

# MAINE STATE LEGISLATURE

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L.D. 1739

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Date: **3-23-12**

(Filing No. S-**471**)

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**AGRICULTURE, CONSERVATION AND FORESTRY**

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Reproduced and distributed under the direction of the Secretary of the Senate.

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**STATE OF MAINE**

6

**SENATE**

7

**125TH LEGISLATURE**

8

**SECOND REGULAR SESSION**

9

COMMITTEE AMENDMENT "**A**" to S.P. 596, L.D. 1739, Bill, "An Act To  
10 Change Regulation of Forestry Activities"

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Amend the bill by striking out everything after the enacting clause and before  
12 summary and inserting the following:

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'**Sec. 1. 12 MRSA §685-A, sub-§12**, as repealed and replaced by PL 2005, c.  
14 226, §1, is amended to read:

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**12. Timber harvesting activities.** Rules adopted by the Commissioner of  
16 Conservation pursuant to section 8867-B for the purpose of regulating timber harvesting  
17 and timber harvesting activities in areas adjacent to rivers, streams, ponds, wetlands and  
18 tidal waters become effective for the unorganized and deorganized areas on the date  
19 established under Title 38, section 438-B, subsection 5.

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The Director of the Bureau of Forestry within the Department of Conservation shall  
21 administer and enforce the regulation of timber harvesting and timber harvesting  
22 activities in these areas. For the purposes of this subsection, "timber harvesting" and  
23 "timber harvesting activities" have the same meanings as in section 8868, subsections 4  
24 and 5.

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Beginning November 1, 2012, the Director of the Bureau of Forestry within the  
26 Department of Conservation shall administer and enforce the regulation of timber  
27 harvesting and timber harvesting activities in protection districts and management  
28 districts in accordance with rules adopted under section 8867-D.

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**Sec. 2. 12 MRSA §685-A, sub-§14** is enacted to read:

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**14. Land management roads, gravel pits and water crossings.** Beginning  
31 November 1, 2012, the Director of the Bureau of Forestry within the Department of  
32 Conservation shall administer and enforce the regulation of construction, maintenance  
33 and repair of land management roads, water crossings and gravel pits of less than 5 acres  
34 in protection districts and management districts in accordance with rules adopted under  
35 section 8867-E. For the purposes of this subsection, "land management road" has the  
36 same meaning as under section 8868, subsection 7.

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Sec. 3. 12 MRSA §8867-C is enacted to read:

**§8867-C. Enhancement of cold water fisheries habitat**

By November 1, 2012, the Commissioner of Conservation shall adopt rules to allow activities that enhance cold water fishery habitat without a permit or fee. The rules must establish standards for the placement of wood in stream channels and specify that only a licensed forester trained by the bureau in cooperation with the Department of Inland Fisheries and Wildlife in techniques to enhance fisheries habitat may implement these techniques.

In developing standards to enhance brook trout habitat and the training required to implement habitat enhancement, the Commissioner of Conservation shall consult with the Department of Inland Fisheries and Wildlife, the Department of Marine Resources and the Department of Environmental Protection. The bureau shall notify the departments of habitat enhancement activities conducted under this section.

A permit is not required for activities conducted in accordance with the rules adopted under this section in stream segments that have been identified by the Department of Inland Fisheries and Wildlife as lacking desired habitat features. The Department of Marine Resources must be consulted and approve of any habitat enhancement under this section on a stream that is identified as Atlantic salmon habitat.

The initial rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. This section does not relieve a person from meeting the requirements of section 8867-B or Title 38, chapter 3, subchapter 1, article 2-B.

Sec. 4. 12 MRSA §8867-D is enacted to read:

**§8867-D. Regulation of timber harvesting and timber harvesting activities within the unorganized and deorganized areas of the State**

Beginning November 1, 2012, the director of the bureau shall administer and enforce the regulation of timber harvesting and timber harvesting activities in areas classified as protection districts and management districts by the commission in accordance with section 685-A. The Commissioner of Conservation shall establish standards in rule to implement this section.

The initial rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 12 MRSA §8867-E is enacted to read:

**§8867-E. Regulation of land management roads, gravel pits and water crossings within the unorganized and deorganized areas of the State**

1. Regulation. In accordance with section 685-A, subsection 14, beginning November 1, 2012, the director of the bureau shall administer and enforce the regulation of construction, maintenance and repair of land management roads, water crossings and

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1 gravel pits of less than 5 acres in areas designated as protection districts and management  
2 districts by the commission.

3 **2. Rules.** The Commissioner of Conservation shall adopt rules to implement this  
4 section. Initial rules adopted under this subsection are routine technical rules as defined in  
5 Title 5, chapter 375, subchapter 2-A. Subsequent amendments to those rules are major  
6 substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted under  
7 this subsection must be adopted in consultation with the commission. The rules must:

8 A. Require a permit from the bureau for activities located within areas of special  
9 flood hazard as defined in the commission's rules;

10 B. Include standards to protect outstanding river segments, historic, scenic,  
11 scientific, recreational and aesthetic resources in districts classified by the  
12 commission for special protection and delineated on land use maps adopted under  
13 section 685-A, subsection 7-A; and

14 C. Require review by and approval from the commission for any activity in a  
15 protection district described in paragraph B that requires a permit.

16 **Sec. 6. 12 MRSA §8867-F** is enacted to read:

17 **§8867-F. Fee schedule**

18 The bureau shall establish a schedule of fees through rulemaking for the  
19 administration of sections 8867-D and 8867-E. Notwithstanding Title 5, section 8071,  
20 subsection 2, paragraph A, rules adopted pursuant to this section are routine technical  
21 rules as defined in Title 5, chapter 375, subchapter 2-A. The bureau may not issue an  
22 approval, certificate, special exception or variance until the required fee has been paid.

23 **Sec. 7. 12 MRSA §8868, sub-§1-A** is enacted to read:

24 **1-A. Commission.** "Commission" means the Maine Land Use Regulation  
25 Commission established under section 683.

26 **Sec. 8. 12 MRSA §8868, sub-§5,** as enacted by PL 1999, c. 695, §2, is amended  
27 to read:

28 **5. Timber harvesting activities.** "Timber harvesting activities" means timber  
29 harvesting, the construction and maintenance of roads used primarily for timber  
30 harvesting, the mining of gravel used for the construction and maintenance of roads used  
31 primarily for timber harvesting and other activities conducted to facilitate timber  
32 harvesting.

33 **Sec. 9. 12 MRSA §8868, sub-§7** is enacted to read:

34 **7. Land management road.** "Land management road" means a road constructed  
35 and used primarily for agricultural or forest management activities.

36 **Sec. 10. 38 MRSA §438-B,** as amended by PL 2005, c. 397, Pt. C, §23 and  
37 affected by §24, is further amended to read:

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**§438-B. Timber harvesting and timber harvesting activities in shoreland areas; authority of Director of the Bureau of Forestry in the Department of Conservation**

Except as provided in subsection 4, beginning on the effective date established under subsection 5, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide for the purpose of regulating timber harvesting and timber harvesting activities in shoreland areas.

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Director" means the Director of the Bureau of Forestry within the Department of Conservation.
- B. "Statewide standards" means the performance standards for timber harvesting activities adopted pursuant to Title 12, section 8867-B.
- C. "Timber harvesting" means cutting or removal of timber for the primary purpose of selling or processing forest products.
- D. "Timber harvesting activities" means the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**2. Municipal acceptance of statewide standards.** A municipality may choose to have the statewide standards apply to timber harvesting and timber harvesting activities in that municipality by authorizing the repeal of all provisions within the municipal shoreland zoning ordinance that regulate timber harvesting and timber harvesting activities in shoreland areas and notifying the director of the repeal. The authorization must specify a repeal date ~~consistent with the effective date established under subsection 5.~~ When a municipality accepts the statewide standards in accordance with this subsection, the director shall administer and enforce the statewide standards within that municipality beginning on the effective date established under subsection 5 or the municipal repeal date specified in the notification received under this subsection.

**3. Municipal adoption of ordinance identical to statewide standards.** A municipality may adopt an ordinance to regulate timber harvesting and timber harvesting activities that is identical to the statewide standards. A municipality that adopts an ordinance under this subsection may request the director to administer and enforce the ordinance or to participate in joint administration and enforcement of the ordinance with the municipality beginning on the effective date established under subsection 5 or within 60 days of the director's receiving a request. When a municipality requests joint responsibilities, the director and the municipality shall enter into an agreement that delineates the administrative and enforcement duties of each. To continue to receive administrative and enforcement assistance from the director under this subsection, a municipality must amend its ordinance as necessary to maintain identical provisions with the statewide standards.

**4. Municipal ordinances that are not identical to statewide standards.** A municipal ordinance regulating timber harvesting and timber harvesting activities that is in effect and consistent with state laws and rules in effect on December 31, 2005

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continues in effect unless action is taken in accordance with subsection 2 or 3. A municipality that retains an ordinance with provisions that differ from the statewide standards shall administer and enforce that ordinance unless the municipality requests that the director administer and enforce the ordinance and the director agrees with the request after reviewing the ordinance. The director may not administer or enforce any ordinance that is more stringent than or significantly different from the requirements of section 438-A. A municipality may not amend a municipal ordinance regulating timber harvesting and timber harvesting activities unless the process established in Title 12, section 8869, subsection 8 is followed. Beginning on the effective date established under subsection 5, a municipality may not amend an ordinance regulating timber harvesting and timber harvesting activities in a manner that results in standards that are less stringent than or otherwise conflict with the statewide standards.

**5. Effective date for statewide standards.** Except as provided in subsection 4, rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply statewide beginning on the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1999-2003 have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3. Within 30 days of making the determination that the 252-municipality threshold has been met, the Commissioner of Conservation shall notify the Secretary of State in writing and advise the secretary of the effective date for the statewide standards.

**6. Effective date for statewide standards in certain municipalities.** Notwithstanding any provision in a local ordinance to the contrary, beginning January 1, 2013 rules adopted by the Commissioner of Conservation under Title 12, section 8867-B apply in all municipalities that have either accepted the statewide standards in accordance with subsection 2 or have adopted an ordinance identical to the statewide standards in accordance with subsection 3.

**Sec. 11. 38 MRSA §480-B, sub-§2-B,** as amended by PL 2005, c. 116, §1, is further amended to read:

**2-B. Forest management activities.** "Forest management activities" means timber stand improvement, timber harvesting activities, forest products harvesting and regeneration of forest stands. For the purposes of this definition, "timber harvesting activities" means timber harvesting, the construction and maintenance of roads used primarily for timber harvesting, the mining of gravel used for the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting. For the purposes of this definition, "timber harvesting" means the cutting or removal of timber for the primary purpose of selling or processing forest products.

**Sec. 12. 38 MRSA §480-E-1, first ¶,** as amended by PL 2009, c. 615, Pt. E, §11, is further amended to read:

The Except as provided in section 480-E-3, the Maine Land Use Regulation Commission shall issue all permits under this article for activities that are located wholly

**COMMITTEE AMENDMENT**

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within its jurisdiction and are not subject to review and approval by the department under any other article of this chapter, except as provided in subsection 3.

3           **Sec. 13. 38 MRSA §480-E-3** is enacted to read:

4           **§480-E-3. Delegation of permit-granting authority to the Department of**  
5           **Conservation, Bureau of Forestry**

6           Notwithstanding section 480-E-1, the Department of Conservation, Bureau of  
7           Forestry shall issue all permits under this article for timber harvesting activities that are  
8           located within the unorganized and deorganized areas of the State as defined in Title 12,  
9           section 682, subsection 1 and are not subject to review and approval by the department  
10          under any other article of this chapter. For the purposes of this section, "timber harvesting  
11          activities" means timber harvesting, the construction and maintenance of roads used  
12          primarily for timber harvesting, the mining of gravel used for the construction and  
13          maintenance of roads used primarily for timber harvesting and other activities conducted  
14          to facilitate timber harvesting.

15          **1. Activity located in organized and unorganized area.** If a timber harvesting  
16          activity is located in part within an organized area and in part within an unorganized or  
17          deorganized area, that portion of the timber harvesting activity within the organized area  
18          is subject to department review under this article if that portion is an activity pursuant to  
19          this article. That portion of the timber harvesting activity within an unorganized or  
20          deorganized area of the State is not subject to the requirements of this article except as  
21          provided in subsection 2.

22          **2. Allowed use.** If a timber harvesting activity is located as described in subsection  
23          1, the department may review that portion of the activity within the unorganized and  
24          deorganized areas if the Department of Conservation, Bureau of Forestry determines that  
25          the project is an allowed use within the subdistrict or subdistricts for which it is proposed.  
26          A permit from the Bureau of Forestry is not required for those aspects of an activity  
27          approved by the department under this subsection.

28          The Department of Conservation, Bureau of Forestry, in consultation with the  
29          department, shall annually review standards for timber harvesting activities adopted by  
30          the Bureau of Forestry to ensure that the standards afford a level of protection consistent  
31          with the goals of this article and the goals of Title 12, chapter 805, subchapter 3-A.

32          **Sec. 14. 38 MRSA §480-Q, sub-§32** is enacted to read:

33          **32. Placement of wood in streams.** The placement of wood in stream channels to  
34          enhance cold water fisheries habitat in accordance with Title 12, section 8867-C and rules  
35          adopted to implement that section.

36          **Sec. 15. Transition.** In adopting rules under the Maine Revised Statutes, Title 12,  
37          section 8867-D, the Department of Conservation shall review rules adopted by the Maine  
38          Land Use Regulation Commission and in effect for timber harvesting, timber harvesting  
39          activities, land management roads, water crossings and gravel pits of less than 5 acres.  
40          The department and the commission shall jointly review standards for land management  
41          roads, water crossings and gravel pits to protect historic, scenic, scientific, recreational  
42          and aesthetic resources in areas identified by the commission as requiring special

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1 protection. The department may adopt permit by rule standards through rulemaking  
2 under Title 12, sections 8867-D and 8867-E to allow activities without a permit.'

3 **SUMMARY**

4 This amendment does the following.

5 1. It amends the definition of "timber harvesting activities" to include mining gravel  
6 for the construction and maintenance of roads used primarily for timber harvesting.

7 2. It provides more specific direction to the Commissioner of Conservation for  
8 adopting rules to allow wood to be placed in stream channels for the purpose of  
9 enhancing cold water fisheries habitat.

10 3. It amends the directive regarding oversight of timber harvesting and timber  
11 harvesting activities within the jurisdiction of the Maine Land Use Regulation  
12 Commission. The Department of Conservation, Bureau of Forestry would assume  
13 responsibility for regulation of these activities in protection and management districts  
14 beginning November 1, 2012.

15 4. It provides for the Bureau of Forestry to administer and enforce the construction  
16 and maintenance of land management roads, water crossings and gravel pits of less than 5  
17 acres in the protection and management districts within the unorganized and deorganized  
18 areas.

19 5. It allows the Bureau of Forestry to establish a fee schedule for activities relating to  
20 timber harvesting, land management roads, water crossings and gravel pits in protection  
21 and management districts.

22 6. It provides for the Bureau of Forestry to administer and enforce timber harvesting  
23 and timber harvesting activities in shoreland areas for municipalities that:

24 A. Have repealed their ordinances;

25 B. Have adopted ordinances identical to the statewide standards and request the  
26 bureau to assume administrative and enforcement responsibilities; and

27 C. Have ordinances that are consistent with laws and rules in effect on December 31,  
28 2005 and request the bureau to assume responsibility. The bureau may agree to  
29 assume the responsibility after reviewing the ordinance but is not required to do so.  
30 The bureau may not assume responsibility for administering or enforcing ordinances  
31 that are more stringent than or significantly different from requirements under  
32 shoreland zoning.

33 7. It provides an exemption from permit requirements under the Natural Resources  
34 Protection Act for the placement of wood in stream channels when the placement is in  
35 compliance with rules adopted by the Department of Conservation for this activity.

**FISCAL NOTE REQUIRED**  
**(See attached)**



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Approved: 03/21/12 *MAC*

# 125th MAINE LEGISLATURE

LD 1739

LR 2498(02)

An Act To Change Regulation of Forestry Activities

Fiscal Note for Bill as Amended by Committee Amendment "A" S 471

Committee: Agriculture, Conservation and Forestry

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund

### Fiscal Detail and Notes

Additional costs to the Department of Conservation associated with establishing rules and standards can be absorbed within existing budgeted resources. Additional costs to the Departments of Environmental Protection and Inland Fisheries and Wildlife associated with providing guidance to the department can also be absorbed.