

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)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1318

H.P. 972

House of Representatives, March 11, 2003

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

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SMITH of Van Buren.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: HATCH of Skowhegan, HUTTON of Bowdoinham, JACKSON of Fort Kent,
PATRICK of Rumford, Senators: BRYANT of Oxford, EDMONDS of Cumberland, HATCH
of Somerset, STANLEY of Penobscot.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-B, sub-§10 is enacted to read:

10.	Forest	\$75 per day	26 MRSA
Forestry	Products		§1354
Labor	Bargaining		
	Board		

Sec. 2. 26 MRSA c. 18 is enacted to read:

CHAPTER 18

**FOREST PRODUCTS HARVESTERS AND HAULERS
COLLECTIVE BARGAINING ACT**

§1351. Legislative findings

The harvesting and hauling of forest products is performed by numerous individual loggers and truckers who, despite being labeled "independent contractors" are, effectively, employees of forest landowners. The compensation and bargaining position of those individuals are adversely affected unless they are able to join together voluntarily in cooperative associations as authorized by law.

Furthermore, membership in such an association is meaningful only if a landowner contracting for harvesting and hauling of forest products is required to bargain in good faith with the association as the representative of its members.

This chapter provides standards for the qualification of forest products harvesting and hauling cooperative associations for bargaining purposes, defines the mutual obligation of forest landowners and cooperative associations to bargain with respect to the harvesting and hauling of forest products and provides for the enforcement of such an obligation.

§1352. Short title

This chapter is known and may be cited as "the Forest Products Harvesters and Haulers Collective Bargaining Act."

§1353. Definitions

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

1. Board. "Board" means the Forest Products Bargaining Board created in this chapter.

2 2. Forest landowner. "Forest landowner" means a person
4 that owns more than 100,000 acres of forest land in this State or
6 the agent or subsidiary of such a person, any of whom is involved
8 in contracting or negotiating contracts or other arrangements,
10 written or oral, with forest products harvesters or forest
12 products haulers.

14 3. Forest products harvester. "Forest products harvester"
16 or "harvester" means a person having a place of business in this
18 State who is engaged in the harvesting of trees from Maine
20 forests in the State.

22 4. Forest products harvesting and hauling cooperative
24 association. "Forest products harvesting and hauling cooperative
26 association" or "association" means an association of forest
28 products harvesters, forest products haulers, or a combination of
30 the 2, formed for the mutual benefit of its members.

32 5. Forest products hauler. "Forest products hauler" or
34 "hauler" means a person having a place of business in this State
36 who is engaged in the hauling of harvested trees to mills.

38 6. Person. "Person" includes one or more individuals,
40 partnerships, corporations and associations.

42 7. Prior course of dealing. "Prior course of dealing" with
44 respect to a forest products harvester, forest products hauler or
46 qualified bargaining association means that a forest landowner
48 contracted for services with that harvester, hauler or
 association in any 2 of the preceding 3 years. The sale by a
 forest landowner of that landowner's business does not negate any
 prior course of dealing that harvesters or haulers have had with
 the business.

8. Qualified bargaining association. "Qualified bargaining
 association" means a forest products harvesting and hauling
 cooperative association qualified under section 1355.

40 §1354. Forest Products Bargaining Board

42 1. Board. The Forest Products Bargaining Board,
44 established by Title 5, section 12004-B, subsection 10, located
46 in the Department of Labor and referred to in this chapter as
48 "the board" shall administer this chapter.

2. Membership; chair. The board consists of 5 members and
 2 alternates, appointed by the Governor.

2 A. Two members and one alternate are appointed from a list
3 of names submitted by forest products harvesting or hauling
4 cooperative associations organized for purposes of this
5 chapter, and one member and one alternate are appointed from
6 a list of names submitted by forest landowners. An
7 alternate serves when for any reason the respective member
8 is unable to serve.

9 B. Two members are appointed to represent the public. A
10 public member may not hold stock, securities or any other
11 interest in a forest products harvester, forest products
12 hauler or forest landowner.

13 C. One of the public members serves as the board's chair,
14 designated by the Governor.

15 D. Members shall take the oath of office prescribed for
16 state officers.

17 **3. Term of office; vacancy.** The term of office for all
18 members and alternates is 3 years. Members other than public
19 members or alternates may not serve more than 2 terms in
20 succession. In the event of a vacancy, the Governor shall,
21 within one month, appoint a successor to fill the unexpired term.

22 **4. Removal.** Members of the board must be removed by the
23 Commissioner of Labor, upon notice and hearing, for neglect of
24 duty or malfeasance in office but for no other cause. If a
25 member is absent from 3 successive meetings of the board and the
26 board finds the member's excuse for the absences to be without
27 merit, that member's conduct is considered neglect of duty.

28 **5. Quorum.** A vacancy in the board does not impair the
29 right of the remaining members to exercise all the powers of the
30 board. Three members of the board constitute a quorum at all
31 times, provided that reasonable notice has been given to all
32 members of the board of the subject matter and date of any
33 meeting at which the board is to exercise any of its powers.

34 **6. Compensation.** Members and alternate members of the
35 board are compensated according to the provisions of Title 5,
36 chapter 379.

37 **7. Rules.** The board may adopt, amend and repeal rules as
38 necessary or appropriate to carry out this chapter. The board
39 shall act as expeditiously as possible to adopt interpretive and
40 procedural rules for carrying out the purposes of this chapter.
41 Rules adopted pursuant to this subsection are routine technical
42 rules as defined in Title 5, chapter 375, subchapter 2-A.

2 8. Annual report. The board shall issue an annual report
4 to the Commissioner of Labor and to the joint standing committee
6 of the Legislature having jurisdiction over labor matters on or
before January 15th of each year regarding the operation and
effectiveness of this chapter. The report must address the
following issues:

8 A. Unfair practices;

10 B. Qualification of forest products harvesting and hauling
12 cooperative associations;

14 C. Funding of the board;

16 D. Investigation and hearing procedures;

18 E. Any recommended changes to this chapter; and

20 F. Any other issues relating to this chapter that the board
considers appropriate.

22 **§1355. Qualification of forest products harvesting and hauling
24 cooperative associations**

26 1. Qualification. Only forest products harvesting and
28 hauling cooperative associations that have been qualified in
accordance with this section are entitled to the benefits
provided by this chapter.

30 2. Petition. A forest products harvesting and hauling
32 cooperative association desiring qualification with respect to
34 one or more forest landowners shall file with the board a
petition for qualification with respect to the landowner or
landowners. The petition must contain the information and be
accompanied by the documents required by the rules of the board.

36 3. Determination; hearing. The board shall provide notice
38 and opportunity for a hearing in accordance with Title 5, chapter
40 375, subchapter 4. The board shall qualify a forest products
42 harvesting and hauling association if, based upon the evidence at
the hearing, the board finds that:

44 A. Under the charter documents or the bylaws of the
association, the association is directly or indirectly owned
46 and controlled by forest products harvesters or haulers or a
combination of the 2;

48 B. The association has membership agreements signed by each
50 of its members that authorize the association to represent
each member for the purposes of this chapter;

2 C. The association is financially sound and has sufficient
4 resources and management to carry out the purposes for which
 it was organized;

6 D. The association represents 51% or more of the forest
8 products harvesters or the forest products haulers who have
10 a prior course of dealing with the forest landowner or
12 landowners named in the petition under subsection 2. If the
 board has reasonable cause to question such representation,
 the board shall require a secret ballot election to certify
 the percentage of representation; and

14 E. The association has as one of its functions acting as
16 principal or agent for its members in negotiations with
18 forest landowners for prices and other terms of contracts
 with respect to the harvesting and hauling of forest
 products.

20 4. Refiling of petition. If, after the hearing under
22 subsection 2, the board does not consider an association
24 qualified, it shall, in accordance with Title 5, chapter 375,
 subchapter 4, clearly specify in its decision the reasons for the
26 failure to qualify. An association seeking reconsideration of a
 board decision must refile its petition within 30 days of receipt
28 of the board's initial decision. The board shall reconsider its
 decision within 30 days after the date on which the petition is
 refiled.

30 5. Notice. After the board qualifies an association, it
32 shall give notice of the qualification to all known forest
34 landowners that, in the ordinary course of business, contract
 with the forest products harvesters or haulers that the
 association represents.

36 6. Annual report. A qualified bargaining association shall
38 file an annual report with the board in the form required by
40 rules of the board. The annual report must contain information
 that will enable the board to determine whether the association
 continues to meet the standards for qualification.

42 7. Revocation. If a qualified bargaining association
44 ceases to maintain the standards for qualification set forth in
46 subsection 3, the board shall, in a manner consistent with the
 Maine Administrative Procedure Act, apply to the District Court
 to revoke the qualification of that association.

48 8. Confidentiality. Information provided to the board by
50 an association regarding the identification of its members and
 information provided to the board by a forest landowner regarding

2 its contracts with harvesters and haulers is confidential and may
3 not to be disclosed to the adverse party or any other person
4 without the consent of the association or the forest landowner,
5 respectively, until the board has rendered its final decision as
6 to the qualification of the association. After a final decision
7 has been rendered, the information is no longer confidential
8 information, but its disclosure is governed by Title 1, section
9 402, subsection 3, paragraph B.

10 **§1356. Bargaining**

12 1. Obligation. It is the mutual obligation of a forest
13 landowner and a qualified bargaining association qualified with
14 respect to that landowner to bargain in good faith.

16 2. Bargaining in good faith. To be considered as
17 bargaining in good faith, the forest landowner and the
18 association qualified with respect to that landowner must:

20 A. Meet at reasonable times;

22 B. Negotiate in good faith with respect to the terms of
23 contracts for hauling or harvesting services to be provided
24 by forest products harvesters or forest products haulers
25 represented by the association; and

26 C. If requested by either party, execute a written contract
27 incorporating any agreement reached.

30 The obligation to bargain in good faith does not require either
31 party to agree to a proposal or to make a concession. The
32 obligation continues until the commencement of required
33 mediation, as provided in section 1357, subsection 2.

34 **§1357. Dispute resolution**

36 1. Voluntary mediation. At any time prior to the
37 commencement of required mediation under subsection 2, a forest
38 landowner and a qualified bargaining association may mutually
39 agree to obtain or may unilaterally obtain the services of a
40 mediator. Regardless of whether mediation is sought mutually or
41 unilaterally, both parties shall participate in mediation in good
42 faith. The parties shall use the services of the State's Panel
43 of Mediators for mediation and shall share all costs of mediation
44 equally.

46 A. Costs of mediation and any applicable state cost
47 allocation program charges must be paid into a special fund
48 administered by the Maine Labor Relations Board. The
49 Executive Director of the Maine Labor Relations Board shall
50 administer the fund.

2 authorize mediation services and expenditures incurred by
3 members of the panel. All costs must be paid from that
4 special fund. The executive director may estimate costs
5 upon receipt of a request for services and collect those
6 costs prior to providing the services. The executive
7 director shall bill or reimburse the parties, as
8 appropriate, for any difference between the estimated costs
9 that were collected and the actual costs of providing the
10 services. Once one party has paid its share of the
11 estimated cost of providing the service, the mediator is
12 assigned. A party who has not paid an invoice for the
13 estimated or actual cost of providing services within 60
14 days of the date the invoice was issued is, in the absence
15 of good cause shown, liable for the amount of the invoice
16 together with a penalty in the amount of 25% of the amount
17 of the invoice. Any penalty amount collected pursuant to
18 this provision remains in the special fund administered by
19 the Maine Labor Relations Board, and that fund does not
20 lapse. The executive director is authorized to collect any
21 sums due and payable pursuant to this provision through
22 civil action. In such an action, the court shall allow
23 litigation costs, including court costs and reasonable
24 attorney's fees, to be deposited in the General Fund if the
25 executive director is the prevailing party in the action.

26 B. Voluntary mediation may not last for more than 5 days,
27 unless extended by mutual agreement of the bargaining
28 parties.

30 **2. Required mediation.** Any matters remaining in dispute
31 between a forest landowner and a qualified bargaining association
32 30 days prior to the contract date, as defined in this
33 subsection, must be submitted by the parties to required
34 mediation.

36 A. For purposes of this section, the contract date is as
37 follows. If there is no contract existing between the
38 parties at the time of required mediation under this
39 section, the contract date is the date set by the board, in
40 consultation with the parties, as the date by which a
41 contract must be signed by both parties. After that date,
42 as between those parties, the contract date is the
43 anniversary of the date set by the board initially. Once a
44 contract date has been established under this paragraph, the
45 parties may mutually agree to a different contract date,
46 provided that they do so no less than 45 days prior to the
47 contract date established under this paragraph.

48 B. If the parties have not mutually agreed on a mediator
49 and on the sharing of costs of mediation 30 days before the
50

2 contract date, the parties shall notify the board and the
3 board shall request the services of the State's Panel of
4 Mediators. If services of the State's Panel of Mediators
5 are used, the parties must share all costs of mediation
6 equally.

7 C. The parties must continue mediation until: agreement is
8 reached on all matters; 5 days from the first mediation, or
9 longer if extended by mutual agreement of the parties; or
10 the mediator declares that resolution by mediation is not
11 possible, whichever is earliest.

12 D. At the end of the mediation period or upon the
13 mediator's earlier declaration, the mediator shall promptly
14 prepare a report specifying all agreements reached in
15 mediation and recommending that the parties either resume
16 bargaining as to all matters remaining in dispute or that
17 the parties submit all matters remaining in dispute to
18 arbitration. The parties shall proceed according to the
19 mediator's recommendation.

20 E. If the parties are to resume bargaining, bargaining must
21 commence on the day after the day on which the mediator
22 makes that recommendation and must continue for a period of
23 time not to exceed 2 days. Any matters remaining in dispute
24 at the end of the specified bargaining period must be
25 submitted to arbitration.

26 **3. Arbitration.** The parties shall notify the board and the
27 Commissioner of Labor at the commencement of required mediation
28 and an arbitrator must be selected as provided in paragraph D.
29 One day after the mediator recommends arbitration or one day
30 after the conclusion of the period of further bargaining, as
31 provided in subsection 2, each party shall submit to the
32 arbitrator its final offer, in which it shall identify all
33 matters as to which the parties agree with contractual language
34 setting forth these agreements and all matters as to which the
35 parties do not agree, with contractual language setting forth the
36 party's final offer for resolution of those disagreements.

37 A. For all matters submitted to arbitration, the arbitrator
38 shall choose between the final offers of the parties. If
39 the parties reach an agreement on the matters under
40 arbitration before the arbitrator issues a decision, they
41 may submit a joint final offer that the arbitrator shall
42 accept and render as the decision. The arbitrator may hold
43 hearings and administer oaths, examine witnesses and
44 documents, take testimony and receive evidence and issue
45 subpoenas to compel the attendance of witnesses and the
46 production of records. A person who fails to obey the
47 production of records. A person who fails to obey the
48 production of records. A person who fails to obey the
49 production of records. A person who fails to obey the
50 production of records. A person who fails to obey the

2 subpoena of an arbitrator may be punished for contempt of
3 court on application by the arbitrator to the Superior Court
4 for the county in which the failure occurs. The arbitrator
5 may use other information in addition to that provided by or
6 elicited from the parties. The arbitrator shall issue a
7 decision within 10 days of the commencement of arbitration
8 and that decision is binding on the parties. If the parties
9 reach an agreement on the matters in the arbitrator's
10 decision prior to signing the contract, they may submit a
11 joint final offer to the arbitrator. The arbitrator shall
12 rescind the previous decision and accept and render the
13 joint final offer as the decision.

14 B. Within 5 days of the arbitrator's decision, the board
15 shall prepare a contract, which must include all terms
16 agreed to by the parties in bargaining or settled by
17 voluntary or required mediation or by arbitration, and
18 present the contract to the parties, who shall sign the
19 contract within 2 days of its presentation.

20 C. The Commissioner of Labor, in consultation with the
21 board, shall establish a panel of arbitrators, who must be
22 qualified by education, training or experience to carry out
23 the responsibilities of an arbitrator under this chapter.

24 D. Upon notification by the parties as provided in this
25 subsection, the Commissioner of Labor shall submit to the
26 parties a list containing an odd number of names of members
27 of the panel of arbitrators who are available for
28 arbitration. The parties shall alternately strike names
29 from the list until a single name is left, who is the
30 arbitrator. The order of striking names must be determined
31 by chance.

32 E. All costs of arbitration must be borne equally by the
33 parties. The arbitrator shall submit a statement of charges
34 and expenses to the parties and to the board. Each party
35 shall pay the arbitrator directly.

36 **4. Criteria for arbitrator decision.** The arbitrator shall
37 consider the following factors in making a decision pursuant to
38 subsection 3:

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

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

2 C. The relationship between the quantity of forest products
3 produced and the quantity produced by the forest landowner;

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

8 E. Environmental and highway laws or rules;

10 F. The impact of the award on the competitive position of
11 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
15 tree harvesting involved;

18 I. The amount of hauling conducted on private roads and the
19 amount of hauling conducted on public roads;

20 J. Safety considerations;

22 K. Prior agreements of the parties; and

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

28 5. Violation. Failure by a party to comply with any of the
30 requirements of this section is a violation of this chapter.

32 **§1358. Failure to bargain in good faith**

34 1. Complaint; hearing. Whenever it is charged that a
35 qualified bargaining association or forest landowner refuses to
36 bargain in good faith as required by this chapter, the board
37 shall provide that person with notice and opportunity to be
38 heard, in accordance with Title 5, chapter 375, subchapter 4.
39 The board shall request that the Attorney General, or any
40 attorney in the Department of the Attorney General designated by
41 the Attorney General, be present at such a hearing to advise the
42 board on procedure and on the admissibility of any evidence.

44 2. Failure by forest landowner. Failure to bargain in good
45 faith for a forest landowner includes, but is not limited to:

46 A. Failure to disclose to the qualified bargaining
47 association the existence of contracts between that
48 landowner or a subsidiary of the landowner and forest
49 products haulers or harvesters who reside in Canada; or
50

2 B. Basing that landowner's negotiation of prices and terms
3 of contracts on contracts with other harvesters or haulers
4 who have the benefit of subsidies or offsetting contracts.

6 3. Findings. If the board determines, by a preponderance
7 of the evidence, that the person complained of has refused to
8 bargain in good faith in violation of this chapter, it shall
9 state its findings of fact, shall issue an order requiring the
10 person to bargain in good faith and shall order further
11 affirmative action, excluding an award of damages, to effectuate
12 the policies of this chapter. Failure to comply with such an
13 order is a violation of this chapter. If the board determines
14 that the person complained of has not refused to bargain in good
15 faith, it shall state its findings of fact and shall issue an
16 order dismissing the charges.

18 4. Modification. Until the record in a case has been filed
19 in a court as provided in section 1361, the board may at any
20 time, upon reasonable notice and in a manner it considers proper,
21 modify or set aside, in whole or in part, any finding or order
22 made or issued by it.

24 **§1359. Unfair practices**

26 1. Unfair practices by forest landowners. Forest products
27 harvesters and haulers may join together voluntarily in qualified
28 bargaining associations as authorized by law without interference
29 by forest landowners. A forest landowner may not engage in or
30 permit an employee or agent to engage in any of the following
31 practices, which are unfair practices under this chapter:

32 A. Coercing a harvester or hauler in the exercise of the
33 right to join and belong to or to refrain from joining or
34 belonging to an association or refusing to deal with a
35 harvester or hauler because of the exercise of the right to
36 join and belong to an association except as provided in
37 paragraph I;

38 B. Discriminating against a harvester or hauler with
39 respect to price or other terms of hauling or harvesting
40 forest products because of that person's membership in or
41 contract with an association;

42 C. Coercing or intimidating a harvester or hauler to
43 breach, cancel or terminate a membership agreement or other
44 agreement with an association or a contract with a forest
45 landowner;

2 D. Paying or loaning money, giving anything of value or
3 offering any other inducement to a harvester or hauler for
4 refusing or ceasing to belong to an association;

5 E. Making or circulating unsubstantiated reports about the
6 finances, management or activities of associations or forest
7 landowners;

8 F. Conspiring, combining, agreeing or arranging with any
9 other person to do, or aiding or abetting the doing of, any
10 practice that violates this Act;

11 G. Refusing to bargain with a qualified bargaining
12 association with whom the forest landowner has had a prior
13 course of dealing or with a qualified bargaining association
14 that represents harvesters or haulers that have had
15 substantial dealing with the forest landowner prior to the
16 qualification of the association;

17 H. Negotiating with a harvester or hauler included in the
18 qualified bargaining association after the association is
19 accredited; or

20 I. Contracting for hauling or harvesting with other
21 persons under terms more favorable than those terms
22 negotiated with a qualified bargaining association for such
23 hauling or harvesting, unless the forest landowner has first
24 offered to contract for those services under the more
25 favorable terms from the members of the qualified bargaining
26 association and those members have failed to supply the
27 required services within a reasonable time according to the
28 more favorable terms.

29 **2. Unfair practices by associations.** An association may
30 not engage or permit an employee or agent of the association to
31 engage in the following practices, declared to be unfair
32 practices under this chapter:

33 A. Acting in a manner contrary to the bylaws of the
34 association;

35 B. Refusing to bargain with a forest landowner with whom
36 the qualified bargaining association has had prior dealing
37 or with whom its harvesters or haulers have had substantial
38 dealing prior to qualification of the association;

39 C. Coercing or intimidating a forest landowner to breach,
40 cancel or terminate a membership agreement or other
41 agreement with an association or a contract with a harvester
42 or hauler;

2 D. Making or circulating unsubstantiated reports about the
4 finances, management or activities of other associations or
 forest landowners;

6 E. Conspiring, combining, agreeing or arranging with any
8 other person to do, or aiding or abetting the doing of, any
 practice that violates this Act;

10 F. Hindering or preventing to hinder or prevent, by
12 picketing, threats, intimidations, force or coercion of any
14 kind, the pursuit of any lawful work or employment;
16 obstructing or interfering with entrance to or egress from
 any place of employment; or obstructing or interfering with
 free and uninterrupted use of public roads, streets,
18 highways, railways, airports or other ways of travel or
 conveyance; and

20 G. Exercising coercive pressure by picketing, patrolling or
22 using other actions against business establishments other
 than the premises owned or controlled by the forest
24 landowner in order to cause the business establishments to
 cease doing business with that forest landowner.

26 3. Notice; hearing. Whenever it is charged that an
28 association or a forest landowner has committed an unfair
30 practice under this section, the board shall provide that person
32 with notice and opportunity for a hearing in accordance with
34 Title 5, chapter 375, subchapter 4. The board shall request that
 the Attorney General or any attorney in the Department of the
 Attorney General designated by the Attorney General be present at
 such a hearing and shall advise the board on procedure and on the
 admissibility of any evidence.

36 4. Findings. If, upon a preponderance of the evidence, the
38 board determines that the person complained of has committed an
40 unfair practice in violation of this chapter, it shall state its
42 findings of fact, shall issue an order requiring the person to
44 cease and desist from such conduct and shall order further
46 affirmative action, excluding an award of damages, to effectuate
 the policies of this chapter. Failure to comply with such an
 order is a violation of this chapter. If the board determines
 that the person complained of has not committed an unfair
 practice, it shall state its findings of fact and shall issue an
 order dismissing the charges.

48 5. Frivolous charges. If the board determines that a
50 charge of unfair practice is frivolous, it shall state its
 findings of fact and may issue a reprimand to the person making
 the charge. When the board determines that a person who made a

2 charge that was determined frivolous did so knowing the charge to
4 be frivolous, the board shall state its findings of fact and
6 shall issue an order requiring that person to pay the reasonable
8 attorney's fees and double the amount of other reasonable costs
10 incurred by the person against whom the charge was made in
12 defending against the charge before the board. When it is
14 disputed, reasonableness must be determined by the board. The
16 order must also require that person to reimburse the State for
18 the per diem payments made to board members for their attendance
20 at the hearing on the charge. Failure to comply with such an
22 order is a violation of this chapter.

12 **§1360. Subpoena**

14
16 In any proceeding before the board under this chapter, the
18 board may issue subpoenas for the attendance of witnesses or for
20 the production of documents and may examine witnesses under
22 oath. The board shall issue subpoenas for the attendance of
24 witnesses or for the production of documents upon written
26 application of a party to a proceeding. A person who fails to
28 obey the subpoena of the board may be punished as for contempt of
30 court on application by the board to the Superior Court for the
32 county in which that failure occurred. Witnesses who are
34 summoned before the board or its agents are entitled to the same
36 witness and mileage fees as are paid to witnesses subpoenaed in
38 the District Courts of the State.

28 **§1361. Enforcement of orders and judicial review**

30 1. Complaint. The board may file a complaint in Superior
32 Court for the enforcement of orders issued by the board under
34 sections 1358 and 1359 and for appropriate temporary relief or a
36 restraining order. The board shall file with the court the
38 original or certified copy of the entire record in the proceeding
40 and shall cause notice of the complaint to be served upon the
42 person against whom enforcement or relief is sought. The court
44 may grant temporary relief or a restraining order as it considers
46 just and proper, including making and entering a judgment
48 enforcing; modifying and enforcing as so modified; or setting
50 aside, in whole or in part, the order of the board.

42 A. The court may not consider an objection that was not
44 made to the board, unless the failure or neglect to make the
46 objection is excused by extraordinary circumstances. The
48 findings of the board with respect to questions of fact, if
50 supported by substantial evidence on the record considered
as a whole, are conclusive.

B. If either party applies to the court for leave to adduce
additional evidence and shows to the satisfaction of the

2 court that such additional evidence is material and that
4 there were reasonable grounds for the failure to adduce such
6 evidence in the hearing before the board, the court may
8 order such additional evidence to be taken before the board
10 and to be made a part of the record. The board may modify
12 its findings as to the facts, or make new findings, by
14 reason of additional evidence so taken and filed. The board
16 shall file any modified or new findings, which findings with
18 respect to questions of fact if supported by substantial
20 evidence on the record considered as a whole are conclusive,
22 and shall file its recommendations, if any, for the
24 modification or setting aside of its original order.

26 2. Stay. The provisions of Title 5, section 11004 govern
28 any application for a stay of an order of the board.

30 3. Violation of chapter; fines. A person who violates this
32 chapter commits a civil violation for which a fine of not more
34 than \$5,000 may be imposed. The board may seek fines for
36 violation of this chapter in an action to enforce an order or in
38 a separate action. If the violation is a refusal to bargain in
40 good faith under section 1356 or 1358 or an unfair practice under
42 section 1359, each day that such conduct occurs constitutes a
44 separate violation. If the court imposes a fine against a
46 qualified bargaining association for committing a violation under
48 section 1356, 1358 or 1359 and that the association is unable to
50 pay the fine, the court shall instead issue an order suspending
for one year the association's rights as a qualified bargaining
association under this chapter.

§1362. Antitrust

Notwithstanding any law to the contrary, the activities of
qualified bargaining associations and forest landowners in
bargaining with respect to the price and other terms for hauling
or harvesting services performed under contract by the members of
such qualified bargaining associations do not violate antitrust
laws of this State. This chapter does not permit forest
landowners to contract, combine or conspire with one another in
bargaining with qualified bargaining associations.

SUMMARY

This bill enacts the Forest Products Harvesters and Haulers
Collective Bargaining Act. It allows individual forest products
harvesters and haulers to join together to bargain with forest
landowners over the prices and other terms of contracts for
harvesting and hauling trees in Maine forests. It requires a
forest landowner to bargain in good faith with such an

2 association if the association represents 51% or more of the
harvesters or haulers that have a prior course of dealing with
the forest landowner. The bill creates a Forest Products
4 Bargaining Board to implement the Act, sets forth a procedure for
mediation and arbitration if the parties can not come to
6 agreement on their own and lists prohibited unfair practices.
The bill is based on existing law allowing agricultural producers
8 to form associations to bargain with handlers of agricultural
products.