

# MAINE STATE LEGISLATURE

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M  
R.S.

L.D. 245

DATE: 5-14-03

(Filing No. H-378)

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**AGRICULTURE, CONSERVATION AND FORESTRY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
121ST LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 200, L.D. 245, Bill, "An Act To Promote Planning To Protect the State's Waters"

Amend the bill by striking out the title and substituting the following:

**'An Act To Promote Consistent Protection of the State's Waters'**

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

**'Sec. 1. 12 MRSA §685-A, sub-§12 is enacted to read:**

12. Timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. Beginning January 1, 2006, rules adopted by the Commissioner of Conservation pursuant to section 8867-B apply in the unorganized and deorganized areas for the purpose of regulating timber harvesting and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. The Director of the Bureau of Forestry shall administer and enforce the regulation of timber harvesting and timber harvesting activities in these areas. For the purposes of this subsection, "timber harvesting" and "timber harvesting activities" have the same meanings as in section 8868, subsections 4 and 5.

**Sec. 2. 12 MRSA §8867-B, as amended by PL 2001, c. 566, §1, is further amended to read:**

**COMMITTEE AMENDMENT**

H. of S.

**§8867-B. Regulation of timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters**

In accordance with the purposes of chapter 206-A and Title 38, chapter 3 and no later than October 1, 2003, the Commissioner of Conservation ~~may-provisionally~~ shall adopt rules in accordance with Title 5, chapter 375 to establish performance standards for timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and tidal waters. The rules must provide the maximum opportunity for flexibility that achieves the goal of protecting the public resources while minimizing the impact on private resources. ~~Rules~~ The initial rules adopted pursuant to this section are ~~major-substantive~~ routine technical rules as defined in Title 5, chapter 375, subchapter II-A 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 3. 12 MRSA §8869, sub-§8**, as amended by PL 1999, c. 263, §1, is further amended by amending the 2nd paragraph to read:

A municipality may not adopt an ordinance that is less stringent than the minimum standards established in this section and in rules adopted by the commissioner to implement this section and section 8867-B. A municipality may not adopt or amend an ordinance that regulates timber harvesting unless the process set out in this subsection is followed in the development and review of the ordinance.

**Sec. 4. 38 MRSA §438-A**, as amended by PL 1997, c. 726, §2, is further amended by adding a new 2nd paragraph to read:

Notwithstanding other provisions of this article, beginning January 1, 2006 the regulation of timber harvesting and timber harvesting activities in shoreland areas must be in accordance with section 438-B and rules adopted by the Commissioner of Conservation pursuant to Title 12, section 8867-B.

**Sec. 5. 38 MRSA §438-B** is enacted to read:

**§438-B. Timber harvesting and timber harvesting activities in shoreland areas; authority of Director of the Bureau of Forestry in the Department of Conservation**

Except as provided in subsection 4, beginning January 1, 2006, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas.

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2 1. Definitions. As used in this section, unless the  
3 context otherwise indicates, the following terms have the  
4 following meanings.

5 A. "Director" means the Director of the Bureau of Forestry  
6 within the Department of Conservation.

7 B. "Statewide standards" means the performance standards for  
8 timber harvesting activities adopted pursuant to Title 12,  
9 section 8867-B.

10 C. "Timber harvesting" means cutting or removal of timber  
11 for the primary purpose of selling or processing forest  
12 products.

13 D. "Timber harvesting activities" means the construction and  
14 maintenance of roads used primarily for timber harvesting  
15 and other activities conducted to facilitate timber  
16 harvesting.

17 2. Municipal acceptance of statewide standards. A  
18 municipality may choose to have the statewide standards apply to  
19 timber harvesting and timber harvesting activities in that  
20 municipality by repealing all provisions within the municipal  
21 shoreland zoning ordinance that regulate timber harvesting and  
22 timber harvesting activities in shoreland areas and notifying the  
23 director of the repeal. When a municipality accepts the statewide  
24 standards in accordance with this subsection, the director shall  
25 administer and enforce the statewide standards within that  
26 municipality.

27 3. Municipal adoption of ordinance identical to statewide  
28 standards. A municipality may adopt an ordinance to regulate  
29 timber harvesting and timber harvesting activities that is  
30 identical to the statewide standards. A municipality that adopts  
31 an ordinance under this subsection may request the director to  
32 administer and enforce the ordinance or to participate in joint  
33 administration and enforcement of the ordinance with the  
34 municipality. When a municipality requests joint  
35 responsibilities, the director and the municipality shall enter  
36 into an agreement that delineates the administrative and  
37 enforcement duties of each. To continue to receive  
38 administrative and enforcement assistance from the director under  
39 this subsection, a municipality must amend its ordinance as  
40 necessary to maintain identical provisions with the statewide  
41 standards.

42 4. Municipal ordinances that are not identical to statewide  
43 standards. A municipal ordinance regulating timber harvesting  
44 and timber harvesting activities that is in effect and consistent  
45 with the statewide standards shall not be subject to repeal.

# COMMITTEE AMENDMENT

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2 with state laws and rules in effect on December 31, 2005  
3 continues in effect unless action is taken in accordance with  
4 subsection 2 or 3. A municipality that retains an ordinance with  
5 provisions that differ from the statewide standards shall  
6 administer and enforce that ordinance. A municipality may not  
7 amend a municipal ordinance regulating timber harvesting and  
8 timber harvesting activities unless the process established in  
9 Title 12, section 8869, subsection 8 is followed. Beginning on  
10 January 1, 2006, a municipality may not amend an ordinance  
11 regulating timber harvesting and timber harvesting activities in  
12 a manner that results in standards that are less stringent than  
13 or otherwise conflict with the statewide standards.

14 **Sec. 6. Adoption of rule; legislation authorized.** The Commissioner  
15 of Conservation shall proceed with adoption of a rule to  
16 establish statewide standards for timber harvesting and timber  
17 harvesting activities in shoreland areas. The rule must implement  
18 the recommendations submitted in a report dated February 18, 2003  
19 and presented to the Joint Standing Committee on Agriculture,  
20 Conservation and Forestry on February 24, 2003. The committee may  
21 report out a bill to the Second Regular Session of the 121st  
22 Legislature to make statutory revisions necessary to implement a  
23 statewide standard for timber harvesting and timber harvesting  
24 activities in shoreland areas, to clarify the responsibilities of  
25 the Bureau of Forestry in administering and enforcing the  
26 standard and to clarify municipal authority to adopt, administer  
27 and enforce a standard that is consistent with or more stringent  
28 than the statewide standard.

30 **Sec. 7. Review of rules pertaining to timber harvesting in shoreland**  
31 **areas within unorganized and deorganized areas.** No later than  
32 October 1, 2005, the Maine Land Use Regulation Commission, in  
33 consultation with the Director of the Bureau of Forestry within  
34 the Department of Conservation, shall review the commission's  
35 rules pertaining to timber harvesting and timber harvesting  
36 activities in shoreland areas and provide for the repeal or  
37 amendment of rules that duplicate or conflict with the rules  
38 adopted by the Commissioner of Conservation pursuant to the Maine  
39 Revised Statutes, Title 12, section 8867-B. The commission shall  
40 ensure that any necessary changes in rule become effective  
41 January 1, 2006.

42 **Sec. 8. Review of rules pertaining to timber harvesting in shoreland**  
43 **areas.** No later than October 1, 2005, the Commissioner of  
44 Environmental Protection, in consultation with the Director of  
45 the Bureau of Forestry within the Department of Conservation,  
46 shall review rules adopted by the commissioner or the Board of  
47 Environmental Protection pertaining to timber harvesting and  
48 timber harvesting activities in shoreland areas and provide for  
49 the repeal or amendment of rules that duplicate or conflict with  
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1015  
2 the rules adopted by the Commissioner of Conservation pursuant to  
3 Maine Revised Statutes, Title 12, section 8867-B. The  
4 Commissioner of Environmental Protection and the board shall  
5 ensure that any necessary changes become effective January 1,  
6 2006.'

8 **SUMMARY**

10 This amendment replaces the bill. It authorizes the  
11 Department of Conservation to proceed with rulemaking to  
12 implement a statewide standard for timber harvesting and timber  
13 harvesting activities in shoreland areas. It allows a  
14 municipality to retain a municipal ordinance pertaining to timber  
15 harvesting and timber harvesting activities in shoreland areas if  
16 the ordinance is consistent with laws and rules in effect  
17 December 31, 2005. The statewide standards must be adopted by  
18 October 1, 2003 with a delayed effective date of January 1, 2006.  
19 The Maine Land Use Regulation Commission, the Commissioner of  
20 Environmental Protection and the Board of Environmental  
21 Protection are directed to amend or repeal their rules as  
22 necessary to remove any provisions that duplicate or conflict  
23 with the statewide standards. It authorizes the Joint Standing  
24 Committee on Agriculture, Conservation and Forestry to report out  
25 legislation necessary to implement the statewide standard for  
26 timber harvesting in shoreland areas or clarify the  
27 responsibilities of the Bureau of Forestry in administering and  
28 enforcing the standard.

**FISCAL NOTE REQUIRED**  
(See attached)

**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 245**

**An Act To Promote Consistent Protection of the State's Waters**

**LR 1115(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Agriculture, Conservation and Forestry**

**Fiscal Note Required: Yes**



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**Fiscal Note**

Minor cost increase - General Fund