

# MAINE STATE LEGISLATURE

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DATE: 1-20-04

(Filing No: H-632)

MAJORITY  
LABOR

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

COMMITTEE AMENDMENT "B" 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**

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

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

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

15 **§1354. Participation of harvesters and haulers in rate**  
16 **determination process**

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

23 **§1355. Negotiations preceding rate determination**

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

30 **§1356. Activities are not restraint of trade**

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

43 **§1357. Rate determination petition**

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

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

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

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

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

20        D. Information relevant to the factors set forth in section  
21        1358, subsection 4 needed for the board to make a decision;

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

26        F. Any other information the board specifically requests.

28        **§1358. Rate determination proceedings**

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

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

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

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COMMITTEE AMENDMENT "B" to H.P. 972, L.D. 1318

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

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

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

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

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

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

21 E. Environmental and highway laws or rules;

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

25 G. A fair return on investment;

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

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

30 J. Safety considerations;

31 K. Prior agreements of the parties; and

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

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

# COMMITTEE AMENDMENT

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;

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	(0.000)	(1.000)
Personal Services	\$0	\$46,819
All Other	0	9,600
General Fund Total	\$0	\$56,419

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	\$0	\$2,600
All Other	0	7,380
General Fund Total	\$0	\$9,980

Other Special Revenue Funds	2003-04	2004-05
Personal Services	\$0	\$5,400
All Other	0	27,600
Other Special Revenue Funds Total	\$0	\$33,000

LABOR, DEPARTMENT OF  
DEPARTMENT TOTALS

	2003-04	2004-05
GENERAL FUND	\$0	\$66,399
OTHER SPECIAL REVENUE FUNDS	0	33,000
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$99,399'



**SUMMARY**

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4 This amendment replaces the bill. Rather than allowing  
6 harvesters and haulers to collectively bargain with forest  
8 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 Harvesters and haulers are authorized to form associations  
14 to participate in the rate determination proceedings. Those  
16 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.

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20 The amendment would not prohibit individual harvesters and  
22 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

26 The amendment adds an appropriations and allocations section  
to the bill.

28

**FISCAL NOTE REQUIRED**  
(See attached)

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

**LD 1318**

**An Act To Provide Collective Bargaining Rights to Certain Forest  
Products Workers**

**LR 1321(04)**

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

**Committee: Labor**

**Fiscal Note Required: Yes**

**Majority**

**Fiscal Note**

	<b>2003-04</b>	<b>2004-05</b>	<b>Projections 2005-06</b>	<b>Projections 2006-07</b>
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$66,399	\$64,965	\$67,344
<b>Appropriations/Allocations</b>				
General Fund	\$0	\$66,399	\$64,965	\$67,344
Other Special Revenue Funds	\$0	\$33,000	\$33,000	\$33,000
<b>Revenue</b>				
Other Special Revenue Funds	\$0	\$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 a General Fund appropriation of \$56,419 in fiscal year 2004-05 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 a General Fund appropriation of \$9,980 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 an Other Special Revenue Funds allocation of \$33,000 in fiscal year 2004-05 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.