

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.d.S.

L.D. 1318

DATE: 4-1-04

(Filing No. H-848)

**MAJORITY
LABOR**

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

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

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION**

COMMITTEE AMENDMENT "C" 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 §931, first ¶, as amended by PL 1991, c. 798, §3, is further amended to read:

The State Board of Arbitration and Conciliation, in this subchapter called the "board," consists of 3 members appointed by the Governor from time to time upon the expiration of the terms of the several members, for terms of 3 years. One member must be an employer of labor or selected from some association representing employers of labor, and another must be an employee or selected from some bona fide trade or labor union. The 3rd member must represent the public interests of the State and serves as chair. Vacancies occurring during a term must be filled for the unexpired term. Members of the board are entitled to receive \$75 a day for their services for the time actually employed in the discharge of their official duties. They are

COMMITTEE AMENDMENT

R.O.S.

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

2 entitled to receive their traveling and all other necessary
3 expenses. The costs for services rendered and expenses incurred
4 by the State Board of Arbitration and Conciliation and any state
5 allocation program charges must be shared equally by the parties
6 to the proceedings and must be paid into a special fund
7 administered by the Maine Labor Relations Board. Authorization
8 for services rendered and expenditures incurred by the State
9 Board of Arbitration and Conciliation is the responsibility of
10 the Executive Director of the Maine Labor Relations Board. All
11 costs must be paid from that special fund. The executive
12 director may estimate costs upon receipt of a request for
13 services and collect those costs prior to providing the
14 services. The executive director shall bill or reimburse the
15 parties, as appropriate, for any difference between the estimated
16 costs that were collected and the actual costs of providing the
17 services. Once one party has paid its share of the estimated
18 cost of providing the service, the matter is scheduled for
19 hearing. A party who has not paid an invoice for the estimated
20 or actual cost of providing services within 60 days of the date
21 the invoice was issued is, in the absence of good cause shown,
22 liable for the amount of the invoice together with a penalty
23 amount collected pursuant to this provision remains in the
24 special fund administered by the Maine Labor Relations Board and
25 that fund does not lapse. The executive director is authorized
26 to collect any sums due and payable pursuant to this provision
27 through civil action. In such an action, the court shall allow
28 litigation costs, including court costs and reasonable attorney's
29 fees, to be deposited in the General Fund if the executive
30 director is the prevailing party in the action. The executive
31 director shall, annually, on or before July 1st, make a report of
32 the activities of the State Board of Arbitration and Conciliation
33 to the Governor. The board shall from time to time adopt rules
34 of procedure as it determines necessary, including rules of
35 procedure for proceedings under chapter 18. Rules adopted
36 pursuant to this section are routine technical rules as defined
37 in Title 5, chapter 375, subchapter 2-A.

38 **Sec. 2. 26 MRSA §931-B is enacted to read:**

39 **§931-B. Forestry rate proceedings panel**

40
41 **1. Membership of forestry rate proceedings panel. There is**
42 **established, under the authority of the board, a forestry rate**
43 **proceedings panel, referred to in this section as "the panel," to**
44 **conduct proceedings under chapter 18. The panel consists of the**
45 **following 3 members:**

46
47 **A. One member representing forest products harvesters and**
48 **forest products haulers, as defined in section 1352;**

H. of S.

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

2 B. One member representing forest landowners, as defined in
3 section 1352; and

4
5 C. One member representing the public interests of the
6 State.

7
8 2. Appointment of members and alternates; terms. Members
9 serve for terms of 3 years or until their successors are
10 appointed. A vacancy occurring during a term must be filled for
11 the unexpired portion of the term. Members are appointed as
12 follows.

13
14 A. The member representing the public interests of the
15 State must be the person appointed under section 931 to
16 represent the public interests of the State. The member
17 representing forest products harvesters and forest products
18 haulers must be appointed from a list provided by the
19 International Loggers Association or a successor
20 organization. The member representing the forest landowners
21 must be appointed from a list provided by the Maine Forest
22 Products Council or a successor organization. If an
23 organization named in this subsection ceases to exist and
24 does not have a successor, the Governor shall solicit names
25 from similar organizations and may appoint any person the
26 Governor considers appropriate to represent the appropriate
27 interests.

28
29 B. The Governor shall appoint 2 alternate members to
30 represent each interest set forth in subsection 1,
31 paragraphs A and B. Alternates representing the public
32 interests of the State appointed under section 931 serve as
33 alternate members to represent the interests set forth in
34 subsection 1, paragraph C. Alternate members serve for the
35 same terms, have the same responsibilities and duties and
36 are entitled to the same privileges and emoluments as
37 members. When for any reason a member of the panel does not
38 serve in a particular case, an alternate member having the
39 same qualifications shall act as a member of the panel in
40 that case.

41
42 C. Members and alternates are subject to restrictions on
43 participating in proceedings in which they have a financial
44 interest, as provided in section 1358.

45
46 3. Costs of proceedings. The parties to a proceeding
47 brought under chapter 18 shall share equally in the cost of the
48 services rendered and expenses incurred, in the same manner as
49 provided in section 931. Notwithstanding Title 5, section
50 12004-B, subsection 1, the member of the panel representing the

COMMITTEE AMENDMENT

R. of S.

2 public interests of the State is entitled to \$750 a day and the
3 other 2 members of the panel are entitled to \$250 a day for
4 services for the time actually employed in the discharge of
5 duties under chapter 18. All panel members are entitled to
6 travel and other expenses, in the same manner as for board
7 members under section 931.

8 4. Appeal of decisions. Decisions by the panel under
9 chapter 18 constitute final agency action and are subject to
10 judicial review pursuant to Title 5, chapter 375, subchapter 7.

11 5. Applicability of general board provisions. The
12 provisions of section 931 that are not inconsistent with this
13 section, and the provisions of sections 932 and 939, apply to
14 panel proceedings under this section and chapter 18. Section
15 931-A does not apply to such panel proceedings.

16
17 **Sec. 3. 26 MRSA c. 18 is enacted to read:**

18
19 **CHAPTER 18**

20
21 **RATES OF COMPENSATION FOR FOREST**
22 **PRODUCTS HARVESTING AND HAULING SERVICES**

23
24 **§1351. Legislative findings**

25
26 The Legislature finds that Maine's forest products industry
27 is a vital component of Maine's economy and has a direct
28 relationship to the economic health and welfare of workers,
29 communities and businesses. Central to the viability of the
30 forest products industry is a stable workforce of loggers and
31 wood haulers available to harvest wood from Maine's forests and
32 bring the wood to mills and other wood-using industry. The
33 erosion of the logger and wood hauler infrastructure in any major
34 region of the State can have a serious negative effect on wood
35 products manufacturing throughout the State. The Legislature
36 further finds that, based upon patterns and configurations of
37 forest landownership, the harvesting and hauling of forest
38 products are performed by numerous loggers and truckers who, in
39 many cases, are not able individually to bargain effectively with
40 forest landowners who possess overwhelming market power. The
41 Legislature finds that such market power exists whenever a forest
42 landowner owns, possesses or acquires economic control over more
43 than 400,000 acres in a labor market area. Accordingly, the
44 Legislature finds it necessary, in the absence of sufficiently
45 vigorous competitive market forces, to displace competition as
46 provided in this chapter. The inequity of power in determining
47 compensation and the lack of opportunity to join together in
48 bargaining over compensation can result in unfair contract rates
49 for the services of loggers and wood haulers. The Legislature
50

H. of S.

2 finds evidence of unfairness in the fact that contract rates for
4 harvesting and hauling services are considerably lower on the
6 land of such owners. The Legislature finds that it is in the
8 public interest to ensure a reasonable rate of compensation for
harvesting and hauling services and therefore creates in this
chapter a process whereby the State displaces existing market
forces and, upon request, sets the rates of compensation for such
services.

10 **§1352. Definitions**

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

16 1. **Affiliated person.** "Affiliated person" means a person
18 in the same corporate system as a parent or member organization
by virtue of common ownership, control, operation or management.

20 2. **Association.** "Association" includes an incorporated or
unincorporated entity.

22 3. **Economic control.** "Economic control" means the legal
24 right, whether through ownership, contract or otherwise, to make
26 or influence decisions regarding the harvesting of trees and
disposition in general of forest products on subject land.

28 4. **Forest land.** "Forest land" means land used primarily
for growth of trees to be harvested for commercial use.

30 5. **Forest landowner.** "Forest landowner" means:

32 A. A person that owns directly or through affiliated
34 persons, or possesses economic control over, more than
400,000 acres in a labor market area; or

36 B. An agent or subsidiary of a person described in
38 paragraph A if that agent or subsidiary is involved in
40 contracting or negotiating contracts or other arrangements,
written or oral, with forest products harvesters or forest
products haulers.

42 6. **Forest products harvester.** "Forest products harvester"
44 or "harvester" means a person having a place of business in this
State who is engaged in harvesting trees from forest land in the
46 State under a contract or subcontract, directly or indirectly,
for a forest landowner.

48 7. **Forest products hauler.** "Forest products hauler" or
"hauler" means a person having a place of business in this State
50 who is engaged in hauling harvested trees to mills under a

H. O. S.

2 contract or subcontract, directly or indirectly, for a forest
landowner.

4 8. Labor market area. "Labor market area" means an area
designated as such by the United States Department of Labor,
6 Bureau of Labor Statistics for purposes of implementing a
comprehensive labor market information system.

8
10 9. Panel. "Panel" means the forestry rate proceedings
panel, constituted under the State Board of Arbitration and
Conciliation pursuant to section 931-B.

12
14 10. Person. "Person" includes one or more individuals,
partnerships, corporations and associations.

16 **§1353. State role in determining rates of compensation; panel**
powers and duties

18
20 1. Rate determinations. The panel, upon petition made
pursuant to section 1357 and in accordance with the procedures
22 and standards set forth in this chapter, shall determine
reasonable rates of compensation to be paid for forest products
24 hauling services and forest products harvesting services in a
specified area of the State.

26 2. Panel powers and duties. For the purposes of carrying
out its responsibilities under this chapter, the panel has the
28 powers of the State Board of Arbitration and Conciliation as set
forth in chapter 9, subchapter 2-A. The State Board of
30 Arbitration and Conciliation as established pursuant to section
931 may adopt rules to implement this chapter, including rules
32 specifying what information held by the panel is confidential and
not subject to public disclosure. Rules adopted pursuant to this
34 subsection are routine technical rules as defined in Title 5,
chapter 375, subchapter 2-A.

36
38 3. Compensation; costs of rate determination proceeding.
Members of the panel are entitled to the compensation provided
40 for in section 931-B for their services under this chapter.
Costs incurred by the panel in making a rate determination under
42 this chapter must be borne equally by the parties to the rate
determination proceeding and may be collected by the Maine Labor
Relations Board pursuant to section 931.

44
46 **§1354. Participation of harvesters and haulers in rate**
determination process

48 For the purpose of effectively representing their interests
in contemplated or pending rate determination proceedings under
50 this chapter, 2 or more harvesters or haulers may join together

R. G. S.

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

and form an association to meet, confer, share information and take other collective action as may support their participation in rate determination proceedings.

§1355. Negotiations preceding rate determination

One or more harvesters or haulers may meet and negotiate with a forest landowner on the issue of determining reasonable rates to be paid for harvesting services and hauling services in the State, as long as any agreement reached by the parties regarding rates of compensation is made contingent upon review and approval by the panel.

§1356. Activities are not restraint of trade

The provisions of this chapter are intended to displace existing market forces based on a legislative finding that such forces are insufficient to permit the affected market to function normally. Activities carried out pursuant to this chapter do not constitute a conspiracy, or a combination in restraint of trade or an illegal monopoly, nor are they carried out for the purposes of lessening competition or fixing prices arbitrarily, as long as the activities are carried out for the purpose of preparing, initiating or participating in a rate determination proceeding under this chapter. A contract or agreement entered into pursuant to 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 panel as provided in section 1358.

§1357. Rate determination petition

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

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

- A. The service for which the rate is to be determined;
- B. The identity of the forest landowner who owns or possesses economic control over the land on which the rates are to apply and the geographic area in which the rates are to apply;

A. of S.

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

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

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

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

F. Any other information the panel specifically requests.

§1358. Rate determination proceedings

1. Public notice. Upon receipt of a properly filed petition, the panel shall publish notice in newspapers of general circulation in the areas of the State affected by the petition filing. The panel shall also provide notice to any person who 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 panel determines that a shorter notice period is required by extraordinary circumstances.

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

3. Panel decision. After the close of the comment period and completion of any public hearing on the petition, the panel 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 panel determines appropriate. The panel'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 panel are not stayed pending the appeal.

4. Standard for determining reasonable rate. In determining a reasonable rate for harvesting or hauling services, the panel 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;

H. of S.

- 2 B. The quantity of forest products available in the market area or competing areas;
- 4 C. The relationship between the quantity produced and the quantity handled by the forest landowner;
- 6 D. The harvester's or hauler's costs, including, but not limited to, wages, overhead, fuel, insurance and the cost of replacing equipment;
- 8 E. Environmental and highway laws or rules;
- 10 F. The impact of the rate determination on the competitive position of the landowner in the market area or competing market areas;
- 12 G. A fair return on investment;
- 14 H. The species of tree, type of machinery and method of tree harvesting involved;
- 16 I. The extent to which hauling is conducted on private or public roads;
- 18 J. Safety considerations;
- 20 K. Prior agreements of the parties; and
- 22 L. Any factors that are normally or traditionally taken into consideration when determining prices for the services involved.

24 5. Interested panel members may not participate. A member or alternate member of the panel who has a financial interest in a rate determination proceeding brought before the panel, or in any party to the rate determination proceeding, may not participate in the proceeding affecting that financial interest.

26 6. Limitation on petitions. Unless the panel'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.

28 **§1359. Violation**

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

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

2 prevent the market for forest products hauling and harvesting
3 services from functioning normally. The amendment establishes a
4 mechanism to displace existing market forces by authorizing
5 administrative ratesetting for forest products haulers and
6 harvesters providing services to landowners who control such
7 acreage.

8 The amendment authorizes forest products haulers and
9 harvesters to organize associations and to negotiate collectively
10 with certain landowners, provided their activities are
11 preparatory to and for the purpose of an authorized rate-setting
12 proceeding. To the extent that their collective activities are
13 directed toward implementing authorized ratesetting, forest
14 products haulers and harvesters have immunity from federal
15 antitrust liability.

16
17
18 **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(06)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Labor

Fiscal Note Required: Yes

Majority

Fiscal Note

| | 2003-04 | 2004-05 | Projections 2005-06 | Projections 2006-07 |
|-----------------------------------|----------------|----------------|--------------------------------|--------------------------------|
| Net Cost (Savings) | | | | |
| General Fund | \$0 | \$4,200 | \$4,200 | \$4,200 |
| Appropriations/Allocations | | | | |
| General Fund | \$0 | \$4,200 | \$4,200 | \$4,200 |
| Other Special Revenue Funds | \$0 | \$18,360 | \$18,360 | \$18,360 |
| Revenue | | | | |
| Other Special Revenue Funds | \$0 | \$18,360 | \$18,360 | \$18,360 |

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 includes a General Fund appropriation of \$4,200 in fiscal year 2004-05 for the per diem and all other costs 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 also includes an Other Special Revenue Funds allocation of \$18,360 in fiscal year 2004-05 for the costs to the State Board of Arbitration and Conciliation related to the rate determination process that will be offset by fees collected from the interested parties. Additional costs associated with enforcing these provisions under the unfair trade practices act can be absorbed by the Department of the Attorney General.