

# MAINE STATE LEGISLATURE

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L.D. 1962

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MINORITY  
AGRICULTURE, CONSERVATION AND FORESTRY

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

COMMITTEE AMENDMENT "B" to H.P. 1466, L.D. 1962, "Resolve, Regarding Legislative Review of Chapter 23: Standards for Timber Harvesting To Substantially Eliminate Liquidation Harvesting, a Major Substantive Rule of the Department of Conservation"

Amend the resolve by striking out everything after the title and before the summary and inserting in its place the following:

**Sec. 1. Adoption. Resolved:** That final adoption of Chapter 23: Standards for Timber Harvesting to substantially eliminate Liquidation Harvesting, a provisionally adopted major substantive rule of the Department of Conservation that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the rule is modified as follows.

1. Sec. 3, identifying the scope and applicability of the rule, must be revised to provide that the transfer of title or ownership of a parcel of land is not considered a sale, offer for sale or conveyance for purposes of this rule if the transferor is related in business to the transferee or the transfer is incidental to a merger, consolidation, acquisition or reorganization of a business as long as, subsequent to the transfer, the transferee is related in business to the transferor.

In the event of a transfer of title or ownership of such a parcel of land, the provisions of this rule would apply as if the transfer had not occurred and the transferee is deemed to be the same entity as the transferor for the purposes of applying this rule. Timber harvesting on the parcel is subject to the

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2 requirements of this rule if any portion of the parcel is sold,  
3 offered for resale or otherwise conveyed within 5 years of the  
4 date of the most recent purchase or acquisition of the parcel  
5 that involved a transfer of title or ownership not described in  
6 this provision or otherwise exempted pursuant to Sec. 5.

7 2. The rule must be revised to define "acceptable residual  
8 tree" as a live tree that is wind-firm and meets the definition  
9 of acceptable growing stock in Maine Forest Service Rule, Chapter  
10 20.

11 3. The rule must be revised to define "related in business"  
12 as any of the following business relationships between the  
13 transferor and transferee of a parcel of land:

14 A. The transferor owns a controlling interest in the  
15 transferee;

16 B. The transferee owns a controlling interest in the  
17 transferor; or

18 C. A 3rd entity owns a controlling interest in both the  
19 transferor and the transferee.

20 4. Sec. 4, the definitions section, must be revised to:

21 A. Remove the definitions of "adequately stocked stand,"  
22 "high grading," "rare or exemplary natural community" and  
23 "threatened or endangered species";

24 B. Include a definition of "area affected by a harvest"  
25 that is substantively identical to the definition in the  
26 proposed revision to the rule prepared by the Maine Forest  
27 Service, dated April 27, 2004 and submitted to the Joint  
28 Standing Committee on Agriculture, Conservation and Forestry  
29 on April 26, 2004;

30 C. Amend the definition of "responsible party" to delete  
31 the reference to a timber harvest plan required by the rule;  
32 and

33 D. Amend the definition of "timber harvest plan" to mean a  
34 site-specific document signed by a licensed forester  
35 outlining proposed timber harvesting activities.

36 5. The exemptions section must include the changes to the  
37 provisionally adopted rule found in Sec. 5 of the proposed  
38 revision to the rule prepared by the Maine Forest Service, dated  
39 April 27, 2004 and submitted to the Joint Standing Committee on  
40 Agriculture, Conservation and Forestry on April 26, 2004 and  
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2 additionally must include revisions to Sec. 5, paragraphs E and G  
3 for the purpose of allowing these exemptions to apply to  
4 landowners with less than 100 acres of forestland statewide, and  
5 on parcels containing less than 20 acres of forestland,  
6 respectively.

7 6. The first paragraph in Sec. 6 Harvest Standards of the  
8 provisionally adopted rule must be amended to clarify that the  
9 harvest standards in this rule do not apply to a harvest subject  
10 to and in compliance with the clear-cutting standards in Maine  
11 Forest Service Rule, Chapter 20. The first paragraph in Sec. 6  
12 Harvest Standards must also be amended to require timber  
13 harvesting under this rule to include measures to protect  
14 advanced regeneration by minimizing the area damaged by logging  
15 equipment.

16 7. The harvest standards described under Options 1 and 3 in  
17 Sec. 6 of the provisionally adopted rule must be removed and  
18 replaced with standards specifying the criteria for an acceptable  
19 residual stand. The rule must provide for a harvest to be in  
20 compliance with the rule if the residual stand meets one of the  
21 following criteria:

22 A. The average basal area of acceptable residual trees 4.5  
23 inches and larger in diameter at breast height must equal or  
24 exceed 45 square feet per acre;

25 B. A minimum of 600 trees per acre must be present. To be  
26 included in the 600-tree count a tree must meet the criteria  
27 for acceptable residual tree and be a minimum of 3 feet in  
28 height if a softwood or a minimum of 5 feet in height if a  
29 hardwood; or

30 C. A minimum of 375 trees per acre must be present. To be  
31 included in the 375-tree count a tree must meet the criteria  
32 for acceptable residual tree and be a minimum of 10 feet in  
33 height if a softwood or a minimum of 20 feet in height if a  
34 hardwood.

35 8. Option 2 in Sec. 6 of the provisionally adopted rule  
36 must be amended to allow a landowner to be accredited and qualify  
37 for this option when the landowner is conducting or supervising a  
38 harvest that occupies an area of 100 acres or less.

39 9. Option 4 in Sec. 6 of the provisionally adopted rule  
40 must be amended as in the proposed revision to the rule prepared  
41 by the Maine Forest Service, dated April 27, 2004 and submitted  
42 to the Joint Standing Committee on Agriculture, Conservation and  
43 Forestry on April 26, 2004.

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**COMMITTEE AMENDMENT**

10. Sec. 7 of the provisionally adopted rule must include language to clarify that a forester, timber harvester or landowner's designated agent is not liable for a violation of the rule if that person was not aware at the time of the harvest that the landowner intended to sell the land in violation of the liquidation harvesting rule.

The Commissioner of Conservation is not required to hold hearings or conduct other formal proceedings prior to finally adopting the rule in accordance with this resolve. At the time of final adoption, the commissioner shall make available to the public a document that allows comparison of the rule provisionally adopted on April 14, 2004 and the rule authorized and finally adopted in accordance with this resolve.'

### SUMMARY

This amendment is the minority report of the Joint Standing Committee on Agriculture, Conservation and Forestry. This amendment authorizes final adoption of the provisionally adopted rule provided the revisions specified are made. It removes the emergency preamble and clause from the resolve.