir.1998) (citing J.R.C. § 6110(j)(3) (1988); *Treas. Reg. § 301.6110-7(b)*); see *Fox Valley & Vicinity Construction Workers Pension Fund*, 897 F.2d 275, 280 n. 2 (7th Cir.1990) ("A private ruling ... may not be used or cited as precedent"); *Comerica Bank, N.A. v. United States* [96-2 USTC ¶ 60,242], 93 F.3d 225, 229 (6th Cir.1996) ("While private letter rulings are not binding authority, they may be cited as evidence of administrative interpretation"); *Phi*

Delta Theta Fraternity v. Commissioner of Internal Revenue [89-2 USTC ¶ 9600], 887 F.2d 1302, 1308 (6th Cir.1989) ("Although private letter rulings are helpful in determining the contours of tax statutes and may be considered when evaluating the consistency of application of statutes, such letter rulings have no precedential effect"). Therefore, to the extent that Hope claims that the IRS "has violated Section 530(b) of the Revenue Act" thus entitling Hope "to the relief demanded in its Complaint," Memorandum of Law in Opposition, at 4, such a claim is deficient as a matter of law.

CONCLUSION

*5 For the foregoing reasons, the court grants the United States' motion to dismiss Hope's claim alleging violation of Section 530(b) of the Revenue Act of 1978.

END OF DOCUMENT

APPENDIX I

Staff Correspondence with T. Collier and F. Kimball (12/00)

The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

December 6, 2000

Tim Collier, Asst. General Counsel
Workers' Compensation Board
27 State House Station
Augusta, ME 04333-0027

Dear Mr. Collier:

The members of the Logging Labor Force Working Group of the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry wish to extend their thanks to you for attending the group's December 1, 2000 meeting in Old Town.

As a follow-up to that meeting, the working group has asked to receive a written response to the following questions that were discussed by you and others at that meeting. Those questions are:

1. Are foreign workers coming into Maine required to be covered by Maine worker's compensation?
2. Is independent contractor status available to foreign nationals operating in Maine even if they do not obtain workers' compensation coverage in Maine (as opposed to the province)?
3. Does Maine allow foreign businesses that self-insure worker's compensation insurance to operate in Maine? If so, under what criteria do they operate?

The working group appreciates the fact that you have already answered these inquiries orally, but would like to have your responses in writing for the public record.

Sincerely,



Christopher J. Spruce
Legislative Analyst, Office of Policy & Legal Analysis

cc: Sen. John Nutting, co-chair
Rep. Roland Sampson, co-chair
The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry



STATE OF MAINE
WORKERS' COMPENSATION BOARD
DEERING BUILDING AMHI COMPLEX
27 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0027

ANGUS S. KING, JR.
GOVERNOR

PAUL R. DIONNE
EXECUTIVE DIRECTOR

December 14, 2000

Christopher J. Spruce, Legislative Analyst
Office of Policy and Legal Analysis
13 State House Station
Augusta, Maine 04333-0013

Dear Chris:

Thank you for the opportunity to attend the December 1, 2000 meeting of the Forest Product Industry Round Table's Logging Labor Force Working Group. It was certainly an interesting discussion. The responses to the Group's questions, as set forth in your letter to me of December 6, 2000, are as follows:

1. Are foreign workers coming into Maine required to be covered by Maine workers' compensation?

Yes, as a general matter employees working in Maine must be covered by workers' compensation insurance (which may include approved self-insurance). Section 401(6) of the Act specifically provides that a "nonresident employer whose employees work in the State shall obtain coverage under this Act from an insurer or self-insurer authorized in the State unless exempt under Section 113 or unless the employer would be exempt if located in the State." There are some exceptions to the coverage requirement but only one specifically concerns the residency of the employee: under Section 113 of the Act (39-A M.R.S.A. § 113) nonresident employees who are in Maine working only temporarily (defined as no more than 5 consecutive days, nor ten days in any 30-day period, nor 30 days in any 360-day period) need not have Maine coverage if they are covered for their work in Maine by workers' compensation insurance in their home state. A copy of Section 113 of the Act is enclosed for your convenience.

Self-employed workers may choose not to be covered by workers' compensation insurance under Section 102(11)(B) and this applies equally to nonresident workers who are self-employed. Any person engaged in wood harvesting, however, is subject to some specific provisions under the Act. Any such person is deemed to be an employee and must obtain workers' compensation insurance, under Section 102(11)(B-1) of the Act, unless they meet three criteria: (1) they contract directly with the landowner, (2) they perform all the wood harvesting alone or with a parent, child, spouse, niece or nephew, or with a partner, or with other persons who are all



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covered by workers' compensation insurance, and (3) they meet the criteria to obtain either a certificate of independent status or a predetermination of independent status. A copy of Section 102(11)(B-1) of the Act is also enclosed for your convenience.

2. Is independent contractor status available to foreign nationals operating in Maine even if they do not obtain workers' compensation insurance in Maine (as opposed to the province)?

Independent contractor status is available to foreign nationals. The determination of employment status -- employer/employee vs. independent contractor -- does not depend on residency or citizenship. An independent contractor could be a resident of Maine, or of a neighboring U.S. state such as New Hampshire, or of Canada. However, any independent contractor must comply with the coverage requirements of the Maine Workers' Compensation Act, and any foreign national engaged in wood harvesting is covered by Section 102(11)(B-1) of the Act, as discussed in the answer to Question 1, above.

3. Does Maine allow foreign businesses that self-insure workers' compensation insurance to operate in Maine? If so, under what criteria do they operate?

Yes, foreign businesses may operate in Maine as long as they comply with the coverage requirements of the Maine Workers' Compensation Act. The coverage requirements may be satisfied through self-insurance under Section 403 of the Act, with the approval of Maine's Superintendent of Insurance. A copy of Section 403 of the Act is enclosed for your convenience.

I hope that this is helpful to the working group. Thank you again for the opportunity to participate, and please do not hesitate to contact me should you have any questions or need any further information.

Sincerely,



Timothy W. Collier
Assistant General Counsel



STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

ANGUS S. KING, JR.
GOVERNOR

ALESSANDRO A. IUPPA
SUPERINTENDENT

December 13, 2000

Christopher J. Spruce, Legislative Analyst
Office of Policy & Legal Analysis
13 SHS
Augusta, ME 04333

Re: The Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Dear Mr. Spruce:

This is in response to your letter of December 6, 2000. Here are the answers to your questions:

1. Foreign workers coming into Maine are required to be covered by Maine workers' compensation to the same extent that Maine workers and workers from other states must be covered.
2. Independent contractor status is available to foreign nationals operating in Maine to the same extent that Maine workers and workers from other states are allow to operate as independent contractors.
3. Maine allows foreign businesses that operate in Maine to self-insure if they are authorized by this bureau. They are required to meet the same criteria for this authority that domestic companies must meet.

Should you require further assistance feel free to call me at 624-8451.

Sincerely,

Frank Kimball
Supervisor, Workers' Compensation Division

cc: Alessandro Iuppa



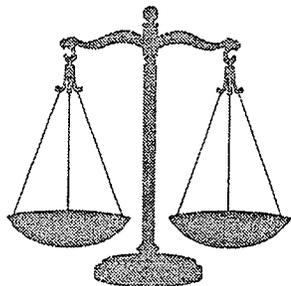
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APPENDIX J

Copy of IRS Publication 1976 (9-96)



INDEPENDENT CONTRACTOR OR EMPLOYEE?



SECTION 530 PROVIDES
BUSINESSES WITH
RELIEF FROM FEDERAL
EMPLOYMENT TAX
OBLIGATIONS IF CERTAIN
REQUIREMENTS ARE MET.

SECTION 530 RELIEF REQUIREMENTS

Your business has been selected for an employment tax examination to determine whether you correctly treated certain workers as independent contractors. However, you will not owe employment taxes for these workers, if you meet the **relief requirements** described below. If you do not meet these **relief requirements**, the IRS will need to determine whether the workers are independent contractors or employees and whether you owe employment taxes for those workers.

Section 530 Relief Requirements:

To receive relief, you must meet all three of the following requirements:

I. Reasonable Basis

First, you had a reasonable basis for not treating the workers as employees. To establish that you had a reasonable basis for not treating the workers as employees, you can show that:

- You reasonably relied on a court case about Federal taxes or a ruling issued to you by the IRS; or
- Your business was audited by the IRS at a time when you treated similar workers as independent contractors and the IRS did not reclassify those workers as employees; or

- You treated the workers as independent contractors because you knew that was how a significant segment of your industry treated similar workers; or
- You relied on some other reasonable basis. For example, you relied on the advice of a business lawyer or accountant who knew the facts about your business.

If you did not have a reasonable basis for treating the workers as independent contractors, you do not meet the **relief requirements**.

II. Substantive Consistency

In addition, you (and any predecessor business) must have treated the workers, and any similar workers, as independent contractors. If you treated similar workers as employees, this relief provision is not available.

III. Reporting Consistency

Finally, you must have filed Form 1099-MISC for each worker, unless the worker earned less than \$600. Relief is not available for any year you did not file the required Forms 1099-MISC. If you filed the required Forms 1099-MISC for some workers, but not for others, relief is not available for the workers for whom you did not file Forms 1099-MISC.

The IRS examiner will answer any questions you may have about your eligibility for this relief.





APPENDIX K

Summary of Results of Forestry Referenda, 1996-2000

Votes on Initiated Forestry Referenda in Maine, 1996 to 2000

	<i>(Ban)</i>	<i>(Compact)</i>	<i>(No to Both)</i>
1996 Clearcutting Ban	2-A	2-B	2-C
Raw vote totals:	175,078	282,620	139,176
%age of votes cast:	29.3	47.4	23.3
1997 Compact Vote	Yes	No	
Raw vote totals:	164,573	182,368	
%age of votes casts:	47.4	52.6	
2000 Clearcut Permits	Yes	No	
Raw vote totals:	175,851	452,174	
%age of votes casts:	28	72	

Source: Secretary of State except 2000 results, which are unofficial from Bangor Daily News, 11/9/00

APPENDIX L

Staff Memo Dated 12/04/00



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

Memorandum

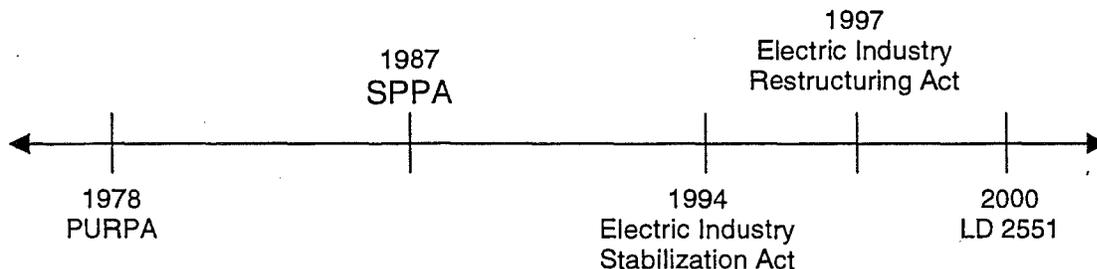
Date: December 4, 2000

To: Members, Logging Trends Working Group of the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry

Fr: Todd Jorgensen, Legislative Analyst ^A
Christopher Spruce, Legislative Analyst
Office of Policy and Legal Analysis

Re: Summary of Biomass Power Legislation - PURPA and Related State Policies

At the first meeting of the Logging Trends Working Group, the group requested additional information on the Public Utilities Regulatory Policy Act of 1978 (PURPA) and related Maine utility policies. The following is a summary of these policies and how they relate to the biomass energy industry. First, a time line tracking the evolution of State and Federal policy may be appropriate.



PURPA & SPPA

PURPA evolved from concerns at the Federal level regarding the insecurity of the US oil supply in the late 1970's. Domestic demand had been growing while domestic production was declining. PURPA obligated states to consider certain standards in respect to how their state regulatory authorities (PUCs) did business. States paid differing levels of attention to these obligations. Maine was one state that took the lead in developing standards under PURPA.

In addition to PURPA, Maine enacted the Small Power Production Act (SPPA) in 1987. Both PURPA and SPPA were established to encourage the development of indigenous renewable energy sources. These policies were successful in creating an independent power industry at a time when traditional sources of power were expected to be more expensive to create and purchase. However, by the mid-1980's these indigenous renewable sources became more expensive than traditional sources.

One new standard in particular under PURPA and SPPA related to the biomass energy market. It required utilities to purchase energy from certain qualifying biomass energy facilities if the rate at which the facility offered the energy was at a comparable rate to what other fuel sources were offered, or at what was called an avoided cost rate. The avoided cost rate raised many questions regarding how the PUC set the rate. Further, one major problem was that early rates were based on forecasts that set oil prices at extremely high levels. When these high levels did not materialize, the avoided cost rates were well above the market.

While the avoided cost rates and market rates did not accord, many relatively long-term contracts between the biomass energy facilities and the utilities were already in place.

Electric Industry Stabilization Act

In 1994, the Maine Legislature enacted the Electric Industry Stabilization Act. It provided a State guarantee for a low interest fund to support utility buyouts and buy downs of their contracts with biomass energy facilities. The intention of this Act was help reduce electricity costs but still keep Maine's renewable generators in production. Some of the larger utilities took advantage of the program and the funding has long been obligated.

Electric Industry Restructuring Act

In 1997, the legislature enacted the Electric Industry Restructuring Act. It was designed to further reduce electricity costs while still protecting some of the established renewable energy industry in Maine. Most significantly, the restructuring repealed SPPA and thus negated the state's obligation under PURPA. The divestiture requirement of restructuring essentially took the utilities in Maine out of the energy business. Instead, the utilities handle energy transmission.

The Act created a supply portfolio requirement for retail electricity sales, requiring 30% of the provider's portfolio to include renewable energy. Restructuring did not stipulate that this 30% must be biomass energy, only that it be renewable. Presently, most of the PURPA inspired contracts have been bought out or renegotiated, reflecting prices much closer to current market price. This meant a diminishing market for the biomass energy. At the same time, the costs of the remaining contract obligations continue to accrue to the ratepayer.

LD 2551

These public policies to encourage and maintain biomass power generation have resulted in higher electricity costs for ratepayers. At the same time, due to the higher costs, demand for biomass power generation has decreased. This has caused concern from sawmill operators and other producers of biomass waste materials about the existence of future available markets for waste materials.

In response to this dilemma, the 119th Legislature enacted LD 2551 in the Second Regular Session. An Act to Implement the Recommendations of the Committee on Sawmill Biomass creates a one-year income tax credit for wood processing facilities. The credit is based on the number of tons of wood processing residue transported from the facility and the price received for the residue. The aggregate amount of the credits is limited to \$500,000.

APPENDIX M

**Draft Legislation and Correspondence
Re: Findings and Recommendations**

DRAFT LEGISLATION

Title:

An Act to Require Logging Contractors to Notify Landowners and Employees of the Cancellation of Workers' Compensation Insurance Coverage

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

Sec. 1. 39-A MRSA §401 sub-§3-A is enacted to read:

3-A. Cancellation notice requirements. Any person engaged in harvesting forest products not exempt under subsection 1 shall within 3 business days provide written notification to the landowner to whom the person is under contract of the cancellation of the contractor's workers' compensation insurance policy. The contractor shall provide identical notice to any employee who was covered by the cancelled workers' compensation insurance policy. A person engaged in harvesting forest products not exempt under subsection 1 who is found in non-compliance with these notification requirements is liable for a civil forfeiture of not less than \$50 or more than \$100 for each day of non-compliance.

Sec. 2. The Workers' Compensation Board shall study its enforcement policies and activities concerning any person engaged in harvesting forest products and not exempt under the Act who fails to maintain mandated workers' compensation insurance coverage for their employees. In studying their enforcement efforts, the board shall examine its current enforcement practices in the area of policy cancellations, identify ways to enhance its enforcement efforts in this area, and determine staffing requirements for additional enforcement efforts. In addition to studying its enforcement practices, the board shall redirect staff's attention to the forest products harvesting industry and work with the industry to develop incentive-based systems that will continue efforts to reduce the number and frequency of accidents in the industry. The board shall report its findings and recommendations to the Joint Standing Committee on Labor and the Joint Standing Committee on Agriculture, Conservation and Forestry by January 15, 2003.

SUMMARY

This bill requires any person engaged in harvesting wood products and not exempt from carrying workers' compensation coverage for that person's employees to notify landowners and employees within 3 business days of canceling a workers' compensation insurance policy. The

bill also requires the Workers' Compensation Board to study its enforcement policies and practices concerning persons engaged in harvesting wood products who fail to maintain required workers' compensation coverage for their employees. The bill also requires the board to refocus its attention on safety in the forest products harvesting industry and to work with industry to develop incentive-based systems to reduce the number of accidents in the industry. The board is required to submit its findings and recommendations to the Joint Standing Committee on Labor and the Joint Standing Committee on Agriculture, Conservation and Forestry by January 15, 2003.

DRAFT JOINT RESOLUTION

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO CLARIFY AND TO MAKE MORE CONSISTENT THE DEFINITION OF INDEPENDENT CONTRACTOR IN ALL FEDERAL LAWS AND REGULATIONS

WE, your Memorialists, the Members of the One Hundred and Twentieth Legislature of the State of Maine now assembled in Second Regular Session, most respectfully present and petition the Congress of the United States, as follows:

WHEREAS, the varying and conflicting definitions of, criteria for and the application of independent contractor status by Federal agencies represent a significant challenge to the forest products and other industries; and

WHEREAS, these varying and conflicting definitions and applications of independent contractor status make it difficult for members of the forest products and other industries to efficiently operate their businesses in compliance with these laws which are intended to define and characterize the employer-employee relationship; and

WHEREAS, some of these varying and conflicting definitions and applications of independent contractor status, particularly Section 530 of the Revenue Act of 1978 as amended, encourage and enable some industry members to use these laws to gain a competitive advantage over those industry members struggling to obey both the letter and spirit of these laws; and

WHEREAS, these varying and conflicting definitions and applications of independent contractor status have made it difficult, if not impossible, for Federal agencies to successfully prosecute individuals and businesses who willfully violate the letter and spirit of these laws; now, therefore, be it

RESOLVED, That We, your Memorialists, respectfully urge and request Members of Maine's Congressional Delegation to submit, and Congress to enact, legislation to clarify and make more consistent the definitions, applications and criteria for independent contractors in Federal law; and be it further

RESOLVED, That the Maine Congressional Delegation review Section 530 of the Revenue Act of 1978 as amended, with the Internal Revenue Service to ensure that its current application does not represent a barrier to the health and safety of those who work in the forest products industry and that, if warranted, the delegation submit, and Congress enact, legislation that will clarify the application of Section 530 of the Revenue Act of 1978 as amended; and be it further

RESOLVED, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Secretary of the United States Department of Labor, to the Commissioner of the United States Internal Revenue Service, and to each member of the Maine Congressional Delegation.

DRAFT JOINT RESOLUTION

JOINT RESOLUTION MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO REQUIRE THE UNITED STATES DEPARTMENT OF LABOR TO REVIEW ITS METHODOLOGY FOR THE ANNUAL WOODS WAGE SURVEY AND TO ESTABLISH HEAVY EQUIPMENT OPERATIONAL RATES UNDER THE FEDERAL H-2 BONDED LABOR PROGRAM

WE, your Memorialists, the Members of the One Hundred and Twentieth Legislature of the State of Maine now assembled in Second Regular Session, most respectfully present and petition the Congress of the United States, as follows:

WHEREAS, the H-2 Bonded Labor Program is still used to employ loggers by timber harvesting companies that operate in the forests of Maine; and

WHEREAS, a 1999 United States Department of Labor-sponsored study of the Bonded Labor Program and the Maine logging industry recommended a number of changes in the H-2 program; and

WHEREAS, wage, piece and equipment rates are established annually for the H-2 program essentially represent minimum wage, piece and equipment rates not only for Canadian bonds but also U.S. loggers who work in Maine timber harvesting operations; and

WHEREAS, the timber harvesting segment of the Maine forest products industry is characterized by greater use of mechanized equipment to harvest the trees in the Maine woods; and

WHEREAS, a significant volume of the wood harvested in Maine's forests is now cut by mechanical equipment other than the cable skidder. These machines harvest include feller-bunchers, delimiters, grapple skidders, cut-to-length processor, forwarders and loaders; and

WHEREAS, it has been 30 years since the United States Department of Labor established rates of operational reimbursement under the H-2 program for the use of skidders;

WHEREAS, simple fairness dictates that the United State Department of Labor should establish rates of operational reimbursement under the H-2 program for the types of mechanized equipment currently being used in timber harvesting operations; and

WHEREAS, failure to establish these rates may adversely affect the continued viability of the timber harvesting industry in Maine; and

WHEREAS, the 1999 bonded labor study found that “changes to the annual Woods Wage Survey and the establishment of heavy equipment reimbursement rates will make the H-2 program more efficient in ensuring its goals”; now, therefore, be it

RESOLVED, That We, your Memorialists, respectfully urge and request Members of Maine’s Congressional Delegation to submit, and Congress to enact, legislation to require the United States Department of Labor to establish reimbursement rates for heavy equipment operation under the H-2 program; and be it further

RESOLVED, That the Maine Congressional Delegation urge the United States Department of Labor to conduct a thorough examination of the current methodology for calculating the various rates reflected in the annual Woods Wage Survey for the H-2 program, particularly the methodology for calculating hourly wage rates. Specifically, the Maine Congressional Delegation should urge the department to examine the methodology for its Woods Wage Survey for accuracy, rigor and types of workers included in the survey’s universe; and be it further

RESOLVED, That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Secretary of the United States Department of Labor, and to each member of the Maine Congressional Delegation.



Maine State Legislature
OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
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DRAFT

Sen. John Nutting, co-chair
Rep. Rosita Gagne, co-chair
Round Table on the Forest Products Industry
c/o Office of Policy & Legal Analysis
13 State House Station
Augusta, ME 04333-0013

December 31, 2001

Steven Levesque, Commissioner
Department of Economic and Community Development
59 State House Station
Augusta, ME 04333-0059

Dear Commissioner Levesque:

We are writing to you on behalf of the Round Table to Study Economic and Labor Issues Relating to the Forest Products Industry to urge you to include in your current statewide assessment of technical assistance to all small businesses a particular focus on the forest products industry. Specifically, we are requesting that your assessment address the following:

- Assess the business assistance needs within each of the 3 sectors of the forest products industry (logging and primary and secondary manufacturing), documenting what needs are being met, and what needs are unfulfilled.
- Document the extent, location, source and types of business assistance services that are targeted to each of the 3 sectors of the forest products industry.
- Assess, through business assistance service providers, the current levels of participation- utilization of business assistance services by each sector in the forest products industry.
- Identify the gaps in business assistance services, such as the BETR program, that are needed within each sector of the industry.
- Identify options for improving the utilization and coordination of existing business assistance services, as well as how to fill service gaps within each sector of the forest products industry.
- Work with the Finance Authority of Maine to assess the awareness within the 3 sectors of the forest products industry of the availability of financial resources through FAME's Natural Resources Division programs and to develop strategies for enhancing awareness of such programs throughout the forest products industry.

Page Two
Commissioner Levesque
12/31/01

In addition to providing this focus on the forest products industry, the Round Table also is recommending that upon the completion of its statewide assessment, the Department of Economic and Community Development report in writing its findings and recommendations concerning technical assistance and business assistance for the forest products industry to the Joint Standing Committee on Agriculture, Conservation and Forestry and to the Joint Standing Committee on Business and Economic Development.

On behalf of the Round Table, we thank you for considering our request. Please direct any questions you may have about this letter to the Round Table's analyst, Christopher Spruce, at the Office of Policy and Legal Analysis.

Sincerely,

Sen. John Nutting, Senate Chair

Rep. Rosita Gagne, House Chair

Cc: Tom Doak, Maine Forest Service
Peggy Schaffer, Policy Specialist, DECD
Evan Richert, State Planning Office
Charles Spies, Finance Authority of Maine
Dean Bruce Wiersma, College of Natural Sciences, Forestry and Agriculture, UM
Dr. Habib Dagher, Advance Engineered Wood Composite Center, UM
Richard Coyle, Maine International Trade Center
Mary McAleney, U.S. Small Business Administration
Eric Howard, Maine Wood Products Association

APPENDIX N

MDOL Brochure on Independent Contractor Definitions

Independent Contractors in Maine

The following agencies can answer questions about independent contractor issues.

Maine Department of Labor

P.O. Box 259
Augusta, ME 04332-0259
Tel: (207) 624-6400, Fax: (207) 624-6449
TTY: (800) 794-1110
e-mail: webmaster_bls@state.me.us
web site: <http://www.state.me.us/labor/>

Maine Workers' Compensation Board

Coverage Division
27 State House Station
Augusta, ME 04333-0027
Tel: (207) 287-7066, Fax: (207) 287-7198
TTY: (207) 287-6119
e-mail: Brad.Howard@state.me.us
web site: <http://www.state.me.us/wcb.htm>

Maine Revenue Service

Income/Estate Tax Division
24 State House Station
Augusta, ME 04333
Tel: (207) 626-8475, Fax: (207) 624-9694
TTY: (207) 287-4477
e-mail: withholding_tax@state.me.us
web site: <http://www.state.me.us/revenue>

U.S. Department of Labor

Wage and Hour Division
P.O. Box 554
Portland, ME 04112-0554
Tel: (207) 780-3344 or (207) 945-0330
Fax: (207) 780-3787
e-mail: mcoll@phi.dol-esa.gov
web site: <http://www.dol.gov>

U.S. Internal Revenue Service

SS-8 Unit
SS-8 Coordinator/Site Manager
40 Lakemont Road
Newport, VT 05855
Tel: (802) 334-0252
Fax: (802) 334-5607
e-mail: Gail.Lontine@irs.gov

Disclaimer: This brochure provides brief information and is not a substitute for laws or formal interpretations, which can be obtained from the agencies listed.

Independent Contractor or Employee: Why Does it Matter?

Being classified as an employee or independent contractor affects the taxes you pay and how you pay them. It affects eligibility for unemployment and workers' compensation, Medicare and other benefits and protections. Employers must classify workers either as independent contractors or employees.

What is an Independent Contractor?

In determining independent contractor status, all government agencies consider the amount of direction and control the business has on the worker. In general, if the business supplies training or equipment or tells the workers when and how to do the job, the workers are probably employees. Independent contractors usually use their own tools and work on their own schedule.

That said, there is no single rule or test used by all government agencies. Because they are responsible for a number of different aspects of employment law, agencies use different guidelines to decide whether a worker is an independent contractor or an employee. For example, Internal Revenue Service (IRS) and Maine Revenue Service (MRS) refer to "common law rules." Unemployment Compensation uses the "ABC" test and Workers' Compensation considers other factors. Because agencies have different ways of determining independent contractor status, a business may have to pay unemployment tax and/or carry workers' compensation coverage even if IRS or MRS determines that its workers are independent contractors for income tax purposes.

The guidelines of each agency are too detailed for one brochure. However, it is important to understand how the different laws may affect you. Employers should ask each agency if they consider workers to be employees or independent contractors before the contracted work begins.

If you work as an independent contractor, you:

- Pay your own taxes.
- May not be entitled to unemployment or workers' compensation.
- May not be protected by wage payment and recordkeeping laws, such as minimum wage and overtime.
- Direct and control your work and the work of your employees.

If your business uses independent contractors, you

- Do not withhold taxes or Medicare insurance.
- May have to carry workers' compensation insurance.
- May have to pay unemployment taxes.
- Must ensure that foreign workers are legal and documented.
- Should consult each of the governmental agencies listed in this brochure to find out if they consider your workers to be independent contractors.
- May be liable for back taxes and wages and/or penalties if you misclassify employees as independent contractors.

Here are typical questions about independent contractor status:

1. How can I find out how and when I have to pay taxes?

Contact the Internal Revenue Service (IRS), Maine Revenue Service (MRS), and Maine Department of Labor Bureau of Unemployment Compensation (contact information listed on front page).

2. What kind of wage statement should employees get or businesses provide?

Employees receive a W-2 wage statement. Independent contractors receive a 1099-nonwage payment statement. If you're not sure which you should get (or provide), contact the IRS.

3. Should businesses have written contracts with independent contractors?

Written contracts can show the intent of both parties before the beginning of their working relationship. They may be useful in determining independent contractor status. The Workers' Compensation Board requires a written contract to apply for determination of independent contractor status.

4. Can General Contractors put people to work without putting them on the payroll?

If IRS determines the workers are independent contractors, they do not have to be on the payroll for income tax purposes. However, even if IRS determines the workers are independent contractors, another agency may consider them employees. So, employers may have to buy workers' compensation insurance and pay unemployment tax. To avoid paying back taxes and penalties, businesses should contact each agency before workers start a job.

5. How can businesses employ temporary workers from other countries when they are unable to find sufficient U.S. workers?

The Alien Labor Certification program of the Maine Department of Labor provides assistance in the hiring of temporary foreign workers.

6. How can employers learn if they need to purchase workers' compensation insurance?

Contact the Workers' Compensation Board.

7. Do woodlot owners need to purchase workers' compensation insurance for workers who are harvesting trees?

A woodlot owner who gets a "Conclusive Predetermination" from the Workers' Compensation Board or contracts with a wood harvester who has an approved Certificate of Independent Status does not have to carry workers' compensation insurance for that harvester.

8. How do harvesters obtain proof of independent contractor status?

Apply to the Workers' Compensation Board for a Certificate of Independent Status to confirm independent contractor status.

9. What agency investigates wage or overtime issues for employees?

The Maine Department of Labor and the U.S. Department of Labor Wage and Hour Division investigate complaints.

10. What protection do independent contractors have if injured on the job?

Contact the Workers' Compensation Board to learn about rights.

11. Can independent contractors get unemployment compensation?

The Maine Department of Labor, Bureau of Unemployment Compensation will determine coverage.

If you don't know all the responsibilities of being—or contracting with—an independent contractor, find out now so you can make the right decisions and avoid legal and financial problems down the road.