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L.D. 1766

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MINORITY
AGRICULTURE, CONSERVATION AND FORESTRY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1246, L.D. 1766, Bill, "An Act to Improve Management of Maine's Forests"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

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

12-A.	Sustainable	Not Autho-	12 MRSA
Environment/ Natural Resources	Forest Management Program Board	rized	§8870-C

Sec. 2. 12 MRSA §8867, as amended by PL 1991, c. 722, §§2 to 4 and affected by §11, is repealed.

Sec. 3. 12 MRSA §8868, as enacted by PL 1989, c. 555, §10, is repealed.

Sec. 4. 12 MRSA §8868-A is enacted to read:

§8868-A. Definitions

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

1. Affiliated interest. "Affiliated interest" means:

COMMITTEE AMENDMENT

2 A. Any corporate or other legal entity in which a landowner
 possesses a controlling ownership interest; or

4 B. Any corporate or other legal entity that possesses a
 controlling ownership interest in a landowner. Rules
6 adopted by the commissioner must define what constitutes a
 controlling ownership interest in a landowner.

8 2. Benchmark. "Benchmark" means a measurable forest
10 management goal or guideline, but is not a regulatory standard.

12 3. Bureau. "Bureau" means the Bureau of Forestry.

14 4. Clear-cut. "Clear-cut" means timber harvesting on a
16 forested site greater than one acre in size that results in a
 residual stand that does not meet either of the following
18 conditions:

20 A. The average residual basal area of acceptable growing
 stock trees 4.5 inches and over in diameter measured at 4
22 1/2 feet above the ground is 45 square feet per acre or
 more; or

24 B. The site has a well-distributed stand of acceptable
 growing stock trees of at least 5 feet in height that meets
26 the regeneration standards adopted by the commissioner.

28 5. Commissioner. "Commissioner" means the Commissioner of
30 Conservation.

32 6. Director. "Director" means the Director of the Bureau
 of Forestry.

34 7. Forest lands owned by a landowner. "Forest lands owned
36 by a landowner" means any forest land in which a landowner or an
 affiliated interest possesses a dominant ownership interest with
38 respect to timber harvesting. Rules adopted by the commissioner
 must describe what constitutes a dominant ownership interest.

40 8. Landowner. "Landowner" means a person, firm,
42 association, organization, partnership, cotenant, joint tenant,
 trust, company, corporation, state agency or other legal entity
44 or entities that possess a dominant ownership interest in land
 with respect to timber harvesting. Rules adopted by the
46 commissioner must describe what constitutes a dominant ownership
 interest.

48 9. Parcel. "Parcel" means a contiguous tract or plot of
 forest land owned by a landowner. Multiple contiguous tracts,

plots or parcels of forest land owned by the same landowner are considered a single parcel for the purposes of this subchapter.

10. Timber harvesting. "Timber harvesting" means the cutting or removal of at least 50 cords of timber for the primary purpose of selling or processing forest products.

Sec. 5. 12 MRSA §8869, sub-§§2, 3 and 5, as enacted by PL 1989, c. 555, §10, are repealed.

Sec. 6. 12 MRSA §8869, sub-§§13 to 18 are enacted to read:

13. Maximum area clear-cut limits; forest land ownerships equal to or greater than 100,000 acres. When forest lands owned by a landowner total 100,000 acres or more statewide, not more than one quarter of one percent of those forest lands may be clear-cut in any calendar year.

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

15. Clear-cut separation zones. For parcels of land over 100 acres, clear-cut harvest areas must be separated by a defined area equal to 1 1/2 times the area contained within the perimeter of the clear-cut. Each defined area must be identified with a specific clear-cut area. For parcels of land 100 acres or less, a clear-cut must be separated from any other clear-cut by at least 250 feet.

16. Science-based stocking standards. A landowner subject to the provisions of subsection 13 must ensure that timber harvesting on that landowner's lands leaves adequate residual stocking. Adequate residual stocking standards for nonregeneration harvests of commercial forest products by that landowner must meet stocking standards adopted by the commissioner.

17. Sustainable harvest levels. For landowners subject to the provisions of subsection 13, species group and total harvesting activities may not exceed sustainable harvest levels for any rolling 10-year average as defined in rules adopted by the commissioner. Sustainable harvest levels must be based on growth rate, yield and other criteria established in those rules.

18. Permit required; variance. A landowner subject to the provisions of subsection 13 must obtain a permit from the Maine Forest Service prior to undertaking harvesting activities that are planned to or may reasonably be expected to result in:

2 A. A clear-cut. Prior to issuing a permit for a clear-cut,
4 the Maine Forest Service must determine that the clear-cut
6 is silviculturally justified, that there are no reasonable
8 alternatives to the proposed clear-cut and that no undue
10 adverse ecological damage will result from the clear-cut or
12 the clear-cutting activities; or

14 B. For harvesting activities other than clearcutting, a
16 residual stocking level that is less than that required by
18 the Maine Forest Service or less than the applicable United
20 States Forest Services C line.

22 The commissioner shall establish, by rule, guidelines for
24 permitting activities that exceed the standards set forth under
26 this subsection. In developing those guidelines, the
28 commissioner shall consider the unique characteristics of a site
30 and any related economic hardship that would result from
32 noncompliance with these standards.

34 Sec. 7. 12 MRSA c. 805, sub-c. III-B is enacted to read:

36 **SUBCHAPTER III-B**

38 **SUSTAINABLE FOREST MANAGEMENT PROGRAM**

40 **§8870-A. Sustainable Forest Management Program**

42 **1. Findings.** The Legislature finds that:

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

48 B. The forests of this State must be managed in a manner
50 that ensures their sustainable ecological and economic
52 health; and

54 C. Forests must be managed in a sustainable manner to meet
56 the needs of current and future generations.

58 **2. Program established; objectives.** The Sustainable Forest
60 Management Program, referred to in this subchapter as the
62 "program," is established within the Department of Conservation
64 to ensure continuous improvement in forest management and to
66 optimize both the long-term ecological and the economic health of
68 forests in this State. Two objectives guide the program:

70 A. The maintenance and enhancement of timber sustainability
72 and the economic viability of forest management; and

2 B. The maintenance and enhancement of the biodiversity of
3 forests in this State, including viable populations of
4 native species and viable representatives of native forest
5 communities well distributed across their native ranges.

6 **§8870-B. Application**

8 After January 1, 2001, any landowner or affiliated interest
9 who own 100,000 or more acres of forest lands in the State must
10 participate in the program.

12 **§8870-C. Program administration**

14 1. Board established; membership; termination. The
15 Sustainable Forest Management Program Board, referred to in this
16 subchapter as the "board," is established within the Department
17 of Conservation to develop the program and oversee its
18 implementation by the bureau. The bureau shall provide staff
19 assistance to the board within existing budgeted resources.
20 Meetings of the board are public meetings.

22 The board consists of the following 10 members:

24 A. The director, who serves as a nonvoting member; the
25 resource manager for the Specific Forest Management Area in
26 Baxter State Park; and a forester in the Bureau of Parks and
27 Lands appointed by the director of that bureau. Each member
28 under this paragraph serves a term coincident with that
29 person's employment in that position; and

30 B. The following 7 persons appointed by the Governor,
31 subject to review by the joint standing committee of the
32 Legislature having jurisdiction over forestry matters and to
33 confirmation by the Senate: one person with demonstrated
34 expertise in silviculture; one person with demonstrated
35 expertise in freshwater ecology; one person with
36 demonstrated expertise in soil science; one person with
37 demonstrated expertise in forest ecology; one person with
38 demonstrated expertise in conservation or wildlife biology;
39 one person with demonstrated expertise in low-impact
40 forestry; and one person with demonstrated expertise in
41 forest-based recreation. The term of persons appointed
42 under this paragraph is 3 years, except that, of the initial
43 appointees, 3 serve one-year terms, 2 serve 2-year terms and
44 2 serve 3-year terms.

46 The board shall annually select a chair from among its members.
47 A vacancy on the board must be filled as provided in this
48 subsection.

50

2 2. Decision-making process. The board shall reach its
4 decisions by the majority vote of all members. The board shall
6 provide ample opportunities for public input and discussion and
8 may convene working groups to assist it in areas requiring
10 particular expertise or perspectives.

12 3. Duties of the board. The board shall:

14 A. By January 1, 2000, through a public process and using
16 the best scientific information and expertise available:

18 (1) Establish specific, credible and practical
20 benchmarks to achieve the objectives set forth in
22 section 8870-A. The benchmarks must be developed in
24 the categories set forth in section 8870-D. In
26 establishing the benchmarks, the board shall consider
28 and incorporate, as appropriate, the work of past
30 collaborative forest policy efforts, including the
32 findings and recommendations set forth in the final
34 report of the Maine Council on Sustainable Forest
36 Management. In addition, the benchmarks established
38 must be sufficiently flexible to allow successful
40 participation in the program by landowners representing
42 a range of ownership sizes and must ensure continuous
44 improvement of the process;

46 (2) Establish the methodology for reviewing the forest
48 management of landowners participating in the program;

50 (3) Establish a process for certifying independent 3rd
parties to perform review and certification of
landowners in the program. Once established, the
review and certification process must be administered
by the bureau;

(4) Recommend to the commissioner incentives to
encourage participation in the program by landowners.
The incentives may include, but are not limited to,
marketing opportunities, tax treatment and regulatory
flexibility;

(5) Recommend to the commissioner disincentives for
failure to meet program benchmarks;

(6) Develop and maintain a register of accredited
3rd-party review and certification parties that, in the
board's judgment, employ benchmarks and criteria that
are substantially equivalent to those employed under
this section and develop a process to add new
qualifying 3rd-party review and certification parties.

In developing the register, the board's criteria for registering review and certification parties must be sufficiently flexible to allow registration of existing 3rd-party review and certification parties that certify for sustainable forest practices, ecological health, socio-economic health and marketing of forest products in order to ensure continuity for landowners using such programs and minimize duplication of effort; and

(7) Adopt rules establishing a procedure for a landowner to demonstrate compliance with the provisions of the program through submission to the board of proof of review and certification by a review and certification party on the register. At the time of the adoption of rules, the board shall review any a review and certification party considered in compliance with the program benchmarks and criteria and shall authorize the continuation of this recognized status if the board determines that the review and certification party continues to employ benchmarks and criteria that are substantially equivalent to those employed under this section.

4. Responsibility for program administration. The bureau shall administer the program, including benchmarks, methodologies and processes developed by the board.

5. Third party review and certification program. The following provisions govern the 3rd party review and certification program.

A. A landowner who participates in the program shall first register with the director and then select a reviewer certified by the bureau who does not have a direct and substantial financial or other relationship with that landowner that may preclude the reviewer's ability to conduct an independent, objective review.

B. Upon selection of a reviewer, a participating landowner shall submit to the bureau a timetable for conducting a review of the management of the landowner's forest lands in the State and identification of the reviewer selected. The reviewer and the participating landowner shall ensure that the review is conducted within 18 months after submission of the timetable. The review must be conducted in accordance with the benchmarks and criteria established by the board.

C. Upon completion of a review, the reviewer shall submit a written report to the director and the board that includes:

2 (1) A statement that the landowner either passed or
failed the review;

4 (2) The grade received in each area;

6 (3) An explanation of the factual and analytical basis
for the conclusions in the report; and

8 (4) Any conditions required to meet the benchmarks.

10
12 D. A review of the management of forest lands of a
participating landowner must be conducted at least every 5
years.

14
16 6. Program report; confidentiality. Once submitted to the
director or the board, the report of the reviewer required under
subsection 5, paragraph C is a public record. For purposes of
18 Title 1, section 402, a reviewer certified by the bureau is not
an agency or public official of the State and materials held by
20 the reviewer in the course of a review are not public records by
virtue of being in the possession or custody of the reviewer.

22 **§8870-D. Program benchmarks**

24
26 The board shall develop specific, credible and practical
benchmarks in the following areas.

28 1. Sustained yield. The benchmarks must include measures
to ensure sustained yield. These measures may include growth,
30 harvest levels, rotation length, inventory levels, mix of species
and landowners' forest management objectives, if these objectives
32 are compatible with the objectives of the program. The
benchmarks must include appropriate flexibility for year-to-year
34 variation.

36 2. Management according to silvicultural guidelines. The
benchmarks must include appropriate use of established
38 silvicultural guidelines, including:

40 A. Standards to achieve improvement of the overall quality
of the timber resource as a foundation for more value-added
42 opportunities;

44 B. Stocking standards to ensure productivity and
windfirmness in stands where the overstory is manageable; and

46
48 C. A description of the circumstances in which there are no
viable options for managing the overstory.

50 3. Landscape goals. In the area of landscape goals, the
benchmarks must include a requirement to gather and analyze data

2 and to develop and implement a plan age classes for distribution
4 over landscape planning units of approximately 25,000 acres, or
6 other reasonable size proposed by the landowner and acceptable to
8 the board, of age classes, including late successional age
10 classes; species; habitats; and structures. The landscape
12 planning units must also include mature and 2 or more layered
14 stands. The benchmarks must include a definition of and
16 benchmarks for "naturalistic forest management" to be applied on
18 landscapes of high ecological, recreational or scenic value.
20 Benchmarks must ensure that a significant percentage of each
22 landscape planning unit is in mature well-stocked condition at
24 all times. Benchmarks must reflect the limitations and
26 opportunities inherent in existing forest conditions and may need
28 to achieve a desired result over a period of time.

16 4. Plantations. The benchmarks must discourage the
18 simplification, fragmentation and conversion of forests and
20 ensure that plantations, if established, are established only on
22 appropriate sites and in a manner that does not significantly
24 alter the ecological integrity of the forest at the landscape
26 scale.

24 5. Visual impact. In the area of visual impact, the
26 benchmarks must include actions at both the landing and landscape
28 levels to minimize the potential adverse impact of forest
30 management within a landowner's total statewide land area
32 ownership, including the impact on views with significant public
34 use.

30 6. Wildlife and fisheries habitat. The benchmarks must
32 include forest management that promotes wildlife and fisheries
34 habitat diversity and conserves viable plant and animal
36 populations.

36 7. Fragile or rare ecological sites. The benchmarks must
38 include screening for and protection of fragile or rare
40 ecological sites and threatened or endangered species.

40 8. Insecticides and herbicides. The benchmarks must
42 include avoidance of activities that lead to an increased
44 likelihood of severe insect, disease or brush problems and ensure
46 the use of integrated pest management techniques to minimize the
48 use of chemical insecticides and herbicides.

46 9. Water quality. The benchmarks must ensure the
48 protection and integrity of freshwater ecosystems by determining
width of buffers by water body size, stocking requirements within
those buffers and placement of roads and other openings.

10. Soil productivity. The benchmarks must include measures for adequate ecological rotations based on stand and soil types, to allow recovery of soil nutrient and organic matter and recovery of late successional habitats.

11. Impact of harvesting activities. The benchmarks must establish maximum allowable levels of residual stand damage to soils and residual trees; address the size and distribution of roads, trails and yards to minimize soil damage, windthrow, habitat fragmentation and loss of productivity; and address the management of harvest residues to ensure that nutrients and organic matter are returned to forest soils in a well-distributed manner.

The board may develop other benchmarks that it identifies as necessary to achieve the purposes of this subchapter.

Sec. 8. Rulemaking. The Commissioner of Conservation and the Sustainable Forest Management Program Board shall provisionally adopt all rules required by this Act in accordance with the Maine Revised Statutes, Title 5, chapter 375. All rules adopted to implement this Act are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and initially must be provisionally adopted and submitted to the Legislature no later than January 1, 1999. Prior to provisionally adopting these rules, the commissioner shall consult with the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife and shall ensure that these rules are consistent with wildlife habitat and environmental protection laws, rules and policies administered by those departments.

Sec. 9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

CONSERVATION, DEPARTMENT OF

Forest Practices

All Other \$5,000

Provides funds to develop benchmarks and a database necessary for the establishment of a forestry audit program for large landowners.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

2 Further amend the bill by inserting at the end before the
summary the following:

6 **FISCAL NOTE**

8 **1998-99**

10 **APPROPRIATIONS/ALLOCATIONS**

12 General Fund \$5,000

14 The Department of Conservation will require additional
16 General Fund appropriations of \$5,000 annually in fiscal years
18 1998-99 and 1999-2000 for the costs of developing required
20 benchmarks and a database needed to implement a forest audit
program for large landowners. The costs beginning in fiscal year
2000-01 will be reduced such that these cost can be absorbed by
the department using budgeted resources.

22 The department will also incur some minor additional costs
24 to adopt certain rules pertaining to the Sustainable Forest
Management Program. These costs can be absorbed within the
department's existing budgeted resources.

26 The Department of Environmental Protection and the
28 Department of Inland Fisheries and Wildlife will incur some minor
30 additional costs to consult with the Department of Conservation
32 regarding the adoption of certain rules. These costs can be
absorbed within the departments' existing budgeted resources.'

34 **SUMMARY**

36 This is the minority report of the Joint Standing Committee
on Agriculture, Conservation and Forestry. This amendment
38 replaces the bill.

40 The amendment proposes several changes relating to
42 clear-cuts, standards for residual stocking and sustainable
harvest levels and certification through a review program.

44 With respect to clear-cuts and clear-cutting activities, the
46 amendment reduces from 250 acres to 75 acres the maximum size of
a clear-cut and reduces the threshold size of a clear-cut from
48 five acres to one acre. It also requires landowners who hold
100,000 or more acres of forest land to get a permit from the
Maine Forest Service before any clear-cutting activity and
50 prohibits such landowners from clear-cutting more than 0.25 of

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2 their land in any one year. Clear-cuts must be separated by a
clearly defined separation zone at least equal to 1 1/2 times the
area of the associated clear-cut.

4
6 With respect to stocking standards and harvest levels, the
amendment requires that all harvests by large landowners leave
adequate residual stocking. A permit from the Maine Forest
8 Service is required before a large landowner may undertake any
harvesting that will result in stocking levels below the
10 applicable United States Forest Service C line standard or below
the standards adopted by the commissioner. Large landowners may
12 not exceed sustainable harvesting levels that are based on
growth, yield and other relevant criteria.

14
16 With respect to certification requirements, the amendment
establishes a 10-member Sustainable Forest Management Program
Board to develop benchmarks for a review program that, after
18 January 1, 2000, is required for large landowners. Members of
the board who are not ex-officio members are appointed by the
20 Governor and are subject to confirmation by the Joint Standing
Committee on Agriculture, Conservation and Forestry.

22
24 The amendment adds an appropriation section and a fiscal
note to the bill.