

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 1998

H.P. 1429

House of Representatives; December 18, 1989

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Received by the Clerk of the House on December 18, 1989. Referred to the Committee on Fisheries and Wildlife and 1600 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

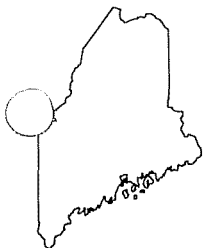
EDWIN H. PERT, Clerk

Presented by Representative FOSS of Yarmouth.
Cosponsored by Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Ensure Equal Access for Commercial Outfitters to Maine's
Natural River Resources.



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

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Sec. 1. 12 MRSA §7365, sub-§2-A, as enacted by PL 1985, c. 669, is repealed and the following enacted in its place:

2-A. Insurance requirements. All outfitters shall carry liability insurance covering the operation of whitewater trips and motor vehicles carrying passengers. The department shall establish, by rule, the minimum limits of liability insurance.

Sec. 2. 12 MRSA §7365, sub-§2-B is enacted to read:

2-B. Bond requirement. All outfitters shall post a surety bond with the department in the amount of \$5,000. The department may levy against a bond to cover unrefunded deposits of customers of an outfitter and to satisfy unpaid penalties assessed against an outfitter under this chapter.

Sec. 3. 12 MRSA §7365, sub-§6, as enacted by PL 1983, c. 502, §4, is repealed and the following enacted in its place:

6. Sale of business. An outfitter may sell its business complete with any allocation held by the outfitter. The sale, transfer or assignment of an allocation, or any portion of an allocation, without the simultaneous sale, transfer or assignment of an outfitter's business assets is prohibited.

Sec. 4. 12 MRSA §7365, sub-§7, as amended by PL 1983, c. 786, §1, is repealed and the following enacted in its place:

7. Affiliated outfitters. Affiliated outfitters may not be licensed by the department for operations on any river in the State which requires a license. Operation of an affiliated outfitter by an outfitter is prohibited and is subject to penalty under section 7370-A.

Sec. 5. 12 MRSA §7367, sub-§5, as enacted by PL 1983, c. 502, §4, is repealed and the following enacted in its place:

5. Order of launch. Launch order of commercial outfitters on rivers requiring allocations shall be determined, supervised and enforced by the department to protect public health and safety.

A. On or before December 1st annually, the department shall determine the order of launch schedule for each allocated river through a random drawing of all outfitters holding allocations for an allocated river. The department shall publish this schedule when the final allocations are published.

2 B. The sale, transfer or assignment of a launch order
3 position by an outfitter is prohibited.

4 C. The department may require compliance with the launch
5 order schedule on allocated days and on other days when
6 necessary to protect public health and safety. Failure to
7 comply with the launch order schedule shall subject an
8 outfitter to the penalties of section 7370-A.

10 **Sec. 6. 12 MRSA §7368, sub-§1**, as enacted by PL 1983, c. 502,
11 §4, is amended to read:

12 **1. Findings and goals.** Increased use has resulted in
13 increased environmental impact on the Kennebec and West Branch
14 Penobscot and Dead Rivers, as well as on their valleys, nearby
15 roads and the social structure of the areas. Recreational use
16 limits are necessary to allow for rafting use and other competing
17 uses, such as fishing, camping and canoeing, while minimizing
18 detrimental impacts and maintaining the opportunity for a quality
19 wilderness experience for rafters and for other users.

22 **Sec. 7. 12 MRSA §7368, sub-§2-A, ¶B**, as enacted by PL 1985, c.
23 571, §3, is amended to read:

24 **B. Sundays:** ~~No limit set~~ 800 commercial passengers; and

26 **Sec. 8. 12 MRSA §7368, sub-§§4 and 5** are enacted to read:

28 **4. Dead River.** The recreational use limit for the Dead
29 River between the confluence of the Dead River and Spencer Stream
30 and the confluence of the Dead River and the Kennebec River is
31 specified as follows. Noncommercial recreational use is not
32 limited. The commercial limit is 1,000 commercial passengers a
33 day, any day.

34 **5. Limit of 80 passengers.** Outfitters are limited to 80
35 passengers per river per day on rapidly flowing rivers not
36 requiring allocations and on nonallocated days on the Kennebec,
37 West Branch Penobscot and Dead Rivers.

38 **Sec. 9. 12 MRSA §7369**, as amended by PL 1989, c. 493, §§26
39 and 27, is repealed.

40 **Sec. 10. 12 MRSA §7369-B** is enacted to read:

41 **§7369-B. Allocation required**

42 **1. Allocations required.** Except as provided in subsection
43 9, operation of a commercial whitewater trip on the sections of
44 the Kennebec, West Branch Penobscot and Dead Rivers identified in
45 section 7368 without an allocation or in excess of an allocation
46 is prohibited.

2 2. Qualifications for allocations. Subject to subsection
4 9, any outfitter that holds a Maine commercial whitewater
6 outfitter's license, provides proof of liability insurance as
8 required by the department and posts a bond with the department
may apply for an allocation. An outfitter may apply for
allocations on any combination of rivers requiring allocations.

10 3. Term of allocation. Allocations are valid for a period
12 of one year from the date of final award by the department.

14 4. Applications for allocations. An outfitter shall submit
16 a separate application for each river for which an allocation is
sought. Applications must be submitted on or before October 15th
in the year preceding the year for which an allocation is
sought. The application fee for each allocated river is \$25.

18 5. Allocation procedure. The department shall award to
20 each qualified applicant an allocation for each allocated river
equal to the number obtained by dividing the recreational use
limit for the allocated river by the number of qualified
applicants for the allocated river.

22 A. The department shall publish initial allocation awards
24 on or before November 1st.

26 B. Following the initial allocation award, an outfitter
28 seeking less than the initial allocation award shall have
until November 15th in which to return all or any portion of
30 that outfitter's initial allocation to the department.

32 C. The department shall calculate the final allocation
34 awards by dividing the total of returned allocations by the
number of outfitters seeking the maximum available
36 allocation. If there are no returned allocation awards, the
initial allocation awards become the final allocation
38 awards. The department shall publish the final allocation
awards on or before December 1st.

40 D. In calculating the final allocation awards, the
42 department shall round up awards not ending in the numbers
zero or 5 to the next nearest number ending in zero or 5.
44 The department may exceed the recreational use limit for an
allocated river in rounding up the final allocation awards.

46 E. There is no maximum allocation limit per outfitter.

48 6. Concurrent allocations. The department may not award
50 concurrent allocations to outfitters on the Kennebec and
Penobscot Rivers when the number of qualified outfitters applying
52 for allocations on either or both rivers produces initial
outfitter allocation awards below 40 passengers per river. The

2 department shall notify outfitters of the ban on concurrent
3 allocations on or before October 20th. Outfitters must then
4 notify the department of their choice of river on or before
5 October 25th.

6 7. Allocation fee; user fee. The allocation fee is \$100
7 for each allocated river, payable to the department on or before
8 December 31st. The user fee for each passenger carried by an
9 outfitter on any rapidly flowing river is \$1 per passenger,
10 payable monthly to the department on or before the 10th day
11 following the month in which the passengers were carried.

12 8. Reporting. Each outfitter shall report monthly to the
13 department the number of passengers carried each day on each
14 river. Inaccurate reporting or failure to report may subject the
15 outfitter to the penalties in section 7370-A.

16 9. Disqualification from allocations. The department shall
17 establish by rule a point system in which to evaluate the
18 qualifications of an outfitter for allocations subsequent to the
19 outfitter's first allocation. The purpose of this section is to
20 ensure that an outfitter that fails to utilize previous
21 allocations efficiently or safely may be disqualified from a
22 subsequent allocation for a limited period. The following are
23 the only categories that the department shall include in rules
24 under this section.

25 A. An outfitter that did not efficiently use an allocation
26 from the preceding year shall receive points on its record.
27 The rules must permit an outfitter to offset points for low
28 use on allocated days with high use on nonallocated days on
29 the same river. Evaluation of an outfitter's efficient use
30 of a previous allocation must be computed as a percentage of
31 all outfitter use on the allocated river in the same year.

32 B. An outfitter with safety violations from the preceding
33 year shall receive points on its record.

34 C. The department shall establish a schedule with
35 disqualification periods of one, 2 or 3 years based on the
36 number of points accumulated by an outfitter in the previous
37 season.

38 10. Allocated days. On the West Branch Penobscot and
39 Kennebec Rivers, allocations are required on Saturdays and
40 Sundays for the period from the 4th Saturday in June to the first
41 Sunday in September. On the Dead River, allocations are required
42 for any day on which scheduled water releases exceed 3,500 cubic
43 feet per second. If the department determines that commercial
44 use has met or will soon meet the recreational use limit for any
45 other day on these rivers, the department shall provide by rule
46 for allocations for any such day.

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STATEMENT OF FACT

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This bill makes several changes in the law governing commercial whitewater outfitters. The bill:

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1. Eliminates the waiver of liability insurance provision and requires that all outfitters carry liability insurance and post a bond with the State;

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2. Eliminates restrictions on the sale of an outfitter's business since the annual allocation established in this bill would be of minimal market value;

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3. Eliminates the so-called "affiliated companies" loophole;

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4. Modifies the order of launch provision by establishing an annual random drawing system to determine launch positions;

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5. Establishes a 1,000-person commercial use limit on the Dead River;

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6. Establishes an 800-person commercial use limit for Sundays on the Kennebec River;

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7. Establishes a new allocation system by dividing up positions equally among all the qualified applicants. The system includes an objective point system to ensure that outfitters meet established guidelines in filling allocations. The allocation period is also reduced in the bill;

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8. Eliminates the so-called "emergency swap" loophole which permits outfitters to shift allocated Penobscot River trips and unallocated Dead River trips over to the Kennebec River when water conditions are not suitable for rafting; and

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9. Eliminates the provision which allows an outfitter to exceed an allocation because the outfitter is overbooked.

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