

MAINE STATE LEGISLATURE

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



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

M
R. O. S.

L.D. 1318

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

DATE: 5-19-03

(Filing No. H-440)

MAJORITY
LABOR

Reproduced and distributed under the direction of the Clerk of the House.

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

COMMITTEE AMENDMENT "A" to H.P. 972, L.D. 1318, Bill, "An Act To Provide Collective Bargaining Rights to Certain Forest Products Workers"

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

'An Act To Promote the Public Interest by Providing for Reasonable Rates of Compensation for Forest Products Harvesting and Hauling Services'

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. 26 MRSA c. 18 is enacted to read:

CHAPTER 18

RATES OF COMPENSATION FOR FOREST PRODUCTS HARVESTING AND HAULING SERVICES

§1351. Legislative findings

The Legislature finds that the harvesting and hauling of forest products are performed by numerous loggers and truckers who individually are not able to bargain effectively with major forest landowners. The inequity of power in determining compensation and the lack of opportunity to join together in bargaining over compensation can result in unfair contract rates for the services of loggers and truckers. The Legislature finds

COMMITTEE AMENDMENT

P.O.S.

2 that it is in the public interest to ensure a reasonable rate of
3 compensation for harvesting and hauling services and therefore
4 creates in this chapter a process whereby the State, upon
5 request, sets the rates of compensation for such services.

6 **§1352. Definitions**

8 As used in this chapter, unless the context otherwise
9 indicates, the following terms have the following meanings.

10 1. Association. "Association" includes an incorporated or
11 unincorporated entity.

12 2. Board. "Board" means the State Board of Arbitration and
13 Conciliation created in section 931.

14 3. Forest landowner. "Forest landowner" means a person
15 that owns more than 100,000 acres of forest land in this State or
16 the agent or subsidiary of such a person, any of whom is involved
17 in contracting or negotiating contracts or other arrangements,
18 written or oral, with forest products harvesters or forest
19 products haulers.

20 4. Forest products harvester. "Forest products harvester"
21 or "harvester" means a person having a place of business in this
22 State who is engaged in the harvesting of trees from forests in
23 the State and performing services under a contract, directly or
24 indirectly, for a forest landowner.

25 5. Forest products hauler. "Forest products hauler" or
26 "hauler" means a person having a place of business in this State
27 who is engaged in the hauling of harvested trees to mills and
28 performing services under a contract, directly or indirectly, for
29 a forest landowner.

30 6. Person. "Person" includes one or more individuals,
31 partnerships, corporations and associations.

32 **§1353. State role in determining rates of compensation; board**
33 **powers and duties**

34 1. Rate determinations. The board, upon request made
35 pursuant to section 1357 and in accordance with the procedures
36 and standards set forth in this chapter, shall determine
37 reasonable rates of compensation to be paid for forest products
38 hauling services and forest products harvesting services in a
39 specified area of the State.

40 2. Board powers and duties. For the purposes of carrying
41 out its responsibility under this chapter, the board has the
42 power to

2 powers set forth in chapter 9, subchapter 2-A. The board may
4 adopt rules to implement this chapter, including rules specifying
6 what information held by the board is confidential and not
8 subject to public disclosure. Rules adopted by the board to
10 implement this chapter are routine technical rules as defined in
12 Title 5, chapter 375, subchapter 2-A.

8 3. Compensation; costs of rate determination proceeding.
10 Members of the board are entitled to the compensation provided
12 for in section 931 for their services under this chapter. Costs
14 incurred by the board in making a rate determination under this
16 chapter must be borne equally by the parties to the rate
18 determination proceeding and may be collected by the board
20 pursuant to section 931.

16 §1354. Participation of harvesters and haulers in the rate
18 determination process

20 For the purpose of effectively representing their interests
22 in rate determination proceedings under this chapter, one or more
24 harvesters or haulers may join together and form an association
26 to meet, confer, share information and take other collective
28 action as may support their participation in rate determination
30 proceedings.

26 §1355. Negotiations preceding rate determination

28 One or more harvesters or haulers may meet and negotiate
30 with one or more forest landowners on the issue of determining
32 reasonable rates to be paid for harvesting services and hauling
34 services in the State, as long as any agreement reached by the
36 parties regarding rates of compensation is made contingent upon
38 review and approval by the board.

34 §1356. Activities are not restraint of trade

36 Activities carried out pursuant to this chapter do not
38 constitute a conspiracy, or a combination in restraint of trade
40 or an illegal monopoly, nor are they carried out for the purposes
42 of lessening competition or fixing prices arbitrarily, as long as
44 the activities are carried out for the purpose of initiating or
46 participating in a rate determination proceeding under this
48 chapter. A contract or agreement entered into pursuant to
50 negotiations between a forest landowner and a group of harvesters
or haulers is not an unlawful restraint in trade or part of a
conspiracy or combination to accomplish an improper or illegal
purpose or act, as long as the contract or agreement is approved
by the board as provided in section 1358.

50 §1357. Rate determination petition

2 1. Who may file petition. A forest landowner or a person
4 representing at least 3 harvesters or haulers may file a petition
6 with the board to initiate a proceeding to determine reasonable
 rates of compensation to be paid for harvesting or hauling
 services.

8 2. Required contents of petition. The petition under
10 subsection 1 must include the following information:

12 A. The service for which the rate is to be determined;

14 B. The forest landowner who owns the land on which the
16 rates are to apply and the geographic area in which the
 rates are to apply;

18 C. The rate, if any, proposed by the filing party,
20 including any rate agreed to in negotiations between forest
 landowners and harvesters or haulers;

22 D. Information relevant to the factors set forth in section
 1358, subsection 4 needed for the board to make a decision.

24 E. A summary of any negotiations between harvesters and
26 haulers and forest landowners; and

28 F. Any other information the board specifically requests.

30 **§1358. Rate determination proceedings**

32 1. Public notice. Upon receipt of a properly filed
34 petition, the board shall publish notice in newspapers of general
36 circulation in the areas of the State affected by the petition
38 filing. The board shall also provide notice to any person who
40 has requested to be notified of filings. Notice must be provided
 at least 30 days before any hearing to be held, and at least 30
 days before the close of a comment period on the filing, unless
 the board determines that a shorter notice period is required by
 extraordinary circumstances.

42 2. Written comment; hearing. The board shall solicit
44 written comment from persons interested in the rates of
46 compensation for harvesting and hauling services. The board may
 also hold a public hearing to collect information and shall hold
 a public hearing if requested by any party to the proceeding.

48 3. Board decision. After the close of the comment period
50 and completion of any public hearing on the petition, the board
 shall issue a decision determining reasonable rates for services
 that are the subject of the petition and reasonable geographic

applicability for the rates, as the board determines appropriate. The board's decision is a final agency action for purposes of Title 5, chapter 375, subchapter 7 and may be appealed pursuant to that subchapter. Rates determined by the board are not stayed pending the appeal.

4. Standard for determining reasonable rate. In determining a reasonable rate for harvesting or hauling services, the board shall consider, to the extent relevant, the following factors:

A. Prices or projected prices for the harvesting services or hauling services currently paid by forest landowners in the State and in other states;

B. The quantity of forest products available in the market area or competing areas;

C. The relationship between the quantity produced and the quantity handled by the forest landowner;

D. The harvester's or hauler's costs, including but not limited to wages, overhead, fuel, insurance and the cost of replacing equipment;

E. Environmental and highway laws or rules;

F. The impact of the rate determination on the competitive position of the landowner in the market area or competing market areas;

G. A fair return on investment;

H. The species of tree, type of machinery and method of tree harvesting involved;

I. The extent to which hauling is conducted on private or public roads;

J. Safety considerations;

K. Prior agreements of the parties; and

L. Other factors that are normally or traditionally taken into consideration when determining prices for the services involved.

5. Interested board members may not participate. A member or alternate member of the board who has a financial interest in a rate determination proceeding brought before the board, or in

any party to the rate determination proceeding, may not participate in the proceeding affecting that financial interest.

6. Limitation on petitions. Unless the board's rate determination decision specifies an earlier time, a person may not file a petition to change the rate set by that decision until one year after the rate determination decision was issued.

§1359. Violation; right of action

1. Violation. A person violates this chapter if that person:

A. Pays a rate for harvesting or hauling services in the State other than the applicable board-determined rate, if any, for that service in that geographic area; or

B. Discriminates against any person for initiating or participating in a rate determination proceeding under this chapter.

2. Right of action. The department or a person who is aggrieved by a violation of this chapter may bring an action in Superior Court in the county in which the person resides, where the violation occurred or in Kennebec County to seek the following:

A. An injunction prohibiting the violation;

B. Damages incurred by the person who brings the action or on whose behalf the action is brought as a result of the violation; and

C. A penalty equal to 2 times the amount by which the rate paid differed from the rate established by the board; and

D. Such other relief as the court determines appropriate.

§1360. Other agreements not precluded

This chapter does not prohibit the negotiation and execution of a contract between a forest landowner and an individual harvester or hauler that provides for the payment of compensation rates other than those determined by this chapter, as long as there is no board-determined rate applicable to the service being provided, and there is no properly filed rate determination petition that would apply to the service pending before the board at the time the contract is entered into.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

LABOR, DEPARTMENT OF

Regulation and Enforcement 0159

Initiative: Provides funds for one Planning and Research Associate II position and related All Other costs associated with the rate determination process for forest products hauling and harvesting services.

General Fund	2003-04	2004-05
Positions - Legislative Count	(1,000)	(1,000)
Personal Services	\$41,900	\$53,400
All Other	3,800	1,250
	<hr/>	<hr/>
General Fund Total	\$45,700	\$54,650

Labor Relations Board 0160

Initiative: Provides funds for the per diem and related costs of the State Board of Arbitration and Conciliation associated with the rate determination process for forest products hauling and harvesting services.

General Fund	2003-04	2004-05
Personal Services	\$1,350	\$1,350
All Other	7,380	7,380
	<hr/>	<hr/>
General Fund Total	\$8,730	\$8,730

Other Special Revenue Funds	2003-04	2004-05
Personal Services	\$5,400	\$5,400
All Other	27,600	27,600
	<hr/>	<hr/>
Other Special Revenue Funds Total	\$33,000	\$33,000

LABOR, DEPARTMENT OF

DEPARTMENT TOTALS	2003-04	2004-05
GENERAL FUND	\$54,430	\$63,380
OTHER SPECIAL REVENUE FUNDS	\$33,000	\$33,000
DEPARTMENT TOTAL - ALL FUNDS	\$87,430	\$96,380

SUMMARY

2

4

6

8

This amendment replaces the bill. Rather than allowing harvesters and haulers to collectively bargain with forest landowners to establish rates of compensation, this amendment provides for the State Board of Arbitration and Conciliation to establish rates of compensation, based on factors set forth in the statute.

10

12

14

16

Harvesters and haulers are authorized to form associations to participate in the rate determination proceedings. Those associations may also negotiate with forest landowners prior to the rate determination proceeding, but any tentative agreement reached in those negotiations must be reviewed and approved by the State Board of Arbitration and Conciliation through a rate determination proceeding.

18

20

22

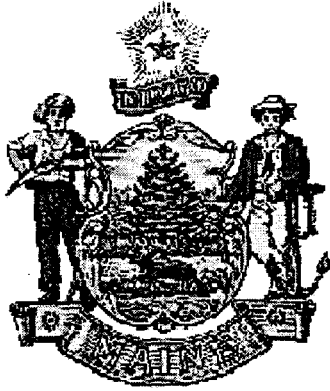
The amendment would not prohibit individual harvesters and haulers from negotiating directly and individually with a forest landowner, but the activities of those persons would not be protected from antitrust liability because the State would not be reviewing and approving the rates.

24

FISCAL NOTE REQUIRED
(See attached)

26

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

**LD 1318**

**An Act To Promote the Public Interest by Providing for Reasonable
Rates of Compensation for Forest Products Harvesting and Hauling
Services**

LR 1321(02)**Fiscal Note for Bill as Amended by Committee Amendment " "****Committee: Labor****Fiscal Note Required: Yes****Fiscal Note**

	2003-04	2004-05	Projections 2005-06	Projections 2006-07
Net Cost (Savings)				
General Fund	\$54,430	\$63,380	\$64,965	\$66,589
Appropriations/Allocations				
General Fund	\$54,430	\$63,380	\$64,965	\$66,589
Other Special Revenue Funds	\$33,000	\$33,000	\$33,000	\$33,000
Revenue				
Other Special Revenue Funds	\$33,000	\$33,000	\$33,000	\$33,000

Correctional and Judicial Impact Statements:

This bill may increase the number of civil suits filed in the court system.

Fiscal Detail and Notes

This bill provides General Fund appropriations of \$45,700 and \$54,650 in fiscal years 2003-04 and 2004-05, respectively, for the Regulation and Enforcement program within the Department of Labor for one Planning and Research Associate II position and related All Other costs associated with the data collection required to determine the rates for harvesting or hauling services. This bill also includes General Fund appropriations of \$8,730 in fiscal year 2003-04 and \$8,730 in fiscal year 2004-05 for the per diem and all other costs associated with the activities of the State Board of Arbitration and Conciliation related to the rate determination process that may not be directly billable to the individual parties. This bill includes Other Special Revenue Fund allocations of \$33,000 in fiscal year 2003-04 and \$33,000 in fiscal year 2004-04 for the Labor Relations Board within the Department of Labor for the costs to the State Board of Arbitration and Conciliation associated with the process of rate determination that will be offset by fees collected from the interested parties.