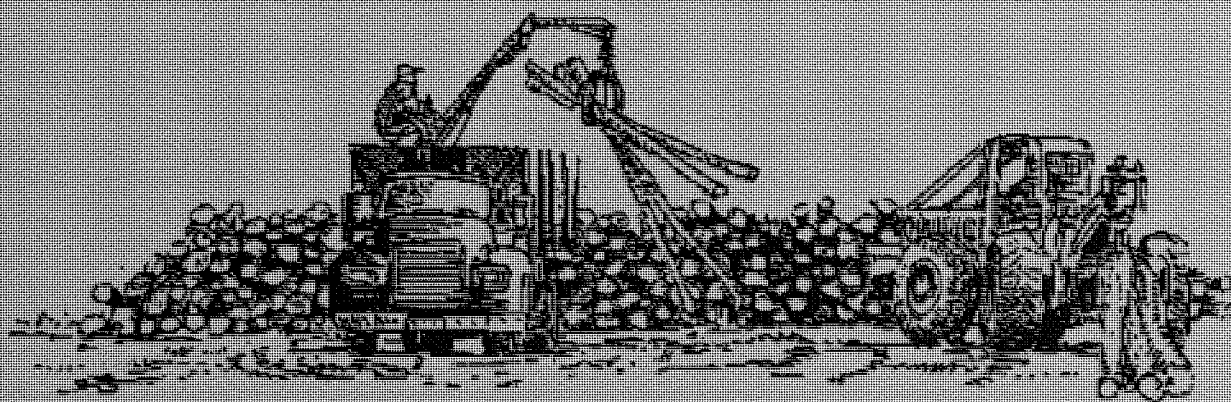


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“Making The Current Laws Work”

REPORT OF THE

LOGGER LICENSING

TECHNICAL REVIEW COMMITTEE

Sunrise Review of LD 1430, An Act to Regulate Professional Loggers
Presented to: Commissioner S. Catherine Longley
Department of Professional and Financial Regulation
January, 1998

"Making The Current Laws Work": Report of the Logger Licensing Technical Review Committee

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January, 1998

Logger Licensing Technical Review Committee
Maine Forest Service
22 State House Station
Augusta, ME 04333-0022

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05 January 1998

Commissioner S. Catherine Longley
Department of Professional and Financial Regulation
35 State House Station
Augusta, ME 04333

Dear Commissioner Longley:

We are pleased to submit to you our "sunrise review" report on LD 1430, An Act to Regulate Professional Loggers. We conducted our review in accordance with the criteria of 5 MRSA §12015, sub-§3 *et seq* as directed. Further, in accordance with your charge to us, we focused our attention on: public health, safety and welfare issues as they relate to timber harvesting; the role of existing laws and regulations; and, lessons from other states.

To carry out our charge, we began by listening to the public, particularly the logging community, about the proposed legislation and the sunrise review criteria. We sponsored four listening sessions across the state and held a public comment period. About 300 people attended one or more of our listening sessions. Over 60 people spoke at these sessions. In addition, nearly 20 people took the time to write us with their comments. The message we heard loud and clear from these comments was, before we create any new regulatory programs, "Make the current laws work!" We took that message to heart, and - combined with your guidance to seek the least restrictive, but most effective means of protecting the public health, safety and welfare - used it as a reference point for our work.

After the public comment period, we focused on identifying the harm or harms that the proposed legislation sought to address and discussing a broad range of possible remedies to these threats. The committee determined that the principal threats to public health, safety, and welfare associated with timber harvesting are:

- Timber theft and damage to real property;
- Soil erosion and water quality degradation;
- Logger safety and the public costs of injuries to loggers; and,
- Public safety concerns.

We concluded that these threats are significant and are not fully remedied by existing laws and rules. However, after carefully weighing the pros and cons of all of the options available to us, the committee does not believe that logger licensure as envisioned by LD 1430 is the answer. We note that recent changes to timber theft laws may aid the state in prosecuting theft, but these changes will require time to evaluate their full impact. We also concluded that creation of a logger registration program would not fully address the threats to public health, safety, and welfare we identified. Consequently, we recommend a number of modifications to existing laws and rules, in addition to some non-regulatory actions. We further suggest that LD 1430 be retitled, "An Act to Strengthen Forest Laws Regarding Timber Theft, Environmental Quality, and Logger Safety," and that the bill's existing language be replaced with the statutory changes recommended below. Our recommendations are, in priority order:

- Improvements to the "Notification of Intent to Harvest Timber" system required by the Forest Practices Act, including involving organized towns in the process;

- Modifications to the Wood Measurement laws to reduce timber theft;
- Changes to the workers compensation law regarding Predetermination of Independent Contractor Status to better protect landowners and loggers;
- Strengthening enforcement of water quality laws and promoting the use of Best Management Practices;
- Improving interagency coordination for enforcement of timber theft, timber trespass, wood measurement, and water quality laws; and,
- Increased and coordinated information and training efforts aimed at both landowners and loggers.

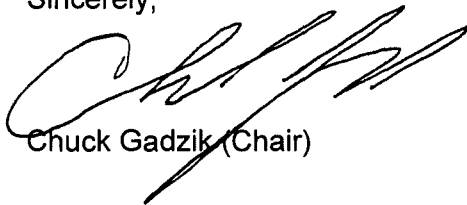
These recommendations are detailed in the report.

We submit these recommendations as a prioritized package. We do not believe that a piecemeal approach will suffice to protect the public interest and ask you to consider our report in that light.

In closing, we want to highlight the great contributions that the Certified Logging Professional Program has made to advancing logger safety and professionalism in Maine. This program, instituted in 1991, has trained at least half of the loggers working in the state. The positive outcomes of this training on the practice of logging in Maine are significant. Of particular note are the major reductions in both injuries and insurance rates for CLP-certified loggers. Application of CLP techniques in the woods saves lives and dollars. But CLP involves more than just safety. A CLP logger is a better businessperson and has a better grasp of harvesting techniques that protect public trust resources and the future forest. We could not in good conscience recommend any regulatory program that would overshadow the many positive advances this program has made in just 7 years.

We thank you for your confidence and support, and stand ready to support these recommendations before the Legislature.

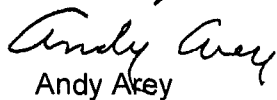
Sincerely,



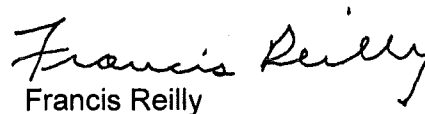
Chuck Gadzik (Chair)



Neil Postlewaite



Andy Arey



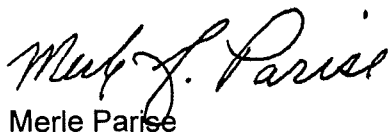
Francis Reilly



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“MAKE THE CURRENT LAWS WORK”

What We Heard From the Public

The Logger Licensing Technical Review Committee (committee) sponsored four Listening Sessions across the state in late August and early September 1997. These Listening Sessions took place in Ashland, Bangor, Augusta and South Paris and were publicized by press releases, flyer distribution at key mill yards, targeted mailings, and personal contacts. In addition, the committee asked for and received written comments from the public. The overwhelming message sent by those who attended the Listening Sessions (about 300 people) or who wrote letters and emails (about 20 people) was, before creating any new regulatory programs, “Make the current laws work!” Many of those who spoke felt confident that enforcement of current laws would largely address timber theft and other problems. This message was consistent with the guidance the committee received from Commissioner Longley and her staff to “identify the least restrictive and most effective methods to prevent public harm.”

The Threats to Public Health, Safety, and Welfare

The Logger Licensing Technical Review Committee was charged with assessing the merits of LD 1430, An Act to Regulate Professional Loggers, a legislative proposal to license loggers. The committee focused its attention on those aspects of timber harvesting that threaten public health, safety, and welfare. Following a careful evaluation of the available data, brainstorming and prioritization, the committee identified four significant threats:

- Timber theft and damage to real property;
- Water quality degradation and soil erosion;
- Logger safety and the public cost of injuries to uninsured loggers; and,
- Public safety.

It is also very clear that many non-industrial landowners simply do not avail themselves of available information and technical assistance and therefore get taken advantage of. Similarly, many loggers do not take advantage of the many training opportunities available to them, often offered at low or no cost. In addition, entrenched attitudes about safety, harvesting methods and what constitutes a good job in the woods carry a heavy cost in injuries, lives, unproductive forests, resource damage and alienated landowners. These issues will not be resolved by logger licensing.

The committee concluded that existing laws - at current enforcement levels - and programs do not adequately protect the public from these threats. Therefore, it recommends measures to address them, both regulatory and non-regulatory. The committee recognizes that it may not be feasible to implement all of its

recommendations immediately, and views its suggestions as a long-range work plan for the agencies and stakeholders involved. To summarize its findings, the committee concluded that making existing laws and rules work better, combined with a more aggressive education program aimed at both loggers and landowners, would go far toward assuring the public that loggers are both skilled and responsible in the practice of logging.

The Certified Logging Professional Program: A Success Story

The committee recognizes and commends highly the accomplishments of the Certified Logging Professional (CLP) program, which continues to set high standards for the profession. CLP has made significant contributions to the advancement of logger safety and professionalism in Maine. This program, instituted in 1991, has trained over 2,000 individuals to date.

The positive outcomes of this training on the practice of logging in Maine are significant. Of particular note are the major reductions in both injuries and insurance rates for CLP-certified loggers. For example, workers' compensation rates for CLP-certified loggers are less than half that for non-CLP loggers. More important from a human standpoint, CLP-certified loggers have not suffered a single fatality or major disabling injury since 1994. CLP loggers work safer. The program has no equal in this regard.

CLP involves more than just safety. A CLP logger is a better businessperson and has a better grasp of harvesting techniques that protect public trust resources and the future forest. A five day course in CLP includes training in business management, Best Management Practices to protect water quality, land use regulations and silviculture.

CLP has endured a great deal of criticism because of its cost, and in part because of entrenched attitudes about logging safety procedures. The Sustainable Forestry Initiative Committee - at least partly in response to the input received at the Listening Sessions - has acknowledged that the program's effectiveness is constrained by its inability to reach all loggers, particularly small, independent loggers, in large part due to the cost of tuition and down time. Therefore, the committee has budgeted a substantial amount of money in its upcoming budget to: (1) strengthen CLP by supporting program costs to keep tuition rates stable, and (2) help some loggers pay their CLP tuition in installments.

The committee could not in good conscience recommend any regulatory program that would overshadow the many positive advances this program has made in just 7 years. It does not believe, however, that CLP should be mandated by the state. Many of the independent loggers who spoke at the listening sessions felt that such a mandate could have the unintended effect of driving many small, independent loggers out of the business. If true, this would not serve the public interest, as competition would be reduced, and it could create an unreasonably high barrier to entry into the business.

CLP is working well and is capable of self-correction and improvement when necessary. It is conceivable that the CLP program will have reached over 90% of all loggers in Maine within the next decade.

Problems in the Woods

The committee heard from enough people and collected enough data to conclude that the public health, safety and welfare are at risk from the activities of some loggers. Although many loggers are excellent business people with a strong customer service and land ethic, there is a sizable element of the profession that, because of economic pressures and for other reasons, are causing many of the problems in the woods. The existing framework of laws was found to be adequate in intent but too often short on effective enforcement. The lack of enforcement is due more to a lack of agency resources than to a lack of will.

Timber theft and fraud are major concerns. In addition to recommending a number of measures designed to improve the tracking of wood from the stump to the mill as well as facilitate enforcement of timber theft laws, the committee believes the industry (mills, brokers, truckers, and contractors) must take more responsibility for policing itself on this issue. If progress is not made in this area within a short time, the Legislature should consider additional measures to curb theft and fraud.

The committee believes that environmental laws are adequate in intent, but enforcement and education are lacking. More consistent enforcement of existing laws is needed, as are measures to promote greater use of Best Management Practices (BMPs). A commitment to more training and education of code enforcement officers and loggers would promote greater compliance and more effective enforcement.

Workers' compensation laws do not provide comprehensive and effective protection for loggers working in the woods, nor do they adequately protect landowners who may have one timber harvest experience in their lifetimes. The committee recommends a reexamination of the process for obtaining Predetermination of Independent Contractor Status (predetermination), so that all loggers, landowners and the public at large are protected from the high cost of logging-related injuries.

Finally, the committee had difficulty in arriving at an estimate of the number of loggers working in Maine. This issue exists in part because of the transient nature of a portion of the logging work force, as some individuals respond to market-driven and seasonal work opportunities to flow into and out of the field. The Maine Forest Service could utilize its existing timber harvest notification system to develop a reasonably accurate list of active loggers and help identify opportunities for training and outreach work.

A ROAD MAP FOR IMPROVEMENT

After full consideration of all of the issues and all of the known options, the committee recommends the following package of changes to current laws and rules. The recommendations are ranked by priority, with priority assigned on the expected level of impact on the identified problems. The committee had a full discussion of the pros and cons of both logger licensing and logger registration. At this time, the committee does not support either of those two options. The committee suggests that LD 1430 be retitled, "An Act to Strengthen Forest Laws Regarding Timber Theft, Environmental Quality, and Logger Safety," and that the bill's existing language be replaced with the statutory changes recommended below.

Priority Recommendations for Regulatory Change

I. Timber Harvest Notification System

- A. Organized towns can provide local information and services that the state cannot. They should play a greater role in the timber harvesting notification process. The committee recommends that organized towns take responsibility for processing notifications as the state's agent, and have the option to charge a town fee. The fee should be adequate to encourage town participation, but should not exceed 10 dollars. While the MFS will continue to dedicate its resources to Forest Practices Act (FPA) and timber theft enforcement, a number of towns have suggested this change. With timber harvesting notifications processed locally, Code Enforcement Officers will be alerted to upcoming timber harvests so they can more effectively enforce local land use ordinances, and cases of timber theft may be discovered more quickly.
- B. Improving the "Notification of Intent to Harvest Timber" form and associated procedures will protect landowners, absentee landowners in particular, and enhance enforcement of both the FPA and timber theft and trespass laws. Such improvement would also enable the MFS to better identify the number and type of loggers working in Maine, a key missing link in currently available information. Therefore, the committee recommends the following procedural changes to the existing notification process to make current laws work better:
 - 1. The Maine Forest Service (MFS) has experienced problems where notifications are filed without one or more of the listed parties' consent. For example, some unscrupulous loggers have filed notifications to harvest timber on the land of absentee owners. Therefore, all parties named on a notification (landowner, agent, harvester, forester) should be required to sign the notification. This would protect all signatory parties.
 - 2. In cases where a landowner has a designated agent, the agent should be required to submit either a notarized work agreement or a durable power of

attorney with a notification. This measure would protect absentee landowners in particular.

3. The MFS should require posting of notifications at the harvest site, to facilitate enforcement efforts and reduce theft. Notifications should be posted securely in a prominent place.
 4. The notification form should require better information on the location of harvests - either a photocopy of a USGS topo sheet or DeLorme map with the harvest site clearly marked - to facilitate site visits by Rangers and Foresters.
 5. To enable Rangers and Foresters to make site visits more efficiently, notification validity should be limited to one year, renewable under certain circumstances.
- C. The notification form should also be modified to remind landowners about good business practices and to help build a more accurate profile of the logging profession in Maine. The committee recommends that the notification form include a checklist on good business practices for landowners, including the following questions:
1. Do you have a written contract with the logger?
 2. Has your logger provided you proof of workers' compensation insurance coverage, or, if not, have you obtained a "Predetermination of Independent Contractor Status" from the Workers Compensation Board?
 3. Have you engaged a Licensed Professional Forester to plan or implement your harvest?
- D. The Maine Forest Service should draw a sample of notifications to conduct a regular survey of loggers to obtain information on logger training to improve data on logger training and continuing education needs.

II. Wood Measurement Law

- A. Modifications to the wood measurement law (10 MRSA §2363-A et seq) will enhance greatly the state's ability to address timber theft. The law should be modified to require trip tickets to track the source of all loads of wood. Trip tickets should contain at minimum the following information¹, with copies provided to the mill, trucker, logger and landowner:
- ♦ Date
 - ♦ Timber harvest notification number
 - ♦ Landowner name
 - ♦ Logger name

¹ The existing information requirements for scale slips should be modified accordingly.

- ♦ Crew name(s)
 - ♦ Trucker name
 - ♦ Woodlot location
 - ♦ Destination
- B. Enhance the wood measurement law by: empowering District Attorneys to prosecute violations; stiffening penalties for providing false information; and, making a trucker responsible for providing correct information.
- C. The Department of Agriculture and the MFS should establish a Memorandum of Agreement to share enforcement responsibility for the wood measurement law. Currently, MFS Rangers are not authorized to enforce the wood measurement law.

III. Predetermination of Independent Contractor Status

- A. The predetermination process set up by the Workers Compensation Board is not working to protect landowners. First, many landowners are completely unaware of their potential liability for injuries to loggers working on their land and do not ask a logger to provide evidence of workers' compensation insurance nor seek to obtain a predetermination. Many others find the process of obtaining a predetermination cumbersome, particularly for small sales, so they knowingly take a risk. Finally, even when a landowner has obtained a non-rebuttable presumption of independent contractor status, it can be invalidated if a logger uses subcontractors on a site. The business of logging is such that one-person shows are very rare. Most loggers use subcontractors to execute portions of a timber harvest, so the predetermination affords landowners little protection.

At the same time, the law allows some loggers to maintain the fiction of being an independent contractor using subcontractors when they should really be considered employers and bear all of the responsibilities of an employer. These individuals operate with a competitive advantage over legitimate logging contractors that acknowledge their role as employers by paying wages, payroll taxes and workers' compensation insurance.

The committee believes that a substantial number of logging operations occur in Maine where the logger has neither workers' compensation insurance nor a predetermination of independent contractor status. This situation exposes landowners, logging contractors, and the public to massive liability for injuries and deaths. The committee believes that all loggers should either be covered by workers' compensation insurance or have a predetermination of independent contractor status for every logging operation. Further, the committee strongly recommends that the Workers' Compensation Board undertake a serious review of the workers' compensation laws as they pertain to logging contractors and make changes where necessary to protect landowners, loggers, and the public

interest. At minimum, this review should address the following issues:

- 1 - determining the number of logging operations that occur where loggers have neither workers' compensation insurance nor a predetermination;
- 2 - identifying measures to ensure that all loggers not covered by workers' compensation insurance have a valid predetermination on every logging operation; and,
- 3 - creating a predetermination process that is simple for landowners and loggers to understand and use.

Montana provides an interesting possibility for simplifying the predetermination process. A state construction contractor registration program provides essentially a predetermination of independent contractor status that applies to registrants for one year and carries from job to job.

IV. Water Quality Laws and Voluntary Best Management Practices

- A. The Department of Environmental Protection and the Land Use Regulation Commission should promote the use of voluntary BMPs on logging operations by adopting Vermont's approach to prosecuting water quality violations. If a water quality violation occurs on a logging operation, the violation is prosecuted only if BMPs were not used on the harvest site. If BMPs were used, the landowner is not penalized, but must take remedial action (10 VSA §1259-f).
- B. The Legislature and state agencies should increase fines and penalty guidelines for violations of environmental laws. Fines should not be so low as to be considered a cost of doing business.

V. Interagency Enforcement Coordination

Interagency coordination for enforcement of environmental laws is critical. The MFS and DEP should finalize a Memorandum of Agreement for joint enforcement of water quality laws as they relate to timber harvesting.

Recommended Non-regulatory Actions

VI. Landowner Education

Many nonindustrial forest landowners are unaware of, or choose to ignore, the many sources of information and technical assistance available to them that can help make their timber harvest experience pleasant and profitable. For many years, the MFS has encouraged landowners wishing to harvest timber to: seek the services of a qualified forestry consultant; use a contract; either ask a logger to provide proof of workers' compensation insurance or seek a predetermination; make sure their boundary lines are well marked; to seek the best markets for their timber, and so on. The Small Woodland Owners Association of Maine has done a remarkable job with its limited resources to accomplish similar goals. Nevertheless, the huge increase in the number of nonindustrial owners over the past two decades, combined with landowners' changing attitudes about forest management, have meant that many people enter into agreements with loggers without knowledge of sound business practices. This is especially unfortunate, as many landowners also do not realize that their timber has real value that they can capitalize upon as wood markets worldwide tighten up. They are easy prey for unscrupulous individuals. Although industrial and large non-industrial ownerships can supply much of the wood needed for Maine's forest products industry, well-managed nonindustrial ownerships are essential to ensuring the future of this economic sector.

The MFS, in conjunction with landowner organizations, should increase efforts and use more effective means to inform landowners about handling timber sales responsibly, especially with regard to:

- ♦ Using licensed professional foresters;
- ♦ Writing sound contracts that protect their interests;
- ♦ Checking logger references; and,
- ♦ Checking for workers' compensation certificates or obtaining Predetermination of Independent Contractor certification.

VII. Logger Education

The MFS and DEP should develop a good field handbook for loggers. The handbook should be written in clear, easy-to-understand language and must clearly differentiate between environmental protection measures that are required and those that are recommended. The Massachusetts BMP manual is a good example.

VIII. Code Enforcement Officer Training

The MFS, DEP and State Planning Office should coordinate and implement more frequent training for municipal code enforcement officers on enforcement of mandatory shoreland zoning and local timber harvesting ordinances. An improved understanding

of such issues by code enforcement officers will likely result in increased protection of public trust resources.

IX. Personal safety

Personal safety is threatened when members of the public enter active logging sites without awareness of the risks. The committee did not agree on whether to recommend anything in this area. It was suggested that loggers voluntarily post active sites, but they would need to post all dangerous situations, which is impossible. The committee suggests that more effort needs to be made to inform the public about the risks associated with active logging sites, but did not identify specific actions to accomplish this objective.

ALTERNATIVES CONSIDERED BUT NOT RECOMMENDED

Logger Licensing

The committee fully considered the pros and cons of logger licensing. In the end, it concluded that creating a logger licensing program would not be as effective as the changes to current law identified earlier in the report.

A licensing program typically includes requirements for licensees to meet certain education and training levels and often requires proof of continuing education. The committee felt that a licensing program would need to have education and training requirements equivalent to the CLP program. For the state to require the same standards as CLP would constitute an unnecessary duplication of a private initiative that works well. To require anything less would confuse the public (non-CLP loggers could present themselves as licensed by the state and therefore just as good as CLP loggers, even though they may not have had equivalent training) and devalue the CLP program, which is the current standard for professionalism in logging.

Licensing may have merit in the future if the problems identified in the report are not abated by changes to existing laws and rules and through the non-regulatory actions recommended by the committee. However, that issue should be debated in the future.

Licensing Wood Buyers and Brokers: "Go where the money is."

Several people who commented at the Listening Sessions suggested that if the committee wanted to address the problem of timber theft, it should "Go where the money is," that is, to the firms and individuals that purchase stolen wood. The committee's research identified programs in Illinois, Indiana and Iowa that require timber buyers either to be registered by the state or to post a cash bond to cover damage claims due to timber loss or theft, nonpayment for wood, and other disputes that may arise between a landowner and a wood buyer, or both. Anecdotal information received suggests that such programs can be effective in reducing timber theft, particularly if the timber industry gets behind such a program and if the law is enforced. However, the committee believes that the law changes it suggests with respect to the timber harvest notification process and the wood measurement laws will go far in addressing the problem, and did not endorse a licensing program. However, if the recommended changes do not result in a significant reduction in timber theft, the Legislature should consider creating a program to license and bond wood buyers. A copy of the Indiana statute is attached as Appendix VI.

Logger Registration

The committee also considered the merits of establishing a logger registration program. A registration program is less regulatory than a licensing program. The committee considered a program with the following characteristics:

- ♦ The program would be sited in the MFS, with administrative support provided by DFPR;
- ♦ Registration fee would not exceed \$25 per year;
- ♦ Registrant benefits would include regular logger newsletter and training opportunities; and,
- ♦ With statutory changes, registered logging contractors would receive predetermination of independent contractor status, valid for one year, which would be portable from harvest to harvest.

The committee concluded that a fully functional registration program would look much like a licensing program and that a simple registration program would not address the problems identified earlier. Therefore, a registration program would not be as effective as the changes to current law identified earlier in the report.

Voluntary Logger Registration

The committee debated whether to recommend a voluntary logger program. Such a program would allow loggers to register voluntarily and provide information about their activities and training. The public would be able to contact the registry for information about loggers. The committee rejected this concept, in part because the MFS can already provide some of this information to the public, based on information gathered in the notification process. The MFS can also release information about settlement agreements, court decisions, and charges filed in cases of timber theft and FPA and other land use law violations.

BACKGROUND

In 1997, legislation was proposed to require licensing of the logging profession ("An Act to Regulate Professional Loggers," LD 1430, First Regular Session, 118th Legislature). The legislation was not acted on, but was carried over to the next session by the Agriculture, Conservation and Forestry (ACF) Committee.

Maine law establishes specific requirements for legislative committees that consider proposed legislation to license or otherwise regulate professions not previously regulated (5 MRSA §12015, sub-§3). These requirements are referred to as the sunrise review process for occupational and professional regulation.

In accordance with these requirements, the ACF Committee reviewed the legislation to license the logging profession, then requested that the Commissioner of Professional and Financial Regulation establish a technical committee to study the merits of the proposed legislation.

In July of 1997, S. Catherine Longley, Commissioner of Professional and Financial Regulation established the technical committee. By law, committee membership is composed as follows: two members from the profession proposed for regulation; two members from related professions; two public members; and one member designated by the Commissioner (32 MRSA c. I-A, sub-c. II, §60-L,2) . Commissioner Longley appointed the following individuals to the technical committee:

- Andy Arey, a logger from Warren;
- Ronald Laplant, a logger from Princeton;
- Merle Parise, a forester from Newcastle;
- Neil Postlewaite, a forester from Dover-Foxcroft;
- Francis Reilly, a citizen from Yarmouth;
- Walter Whitcomb, a dairy farmer from Belfast; and,
- Chuck Gadzik, Director of the Maine Forest Service.

Chuck Gadzik chaired the committee. Donald Mansius, Director of the MFS Forest Policy & Management Division, provided staff assistance.

Technical Committee's Responsibilities

By law, the committee must assess the merits of the proposal to license loggers using statutory criteria created specifically for the purpose of evaluating proposals to regulate an unregulated profession (32 MRSA c. I-A, sub-c. II, §60-J). Specifically, the committee must examine the following issues:

- Whether timber harvesting is such a specialized skill that the public needs some required assurance of minimal qualifications;

- Whether the public health, safety and welfare are affected by timber harvesting in the absence of new regulation, and if so, describe how they are affected;
- What kind of voluntary and regulatory efforts have been used in the past to protect the public interest with respect to timber harvesting;
- The costs, benefits and impacts of additional regulation on the timber harvesting profession;
- Whether current regulations are inadequate to protect the public interest, and if so, why;
- Whether alternatives to logger licensing, regulatory and nonregulatory, would be appropriate.

The committee is not responsible for addressing other issues related to timber harvesting, such as workers' compensation costs, imported labor, and silvicultural practices such as clearcutting.

If the committee's findings support regulation of the profession, the committee is required by statute to recommend the least restrictive method of regulation. It may also make additional recommendations regarding specific problems identified during the review (32 MRSA c. I-A, sub-c. II, §60-L).

When giving the committee its charge, Commissioner Longley advised it to focus on three critical issues: protection of public health, safety, and welfare; the role of existing regulations; and, lessons from other states that have considered logger licensing. She urged the committee to explore all options, including but not limited to licensing, registration, or certification of loggers.

The committee is required to report its findings to the Commissioner within six months of its establishment. The Commissioner will evaluate the report and make recommendations to the Joint Standing Committee on Agriculture, Conservation & Forestry and the Joint Standing Committee on Business and Economic Development - the two committees that requested the review. The Commissioner's report must include copies of the technical committee's report, but the Commissioner is not bound by the findings and recommendations of the committee's report.

INFORMATION SOURCES

The committee is directed by the sunrise review statute to consider information from all interested parties, including those proposing the regulation, those opposing it, and the general public. It is also authorized to undertake its own research (32 MRSA c. I-A, sub-c. II, §60-J-L).

To gather input from the public and interested parties, the committee held a series of Listening Sessions across the state. Sessions were held in Ashland, Bangor, Augusta, and Norway/South Paris during August and September of 1997. These sessions were publicized by press releases, mailings to interested parties, and distribution of flyers at major wood delivery points around the state. Over 300 people either attended Listening Sessions (of whom over 60 testified) or submitted written comments.

The committee also heard presentations from the following agencies and organizations:

- Department of Professional and Financial Regulation (regarding differences between licensing, certification, and registration of professions);
- Certified Logging Professional program (regarding the CLP program requirements and its results);
- Sustainable Forestry Initiative (regarding its approach to advancing professionalism);
- American Pulpwood Association (regarding logger safety and professionalism)
- Maine Employers Mutual Insurance Company (regarding logger safety and workers compensation rate issues);
- International Paper Company (regarding its wood procurement policy requiring all of its contractors to have CLP certification by 01 January 1998);
- Professional Logging Contractors of Maine (presenting its recommendations to the committee); and,
- MFS Fire Control Division and Attorney General's Office (regarding timber theft, fraud and trespass issues).

As provided by statute, proponents of the proposal to regulate loggers submitted information supporting the legislation to the ACF Committee. The committee also considered this information.

Committee staff gathered additional information as needed to complete the assessment of the statutory evaluation criteria.

PROPOSED LEGISLATION TO REGULATE LOGGERS

The technical committee was created to assess the merits of LD 1430, "An Act to Regulate Professional Loggers," sponsored by Senator Kilkelly in the First Regular Session of the 118th Legislature.

The proposed bill establishes the Maine State Board of Licensure for Professional Loggers. To qualify for licensure, a person must complete a 2-year internship under the guidance of a licensed logger unless the person has graduated from an approved 2-year curriculum and has completed at least 2 years of experience in logging work. Applicants must also pass a written examination approved by the board. Licenses would be issued for those persons currently earning 25% of their personal income from logging until January 1, 1999, thereby grandfathering all those presently engaged in the practice of logging. The annual licensing fee would be determined by the board, but would not exceed \$55 annually.

Merle Parise, a member of the committee, provided some background on the proposal. He indicated that the impetus behind the proposal included the International Paper Company's decision to purchase wood only from CLP certified contractors, a desire to institute a system of peer accountability, and the need to create a means of excluding those who violate the law from the profession.

PUBLIC INPUT FROM LISTENING SESSIONS

The technical review committee began its deliberations by holding four Listening Sessions around the state to solicit input from the public on the proposal to regulate loggers. Most individuals who spoke at the listening sessions are involved in the forest industry, predominantly loggers, large landowners, and forestry consultants. Despite attempts to publicize the sessions, the general public was largely absent. The principal messages of these sessions are summarized below.

Input from the logging community

Most loggers do not like the idea of licensing their profession. They believe licensing is an infringement on their freedom to do business, will increase their costs, will do little to protect the public interest, and will not solve the timber theft problem.

Some members of the logging community, such as large logging contractors, are undecided as to whether they support or oppose the idea of licensing loggers.

Input from landowners and consulting foresters

Nonindustrial landowners and foresters were divided in their opinions on logger licensing. Landowners who are loggers or are otherwise in the forest products business, feel threatened by licensing. Landowners who have been victims of timber theft or shoddy logging operations support licensing.

Enforcement

Enforcement of existing laws that address pertinent areas such as timber theft, forest practices, and wood measurement should be improved. The Legislature should provide more funding for enforcement rather than adopt new regulations.

Timber theft

Timber theft would be reduced if wood buyers were penalized for buying stolen wood. A chain of custody should be established for wood to discourage the sale of stolen wood.

Feedback on the proposed legislation

If the technical review committee recommends licensing, the proposed legislation should be revised to:

1. eliminate grandfathering of all practicing loggers;
2. eliminate the income threshold;

3. clearly define who must be licensed to eliminate confusion regarding subcontractors and employees;
4. exempt landowners who harvest on their own land; and,
5. not diminish logger professionalism by setting too low a standard.

Miscellaneous

Many experienced loggers resent the CLP program and are concerned about its cost. Many are upset at International Paper for its wood procurement policy limiting its purchases to wood harvested by loggers certified by the CLP program.

Many small, independent contractors feel larger contractors are trying to drive them out of business.

Landowners need to be educated about timber harvesting and how to do business with a logger.

Many feel that something needs to be done, but do not believe that licensing is the answer.

Many feel that logging poses no threat to public health, safety, and welfare.

PRESENTATIONS FROM TECHNICAL EXPERTS AND GROUPS

Licensing, Certification, and Registration Procedures

Anne Head of the Department of Financial and Professional Regulation presented information to the technical review committee about the state's three mechanisms for regulating professions and occupations: licensing, certification, and registration. Licensing applies the most rigorous requirements, registration applies the least restrictive requirements, and certification falls in the middle.

Anne Head noted that a registry or licensing board must have statutory authority to adopt rules. She also emphasized the technical review committee's need to establish whether it wishes to create a "title" law (establishing a registration process with modest requirements) or a "practice" law (establishing licensing with more rigorous requirements). She suggested that the technical committee start its deliberations with the following question: What is the harm that the proposed legislation is designed to address?

Licensing

If a profession is licensed, a practitioner must be licensed to practice in the state. Licensing establishes very specific educational and experiential requirements for practitioners, and typically requires passing an examination. The licensing board has the option of setting the pass rate for the exam. Licensing fees are usually higher than certification and registration fees.

Licensing boards usually have seven to ten members. These boards are dominated by members of the regulated profession or occupation, although a shift toward more public members may occur over time. Licensing boards have disciplinary authority. Disciplinary actions include charging fines, suspending a license, and placing conditions on a license. In some cases, license revocation, the most punitive disciplinary action available, can only be applied by a court of law. The Department of Professional and Financial Regulation cannot prosecute persons for practicing without a license. Only the Attorney General's office is authorized to prosecute individuals practicing without a license. Similarly, only the courts are empowered to require restitution for damage, as part of a civil action.

There are some weaknesses in the licensing mechanism. For example, statutory changes are needed to enable the state to seek civil penalties for practicing without a license. The Attorney General's office is often reluctant to pursue criminal prosecution of an unlicensed practitioner, which is all current law allows.

Certification

Certification is the middle ground between licensing and registration, although certification is closer to licensing. The Legislature, however, is no longer establishing new certification programs. It is more common now to create a combination of licensing and registration for similar occupations.

Registration

Registration processes are generally less rigorous than licensing requirements. Informational and other requirements associated with various registries vary considerably, and are closely tied to the provisions of the authorizing statute. Some registries are relatively simple and require only a filing of information and a fee, while others establish specific training requirements. If information about education, training, and experience is requested as part of the registration process, such information must be clearly linked to the consumer protection function of registration.

Registries can be housed in the Department of Financial and Professional Regulation (DFPR) or in other agencies. DFPR handles complaints for the registries it oversees. Disciplinary actions are the same as in licensing - fines and license revocation or suspension.

Registration programs need to establish procedures for auditing information provided by applicants. People with criminal records can be rejected.

Not all registries have boards. In some cases, an existing board can manage a new registry (e.g., the Foresters' Board could manage a registry for loggers), but past experience with this approach is not encouraging. Composition of the board and cost allocation (a single board administering two separate programs) have been problematic.

Certified Logging Professional (CLP) Program

Mike St. Peter, Director of the CLP program, presented information about this program to the technical review committee. Maine's CLP program, operated under the auspices of the Maine Tree Foundation, is designed to train loggers in safe, efficient, and environmentally sound logging practices. Loggers certified under this program are now eligible for greatly reduced workers' compensation insurance rates, up to 53% less than conventional loggers.

Initially, the CLP program requires four days of training in the following areas:

- Business of Logging (1/2 day)
 - 1) Independent contractor status
 - 2) Workers' Compensation, and other insurance
 - 3) Tracking operating costs, hazard communication, code of ethics, OSHA record-keeping, marketing

- Safe and Efficient Harvesting (2 days)
 - 1) Logging safety rules/OSHA regs.
 - 2) Chain saw maintenance
 - 3) Safe and efficient felling
 - 4) Safe skidding and controlled yarding
 - 5) Fatigue and time management
- Forest Management/Silviculture (1/2 day)
 - 1) State harvesting laws and BMPs
 - 2) Understanding landowners' objectives: comparing silvicultural systems
 - 3) Conserving fish and wildlife
- First Aid/CPR (1 day)
 - 1) Evacuation Plan
 - 2) CPR training
 - 3) First aid training
 - 4) Blood borne pathogen program
 - 5) First aid kit inventory

Following successful completion of the course, participants are visited at their worksite within six months. Evaluators interview the participant, observe their work practices, and then determine whether the logger adheres to the principles presented in the training.

The fee for the initial course is \$500 per person, paid either by the individual or the employer. A one day recertification course is required one year after the initial training, and every two years thereafter. These recertification courses cost \$100 per person and are offered in three categories: conventional, mechanical, and supervisory.

In 1996, 388 individuals completed the CLP program, with an additional 577 attending at least one course. Four hundred are expected to complete the program in 1997. An additional 874 are expected to attend at least one course. A majority of those attending, 86% in 1996 and 83% in 1997, are logging employees (as opposed to logging contractors and others).

American Pulpwood Association (APA)

Tim Gammell, Executive Director of APA, discussed APA's efforts to increase professionalism and safety in the logging profession. APA has over 4,000 members nationwide and 100 members in Maine. The organization focuses on technical issues and delivers workshops, safety alerts, technical reports and other services to its members. It recognizes outstanding loggers and logger training programs through a national award program. APA also sponsors a monthly Industrial Forest Forum to facilitate discussion of technical and policy issues. Gammell spoke of the need to encourage logging professionalism. He contrasted professional loggers with those who operate under gray business structures, without insurance, and often without paying other taxes, and urged a leveling of the playing field for those professional loggers who

pay their workers' compensation insurance, shut down during mud season, and incur the other added costs of running a legitimate business.

Maine Employers Mutual Insurance Company (MEMIC)

Bob Meyer of MEMIC provided the data to back up the claims that CLP loggers work safer and presented information about the stark difference between workers' comp insurance rates for CLP and non-CLP loggers. Since December 1994, MEMIC-insured CLP-certified loggers have not suffered a single fatality or catastrophic disabling injury. Prior to that time, the business was experiencing 4-5 deaths and catastrophic disabling injuries per year, with losses running \$5-6 million per year. Insurance rates for CLP-certified manual loggers (\$21.21 per \$100 payroll) are less than half those for non-CLP manual loggers (\$44.60 per \$100 payroll).

MEMIC now mandates logger training for its insured parties. Since making training mandatory, injuries to manual loggers have declined by 82%, and losses have declined by over 90%.

Sustainable Forestry Initiative (SFI)

Pat Sirois, Maine's SFI Coordinator, presented information to the committee regarding Maine's Sustainable Forestry Initiative. SFI has a logger training subcommittee that promotes professionalism in logging and recommends training in the following five areas: professional business management, environmental responsibility and stewardship, timber harvesting and transportation safety, emergency medical response and first aid, and continuing education.

International Paper Company (IP)

Linda Casey and Pat Flood, both senior executives at IP, discussed IP's new wood procurement policy with the committee. The discussion was held as a follow-up to the Listening Sessions, where several loggers expressed outrage and dismay at IP's policy, which will require all wood suppliers to have CLP certification by 01 January 1998. Casey and Flood defended the policy as a concrete way of demonstrating IP's commitment to SFI. IP was involved in developing the SFI guidelines. The state implementation committee believes that CLP is the only training program for loggers that meets those guidelines.

Professional Logging Contractors of Maine (PLC)

Cheryl Russell made a presentation to the committee on behalf of the Professional Logging Contractors of Maine. Her presentation included the following points:

- PLC takes no position for or against the concept of licensing loggers, but opposes the grandfathering provision of LD 1430.

- PLC measures professionalism in logging by its own Mission Statement, Performance Standards, and Conditions of Membership.
- The industry estimates that there are roughly 3,800 loggers in the state. The CLP program has reached 2,200. PLC suggests that self-regulation of professions through programs such as these is a viable alternative to government regulation.
- PLC suggests consideration of a registration process for loggers, designed principally to identify who is logging and where.
- PLC asserts that logging is a specialized skill and provides an extensive list of the specific skills required.
- PLC recommends a number of changes to harvesting notification forms and scale slips. The changes are designed to provide information to aid the determination of whether registration or licensing is necessary.

State Prosecution of Timber Theft and Trespass Laws

Tom Parent, Supervisor of the MFS Fire Control Division, and Leanne Robbin, Assistant Attorney General, discussed the issues of timber theft and trespass with the committee. Parent informed the committee that complaints to the MFS regarding timber theft and trespass continued their sharp rise, from 85 in 1993 to 711 in 1996. Despite this exponential growth in complaints, the total number of court cases has not changed significantly, remaining near 10 cases per year. Parent said that MFS Rangers make an effort to visit at least 60% of the timber harvesting operations in progress each year.

Robbin focused her remarks on the case of a logger who has been convicted of felony theft (the individual is out on bail pending appeal of his conviction). This individual has been implicated in a number of timber thefts and land use violations, yet, through creative arrangements has remained in the logging business. Ms. Robbin noted that even when the individual was on trial for one theft, he was committing theft on another parcel. Robbin emphasized the need for additional resources at the Attorney General's Office to support prosecutions of timber theft crimes.

Both Parent and Robbin agreed that recent changes to the timber theft laws may reduce the incidence of theft once a few cases have made their way through the system. However, they also agreed that much remained to be done, and they concurred with the committee on changes to the notification process and Wood Measurement laws.

SUMMARY OF LAWS AND RULES RELATING TO TIMBER HARVESTING IN MAINE

The technical committee researched the laws and rules that affect timber harvesting in Maine. These laws and rules are summarized below. A more complete listing, including statutory citations, is provided in Appendix I.

The FPA, administered by the MFS, most directly affects timber harvesting. It requires submission of notifications of intent to harvest and certain other reports, and regulates the size and distribution of clearcuts.

A number of laws, administered at the state and local level, address environmental concerns. They include Mandatory Shoreland Zoning, Natural Resources Protection Act, Land Use Regulation Law, Endangered Species Act, and rules administered by the Department of Inland Fisheries and Wildlife. These laws generally focus on erosion control, water quality protection, and protection of sensitive areas, such as wetlands or specialized wildlife habitat.

Maine's Workers' Compensation law regulates workers' compensation coverage. Provisions regarding coverage of independent contractors have particular relevance to the logging industry. In general, landowners are responsible for workers' compensation costs if an uninsured logger is injured on their property, unless the logger has been certified as an independent contractor by the Workers' Compensation Board. Independent contractors are not required to have workers' compensation coverage.

Timber theft and trespass are addressed specifically in some laws, as well as more generally in Maine's Criminal Code. These laws generally contain prohibitions against and penalties for theft and fraud. The boundary marking law requires landowners to clearly mark their boundaries when conducting timber harvests on parcels larger than 10 acres.

The Wood Measurement Law and associated rules, administered by the Department of Agriculture, provides rules regarding the measurement of wood, including filing information about the source of wood.

Federal codes, administered by OSHA, regulate timber harvesting practices regarding worker safety.

Other laws relating to timber harvesting address forest fire control, prevention of the spread of harmful insects or diseases, and harvesting proximate to the Allagash Wilderness Waterway.

REGULATION OF LOGGERS IN OTHER STATES

In researching regulatory activity in other states, the committee utilized an informal survey of forestry professionals and a published summary of state regulation of timber harvesting (see Appendix II for details).

Roughly half of the states have established at least nominal procedures for registration, certification, or licensing of timber harvesters: Alabama, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, and West Virginia. The programs vary greatly, with requirements ranging from performance bonding to knowledge of environmental laws to simple registration. With some exceptions, most of the programs do not appear to apply rigorous requirements to the logging profession.

Eight of the twenty-five states have established actual registration or licensing programs for timber harvesters: California (L), Illinois (L), Indiana (L), Iowa (R), Maryland (R), Massachusetts (L), Rhode Island (R), and West Virginia (L). There are few similarities among the programs in these states, indicating that there is, as yet, no national trend in the area of logger licensing.

West Virginia appears to have the most comprehensive logger licensing program, enacted in 1992, which was awarded the Best Forestry Legislation of the Year by the National Woodland Owners Association in 1992. Its program establishes four requirements:

- 1) notification of harvesting;
- 2) licensing of timber harvesting companies;
- 3) certification of loggers (requires training in BMPs, safety, and first aid); and,
- 4) posting of harvest sites.

Programs in three states (Illinois, Indiana, and Iowa) are directed only at timber buyers. Two states (Idaho and Nevada) require loggers to post performance bonds but do not otherwise regulate loggers. Indiana and Illinois have similar programs. All persons engaged in buying timber must be licensed by the state and must post a bond that is used to compensate landowners for the theft or loss of timber due to the actions of a licensed wood buyer. Unlicensed wood buyers are subject to fines up to \$10,000.

INFORMATION SUBMITTED BY PROPONENTS OF PROPOSED LEGISLATION

As required by law, proponents of LD 1430 submitted written answers to the sunrise review statute's evaluation criteria. They made the following points in their responses to the evaluation criteria:

- Logging is a specialized skill requiring capability in tree felling, safe use of heavy equipment, knowledge of environmental laws, and proper handling of hazardous materials.
- Logging activities pose the following risks to public health, safety and welfare: environmental harm, theft, property damage, safety hazards, and disruption of public utilities. MFS data shows a steady increase in complaints of timber theft between 1990 (65 complaints) and 1996 (466 complaints). According to this information, the vast majority of timber theft complaints that are investigated are found to be not prosecutable. The proponents also submitted a copy of a notice of violation sent by DEP to an individual regarding a timber harvesting operation that violated two natural resource protection laws and was responsible for siltation of a stream.
- The CLP program is not sufficient. During the time it has been in existence, timber theft, environmental damage, and logging hazards to the public have increased.
- The licensing cost to the logger would be modest. The public would benefit through reduced need for enforcement and better trained, more effective loggers.
- Existing laws cannot be used to prevent an irresponsible individual from logging.
- Other states are doing more. Appendices include excerpts from an article describing Massachusetts' forestry regulations, which include licensing of loggers and submission of Forest Cutting Plans for anyone cutting more than 25 Mbf or 50 cords on a particular job. The article also describes the results of a program to evaluate proposed harvest operations in areas of rare wetland species habitat and recommend additional protections as needed.
- Income from licenses is estimated at \$150,000.

A more detailed summary of proponents' answers is provided in Appendix V.

ANALYSIS AND CONCLUSIONS

In approaching its task, the committee focused on the following question:

What is the underlying purpose of the proposal to license loggers, or, more specifically, what harm to the public is logger licensing intended to address?

The sunrise review statute requires consideration of the nature and extent of harm to the public if the profession is not regulated, but the committee also felt that it seemed logical and fair to assess the proposal based at least in part on its implications for the public good.

To get at the above question, the committee spent considerable time discussing and identifying threats to public health, safety, and welfare that are associated with the practice of logging. Initially, the committee identified the following logging-related threats to the public:

- Hazardous waste spills, improper storage of materials
- Water quality degradation and soil erosion
- Littering
- Improper disposal of slash
- Destruction of real property (e.g., private roads, wasted timber)
- Damage to public roads and utilities
- Loss of wildlife habitat
- Public safety concerns
- Logger safety concerns
- Irresponsible, unsustainable forest management
- Timber theft and trespass
- Societal cost of injuries to loggers
- Fire

The committee then consolidated and prioritized the list, concluding that the following pose the most significant threats:

- Timber theft and damage to real property
- Water quality degradation and soil erosion
- Logger safety concerns and societal costs of logger injuries
- Personal safety concerns

Having targeted the most significant threats, the committee focused on how best to address them. In its deliberations, it considered whether existing laws adequately address the threats, and whether existing laws are adequately enforced. The committee discussed the range of policy and other approaches that could be used to address each threat and reached the conclusions summarized below.

Timber theft and damage to real property

Timber theft and trespass and associated problems of property damage are a problem. Recent revisions to pertinent laws attempt to crack down on thieves. These revisions include the creation of an accomplice liability statute, a provision allowing the courts to order restitution to the state (landowner restitution already exists), and the removal of state of mind as a defense in timber theft. These changes may help, but they have not been fully tested for effectiveness.

Even if statutory changes prove to be helpful, enforcement of these laws needs to be strengthened. A very small percentage of timber theft cases are actually prosecuted. Unfortunately, timber theft prosecution is not a high priority for District Attorneys in some areas. More complex issues, such as boundary disputes, sometimes demand more resources than are available to prosecute the cases. Timber theft cases, which are usually civil rather than criminal, are costly and time-consuming to litigate.

Compliance and enforcement could be improved by some modest changes to existing rules involving administrative issues such as tracking of wood and harvest notifications. Involving towns in the harvest notification process could help to reduce timber theft and promote compliance and enforcement in other ways. Finally, more resources need to be directed toward education and enforcement.

Water quality degradation and soil erosion

Environmental protection laws and rules are adequate, but compliance and enforcement are sorely lacking. Code enforcement officers sometimes lack training in how to assess compliance with environmental laws. Local support for enforcement is sometimes lacking. Some loggers and landowners are not well informed about environmental laws, despite the availability of training and information. Enforcement of environmental laws is scattered across numerous agencies, and the cooperation and coordination critical to effective enforcement is lacking.

Studies show that BMPs are generally very effective at preventing environmental harm if applied properly. The state should promote greater use of BMPs in the state by adopting Vermont's approach of only prosecuting violators who failed to use BMPs.

In addition, resources must be committed to developing clear field handbooks for use by loggers and others. Education and training of both loggers and enforcement personnel are critical to reducing environmental problems associated with timber harvesting.

More coordination between agencies is needed in enforcement, and penalties should be increased. Establishment of a logger registration program could also help to reduce environmental harm by promoting professionalism and education.

Logger safety concerns and public costs of injuries to loggers

Workers' compensation laws that affect the logging profession are flawed and do not fully protect loggers or landowners. The law allows persons or entities who should be considered employers to maintain a fiction of hiring "independent contractors," thereby evading the employer's responsibility to provide workers' compensation for its employees. Consequently, some loggers are not required to carry insurance (independent contractors), making the public responsible for their injuries, and place landowners unfairly at risk of being responsible for certain injuries.

Additionally, the process for predetermining independent contractor status is flawed. If a contractor brings in subcontractors (e.g., a logger hires a trucker to haul the timber), the nonrebuttable presumption of independent contractor status is voided, thereby putting landowners at substantial risk of being responsible for injuries to those working on the harvest site. Additional study of the law's provisions relating to independent contractors, subcontractors, and employer/employee relationships is needed to rectify these problems.

Personal safety concerns

The public is at risk when it visits active logging sites. The committee failed to identify feasible solutions to this problem, but suggested as a first step that more could be done to educate the public about the risks associated with logging sites.

A complete list of the committee's recommendations is found earlier in this report.

SUNRISE REVIEW STATUTE EVALUATION CRITERIA

As part of its charge, the committee must evaluate the proposal to license loggers using specific criteria outlined in the sunrise review statute. The evaluation criteria and the committee's responses are listed below.

Data on group

According to information from the Department of Labor, Maine has approximately 2,400 resident loggers and approximately 600 Canadian loggers. A small additional number of loggers residing in other states may practice in the state (See Appendix III). In addition, an unknown, but apparently large number of individuals practice logging as a part-time or seasonal occupation. Many more enter and leave the occupation depending on wood markets. These individuals are not included in the above figures.

The Professional Logging Contractors of Maine and other reliable sources estimate that there are approximately 3,800 loggers working in Maine. This disparity in numbers is probably due to the seasonal and market driven mobility of a portion of the logging work force.

Specialized skill

The committee concluded that logging is a specialized skill requiring an awareness of basic safety practices, environmental laws, and other important skills. It strongly recommends that all loggers obtain CLP certification to assure such awareness.

Public health; safety; welfare

The committee identified four principal threats to public health, safety, and welfare that are posed by logging.

- Timber theft and damage to real property: MFS data demonstrates that timber theft and trespass is a growing problem that is not adequately addressed by existing laws and enforcement.
- Water quality degradation and soil erosion: State and local authorities continue to investigate complaints of environmental degradation related to logging. The committee concluded that existing laws are adequate, but existing levels of enforcement and education are insufficient to remedy the problem of environmental degradation caused by logging.
- Logger safety concerns and public costs of injuries to loggers: There is a dramatic and unnecessary human cost of logging when safety concerns are not fully addressed, as well as public costs. The committee concluded that there are weaknesses in workers' compensation laws that should be reexamined.
- Personal safety concerns: The public is at risk when it enters an active logging site.

Voluntary and past regulatory efforts

The committee recognizes the excellent standard the CLP program has set in the industry. The low injury rate of CLP loggers and the greatly reduced workers' compensation rates are proof of the program's success; however, the program needs more widespread participation from the logging profession. The committee recognizes a compelling need to provide small, independent loggers with access to the program. Without widespread participation in the program, threats to public health, safety, and welfare will not be addressed. The SFI committee has begun to address this issue by budgeting support for CLP scholarships and other incentives for independent loggers.

Cost/benefit

The committee was unable to assess the costs and benefits of modifications to existing laws. For its recommendation that organized towns assume a role in the initial processing of timber harvesting notifications, the added cost to the logging community of a town fee (estimated at \$10 per notification) would total an estimated \$40,000 statewide per year.

Service availability of regulation

The proposed changes to existing laws should not have a noticeable impact on the availability of logging services in the state.

Existing laws and regulations

There is a diverse array of laws and regulations that pertain to the practice of logging (see Appendix I). The committee concluded, however, that these laws and rules, as currently worded and enforced, do not adequately protect the public from the threats associated with logging as described earlier.

Method of regulation

The committee endorsed modifications to existing laws as the least restrictive approach, but one that will contribute to protecting the public health, safety and welfare and enhancing the level of competence in the logging profession.

Other states

At least half of the states regulate the logging profession in some manner (see Appendix II and the summary of other states' activities in the body of this report).

Previous efforts

There have been no known previous efforts to regulate the logging profession through licensing.

Minimal competence

The committee believes that the public should have some assurance that loggers are competent and reputable. However, it believes that landowners, as consumers of logging services, need to do their homework by checking references and engaging in other sound business practices to ensure that they are hiring a competent, reputable logger. Landowners who choose CLP-certified loggers can be assured that the logger works very safely and has had some exposure to training in business management, environmental laws, and other elements important to a successful harvest.

Financial analysis

In summary, the responses to the evaluation criteria support some form of regulation for the logging profession. The committee found that logging, when conducted irresponsibly, does pose a threat to the public interest. It is a specialized skill, and, unfortunately, voluntary efforts to promote professionalism have not reached the entire profession. Existing laws at present levels of enforcement are not sufficient to protect the public from harm, but the method of regulation proposed - modification of existing laws and rules - is the least restrictive approach available. A more rigorous regulatory program (e.g., licensing) may be merited in the future if the recommended changes do not result in significant progress toward reducing public harm.

Appendix I. Summary of Existing Laws Relating to Timber Harvesting in Maine

Law/Issue	Statutory Cite	Rule Name & Cite	Agency of Jurisdiction	What it Attempts to Do
Forest Practices Act	12 MRSA §8867 et seq	MFS Rules Chapter 20	MFS	Regulates the size and arrangement of clearcuts, requires notification of intent to harvest and certain reports.
Shoreland Zoning	38 MRSA §435-449	Guidelines for Municipal Shoreland Zoning Ordinances 06-096, DEP Chapter 1000	Municipalities with DEP Oversight	Regulates timber harvesting and other activities in the Shoreland Zone.
Waste Discharge Licenses	38 MRSA §413	None	DEP	Requires a license to discharge a pollutant into waters. Does not specifically refer to timber harvesting, but sediment discharges from a logging operation are considered a violation.
Natural Resources Protection Act	38 MRSA §480-A to 480-Y	Permit By Rule Standards, Chapter 305	DEP	Requires permits or permits by rule for certain operations in wetlands such as soil disturbance, drainage work etc.
Land Use Regulation Commission	12 MRSA, Chapter 206-A Land Use Regulation §681 et seq	Chapter 10 of the Commission's Rules and Standards	LURC and MFS	Regulates activities in the Unorganized Territory by Land Use Districts.
Deer Yards	12 MRSA §7037	Chapter 10 of DIFW Rules, Sig.Wild. Hab.	DIFW	Regulates activity in certain Deer Wintering Areas
Timber Theft and Trespass	17 MRSA §2510 et seq, 17-A MRSA §351-362, 14 MRSA §7505 et seq	None	MFS, AG, DA	Maine Criminal Code general theft statutes, and some specific timber theft/trespass statutes. Prohibitions, penalties etc.
Boundary Marking Law	14 MRSA §7552-A, §7554	None	MFS, AG, DA	Requires that property boundaries be clearly marked when timber harvesting occurs on parcels larger than 10 acres.
Logging Safety	Federal Code	Federal Code	OSHA	Regulates timber harvesting practices from the standpoint of worker safety.
Workers Compensation	39-A MRSA §101 et seq	Application for predetermination of independent contractor status	Workers Comp Board	Requires and regulates workers comp coverage for certain workers. of particular interest ref timber harvesting is §105, Predetermination of Independent Contractor Status.
Endangered Species Act	12 MRSA §7753 et seq	Chapter 8 of DIFW Rules, Endangered Species.	DIFW	Regulates activity including timber harvesting that can affect endangered species or their habitat.
Wood Measurement	10 MRSA §2363-A et seq	Wood Measurement Rules	ME Dept. of Agriculture	Rules for the measurement (scaling) of wood.
Forest Insect and Disease Control Program	12 MRSA §8101 et seq	None	MFS	Authority to regulate transport of forest products with regard to Federal Quarantine Program
Forest Fire Control	12 MRSA §8901 et seq	04-058 Chapter 2 Spark Arresters	MFS	Forest Fire Control statutes/rules. Some apply to timber harvesting.
Allagash Wilderness Waterway	12 MRSA §670	Rules of AWW Chapter 2.1	Bureau of Parks and Lands AWW	Requires a harvest plan approved by AWW prior to harvest within 1 mile of the waterway

Appendix II. Other States' Approaches to Regulation of the Logging Profession

The following information on regulation of loggers in other states comes from two sources - an informal survey administered through the Society of American Foresters News, and Regulation of Private Forestry Practices by State Governments (Ellefson, P., A. Cheng and R. Moulton. 1995. University of Minnesota, Minnesota Agricultural Experiment Station, Station Bulletin 605-1995. The remarks are minimally edited from the original e-mail.

ALABAMA: Alabama has no logger licensing requirement at the present. AF&PA member companies have a training and education requirement. The logging community has expressed interest in developing some form of mandatory certification, but has not progressed beyond informal discussion of the issue.

CALIFORNIA: The State of California licenses Timber Operators (aka loggers) on two levels. A limited license is required for minor products like firewood, Christmas trees and split products, and a general license is required for general logging of all products.

The general license requires attendance at a 2 day school (no examinations) which covers the laws and rules to follow, not how to do logging or safety, proof of insurance for \$1,000,000 liability and Loggers third party, and proof of 3000 hours of experience in the logging industry. The insurance and experience are new requirements just this year. License fees are \$75 for a new general and \$50 renewal, and \$35 for a new limited license and \$25 for renewal.

CONNECTICUT: Requires certification of all commercial forest practitioners active in the state, (as required by CGS 23-65h)

IDAHO: Nonresident harvesters must submit performance bond of \$200 per acre (minimum \$5,000, maximum \$15,000) to insure compliance with state forest practices law. Department of Lands may act to recover costs or place lien on property.

INDIANA: Indiana has a Timber Buyers Licensing Law. This law requires companies and individuals that buy standing timber and logs for commercial use to apply for a license and to be bonded. The license can be revoked if the buyer is found to be guilty of illegal timber dealings and the bond can be used to pay for wrongful damages. The buyers feel the program is a nuisance. The respondent questions the effectiveness of the program, except to keep track of who is buying timber, since the language is not strong enough to punish "minor" offenses and does not set up a good system for reviewing complaints. Another take on Indiana: Indiana doesn't require loggers to be licensed as such. The Licensed Timber Buyers Act requires anyone who purchases standing timber to have a license. Essentially all the license does is provide a bond that can be used to pay the seller if the buyer defaults on the payment provisions of a contract. There have been some actions under the contract to cover other types of performance defaults, but these are very limited.

MAINE: The logger training subcommittee of the Sustainable Forestry Initiative state implementation committee made the following report on January 8, 1996: "If a licensing program is developed, it should foster the professionalism of logging and incorporate training requirements and criteria in the following five areas: * professional business management, * environmental responsibility and stewardship, * timber harvesting and transportation safety, * emergency medical response and first aid, * continuing education."

MARYLAND: Foresters and loggers that are not under contract with a mill must obtain a license to practice forestry or sever timber (MD Bus. Occ. and Prof. Code Ann. 7-101 to 7-602 and MD Nat. Res. Code Ann. 5-608). Timber harvesting plans must be submitted for any operations involving removal of timber from an area of three or more acres. Plan review, site inspection and plan approval must occur within 30 days (MD Nat. Res. Code Ann. 5-606(a), 5-608(c), 5-608(d)). Sawmills must also be licensed if they have contract harvesters.

MASSACHUSETTS: Massachusetts licenses loggers, has since 1984. Until recently the license was minimal - pay \$15 a year, "demonstrate familiarity" with pertinent laws. The way you demonstrated familiarity was to take a very short little test with the answers essentially given to you. The idea was to force the logger to look up the answer to any question he didn't know the answer to. The state is now in the process of "upgrading" the license.

Most existing loggers will be grandfathered, some may have to take a more rigorous exam, and there will be a small continuing education requirement. The program is administered through the Department of Environmental Management.

And another take on Massachusetts: MA has logger licensing and has had it for 10-15 years. You need a license issued by MA Department of Environmental Management to log commercially. Up until last year, you could take a simple, ten-question open-book test to get a license, and renew it annually. It wasn't tough to get the license obviously, but if you were in a big enough violation of our forest cutting practices act, you could have it revoked. As of this year, loggers need a certain number of continuing education hours to maintain their licenses - and the test is not open-book anymore. Previous license holders were grandfathered in, so only new people need to take the tougher test. Everyone will need continuing education...a certain amount of continuing education will have to focus on the regs, so that everyone will know what they have to do to operate in compliance with the regs. We have roughly 500 licensed loggers in MA. New this year also is the fact that there must be a licensed harvester OPERATING the job on the ground. You can't just have a procurement person from the sawmill hold the license, and have anyone else unlicensed operate the job. There must always be at least one licensed operator on the job. The program is administered by the 14 county service foresters that work for the MA DEM.

MINNESOTA: The 1995 Sustainable Forest Resources Act stated "It is the policy of the state to encourage timber harvesters and forest resource professionals to establish voluntary certification and continuing education programs within their respective

professions. The (Forest Resources) Council shall, where appropriate, facilitate the development of these programs."

Minnesota has established a voluntary education program for loggers where business owners can gain membership. That organization is known as the Minnesota Logger Education Program. Mike Turner is the Executive Director. The program is neither a certification, registration, or licensing program. Instead, it is a membership program.

The program requires both non-educational and educational components. The purpose of the non-educational requirements is to make sure that business owners comply with existing federal and state laws. Examples of those requirements include federal and state tax ID numbers, an unemployment insurance number, a workers' compensation certificate of insurance, and a substance abuse prevention company policy. First-year members must attend three days of training composed of spring break-up training, LogSafe safety training, and BMP field training. In subsequent years, only two days of training are required (no BMP field training). Membership costs \$300 for year 1 members and \$200 for renewals. Business owners who produce less than 1,000 cords/year pay half of those rates.

The program will be establishing a 1-800 number to receive public complaints about negligent timber harvesting or forest management practices.

NEVADA: Requires performance bond of \$75 per acre to insure soil stabilization and rehabilitation of harvested areas. NOTE: Nevada exempts conversions from harvesting standards, but requires conversion "certificate."

NEW HAMPSHIRE: NH does not have logger licensing - still a few years off, if ever. You might want to make contact with CT, WV and VA. Don't make CT's mistakes - it's a nightmare down there from what I hear. Read letter in this month's Northern Logger magazine.

OHIO: Ohio does not have a logger licensing requirement. However, the Ohio Forestry Association (OFA) has developed a Voluntary Logger Certification program. Certified logging companies have employees who have been trained in safety practices and BMPs for water quality mitigation. To date, over 1,000 individuals have received some training. Only a handful of companies, however, have been certified.

TEXAS: Texas has no logger licensing or bonding requirement -- nor any other kind of forestry regulation. A new member of the Texas Legislature says he will introduce a "purple paint" law requiring all property to be marked with purple paint boundary markings as a sign of "posting" - "keep out", etc. Texas does have a very serious timber theft problem.

VERMONT: Vermont has no current logger licensing requirements or bonding. With the present turmoil over clear cutting and herbicide spraying, we are watching closely to see if a bill gets introduced for some type of licensing. Last session a forester licensing bill got left in committee. The Governor is not willing to expand the number of employees or otherwise raise the cost of government, so I do not think there will be much action legislatively on these issues.

VIRGINIA: VA has no licensing, notification, etc. for loggers - yet. We are fortunate in that we have few regulations and requirements on the forest industry.

WEST VIRGINIA: West Virginia has a new logging regulation law. It was enacted in 1992 as the WV Logging Sediment Control Act. In general, it places four requirements on loggers: 1) Notification - a four-page notification form provided to the WV Division of Forestry within three days of beginning an operation; 2) Licensing - each company conducting timber harvesting, log buying, or stumpage buying must be licensed for one or any combination of these three activities; 3) Certification - each logging operation must be supervised by a certified logger, certification coming from the WV Division of Forestry after training received in BMPs, safety, and first aid (refreshers on a three-year basis); and 4) Sign Posting - the logging operator must post a sign at each landing with name and license number. Other details include exemptions, compliance orders, district conference panels to resolve disputes, and recertification process. The WV Division of forestry is the state agency in charge of administering the program. The National Woodland Owners Association named this the Best Forestry Legislation of the Year for 1992 (or 1993?).

Appendix III. Number of Loggers in Maine

According to the 1997 Woods Wage Survey, 475 firms are classified as pulpwood and logging contractors doing business in Maine. Of these, seven have addresses in other states and 25 have addresses in Canada.

The annual average employment in Maine's pulpwood and logging industry was 2,440 in 1996. Some companies in other industries, such as trucking and road building, may employ loggers, but no estimates of the number involved are available.

Forty percent of the companies participating in the 1997 Wage Survey use piece rate wage payment, indicating that they employ cutting crews harvesting timber with skidders and chain saws. Companies are increasingly mechanizing their operations, typically harvesting with feller- bunchers, grapple skidders, mechanical delimbers and slashers.

Maine's Department of Labor estimates that between 550 and 650 Canadians are currently working for logging companies in Maine under bonds or visas.

The Professional Logging Contractors of Maine and other reliable sources estimate that there are approximately 3,800 loggers working in Maine. This disparity in numbers is probably due to the seasonal and market driven mobility of a portion of the logging work force.

Appendix IV. Logging-related Threats to Public Health, Safety and Welfare and the Laws that Address Them

Timber theft and damage to real property

Several laws address timber theft and trespass specifically (17-A MRSA §351-362; 14 MRSA §7505 et seq). The Maine Criminal Code general theft statutes also apply to timber theft. These laws generally contain prohibitions against and penalties for theft and fraud. The MFS investigates timber theft and trespass complaints and forwards its findings to the District Attorney for criminal, and sometimes civil, prosecution. Occasionally, the Attorney General's office participates in settlement or prosecution of a case.

The FPA, which requires submission of Notification of Intent to Harvest Timber, can be used as an enforcement aid regarding timber theft. Harvesting without filing a notification is a summonsable offense. The notification process enables forest rangers to track the activities of loggers with prior complaints or convictions.

The Wood Measurement Law (10 MRSA §2361-A et seq) and associated rules provide rules for the scaling (measurement) of wood. The rules require submission of information including the source of the wood. These rules are administered by the Department of Agriculture.

Civil actions are the only remedy available in cases of damage to real property.

Water quality degradation and soil erosion

Several laws, state and federal, address problems of water quality and soil erosion, as do some government-sponsored voluntary programs.

The Natural Resources Protection Act (38 MRSA §480-A to 480-Y) and associated rules administered by the Department of Environmental Protection require permits or permits by rule for certain operations in sensitive areas such as wetlands.

Mandatory Shoreland Zoning (38 MRSA §435-449) and associated Guidelines for Municipal Shoreland Zoning Ordinances, 06-096, regulates activities, including timber harvesting, in the shoreland zone. In general, shoreland zoning limits volume (basal area) removal within the shoreland zone to 40% in a 10-year period. It also includes restrictions on the size of openings, depending on the type of shoreland district and distance from water body. The law is administered and enforced by municipalities with DEP oversight. No data on enforcement is available, but anecdotal information suggests that enforcement is not consistent across the state.

The Protection of Waters Act (38 MRSA §413) requires a license to discharge a pollutant into water bodies. Discharge of sediment caused by a logging operation is considered a violation. The law is administered and enforced by the Department of Environmental Protection.

The Land Use Regulation Commission administers laws (12 MRSA §681 et seq) and rules that regulate activities, including timber harvesting, in Maine's unorganized areas. Timber harvesting restrictions apply in sensitive areas that have been placed in protection zones. These rules are enforced by the Land Use Regulation Commission and the MFS.

Section 404 of the federal Clean Water Act sets standards and permit requirements for wetland alterations. Silvicultural activities are generally exempt.

The state has sponsored the development of BMPs for a wide range of activities, including forestry. These BMPs, designed to limit environmental degradation, are voluntary. The forestry BMPs include guidelines for road building, skid trail construction, stream crossings, materials management, and other measures designed to protect water quality. A recent study conducted by Kimball and Cormier (1996) indicated that compliance is generally good and BMPs generally work well when applied properly. However, the study also found that compliance is low for certain important BMPs and some BMPs do not protect water quality. The MFS and DEP are currently working to identify priority BMPs and are considering possible revisions to the forestry BMPs.

Logger safety and societal costs of logger injuries

Federal OSHA Rules regulate timber harvesting practices from the standpoint of worker safety. For example, OSHA has standards regarding management of standing deadwood and hung-up trees.

The state's Workers' Compensation statute (39-A MRSA §101 et seq) requires workers' compensation coverage for certain workers. Section 105 of the statute, regarding predetermination of independent contractor status, is of particular interest to the forest industry. In general, landowners are responsible for workers' compensation costs if an uninsured logger is injured on their property, unless the logger has been certified as an independent contractor by the Workers' Compensation Board. (There was an unsuccessful attempt to exempt landowners from liability for injuries to loggers in 1997.)

Charity care statute

Social security laws

The Certified Logging Professional Program (CLP) established by the industry is responsible for training over 2,000 loggers since the program's inception in 1991. Over 70% of those trained still have active certifications. Nearly all large logging contractors have put their employees through the CLP program or are preparing to do so.

An outstanding concern is how to make the program financially accessible to small, independent contractors, particularly those in southern and central Maine.

Maine Mutual Insurers Company notes that there have been no fatalities or major disabling injuries among CLP loggers since 1994. As a result, workers' comp rates for

CLP loggers are roughly half those for non-CLP loggers. Non-CLP loggers are also finding workers' comp insurance less available.

PLC requires that its members be CLP.

Personal safety

Federal OSHA rules govern treatment of hung-up trees, and other hazards that loggers or members of the public may encounter on a logging operation.

Maine's landowner liability laws provide civil protection to landowners for injuries and damages suffered by recreationists on private lands (provided access is free and permission is not written).

Attractive nuisance laws make landowners responsible for protecting public from dangerous situations on their land, e.g., pits, wells.

Appendix V. Proponents of Logger Licensing's Answers to Evaluation Criteria

Data on group: The Bureau of Statistics estimates 3,800 individual loggers in the state.

Specialized skill: Logging involves specialized skills including tree felling, safe operation of equipment, knowledge of environmental laws, species identification, preparation and storage of products, and disposal of hazardous waste.

Public health, safety, and welfare: Logging activities pose the following risks to public welfare: theft and/or destruction of real property; disruption of public utilities; loss of wildlife habitat; and soil erosion.

Logging activities pose the following risks to public safety: improper storage of logging products; improper storage of supplies; improper operation, parking or disabling of heavy equipment; hazard of hung-up or improperly felled trees.

Logging activities pose the following risks to public health: water pollution; improper disposal of hazardous waste; harm from hung-up or falling trees.

Proponents submitted MFS data showing a steady increase in complaints of timber theft between 1990 (65 complaints) and 1996 (466 complaints). According to this information, the vast majority of timber theft complaints that are investigated are found to be not prosecutable. They also submitted a copy of a DEP notice of violation sent to an individual regarding a timber harvesting operation that violated two natural resource protection laws and was responsible for siltation of a stream.

Voluntary and past regulatory efforts: The Certified Logging Professional program is the only program being offered to the logging community. This program has been in effect for eight years, during which time timber theft, environmental damage, and logging hazards to the public have continued to increase. There is no legal means to stop a person from logging even if they have been convicted of fraud, public safety violations, or environmental law violations in their work.

Cost/benefit: Licensing costs will be passed on to consumers by loggers. Benefits include decreased enforcement activity as notorious individuals are weeded out by the licensing process and avoided costs and greater efficiency due to a better trained work force.

Service availability of regulation: Service availability should not be affected. All willing participants will be grandfathered into the program.

Existing laws and regulations: Existing laws and regulations can not prevent an individual from the practice of logging. Existing agencies (MFS, DEP) are available to work with a licensing board. The nature of logging is unique and requires a licensing board.

Method of regulation: The public is not happy with the current practice of logging. Private landowners are having to deal with disreputable individuals who claim to be

professional loggers. Wildlife, water, and soil conditions are being degraded by logging activity. The legislation is proposed to ensure that the logging community will be responsible for its actions.

Other states: Proponents submitted excerpts from an article describing Massachusetts' forestry regulations, which include licensing of loggers and submission of Forest Cutting Plans for anyone cutting more than 25 MBF or 50 cords on a particular job. The article also describes the results of a program to evaluate proposed harvest operations in areas of rare wetland species habitat and recommend additional protections as needed. Proponents also submitted a summary of logger licensing requirements in other states. The summary was prepared by the MFS.

Previous efforts: There have been no previous efforts to regulate the logging profession.

Mandated benefits: Except for the licensing board's expenses, the board does not intend to apply for any mandated funds.

Minimal competence: The proposed requirements do not exceed the standards of minimal competence because there are no standards for the profession.

Appendix VI. Indiana Timber Buyer's Registration Statute

INDIANA CODE

As Amended Through the 1997 Regular Session

IC - - -



Information Maintained by the Office of Code Revision Indiana Legislative Services
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IC 25-36.5

ARTICLE 36.5. TIMBER BUYERS

IC 25-36.5-1

Chapter 1. Regulation of Timber Buyers by Department of Natural Resources

IC 25-36.5-1-1

Sec. 1. As used in this chapter:

"Person" means an individual, partnership, firm, association, business trust, limited liability company, or corporation.

"Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article. "Timber" does not include firewood, Christmas trees, fruit or ornamental trees, or wood products not used or to be used for building, structural, manufacturing, or processing purposes.

"Timber buyer" means a person engaged in the business of buying timber from timber growers for sawing into lumber, processing, or resale, but does not include a person who occasionally purchases timber for sawing or processing for his own use and not for resale.

"Timber grower" means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown in this state and includes persons exercising lawful authority to sell timber for a timber grower.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"Agent" means an individual who represents a timber buyer in effecting or attempting to effect purchases of timber.

"Buying" means acquiring an interest in property by the payment of a price, value, or other consideration.

(Formerly: Acts 1972, P.L.190, SEC.1; Acts 1975, P.L.274, SEC.1.) As amended by P.L.253-1983, SEC.1; P.L.158-1988, SEC.1; P.L.8-1993, SEC.397.

IC 25-36.5-1-2

Sec. 2. (a) On and after July 28, 1972, no person shall engage in the business of timber buying in the state of Indiana without a registration certificate issued by the department. Application for Indiana registration to engage in the business of timber buying shall be

filed with the department. Such application shall set forth the name of the applicant, its principal officers if the applicant is a corporation, its managers and members if the applicant is a limited liability company, or the partners if the applicant is a partnership, the location of any principal office or place of business of the applicant, the counties in this state from which the applicant proposes to engage in the business of timber buying and such additional information as the department by regulation may require.

(b) The application shall set forth the aggregate dollar amount paid to timber growers for timber purchased in this state during the applicant's last completed fiscal or calendar year. In the event the applicant has been engaged as a timber buyer for less than one (1) year, his application shall set forth the dollar amount paid to timber growers for the number of completed months during which the applicant has been so engaged. If the applicant has not been previously engaged in buying timber in this state, the application shall set forth the estimated aggregate dollar amount to be paid by the applicant to timber growers for timber to be purchased from them during the next succeeding year.

(c) The registrations of any persons registered as timber buyers under any prior law in this state shall remain valid until the expiration date of that certificate, unless suspended or revoked. After the expiration of such registrations, all persons engaged in the business of timber buying must be registered under this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1982, P.L.154, SEC.128; P.L.8-1993, SEC.398.

IC 25-36.5-1-3

Sec. 3. (a) Every person registered as a timber buyer shall file with the department an effective surety bond issued by a corporate surety authorized to engage in the business of executing surety bonds in Indiana.

(b) Instead of the bond required by subsection (a), the department may accept security in cash or a certificate of deposit under terms established by rule.

(c) The security required under subsection (a) or (b) shall be made payable upon demand to the director, subject to this chapter, for the use and benefit of the people of Indiana and for the use and benefit of any timber grower from whom the applicant purchased and who is not paid by the applicant or for the use and benefit of any timber grower whose timber has been cut by the applicant or registrant or his agents, and who has not been paid therefor.

(d) The security required under subsection (a) or (b) shall be in the principal amount of two thousand dollars (\$2,000) for an applicant who paid timber growers five thousand dollars (\$5,000) or less for timber during the immediate preceding year, and an additional one hundred dollars (\$100) for each additional one thousand dollars (\$1,000) or fraction thereof paid to timber growers for timber purchased during the preceding year, but shall not be more than twenty thousand dollars (\$20,000). In the case of an applicant not previously engaged in business as a timber buyer, the amount of such bond shall be based on the estimated dollar amount to be paid by such timber buyer to timber growers for timber purchased during the next succeeding year, as set forth in the application.

(e) The security required under subsection (a) or (b) shall not be cancelled or altered during the period for which the certificate to the applicant was issued except upon at least sixty (60) days notice in writing to the department.

(f) Security shall be in such form, contain such terms and conditions as may be approved from time to time by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the registrant, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the registrant in the purchase and cutting of the timber of this state.

(g) If a timber buyer fails to pay when due any amount due a timber grower for timber

purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or his agent, or commits any violation of this chapter, an adjudicative proceeding on the bond for forfeiture may be commenced, and notice of the proceeding shall be provided, under IC 4-21.5-3-6. A surety or person in possession of the security provided under subsection (a) or (b) is entitled to notification of the proceeding. If a final agency action is entered by the department under this subsection against the timber buyer, the surety or other person in possession of the security shall deliver the amount of the security identified in the order. A proceeding for forfeiture of a timber buyer's bond under IC 4-21.5 is the exclusive remedy under law for the forfeiture of the bond.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.253-1983, SEC.2; P.L.158-1988, SEC.2; P.L.220-1993, SEC.1.

IC 25-36.5-1-3.1

Sec. 3.1. The department may under IC 4-21.5-3-6 issue a notice of violation against a person who has violated this chapter or the rules adopted under this chapter. The notice of violation shall be issued to the registrant and the registrant's sureties stating in general terms:

- (1) the nature of the violation; and
- (2) that a proceeding seeking forfeiture of the bond may be commenced twenty (20) days after service of the notice on the registrant if at the end of that period the violation still remains and neither the registrant nor the surety has asked for judicial review of the notice.

As added by P.L.220-1993, SEC.2.

IC 25-36.5-1-3.2

Sec. 3.2. (a) This section refers to an adjudicative proceeding against:

- (1) a timber buyer; or
- (2) a person who cuts timber but is not a timber buyer (referred to as a "timber cutter" in this section).

(b) The department may under IC 4-21.5-3-8 commence a proceeding against a timber buyer or a timber cutter if there is reason to believe that:

- (1) the timber buyer or timber cutter has acquired timber from a timber grower under a written contract for the sale of the timber without payment having been made to the timber grower as specified in the contract; or

(2) if:

- (A) there is no written contract for the sale of the timber; or
- (B) there is a written contract for the sale of the timber but the contract does not set forth the purchase price for the timber;

the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as determined under IC 26-1-2.

(c) A proceeding may be commenced under this section at the request of a timber grower.

(d) The necessary parties to a proceeding initiated under this section are:

- (1) the timber grower; and
- (2) the timber buyer or timber cutter.

(e) After the commencement of a proceeding under this section through the service of a complaint under IC 4-21.5-3-8, a party to the proceeding may move for the joinder of any of the following persons having a relationship to the site or subject of the complaint:

- (1) The surety of the timber buyer.
- (2) A timber buyer.

- (3) A timber cutter.
- (4) A landowner.
- (5) An owner of land adjacent to the land from which the timber was cut.
- (6) A consultant receiving a fee for services related to the timber.
- (7) A land surveyor performing a minimum standard detail survey in Indiana under the requirements of the Indiana Society of Professional Land Surveyors and Indiana Land Association.

(8) The department of natural resources, if the department has a relationship to the site or subject of the complaint as a landowner or owner of adjacent land.

(f) The complaint served under IC 4-21.5-3-8 to commence a proceeding under this section may seek the following:

(1) Damages in compensation for damage actually resulting from the wrongful activities of a timber buyer or timber cutter.

(2) Damages equal to three (3) times the stumpage value of any timber that is wrongfully cut or appropriated without payment.

(g) Notwithstanding subsection (f), the liability on the surety bond of a timber cutter is limited to the value of any timber wrongfully cut or appropriated.

(h) A proceeding under this section is governed by IC 4-21.5. Before a hearing is convened in the proceeding, a prehearing conference shall be conducted to provide the parties with an opportunity for settlement, including an opportunity for mediation.

(i) In determining the site for a hearing in a proceeding under this section, the administrative law judge shall consider the convenience of the parties.

(j) A final agency action in a proceeding under this section must address all issues of damage and responsibility and, after the completion of the opportunity for judicial review, may be enforced in a civil proceeding as a judgment.

As added by P.L.220-1993, SEC.3.

IC 25-36.5-1-3.3

Sec. 3.3. (a) If the amount realized by the department from a bond or security forfeited under section 3(g) of this chapter, after deducting expenses incurred by the department in converting the bond or security into money, is greater than the amount of the liability of the timber buyer as determined under this chapter, the department shall pay the excess to the timber buyer who furnished the bond or security.

(b) If the amount realized by the department from a bond or security forfeited under section 3(g) of this chapter, after deducting expenses incurred by the department in converting the bond or security into money, is less than the amount of liability of the timber buyer as determined under this chapter, the timber buyer's registration may be revoked.

As added by P.L.220-1993, SEC.4.

IC 25-36.5-1-3.5

Sec. 3.5. (a) A timber buyer who intends to cease doing business as a timber buyer in Indiana and who seeks the return of a deposit of cash or a certificate of deposit that the timber buyer submitted to the department under section 3(b) of this chapter must submit the following to the department:

(1) A written request for the return of the cash or certificate of deposit.

(2) An affidavit meeting the requirements set forth in subsection (b).

(b) To obtain the return of a deposit of cash or a certificate of deposit under this section, a timber buyer must execute an affidavit stating under the penalty for perjury set forth in IC 35-44-2-1 that the timber buyer:

(1) has ceased doing business as a timber buyer in Indiana;

(2) will not resume business as a timber buyer in Indiana after the date of the affidavit without filing a surety bond or submitting a new deposit of cash or certificate of deposit to the department;

(3) has not purchased, taken, or cut any timber for which the timber grower has not been paid; and

(4) is not a party to an executory contract for the purchase of timber under which the timber buyer has one (1) or more duties that have not been performed.

(c) Upon receiving a written request described in subsection (a)(1) and an affidavit meeting the requirements of subsection (b), the department shall publish a notice of the request in at least one (1) publication commonly read by persons active in forestry in Indiana. The notice must do the following:

(1) Identify the timber buyer requesting the release of the cash or certificate of deposit.

(2) Indicate the date of the request.

(3) State that the cash or certificate of deposit will be released to the timber buyer on a particular date, which must be at least sixty (60) days after the date of publication of the notice, unless the department is informed of a reason why the cash or certificate of deposit should not be released.

(d) On the date set forth under subsection (c)(3) in the notice given by the department, the department shall return the cash or certificate of deposit to the timber buyer unless the department has obtained information indicating that a statement set forth in the timber buyer's affidavit is false.

As added by P.L. 220-1993, SEC. 5.

IC 25-36.5-1-4

&BTN. At the end of 1st paragraph delete "." and insert ":". &ETN.

Sec. 4. It shall be unlawful and a violation of this chapter.

(a) For any timber buyer to fail to pay, as agreed, for any timber purchased.

(b) For any timber buyer to cut or cause to be cut or appropriate any timber not purchased.

(c) For a timber buyer to willfully make any false statement in connection with the application, bond or other information required to be given to the department or a timber grower.

(d) To fail to honestly account to the timber grower or the department for timber purchased or cut if the buyer is under a duty to do so, and

(e) For a timber buyer to commit any fraudulent act in connection with the purchase or cutting of timber.

(Formerly: Acts 1972, P.L. 190, SEC. 1.)

IC 25-36.5-1-4.9

Sec. 4.9. The director may refuse to issue a timber buyer registration certificate to an applicant that has:

(1) been convicted of a felony;

(2) violated a provision of this chapter; or

(3) violated a rule adopted by the department under this chapter.

As added by P.L. 220-1993, SEC. 6.

IC 25-36.5-1-5 Repealed

(Repealed by P.L. 220-1993, SEC. 10.)

IC 25-36.5-1-6

Sec. 6. (a) If:

(1) the department is satisfied that the applicant has fulfilled the requirements of this chapter for the issuance of a registration certificate;

(2) the bond and sureties or bank certificate of deposit filed by the applicant under section 3 of this chapter is approved; and

(3) the director does not refuse to issue the registration certificate to the applicant under section 4.9 of this chapter;
the department shall issue a registration certificate to the applicant.

(b) The registrations issued shall be valid for a calendar year and may be renewed annually. A copy of the registration certificate issued by the department shall be posted in the principal office of the registrant in this state.

(c) Upon request for a certificate and payment of the fee, the department shall issue to the registrant a certificate that a certificate of registration has been granted and a bond filed as required by this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.220-1993, SEC.7.

IC 25-36.5-1-7

Sec. 7. The application fee or renewal fee for a registration certificate to operate as a timber buyer, is eighty dollars (\$80). The fee for a certificate stating that a registration certificate has been issued and security filed is twenty dollars (\$20). All fees collected by the department accrue to the use of the department for its administrative purposes.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1981, P.L.230, SEC.1; P.L.158-1988, SEC.3.

IC 25-36.5-1-8

Sec. 8. The department may inspect the premises used by any timber buyer in the conduct of his business at any reasonable time and the books, accounts, records and papers of every such timber buyer shall at all times during business hours be subject to inspection by the department.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-9

Sec. 9. The department may make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-10

Sec. 10. A person who:

(1) engages in business as a timber buyer without securing a registration or in violation of this chapter; or

(2) refuses to permit inspection of his premises, books, accounts, or records as provided in this chapter;
commits a Class B misdemeanor.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1978, P.L.2, SEC.2563.

IC 25-36.5-1-11

Sec. 11. No certificate of registration shall be issued to any person who is in default to the people of the State of Indiana for moneys due under this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-12

Sec. 12. The department may, after notice and a hearing, revoke the registration

certificate or license of any person who violates any of the provisions of this chapter. All proceedings under this chapter to revoke a license shall be conducted in the manner prescribed by IC 4-21.5-3.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.253-1983, SEC.3; P.L.7-1987, SEC.132.

IC 25-36.5-1-13

Sec. 13. The department may, by application to any circuit court or to a judge thereof, obtain an injunction restraining any person who engages in the business of timber buying in this state without a certificate of registration (either because his certificate has been revoked or because of a failure to obtain a certificate of registration in the first instance) from engaging in such business until such person complies with this chapter and qualifies for and obtains a certificate of registration. Upon refusal or neglect to obey the order of the court or judge, said court or judge may compel obedience thereof by proceedings for contempt.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-13.5

Sec. 13.5. In addition to the other penalties prescribed by this chapter, the director may, under IC 4-21.5, impose a civil penalty on a person who violates this chapter. A civil penalty imposed under this section may not exceed the following limits:

(1) For engaging in business as a timber buyer without securing a registration certificate under this chapter, ten thousand dollars (\$10,000).

(2) For acting as the agent of a timber buyer without holding an agent's license under this chapter, ten thousand dollars (\$10,000).

(3) For other violations of this chapter, one thousand dollars (\$1,000).

As added by P.L.220-1993, SEC.8.

IC 25-36.5-1-14

Sec. 14. All final administrative decisions under this chapter shall be subject to judicial review under IC 4-21.5-5.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.7-1987, SEC.133.

IC 25-36.5-1-15 Sec. 15. (a) An individual who acts as the agent of a timber buyer must have an agent's license and carry the agent's card that verifies the license.

(b) An agent's license may be granted only:

(1) to qualified individuals;

(2) at the written application of the timber buyer who the agent is to represent; and

(3) under that timber buyer's registration certificate.

(c) The application for an agent's license must contain the agent's full name, address, and other information as required by the department on forms supplied by the department. Each timber buyer is responsible for all of the agent's activities performed while acting under the timber buyer's registration certificate as they pertain to this chapter.

(d) An application fee of five dollars (\$5) for each agent shall be charged for the license and agent's card. However, each timber buyer shall designate a qualified individual to be licensed as its principal agent at no additional charge.

(e) An agent's license may be revoked by the department under IC 4-21.5 if the agent does not comply with this section.

(f) An agent may have a license to represent only one (1) timber buyer; however, upon surrendering the agent's card and license under one (1) timber buyer, an individual may be licensed as an agent of another timber buyer.

(g) A timber buyer may not be licensed as an agent except as the principal agent of that timber buyer.

(h) A timber buyer may not effect or attempt to effect a purchase except through an agent.

(i) A timber buyer may terminate an agency relationship by notifying in writing the agent and the department. Termination of an agency relationship revokes the agent's license.

(j) A person who acts as an agent without a license commits a Class B misdemeanor. *(Formerly: Acts 1975, P.L.274, SEC.2.) As amended by Acts 1981, P.L.230, SEC.2; P.L.253-1983, SEC.4; P.L.158-1988, SEC.4.*

IC 25-36.5-1-16

Sec. 16. The director may revoke or suspend or refuse to issue any license or agent's registration under that license if the applicant or holder of that license has:

- (1) been convicted of a felony;
- (2) violated any provision of this chapter; or
- (3) violated any rule or regulation of the department promulgated under this chapter.

Revocation or suspension of a license or an agent's registration shall be determined by the director after an administrative hearing as provided in section 12 of this chapter. *(Formerly: Acts 1975, P.L.274, SEC.3.)*

IC 25-36.5-1-17 Repealed *(Repealed by P.L.220-1993, SEC.10.)*

IC 25-36.5-1-18

Sec. 18. (a) The definitions set forth in IC 5-2-5-1 apply throughout this section.

(b) The department shall under IC 5-2-5-5(b) request and obtain the release of a limited criminal history from the state police department on each person who applies to the department under this chapter for the issuance of either of the following:

- (1) A timber buyer registration certificate.
- (2) A timber buyer agent's license.

As added by P.L.220-1993, SEC.9.

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