

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND SPECIAL SESSION-1996

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Legislative Document

No. 1892

H.P. 1390

House of Representatives, August 21, 1996

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**An Act to Implement the Compact for Maine's Forests.**

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Received by the Clerk of the House on August 20, 1996. Referred to the Committee on Agriculture, Conservation and Forestry and ordered printed pursuant to Joint Rule 14.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative SPEAR of Nobleboro. (GOVERNOR'S BILL)  
Cosponsored by Senator PARADIS of Aroostook and  
Representatives: CROSS of Dover-Foxcroft, GOOLEY of Farmington, GOULD of  
Greenville, KILKELLY of Wiscasset, Senators: HARRIMAN of Cumberland, LONGLEY of  
Waldo, MICHAUD of Penobscot, MILLS of Somerset.

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

4 **Sec. 1. 5 MRSA §12004-G, sub-§12-A** is enacted to read:

6 12-A. Sustainable Not Autho- 12 MRSA  
7 Environment/ Forest rized §8870-C  
8 Natural Management  
Resources Audit Board

10 This subsection is repealed 90 days after the adjournment of the  
11 Second Regular Session of the 120th Legislature.

12 **Sec. 2. 12 MRSA §8611, sub-§2,** as amended by PL 1989, c. 700,  
14 Pt. A, §40, is further amended to read:

16 **2. Natural resource educator.** The director shall employ a  
17 natural resource educator to develop and coordinate natural  
18 resource education, workshops and training opportunities for the  
19 general public, school-age children, forest landowners, forest  
20 products harvesters and forest managers. Specifically, this  
21 person shall:

22 A. Work with the Department of Education and organizations  
24 to integrate forestry and forest science programs into the  
25 science curricula in public schools; and

26 B. Establish a program for continuing education courses in  
28 timber harvesting equipment operation, safety and basic  
29 forest management skills; ; and

30 C. Work in partnership with the private sector and  
31 nongovernmental organizations, including, but not limited  
32 to, members of associations who own small woodlands in the  
33 State and the Maine TREE Foundation, to develop new natural  
34 resource education initiatives for the general public. By  
35 December 31, 1996, the natural resource educator shall  
36 submit to the director a plan including a description of  
37 those initiatives and any possible financial resources that  
38 have been identified or pledged.

40 **Sec. 3. 12 MRSA §8866** is enacted to read:

42 **§8866. Purpose**

44 The Legislature finds that forest management, when practiced  
45 in accordance with generally accepted silvicultural and  
46 ecological principles, constitutes a beneficial and desirable use  
47 of the State's forest resource and makes vital contributions to  
48 the economy, environment and aesthetic features of the State.  
49 The tradition of using the forest resource for the production of  
50 timber and other forest products is a vital part of the State's

2 forest products and related commercial activities, for recreation  
3 and for sustenance of the State's fisheries and wildlife is  
4 essential to the favorable quality of life in the State.

5 The Legislature finds that timber harvesting is a  
6 traditional and legitimate use of the State's lands. The  
7 Legislature finds further that it is vital to the welfare of the  
8 State that any law, rule or ordinance enacted to regulate this  
9 activity seek a lawful balance between the constitutional rights  
10 of all private property owners affected by the regulation or  
11 activity and the interests of the citizens of the State to  
12 protect public health, safety and welfare.

13 **Sec. 4. 12 MRSA §8867**, as amended by PL 1991, c. 722, §4, is  
14 repealed.

15 **Sec. 5. 12 MRSA §8867-A** is enacted to read:

16 **§8867-A. Rulemaking**

17 No later than May 1, 1997, the Commissioner of Conservation  
18 shall adopt rules in accordance with Title 5, chapter 375 to  
19 implement this subchapter. Title 5, chapter 375, subchapter II-A  
20 does not apply to this rulemaking.

21 The Commissioner of Conservation shall consult with the  
22 Commissioner of Environmental Protection and the Commissioner of  
23 Inland Fisheries and Wildlife to ensure that bureau rules are  
24 consistent with wildlife habitat and environmental protection.

25 **Sec. 6. 12 MRSA §8868**, as enacted by PL 1989, c. 555, §10, is  
26 repealed.

27 **Sec. 7. 12 MRSA §8868-A** is enacted to read:

28 **§8868-A. Definitions**

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

31 **1. Acceptable growing stock.** "Acceptable growing stock"  
32 means live trees of commercially valuable species classified as  
33 sawtimber or pole-timber, that are not culls, or saplings or  
34 seedlings capable of developing into trees suitable for producing  
35 merchantable products.

36 **2. Certified wildlife professional.** "Certified wildlife  
37 professional" means a person who meets the education and  
38 experience requirements of a certified wildlife biologist as

2 defined by a professional organization that certifies wildlife  
3 professionals.

4 3. Clear-cut. "Clear-cut" means any timber harvesting on a  
5 forested site greater than 5 acres in size that results in a  
6 residual stand that does not meet either of the following  
7 conditions:

8  
9 A. The average residual basal area of acceptable growing  
10 stock trees 4.5 inches and over in diameter measured at 4  
11 1/2 feet above the ground is 45 square feet per acre or  
12 more; or

13 B. The site has a well-distributed stand of acceptable  
14 growing stock trees of at least 5 feet in height that meets  
15 the regeneration standards defined under section 8869-A,  
16 subsection 7.

17  
18 4. Forest management plan. "Forest management plan" means  
19 a site-specific document signed by a licensed professional  
20 forester outlining proposed activities to ensure compliance with  
21 performance standards and regeneration requirements established  
22 pursuant to this subchapter.

23 5. Landowner. "Landowner" means an individual, firm,  
24 association, organization, partnership, cotenant, joint tenant,  
25 trust, company, corporation, state agency or other legal entity.

26  
27 6. Licensed professional forester. "Licensed professional  
28 forester" means a person licensed pursuant to Title 32, chapter  
29 75.

30  
31 7. Parcel. "Parcel" means a contiguous tract or plot of  
32 forest land owned by a single landowner. Multiple contiguous  
33 tracts, plots or parcels of forest land owned by the same  
34 landowner are considered a single parcel for the purposes of this  
35 subchapter.

36  
37 8. Timber harvesting. "Timber harvesting" means the  
38 cutting or removal of at least 50 cords of timber for the primary  
39 purpose of selling or processing forest products.

40  
41 **Sec. 8. 12 MRSA §8869**, as amended by PL 1995, c. 122, §1 and  
42 affected by §2, is repealed.

43 **Sec. 9. 12 MRSA §§8869-A and 8870** are enacted to read:

44 **§8869-A. Forest harvest rules**

45 Forest harvesting is regulated as follows.

2           1. Rule-making authority. The Commissioner of Conservation  
4           shall adopt rules to regulate timber harvesting pursuant to this  
6           subchapter in order to promote a healthy and sustainable forest  
8           that contains a balance of age classes necessary for a  
10           sustainable timber supply and spatial and compositional  
12           diversity, to protect water quality, to minimize soil erosion and  
14           to address unreasonable adverse impacts on fisheries and wildlife  
16           habitat. Such rules must describe with specificity the class of  
18           activities covered by the rules and may establish standards of  
20           performance, design, regeneration or use as appropriate to  
22           balance the need to avoid unreasonable environmental impacts with  
24           the considerations of the practicality and costs of  
26           implementation and enforcement. Such rules must to the extent  
possible be developed in consideration of their practicality and  
costs of implementation and enforcement. Any such rules must  
require notification to the Commissioner of Conservation prior to  
the undertaking of the regulated activity. Rules must also  
include a streamlined notification process to the Commissioner of  
Conservation prior to the undertaking of any activity requiring  
certification. The Commissioner of Conservation may incorporate  
regional variations in developing performance standards that  
consider growing conditions, tree species and site quality. The  
Commissioner of Conservation may draw reasonable distinctions  
based upon total forest holdings as well as the size of parcels  
to be harvested in order to take into account the diminishing  
scale of impacts and the logistics of harvesting smaller parcels.

28           2. Silvicultural standards; permit by rule. Except as  
30           provided under subsections 15 to 18 and notwithstanding the  
32           provisions of the Maine Administrative Procedure Act, a landowner  
34           shall obtain a permit by rule from the Commissioner of  
36           Conservation prior to conducting a clear-cut. The Commissioner  
of Conservation shall adopt rules to implement a permit-by-rule  
process based upon streamlined notification and applicant  
certification of compliance with the standards of this section.

38           A. The Commissioner of Conservation shall grant a permit by  
40           rule to allow the use of clear-cuts in timber harvesting  
42           operations upon proper application and with any conditions  
44           necessary to fulfill the purposes of this subchapter when  
the Commissioner of Conservation finds that the applicant  
has demonstrated that the clear-cutting is conducted for one  
or more of the following purposes:

46                   (1) Removal of poor-quality, intolerant, understocked,  
48                   short-lived or mature overstories where the retention  
50                   of the residual overstory trees is not justified for  
further increase in value, as a source of seed or for  
protection of the new stand;

2           (2) Ecologically appropriate improvement or creation  
4           of wildlife habitat, with accompanying prescription and  
6           justification from a certified wildlife professional;

8           (3) Removal of timber stands that, if partially  
10           harvested according to accepted silvicultural practice,  
12           are at high risk for windthrow due to factors such as  
14           soils, rooting depth, crown ratio or stem quality; or

16           (4) Plantation harvest.

18           B. The Commissioner of Conservation shall process all  
20           permits under this subchapter under a permit-by-rule  
22           process. A permit-by-rule application must be processed as  
24           follows:

26           (1) The applicant shall notify the Bureau of Forestry  
28           at least 14 days prior to initiating a clear-cut;

30           (2) The applicant shall complete a form provided by  
32           the Bureau of Forestry requiring the following  
34           information:

36                   (a) The size and number of the proposed  
38                   clear-cuts and other harvest notification  
40                   information required under section 8883,  
42                   subsection 1;

44                   (b) Which silvicultural purpose under paragraph A  
46                   the proposed clear-cut fulfills;

48                   (c) A certification signed by a licensed  
50                   professional forester or, if required under this  
                  subsection, by a certified wildlife professional,  
                  attesting that the proposed clear-cuts meet one or  
                  more purposes under paragraph A; and

(d) A certification by the applicant that the  
                  applicant will comply with the subchapter and all  
                  implementing rules as conditions of the permit;

(3) The permit by rule takes effect 14 days after the  
                  Bureau of Forestry receives the notification form,  
                  unless the Commissioner of Conservation approves or  
                  denies the permit by rule prior to that date. The  
                  Commissioner of Conservation shall approve or deny the  
                  application after review of any reliable information on  
                  file with the application pertaining to the applicant's  
                  compliance with standards for issuance of the permit  
                  provided for in paragraph A, subparagraphs (1) to (4).

2           During the 14-day period, the Commissioner of  
3           Conservation or the Commissioner of Conservation's  
4           designee may contact the applicant verbally to notify  
5           the applicant of the need to submit additional  
6           information in order to complete the application, and  
7           the applicant and Commissioner of Conservation may  
8           mutually agree to extend the 14-day period in order to  
9           accommodate completion of the application. The permit  
10           by rule is effective for 2 years from the effective  
11           date of approval;

12           (4) If the Commissioner of Conservation denies the  
13           permit by rule, the Commissioner of Conservation shall  
14           state the reasons in writing and describe what  
15           conditions could cure the defects. The Commissioner of  
16           Conservation may provide verbal notice of a denial  
17           within the 14-day period as long as the Commissioner of  
18           Conservation immediately issues a written denial. The  
19           applicant may elect to accept a permit by rule with the  
20           proposed conditions or, alternatively, seek a variance  
21           under subsection 18; and

22           (5) An approval or denial of a permit by rule is  
23           considered final agency action for purposes of judicial  
24           appeal under the Title 5, chapter 375, subchapter VII.

25           **3. Maximum area clear-cut limit; forest land ownerships**  
26           **equal to or greater than 100,000 acres.** When forest lands owned  
27           by the same landowner total 100,000 acres or more statewide, the  
28           maximum of that land area to be clear-cut in any year is limited  
29           to:

30           A. Not more than 0.25% of the landowner's total statewide  
31           land area ownership, plus any unused qualifying acres that  
32           may be carried over for up to 3 years; and

33           B. Not more than an additional 0.75% of the ownership's  
34           total statewide land area, as long as every acre clear-cut  
35           in excess of the 0.25% limit referenced in paragraph A is  
36           matched with an acre of land that was planted or  
37           precommercially thinned, mechanically or with nonchemical  
38           manual methods, in the previous year. During the period  
39           from January 1, 1997 to December 31, 1997, landowners may  
40           only exercise this option using the greatest number of acres  
41           that were planted or precommercially thinned, mechanically  
42           or with nonchemical manual methods, during any one of the  
43           calendar years 1994, 1995 or 1996, as reported to the Maine  
44           Forest Service under the reporting requirements of section  
45           8885, subsection 2. Beginning January 1, 1998, unused  
46           qualifying acres may be carried over for up to 3 years.



2           4. Maximum area clear-cut limit; forest land ownerships  
3           less than 100,000 acres. When forest lands owned by the same  
4           landowner total less than 100,000 acres statewide, the maximum of  
5           that land area to be clear-cut in any year is limited to the  
6           greater of either 100 acres or 10% of the land area of any  
7           parcel. Both alternatives must be calculated on a rolling basis  
8           to ensure that clear-cuts do not occupy more than 100 acres or  
9           10% of the parcel, whichever is greater.

10           5. Maximum individual clear-cut size. An individual  
11           clear-cut may not exceed 75 acres in total area.

12           6. Clear-cut separation zones. Clear-cut harvest areas  
13           must be separated by a defined area equal to the area contained  
14           within the perimeter of the clear-cut. Each defined area must be  
15           identified with a specific clear-cut area.

16           7. Standards for regeneration after harvests. The  
17           Commissioner of Conservation shall adopt rules to ensure adequate  
18           regeneration of commercially valuable tree species on a site  
19           within 5 years of completion of any timber harvest. Rules to  
20           implement this requirement must include identification of  
21           commercial tree species, minimum stocking standards and methods  
22           to mitigate inadequate regeneration. In developing regeneration  
23           standards, the Commissioner of Conservation shall take into  
24           consideration regional differences in forest types, tree species  
25           and physiographic conditions. If the regeneration on a harvested  
26           site or a portion of a harvest site is destroyed by fire,  
27           disease, insect infestation or other natural disaster, the  
28           regeneration requirement does not apply. Vegetative cover  
29           sufficient to prevent accelerated erosion must be established on  
30           the site.

31           8. Transfer or sale of property. Upon sale or other  
32           transfer of ownership of land that has been harvested, the  
33           transferee becomes responsible for the regeneration requirements  
34           on the site. The transferor shall disclose in writing to the  
35           transferee the regeneration requirements of this section at, or  
36           prior to, the time of sale or transfer. Failure of the  
37           transferor to comply with the disclosure requirement results in  
38           the transferor being responsible for compliance with the  
39           regeneration requirements of subsection 7.

40           9. Application. This section applies to all forest lands  
41           in the State, including land in municipal and state ownership.  
42           Only state-owned or state-operated research forests or  
43           industrially owned research forests certified by the Commissioner  
44           of Conservation are exempt from these requirements.

2       10. Relationship to municipal rules. This subchapter may  
3 not be construed to preempt or otherwise limit the existing  
4 authority of municipalities to regulate timber harvesting, except  
5 that municipalities regulating timber harvesting shall adopt  
6 definitions for forestry terms used in their ordinances that are  
7 consistent with forestry terms adopted by the Commissioner of  
8 Conservation pursuant to this subchapter. Municipal timber  
9 harvesting ordinances adopted before September 1, 1990 and not  
10 subsequently amended must meet this standard of definitional  
11 compliance no later than January 1, 1999.

12       A municipality may not adopt or amend an ordinance that regulates  
13 timber harvesting unless the process set out in this subsection  
14 is followed in the development and review of the ordinance.

15               A. A licensed professional forester must participate in the  
16 development or amendment of the ordinance.

17               B. A face-to-face meeting must take place in the  
18 municipality during the development or amendment of the  
19 ordinance between representatives of the Department of  
20 Conservation and the municipal officers and other municipal  
21 officials involved in developing the ordinance. Discussion  
22 at the meeting must include, but is not limited to, the  
23 forest practices goals of the municipality. At this meeting  
24 and subsequently, the department must provide guidance to  
25 the municipality on how the municipality may use sound  
26 forestry practices to achieve the municipality's forest  
27 practices goals.

28               C. The municipality shall hold a public hearing to review a  
29 proposed ordinance or ordinance amendment at least 45 days  
30 before a vote is held on the ordinance. The municipality  
31 shall post and publish notice of this public hearing  
32 according to the same general requirements of posted and  
33 published notice for zoning ordinance public hearings as  
34 provided by Title 30-A, section 4352, subsection 9.

35       In addition, when a municipality proposes to adopt or amend  
36 a timber harvesting ordinance pursuant to its home rule  
37 authority as provided by Title 30-A, section 3001, the  
38 municipality shall mail notice of the hearing by first-class  
39 mail at least 14 days before the hearing to all landowners  
40 in the municipality at the last known address of the person  
41 on whom a property tax on each parcel is assessed. In the  
42 case of a timber harvesting ordinance or amendment that  
43 applies only to certain zones or land use districts in the  
44 municipality, the municipality may meet the requirements of  
45 this subsection by mailing notice only to those landowners  
46 in the municipality.

2 whose land is in a zone or land use district or immediately  
abutting the affected zone or land use district.

4 Mailed notice to individual landowners is not required under  
this subsection for any type of amendment to an existing  
6 local land use ordinance merely to conform that ordinance to  
the minimum timber harvesting guidelines required by Title  
8 38, section 439-A, as those guidelines may be subsequently  
amended, or to conform any timber harvesting ordinance to  
10 the definitional compliance required by this section when  
the amendments proposed to accomplish definitional  
12 compliance do not substantially change any previously  
established timber harvesting standards adopted pursuant to  
14 home rule authority.

16 The municipal officers shall prepare and file with the  
municipal clerk a written certificate indicating those  
18 landowners to whom the notice was mailed and at what  
addresses, when it was mailed, by whom it was mailed and  
20 from what location it was mailed. The certificate  
constitutes prima facie evidence that notice was sent to  
22 those landowners named in the certificate.

24 Any action challenging the validity of the adoption or  
amendment of a municipal timber harvesting ordinance based  
26 on the municipality's alleged failure to comply with the  
landowner notice requirement must be brought in Superior  
28 Court within 30 days after the adoption of the ordinance or  
amendment. The Superior Court may invalidate an ordinance  
30 or amendment only if the landowner demonstrates that the  
landowner was entitled to receive a notice under this  
32 section, that the municipality failed to send the notice as  
required, that the landowner had no knowledge of the  
34 proposed ordinance or amendment and that the landowner was  
materially harmed by that lack of knowledge.

36  
38 D. The municipal clerk shall notify the department of the  
time, place and date of the public hearing and provide the  
40 department with a copy of the proposed ordinance that will  
be reviewed at the hearing at least 30 days before the date  
of the hearing.

42  
44 E. At the public hearing, representatives of the Department  
of Conservation must be provided an opportunity to present  
46 and discuss for the municipality's information any reports,  
articles, treatises or similar materials published by  
48 acknowledged experts in the field of sound forestry or  
silvicultural management to the extent such information  
50 might apply to the proposed ordinance or ordinance amendment.

2           The proposed ordinance or ordinance amendment may be revised  
3           after the public hearing. The ordinance or amendment must  
4           be submitted to the legislative body of the municipality in  
5           accordance with the procedures the municipality uses for  
6           adopting ordinances.

7           F. Municipal timber harvesting ordinances may not be  
8           unreasonable, arbitrary or capricious and must employ means  
9           appropriate to the protection of public health, safety and  
10           welfare.

11           G. All direct costs incurred by a municipality associated  
12           with landowner notification requirements and other required  
13           public notice must be reimbursed to the municipality by the  
14           Department of Conservation in a timely manner upon  
15           presentation of satisfactory documentation verifying the  
16           direct municipal costs actually incurred. All direct costs  
17           incurred by a municipality associated with the amendment of  
18           ordinances adopted before September 1, 1990, and not  
19           subsequently amended, in order to comply with this section  
20           must be reimbursed to the municipality by the department in  
21           a timely manner upon presentation of satisfactory  
22           documentation verifying a direct municipal cost actually  
23           incurred.

24           11. Centralized listing of municipal ordinances. The  
25           Bureau of Forestry shall maintain for informational purposes a  
26           statewide centralized listing of municipal ordinances that  
27           specifically apply to forest practices.

28           A. Within 30 days after the legislative body of the  
29           municipality votes on a timber harvesting ordinance  
30           developed according to the procedures of subsection 10, the  
31           clerk shall notify the Bureau of Forestry of the outcome and  
32           shall file a copy of the ordinance with the Bureau of  
33           Forestry.

34           12. Right of enforcement. Department of Conservation  
35           employees and any state, county or municipal law enforcement  
36           officer, including, but not limited to, Bureau of Forestry forest  
37           rangers and field foresters and Inland Fisheries and Wildlife  
38           wardens, are authorized to enforce this subchapter and  
39           implementing rules. Department of Conservation employees are  
40           authorized to issue a stop-work order for up to 5 working days to  
41           a landowner, contractor or any other person conducting timber  
42           harvesting when there is probable cause to believe that a  
43           violation of this subchapter or implementing rules has occurred.  
44           Department employees are authorized to conduct inspections and to  
45           enforce this subchapter and implementing rules under the Maine  
46           Rules of Civil Procedure, Rules 80E and 80H.

2           13. Right of entry. Agents of the Bureau of Forestry have  
rights of access to all lands in the State to carry out their  
4           duties authorized by law. Entry into private property under this  
subsection is not a trespass. This subsection does not authorize  
6           entry into any building or structure.

8           14. Right of action. A landowner found in violation of  
this section and penalized under section 9701 as a result of  
10           actions of a harvester has a right of action to recover the  
penalty against the harvester who undertook the harvest operation  
12           found in violation. In addition to all other defenses permitted  
by law, it is a defense that the harvester operated under the  
14           landowner's instructions. For the purposes of this subsection,  
the terms "harvester" and "harvest operation" have the same  
16           meanings as in section 8881.

18           15. Exemption for compliance with the Sustainable Forest  
Management Audit Program. After receipt of any recommendations  
20           to exempt landowners who have demonstrated compliance with the  
audit criteria of section 8870-D from subsection 2, paragraph B,  
22           or subsection 3, 4, 5 or 6, the Commissioner of Conservation may  
adopt rules to exempt such qualifying landowners, in whole or  
24           part, from these provisions, but only if the Commissioner of  
Conservation determines that the purposes of section 8866 and  
26           this section will be fulfilled by the audit criteria approved by  
the Sustainable Forest Management Audit Board.

28           The Commissioner of Conservation also may adopt rules to certify  
independent 3rd-party auditors to implement the program and to  
30           implement any regulatory incentives to exempt qualifying  
landowners as authorized by this subsection, following receipt of  
32           the Sustainable Forest Management Audit Board recommendations  
developed under section 8870-C.

36           16. Exemption from permit-by-rule standards for clear-cut  
due to natural disturbance. Timber harvesting activities are  
38           exempt from the restrictions on clear-cut size, separation zones  
and maximum extent of clear-cutting and other requirements under  
40           subsection 2, 3, 4, 5 or 6 upon issuance of a natural disturbance  
exemption by the Commissioner of Conservation, as necessary to  
42           allow the salvage or presalvage of timber for which there is a  
high probability of substantial loss or damage from severe  
44           material disturbances, which include, but are not limited to,  
fire, insect infestation, disease, ice and wind. A landowner may  
46           apply for, or the Commissioner of Conservation may declare in the  
absence of a landowner application, a natural disturbance  
48           exemption. If the Commissioner of Conservation declares a  
natural disturbance exemption, the Commissioner of Conservation  
50           shall identify the geographic areas to which the exemption

2 applies. Both declarations and applications for exemptions must  
3 include a description of the natural disturbance, the areas  
4 impacted by the natural disturbance, the species or stand types  
5 affected, the duration of the exemption and the specific  
6 activities regulated under this section to which the exemption  
7 will apply. The application is automatically granted if not  
8 denied within 45 days of the department's receipt of the  
9 application by certified mail, return receipt requested. The  
10 Commissioner of Conservation shall grant an application if, based  
11 on the best available scientific information, the Commissioner of  
12 Conservation finds that there is a high probability of  
13 substantial loss or damage from severe natural disturbance and  
14 that the proposed harvesting can not be reasonably undertaken  
15 under the conditions specified in subsection 2, 3, 4, 5 or 6. If  
16 the Commissioner of Conservation denies the exemption, the  
17 Commissioner of Conservation shall state the reasons in writing  
18 and describe what conditions would cure the defects. The  
19 landowner may elect to accept a conditional approval or,  
20 alternatively, seek a variance under subsection 11.

21 **17. Exemption from permit standards for clear-cuts less**  
22 **than 50 acres in total area. When forest lands owned by the same**  
23 **landowner total less than 100,000 acres statewide, clear-cuts in**  
24 **those lands totaling less than 50 acres per year per parcel are**  
25 **exempt from the permit requirements of subsection 2, but must be**  
26 **conducted in accordance with the separation zone and reporting**  
27 **rules to be adopted under the authority of this section.**

28 **18. Variance. The Commissioner of Conservation may grant a**  
29 **variance from the standards in subsection 2, 3, 4, 5 or 6 when**  
30 **the Commissioner of Conservation finds that strict compliance**  
31 **with this section and implementing rules would cause unusual**  
32 **hardship or extraordinary difficulties because of topography,**  
33 **access, location, shape, size or other physical features of a**  
34 **site, that the proposed clear-cutting is in keeping with the**  
35 **general spirit and intent of this subchapter and that the public**  
36 **interest is otherwise protected. An applicant for a variance**  
37 **shall submit an application on a form provided by the Bureau of**  
38 **Forestry at least 60 days prior to the proposed clear-cut**  
39 **activity. The variance must be processed as provided under**  
40 **subsection 2, paragraph B, except that the Commissioner of**  
41 **Conservation shall issue a written decision granting the variance**  
42 **with any necessary conditions in order for the variance to become**  
43 **effective. The Commissioner of Conservation shall adopt rules**  
44 **and standards for clear-cut variances.**

45 **§8870. Evaluation and assessment**

46  
47  
48 By January 1, 2000 and every 5 years thereafter, the  
49 Commissioner of Conservation shall report to the Legislature on  
50

2 the results of an evaluation and assessment of the impacts of  
3 this subchapter and the forest harvest rules adopted pursuant to  
4 it. At a minimum, the evaluation and assessment must include  
5 research necessary to obtain:

6 1. Acreage harvest. The total acreage, the average  
7 acreage, the range of acreage and the geographic distribution of  
8 clear-cuts and other regeneration and nonregeneration harvests in  
9 the State;

10 2. Harvesting by landowners. The extent to which forest  
11 landowners are harvesting to the minimum standards adopted in the  
12 forest practices rules; and

13 3. Effect of timber harvesting. An understanding of how  
14 this subchapter and the forest harvest rules adopted pursuant to  
15 it have affected the sustainability of timber harvesting in the  
16 State.

17 **Sec. 10. 12 MRSA c. 805, sub-c. III-B is enacted to read:**

18 **SUBCHAPTER III-B**

19 **SUSTAINABLE FOREST MANAGEMENT AUDIT**

20 **§8870-A. Sustainable Forest Management Audit Program**

21 1. Findings. The Legislature finds that:

22 A. The forests of this State are critical for the economic  
23 and ecological health and quality of life in this State;

24 B. A process is needed to ensure the sustainable ecological  
25 and economic health of forests in this State;

26 C. All landowners must be encouraged to use sustainable  
27 forest management to improve the management of the forest  
28 and its related resources in a manner that best serves the  
29 needs of current and future generations; and

30 D. Regulatory systems alone are insufficient to address  
31 comprehensively goals such as sustainable forest  
32 management. The voluntary approach established in this  
33 subchapter allows for individual creativity and flexibility  
34 to be utilized and fostered in meeting clearly defined goals  
35 of sustainability.

36 2. Definitions. As used in this subchapter, unless the  
37 context otherwise indicates, the following terms have the  
38 following meanings.

2           A. "Benchmark" means a quantifiable goal, but may not be  
3           considered a regulatory standard.

4  
5           B. "Landowner" means a forest landowner or an authorized  
6           representative or agent of a forest landowner.

7  
8           3. Program established. To address the findings set forth  
9           in subsection 1, the Sustainable Forest Management Audit Program,  
10           referred to in this subchapter as the "program," is established  
11           within the Department of Conservation. Any landowner may choose  
12           to participate in the program except that, prior to January 1,  
13           2002, participation in the program is limited to landowners  
14           owning or managing 100,000 acres or more in total statewide  
15           holdings of land. A landowner with holdings or management  
16           responsibilities for less than 100,000 acres of land may inform  
17           the Director of the Maine Forest Service of their participation  
18           in the program on a trial basis during the first 5 years of the  
19           program.

20           **§8870-B. Program objectives**

21  
22           The purpose of the program is to encourage continuous  
23           improvement in forest management and to optimize both the  
24           ecological and economic health of the forests in this State. Two  
25           objectives guide the program:

26  
27           1. Economic health. The maintenance and enhancement of  
28           timber sustainability and economic viability of forest  
29           management; and

30  
31           2. Ecological health. The maintenance and enhancement of  
32           the biodiversity of forests in this State, including viable  
33           populations of existing native species and viable representatives  
34           of existing native communities, well distributed across their  
35           native ranges.

36  
37           **§8870-C. Audit program process: development, administration and**  
38           **review**

39  
40           1. Board established. After meeting and consulting with  
41           the President of the Senate and the Speaker of the House of  
42           Representatives and after soliciting recommendations from all  
43           interested parties and the general public, the Governor shall  
44           appoint, not later than January 1, 1997, the Sustainable Forest  
45           Management Audit Board, referred to in this subchapter as the  
46           "board." The board consists of 7 members representing a balance  
47           of interested parties with relevant forest management and  
48           ecological expertise, including participants in the program and  
49           the public, to develop and oversee implementation of the program  
50           by the Maine Forest Service. Board members serve until the



2 termination of the board in 2002. Board members serve without  
3 compensation or reimbursement for expenses. The Maine Forest  
4 Service shall provide staff assistance to the board.

6 This subsection is repealed 90 days after the adjournment of the  
7 Second Regular Session of the 120th Legislature.

8 **2. Decision-making process.** The board shall reach its  
9 decisions based on unanimous consensus. The board may convene  
10 working groups to assist it in areas requiring particular  
11 expertise or perspectives. The board shall provide ample  
12 opportunities for public input and discussion.

14 This subsection is repealed 90 days after the adjournment of the  
15 Second Regular Session of the 120th Legislature.

16 **3. Responsibility for establishing benchmarks and audit**  
17 **methods.** By January 1, 1999, through a public process, the board  
18 shall establish specific, credible and practical benchmarks to  
19 achieve the objectives of the program and the methodology by  
20 which forest management practices of participating landowners  
21 will be audited. In developing the benchmarks, the board shall  
22 review and evaluate the work of previous collaborative forest  
23 policy efforts, including the final report of the Maine Council  
24 on Sustainable Forest Management as the starting point of its  
25 work, with revisions and improvements as necessary to ensure  
26 consistency with the objectives of the program. The board shall:

28 A. Use the best available scientific information and  
29 expertise;

32 B. Set objectives based on demonstrated need and to prevent  
33 the development of crisis situations;

34 C. Ensure that the audit process is continuously improved;

36 D. Ensure that the program is effective yet flexible enough  
37 to encourage participation by landowners representing a full  
38 range of land ownership sizes; and

40 E. Ensure that the program incorporates the experience of  
41 similar programs elsewhere.

44 **4. Independent 3rd-party auditors.** The board shall  
45 establish a process to be administered by the Maine Forest  
46 Service for certifying independent 3rd parties to perform program  
47 audits. A landowner may select any auditor who is certified by  
48 the Commissioner of Conservation and does not have a direct and  
substantial financial relationship with the landowner that would

2 preclude the auditor's ability to make an independent, objective  
3 audit analysis.

4 5. Incentives. The board shall develop incentives to  
5 encourage participation in the program by landowners representing  
6 a full range of land ownership sizes. These incentives may  
7 include, but are not limited to, marketing opportunities, tax  
8 treatment and regulatory flexibility. The board shall determine  
9 appropriate disincentives for failure to meet program benchmarks.

10 6. Implementation. No later than January 1, 1999, the  
11 board shall establish benchmarks and certify auditors to  
12 implement the program. Participating landowners shall use their  
13 best efforts to accomplish the following: submit a timetable for  
14 completion of the audit and identification of their auditors no  
15 later than July 1, 1999, and complete the initial audit by  
16 December 31, 2000.

17 7. Schedule. By January 1, 2000, the board shall review  
18 and recommend to the Commissioner of Conservation measures for  
19 providing regulatory flexibility and relief for participants in  
20 the program. The board may consider exemption from provisions,  
21 including, but not limited to, the following:

22 A. The permit-by-rule provisions in section 8869-A,  
23 subsection 2, paragraph B;

24 B. The 0.75% cap provisions in section 8869-A, subsection  
25 3, paragraph B;

26 C. The clear-cut size provisions in section 8869-A,  
27 subsection 5; and

28 D. The separation zones provisions in section 8869-A,  
29 subsection 6.

30 8. Audits. All information reviewed by an auditor during  
31 the audit process, including information supplied to the  
32 Department of Conservation or other state agency, is confidential  
33 and not subject to disclosure for any reason under the laws  
34 regarding freedom of access to public records and proceedings in  
35 Title 1, sections 401 to 521. After an audit, the auditor shall  
36 report to the board and the Maine Forest Service a determination  
37 as to whether the landowner has passed or failed the audit under  
38 the program, with a brief statement of the basis of the  
39 determination. The determination and statement are public  
40 records. All other information reviewed or developed by the  
41 auditor must be considered proprietary and remains confidential.  
42 Audits must be performed every 5 years.

2 9. Alternative audit programs. No later than April 1,  
3 1997, the Commissioner of Conservation shall develop and maintain  
4 a register of internationally accredited 3rd-party audit or  
5 certification programs that, in the commissioner's judgment,  
6 employ benchmarks and criteria that are substantially equivalent  
7 to those employed under this section and shall develop a  
8 procedure to add new internationally accredited 3rd-party audit  
9 or certification programs after consultation with the board. The  
10 commissioner shall adopt as flexible a policy as possible to  
11 recognize existing, internationally accredited 3rd-party audit or  
12 certification programs that certify for sustainable forest  
13 practices, ecological health, socio-economic health and marketing  
14 of international forest products in order to ensure continuity  
15 for landowners and minimize duplication of effort.

16 A program accredited by Scientific Certification Systems, an  
17 accredited forest auditing organization, as of January 1, 1997 is  
18 deemed to be an internationally accredited 3rd-party audit or  
19 certification program for the purposes of this section until the  
20 board proposes an alternative under this section.

21 The board shall develop audit benchmarks under section 8870-D and  
22 the Commissioner of Conservation, after consultation with the  
23 board, shall adopt rules to develop and maintain a register of  
24 internationally recognized 3rd-party audit or certification  
25 programs that, in the commissioner's judgment, employ benchmarks  
26 and criteria that are substantially equivalent to those employed  
27 under this section. The commissioner shall adopt rules to  
28 establish a procedure for a landowner to demonstrate compliance  
29 with the provisions of the program through the submission of  
30 audit certification by an organization on the register.

31 **§8870-D. Development of audit program benchmarks**

32  
33 The board shall develop specific, credible and practical  
34 benchmarks in the following areas.

35  
36  
37 **1. Sustained yield.** In the area of sustained yield, the  
38 benchmarks must include growth, harvest levels, rotation length,  
39 inventory levels, mix of species and landowners' objectives, if  
40 these objectives are compatible with the objectives of the  
41 program. The benchmarks must include appropriate flexibility for  
42 year-to-year variation.

43  
44  
45 **2. Management according to silvicultural guidelines.** The  
46 benchmarks must include management according to silvicultural  
47 guidelines to achieve improvement of the overall quality of the  
48 timber resource as a foundation for more value-added  
49 opportunities.

50

2 3. Landscape goals. In the area of landscape goals, the  
3 benchmarks must include a requirement to gather and analyze data,  
4 and to develop and implement a plan for distribution of age  
5 classes, species, habitats and structures to include mature and 2  
6 or more layered stands, over a landowner's total statewide land  
7 area ownership. The benchmarks must include a definition of and  
8 benchmarks for "naturalistic forest management" to be applied on  
9 landscapes of high ecological, recreational or scenic value.  
10 Benchmarks must reflect the limitations and opportunities  
11 inherent in existing forest conditions and may need to achieve a  
12 desired result over a period of time.

13 4. Plantations. The benchmarks must include the  
14 establishment and distribution of plantations.

15 5. Visual impacts. In the area of visual impacts, the  
16 benchmarks must include actions at both the landing and landscape  
17 levels to minimize the potential negative impacts of forest  
18 management within a landowner's total statewide land area  
19 ownership, including impacts on viewsheds with significant public  
20 use.

21 6. Wildlife and fisheries habitat. The benchmarks must  
22 include the promotion of wildlife and fisheries habitat diversity  
23 and the conservation of viable plant and animal populations.

24 7. Fragile or rare ecological sites. The benchmarks must  
25 include screening for and protection of fragile or rare  
26 ecological sites.

27 8. Insecticides and herbicides. The benchmarks must assure  
28 the prudent use of forest insecticides and herbicides and use  
29 integrated pest management techniques to minimize the need for  
30 insecticide and herbicide use.

31 9. Soil productivity and water quality. The benchmarks  
32 must include the protection of soil productivity and water  
33 quality.

34 The board may develop other benchmarks that it identifies as  
35 necessary.

#### 36 §8870-E. Public information

37 The Director of the Maine Forest Service, in consultation  
38 with the board, shall publish an annual report on the condition  
39 of the forests of this State and on performance within the  
40 program no later than December 31st of each year. The Maine  
41 Forest Service shall analyze available United States Forestry

2 Service inventory data to establish a baseline and trends in the  
3 sustainability and structure of the forest.

4 **Sec. 11. 14 MRSA §7552, sub-§3, ¶B**, as enacted by PL 1995, c.  
5 450, §2, is amended to read:

6  
7 B. For lost trees, the owner may claim in lieu of market  
8 value the forfeiture amounts in Title 17, section 2510,  
9 subsection 2. In addition, the owner's damages may include  
10 the costs for regeneration of the stand in accordance with  
11 Title 12, section 8869 8669-A.

12 **Sec. 12. 38 MRSA §439-A, sub-§5, ¶C**, as repealed and replaced  
13 by PL 1991, c. 66, Pt. A, §10, is amended to read:

14  
15 C. Any site within a shoreland area zoned for resource  
16 protection abutting a great pond, beyond the 75-foot strip  
17 restricted in paragraph B, where timber is harvested must be  
18 reforested within 2 growing seasons after the completion of  
19 the harvest, according to guidelines adopted by the board.  
20 The board shall adopt guidelines consistent with minimum  
21 stocking standards established under Title 12, section 8869  
22 8869-A.

23 **Sec. 13. 38 MRSA §480-Q, sub-§7-A, ¶A**, as enacted by PL 1989,  
24 c. 838, §6, is amended to read:

25  
26 A. The activity results in a forest stand that meets the  
27 minimum stocking requirements in rules adopted pursuant to  
28 Title 12, section 8869 8869-A. This requirement takes  
29 effect when those rules are adopted;

30  
31 **Sec. 14. Ecological forest reserves.** The Legislature endorses the  
32 Bureau of Parks and Lands' designation of ecological forest  
33 reserves on state-owned land to protect viable representatives of  
34 the State's natural community types. The Legislature endorses  
35 the Bureau of Parks and Lands' integrated resource management  
36 policies for such reserves, including to:

- 37 1. Provide for a wide range of forest conditions;
- 38 2. Preserve natural areas;
- 39 3. Preserve old growth;
- 40 4. Establish and maintain biological diversity;
- 41 5. Sustain the health and vitality of the natural  
42 environment for the State's many species of wildlife; and

2           6. Establish and maintain a broad array of habitat  
conditions for all indigenous species of wildlife, existing  
forest types and other plant associations.

4  
6           No later than May 1, 1997, the Bureau of Parks and Lands  
shall establish ecological forest reserves totaling between  
12,000 and 15,000 acres on public lands that are currently  
8 available for timber harvesting. Timber harvesting is prohibited  
on the ecological forest reserves. Traditional recreation  
10 activities, including, but not limited to, hunting, trapping and  
fishing, must be allowed.

12           **Sec. 15. Timber liquidation.** The Legislature finds that  
14 certain forest lands in the State have been subjected to the  
practice of timber liquidation harvesting.

16           The act of timber liquidation harvesting, defined as  
18 excessive timber harvesting on lands held for less than 10 years,  
is inconsistent with accepted silvicultural and forest  
20 stewardship principles shared by the State and its private forest  
landowners. Ensuring a sustainable forest resource for the State  
22 requires the objective of severely restricting timber liquidation  
activities in the State. While the regulatory changes introduced  
24 by this Act will impact and reduce timber liquidation in the  
State, additional policies will be required to achieve the  
26 objective of severely restricting this activity.

28           Therefore, the Legislature directs that:

30           1. Upon enactment of this Act, the Maine Forest Service, in  
consultation with faculty of the College of Forestry and Natural  
32 Resources at the University of Maine and other outside experts on  
timber liquidation and forest productivity, shall initiate and  
34 complete by March 1, 1997 an assessment of the expected impact of  
the provisions of this Act upon the practice of timber  
36 liquidation;

38           2. The Maine Forest Service, as part of the above  
assessment, shall estimate the amount and types of liquidation  
40 that are likely to occur in the State after implementation of  
this Act; and

42           3. By April 1, 1997, the Governor shall submit to the  
44 Legislature a legislative proposal designed to further restrict  
timber liquidation to ensure that, in combination with the  
46 provisions of this Act, timber liquidation harvesting is severely  
restricted in the State.

48           **Sec. 16. Review of regulatory restrictions.** The Sustainable  
50 Forest Management Audit Board, established in the Maine Revised

2 Statutes, Title 5, section 12004-G, subsection 12-A, shall review  
the regulatory restrictions contained in the laws regulating  
4 forest practices in Title 12, chapter 805, subchapter III-A and  
make a report containing recommendations to the Legislature and  
6 the Commissioner of Conservation for regulatory flexibility to  
apply to the participants in the Sustainable Forest Management  
8 Audit Program who have successfully passed the audit program in  
Title 12, chapter 805, subchapter III-B, thus demonstrating sound  
10 forest management. The review and recommendations must include,  
but are not limited to, suggestions for regulatory flexibility  
regarding the following provisions of Title 12:

12 1. The provisions regarding permit by rule in section  
14 8869-A, subsection 2, paragraph B;

16 2. The provisions regarding the 0.75% limit in section  
18 8869-A, subsection 3, paragraph B;

20 3. The provisions regarding maximum clear-cut size in  
section 8869-A, subsection 5; and

22 4. The provisions regarding clear-cut separation zones in  
24 section 8869-A, subsection 6.

The report must also include recommendations for any  
26 necessary legislative changes to this Act and be submitted on or  
before January 1, 2000.

### 28 **Sec. 17. Board report; termination.**

30 1. The Sustainable Forest Management Audit Board,  
32 established in the Maine Revised Statutes, Title 5, section  
12004-G, subsection 12-A and referred in this section as the  
34 "board," shall conclude its work by January 1, 2002. No later  
than this date, the board shall submit a report and any necessary  
36 implementing legislation to the Governor and the Legislature  
summarizing the board's work and recommending any improvements or  
38 changes to the Sustainable Forest Management Audit Program or  
this Act. The board may recommend any necessary revisions to the  
40 benchmarks to incorporate the best available scientific  
information. The report must include an evaluation and  
42 assessment of the program. The report must also include research  
necessary to determine:

44 A. The potential opportunities and barriers for landowners  
46 with less than 100,000 acres in total statewide land  
holdings to participate voluntarily in the program;

2 B. The number of landowners, the number of acres and the  
geographic distribution of lands certified as passing or  
failing the audit;

4  
6 C. The extent to which landowners are participating in the  
program; and

8 D. The extent to which the benchmarks are being attained.

10 2. The board ceases to exist 90 days after the adjournment  
12 of the Second Regular Session of the 120th Legislature. The  
Commissioner of Conservation shall assume any remaining duties of  
the board.

14  
16 **Sec. 18. Intent of the Legislature; competing measure.** It is the  
intent of the Legislature that this Act be interpreted as a  
18 competing measure within the meaning of the Constitution of  
Maine, Article IV, Part Third, Section 18, with Initiated Bill 4,  
20 Legislative Document 1819 of the 117th Legislature, "An Act to  
Promote Forest Rehabilitation and Eliminate Clearcutting." It is  
the further intent of the Legislature that this measure be  
22 subject to referendum as a competing measure with that bill.

24 **Sec. 19. Statutory referendum procedure; submission at general  
election; form of question; effective date.** This Act must be submitted  
26 to the legal voters of the State of Maine at the next general  
election in the month of November following passage of this Act  
28 as a competing measure with Initiated Bill 4, Legislative  
Document 1819 of the 117th Legislature, "An Act to Promote Forest  
30 Rehabilitation and Eliminate Clearcutting." The municipal  
officers of this State shall notify the inhabitants of their  
32 respective cities, towns and plantations to meet, in the manner  
prescribed by law for holding a statewide election, to vote on  
34 the acceptance or rejection of this Act by voting on the  
following question:

36  
38 "Do you favor enactment of the Compact for Maine's Forests  
to promote sustainable forest management practices  
throughout the State?"

40  
42 The legal voters of each city, town and plantation shall  
vote by ballot on this question, and shall designate their choice  
44 by a cross or check mark placed within a corresponding square  
below the word "Yes" or "No." The ballots must be received,  
46 sorted, counted and declared in open ward, town and plantation  
meetings and returns made to the Secretary of State in the same  
48 manner as votes for members of the Legislature. The Governor  
shall review the returns and, if it appears that a majority of  
50 the legal votes are cast in favor of the Act, the Governor shall  
proclaim that fact without delay, and the Act takes effect  
January 1, 1997.



2           The Secretary of State shall prepare and furnish to each  
city, town and plantation all ballots, returns and copies of this  
4 Act necessary to carry out the purpose of this referendum.

6

8

## SUMMARY

10

This bill establishes a new forest policy for the State. It  
is to be placed before the voters as a competing measure to the  
12 forest practices referendum.

14

This bill amends the Department of Conservation's natural  
resource education program and directs the department to develop  
16 partnerships and funding sources for creating new natural  
resource education initiatives for the public.

18

The bill amends the forest practices laws to establish a  
20 permit-by-rule procedure for clear-cutting, increase the minimum  
basal area required for a timber harvest not to qualify as a  
22 clear-cut, require that clear-cutting have a silvicultural  
justification and set limitations on the size and arrangement of  
24 clear-cuts, with some exemptions provided for smaller holdings.

26

The bill also establishes the Sustainable Forest Management  
Audit Program within the Department of Conservation for  
28 ownerships greater than 100,000 acres in size to ensure the  
maintenance and enhancement of timber sustainability, the  
30 economic viability of forest management and the State's forest  
biodiversity.

32

The bill establishes an ecological forest reserve on public  
34 lands, totaling between 12,000 and 15,000 acres.

36

The bill directs the Maine Forest Service to undertake a  
study of liquidation harvesting and make recommendations to  
38 further restrict the practice.