

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 2086

6  
7 H.P. 1576

House of Representatives, February 16, 1984

8 Submitted by the Joint Standing Committee on Energy and Natural  
9 Resources as approved by the Legislative Council on June 8, 1983.

10 Reported by Representative Hall from the Committee on Energy and  
Natural Resources and printed under Joint Rule 19.

EDWIN H. PERT, Clerk

11  
12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FOUR  
16

17 AN ACT to Clarify the Timber-Harvesting  
18 Provisions of the Allagash Wilderness Waterway  
19 Statutes.  
20

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

23 Sec. 1. 12 MRSA §662, sub-§§9-A and 9-B are en-  
24 acted to read:

25 9-A. Timber-harvesting operation. "Timber-har-  
26 vesting operation" means the cutting and removal of  
27 trees from their growing site and the attendant oper-  
28 ation of mobile or portable chipping mills, and of  
29 cutting and skidding machinery, including the cre-  
30 ation and use of skid trails, skid roads and winter  
31 haul roads, and the construction or creation of land  
32 management roads.

33 9-B. Visible from the watercourse. "Visible from  
34 the watercourse" means what a person at any point on

1 the watercourse from Churchill Dam north can see  
2 without the aid of any magnifying devices.

3       Sec. 2. 12 MRSA §670, as amended by PL 1973, c.  
4 460, §17, is repealed and the following enacted in  
5 its place.

6 §670. Control of timber-harvesting operations

7       1. Restricted zone. Timber-harvesting opera-  
8 tions shall not be permitted within the restricted  
9 zone, except:

10       A. By direction of the bureau for the purpose of  
11 maintaining healthy forest conditions; or

12       B. By direction of the bureau for the purpose of  
13 correcting situations arising from natural disas-  
14 ters.

15       2. Waterway outside restricted zone. No person  
16 may commence a timber-harvesting operations in the  
17 waterway outside of the restricted zone without con-  
18 sultation with or, when required under paragraph B,  
19 approval from the bureau.

20       A. Before a timber-harvesting operation is com-  
21 menced in the waterway outside the restricted  
22 zone, a management plan shall be submitted to the  
23 bureau. The plan shall contain:

24       (1) A plan of the proposed timber-har-  
25 vesting operation, setting forth the type of  
26 cutting proposed;

27       (2) The amount of timber proposed to be re-  
28 moved;

29       (3) The time of year of cutting and remov-  
30 al;

31       (4) The location of principal haul road and  
32 crossings in the waterway to be used in con-  
33 nection with the proposed timber-harvesting  
34 operation;

35       (5) The plan for reforestation;

- 1                   (6) A stand table indicating species compo-  
2                   sition, size class and health of the origi-  
3                   nal and residual stands;
  
- 4                   (7) Expected date of reentry;
  
- 5                   (8) Pesticide, herbicide or other chemical  
6                   treatment planned; and
  
- 7                   (9) Proposed plans to mitigate evidence of  
8                   harvesting.

9                   When an application for approval is not required  
10                   under paragraph B, the bureau shall seek coopera-  
11                   tion from those submitting the management plan in  
12                   addressing any concerns of the bureau.

13                   B. When the bureau determines that the  
14                   timber-harvesting operation is proposed for an  
15                   area in the waterway outside of the restricted  
16                   zone and visible from the watercourse, the  
17                   timber-harvesting operation may commence only  
18                   with approval from the bureau. Application forms  
19                   for approval, provided by the bureau, shall be  
20                   completed and signed by the applicant. This par-  
21                   agraph shall not be construed to excuse the ap-  
22                   plicant from requirements for other permits re-  
23                   quired by law.

24                   C. The bureau shall, within 30 days of receipt  
25                   of an application for approval, either approve  
26                   the proposed timber-harvesting operation, upon  
27                   such terms and conditions as are appropriate and  
28                   reasonable, or disapprove the proposed  
29                   timber-harvesting operation setting forth in  
30                   writing the reasons therefor. If a decision is  
31                   not made within the 30 days, the  
32                   timber-harvesting operation shall be considered  
33                   approved under the provisions of the management  
34                   plan submitted.

35                   D. The bureau shall approve an application for a  
36                   timber-harvesting operation when it finds that  
37                   the management plan provides for the silvicultur-  
38                   al alternative which:

1                   (1) Produces the least adverse impact upon  
2                   the natural character of the area in the wa-  
3                   terway outside the restricted zone and visi-  
4                   ble from the watercourse for which the  
5                   timber-harvesting operation is proposed; and

6                   (2) Is economically feasible.

7                   E. Notwithstanding the provisions of paragraph  
8                   D, the bureau shall not deny an application for  
9                   the removal of trees that are dead, dying or dam-  
10                   aged by natural causes.

11                   F. Before disapproving an application or impos-  
12                   ing terms and conditions under paragraph C, the  
13                   bureau shall have the application and management  
14                   plan reviewed by an experienced professional for-  
15                   ester.

16                   3. Report to Legislature. The bureau shall re-  
17                   port, in January 1987, to the First Regular Session  
18                   of the 113th Legislature, on its experience in con-  
19                   trolling timber-harvesting operations under subsec-  
20                   tion 2. The report shall indicate and describe any  
21                   inadequacies the bureau has found in subsection 2, or  
22                   in any other provision of this chapter, that have  
23                   hindered its ability to control timber-harvesting op-  
24                   erations within the waterway, so as to carry out the  
25                   policy established in section 661.

26                   Sec. 3. 12 MRSA §674, as amended by PL 1973, c.  
27                   460, §17, is repealed and the following enacted in  
28                   its place.

29                   §674. Enforcement, inspection and penalties for vio-  
30                   lations

31                   Rules, regulations and permits issued by the bu-  
32                   reau under this chapter shall have the force and ef-  
33                   fect of law. No timber-harvesting operation may be  
34                   undertaken, except in conformance with this chapter.

35                   For the purposes of inspection and to assure com-  
36                   pliance with permits issued or adopted by the bureau,  
37                   authorized bureau staff or consultant personnel may  
38                   conduct investigations, examinations, tests and site  
39                   evaluations deemed necessary to verify information

1 presented to the bureau, and may obtain access to any  
2 lands and structures regulated under this chapter.

3 Notwithstanding the provisions of Title 17-A,  
4 section 4-A, subsection 4, a violation of any provi-  
5 sion of this chapter, rules promulgated or permit is-  
6 ssued under it shall be punishable by a fine of up to  
7 but not more than \$1,000 for each day of the viola-  
8 tion. In addition, the bureau may, in the name of  
9 the State, institute any appropriate action, injunc-  
10 tion or other proceeding to prevent, restrain, cor-  
11 rect or abate any violation of this chapter or of the  
12 rules or permits issued under it. This action may  
13 include, but is not limited to, proceedings to revoke  
14 or suspend any bureau permit or approval taken before  
15 the Administrative Court, in accordance with Title 4,  
16 section 1151, subsection 2, and sections 1152 to 1157  
17 or, notwithstanding the provisions of Title 5, sec-  
18 tion 10051, before the Superior Court, as part of an  
19 enforcement action brought by the bureau.

20 Notwithstanding the provisions of Title 17-A,  
21 section 4-A, subsection 4, a person who willfully or  
22 knowingly falsifies any statement contained in a man-  
23 agement plan or application under section 670 shall  
24 be punished by a fine of up to but not more than  
25 \$1,000.

26 Sec. 4. 12 MRSA §680, as amended by PL 1973, c.  
27 460, §17, is repealed and the following enacted in  
28 its place.

29 §680. Appeals

30 Any applicant for a timber-harvesting permit ag-  
31 grieved by a decision of the bureau relating to  
32 timber-harvesting operations may appeal therefrom in  
33 accordance with Title 5, chapter 375, subchapter VII.

34 STATEMENT OF FACT

35 The purpose of this bill is to clarify the au-  
36 thority of the Bureau of Parks and Recreation to con-  
37 trol timber-harvesting outside of the restricted zone  
38 but still within the boundaries of the Allagash Wil-  
39 derness Waterway.

1 Section 1 of the bill adds definitions of  
2 "timber-harvesting operation" and "visible from the  
3 watercourse" to current statutes.

4 Section 2 of the bill repeals and replaces the  
5 current statutory section concerning control of tim-  
6 ber harvesting in the waterway. The provisions  
7 concerning the restricted zone are not changed from  
8 those in current law. The Revised Statutes, Title  
9 12, section 670, subsection 2, concerning timber har-  
10 vesting in the waterway outside of the restricted  
11 zone is added, which makes it clear that when timber  
12 harvesting is proposed for this area of the waterway,  
13 a management plan must be submitted to the bureau.  
14 This bill adds provisions for new types of informa-  
15 tion to be included in the management plan.

16 When timber harvesting is proposed for areas not  
17 visible from the watercourse the bureau is to seek  
18 cooperation from the landowner in addressing concerns  
19 of the bureau.

20 When timber harvesting is proposed for areas  
21 visible from the watercourse north of Churchill Dam,  
22 the bureau must approve the management plan before  
23 the operations may commence. The bureau may impose  
24 reasonable terms and conditions, or may disapprove  
25 the plan. The bureau is to approve the plan if it  
26 presents the silvicultural alternative which produces  
27 the least adverse impact upon the areas of the water-  
28 way visible from the watercourse, and is economically  
29 feasible.

30 If the bureau seeks to disapprove a plan or im-  
31 pose terms and conditions it must have the plan re-  
32 viewed by an experienced professional forester.

33 The Revised Statutes, Title 12, section 670, sub-  
34 section 3 is added to require the Bureau of Parks and  
35 Recreation to report to the Legislature in 3 years on  
36 its experience in controlling timber harvesting in  
37 the waterway under the provisions of this bill. The  
38 report is to indicate any inadequacies the bureau has  
39 found in any relevant statutes.

40 Section 3 of the bill provides for enforcement of  
41 the chapter and changes the penalties for violations  
42 in current law.

1           Section 4 removes the de novo appeal provision in  
2 current law. Under this change, appeals from bureau  
3 denials of timber harvesting applications will be re-  
4 viewed as are other administrative decisions. The  
5 court, then, will not rehear evidence presented to  
6 the bureau, but will review the bureau's decision for  
7 abuse of discretion or an error of law.

8

5575011684