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STATE OF MAINE
113TH LEGISLATURE
SECOND REGULAR SESSION

FINAL REPORT
OF THE
MAINE COMMISSION
ON
OUTDOOR RECREATION

JANUARY 1988

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Darrell Morrow
Wesley Smith

Staff: Tim Glidden, Legislative Analyst
Julie Jones, Legislative Analyst
Office of Policy and Legal Analysis
Room 101, State House--Sta. 13
Augusta, Maine 04333
(207) 289-1670

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. Trends in Public Access to Forest Land	2
III. Economic Climate for Forest Land Ownership	8
IV. Legal Issues	10
V. Findings and Recommendations	16
Appendix A: Proposed Legislation	
Appendix B: Recommendations of the Brennan Commission on Outdoor Recreation concerning the establishment and responsibilities of the Maine Advisory Commission on Outdoor Recreation	
Appendix C: Existing Liability Statute 14 MRSA §159-A	
Appendix D: Commission Membership and Affiliations	

Introduction

During the First Regular Session of the 113th Legislature, a number of bills were introduced concerning the public use of private forest land and eligibility of that land for the Tree Growth Tax program. The key pieces of legislation (LD 847 & 1006), considered by the joint standing committees on taxation and on energy and natural resources, were held over until the second regular session pending the report of two special commissions on the subject. The Commission on Outdoor Recreation, established by P&SL 1987, c.68, was charged with examining the "present outdoor recreation needs of the public and determining whether current public policies properly address that need". The establishing act cited changes in land use that threatened traditional recreational resources. A separate group, the Commission on Forest Taxation, was directed to examine the tax issues.

The current Commission on Outdoor Recreation was established with very broad membership representing numerous groups using the forest resources of the State. A list of members and affiliations is shown in Appendix D. The Commission met six times, all of which were open, public sessions. The diverse and actively participating membership resulted in extensive discussions of all the issues under consideration.

As one of its first items of business, the Commission established that, while its efforts must consider a broad range of recreational issues, the central topic under consideration was the public, recreational use of privately owned forest land. The Commission adopted a simple question to guide its initial inquiry:

"Is public recreational access or traditional forms of such access to private forest lands and waters being lost in Maine today?"

Implicit in this question is a recognition of the vital role private, forested land plays in the recreational opportunities of the state.

The Commission then adopted a study agenda which is reflected in the structure of this report. It first investigated the current status of public recreational access to forest land through a landowner survey and review of other data (Section II). After analyzing these results, the Commission spent considerable time discussing the broader economic context for land management including recreational management (Section III). The Commission sought legal advice on the various aspects of public rights and interest in various natural resources (Section IV). Finally, the Commission

adopted general goals it felt addressed the central needs of outdoor recreation in Maine (Section V).

The Commission acknowledges its debt to the recent efforts of the Commission on Outdoor Recreation established under the administration of Governor Joseph Brennan. The reader of this report and the report of the previous Commission will note that several of the key recommendations are very similar. It is only because of the foundation provided by the very broad-based and thorough efforts of the previous Commission that the current Commission has been able to concentrate its efforts on the narrower question described earlier. All subsequent references to the "Commission" are to the current entity unless noted specifically otherwise.

Trends in Public Access to Forest Land

Prior to any reasoned discussion of the access question, the Commission realized it needed to evaluate the current status of public recreational access to forest land. While acknowledging that this is only part of the broader public access issue, the Commission felt that this particular type of access was central to the spirit of the recreational experience in Maine.

Accordingly the Commission directed its staff to collect all available information on the topic. In the absence of any existing systematic set of information, the staff followed a three part strategy. First, state agencies with a direct role in outdoor recreation (primarily the Department of Inland Fisheries & Wildlife and the Department of Conservation) were asked to submit available information concerning the public access question and the general level of public recreational use of forest lands. Second, the staff conducted a direct survey of the major forest landowners or managers most immediately familiar with the Commission's work. Third, the survey effort was complemented with survey results developed by the Sportsman's Alliance of Maine. A similar, independent survey conducted by the Maine Forest Products Council yielded similar results.

The information collected was discussed by the Commission to develop a shared understanding of the current situation. Table 1 and Figure 1 presents data from the Commission's survey combined with data from the SAM survey.

The Commission broke down the types of access into three, overlapping groups:

1. Simple access: At the most fundamental level, access means the ability to enter and use an area.
2. Free access: No user fee is charged to gain access.
3. Vehicular access: A user may use a private vehicle to gain access.

TABLE 1:
Summary of Responses to Access Questionnaire
Commission on Outdoor Recreation

<u>Landowner/Manager</u>	<u>% Free</u>		<u>% Fee</u>		<u>Closed to Public Access</u>	<u>Total Acres</u>
	<u>Vehicular</u>	<u>Fly/Walk</u>	<u>Vehicular</u>	<u>Fly/Walk</u>		
North Maine Woods ¹	0	0	98.1	1.9	0	3,025,000
<u>Acreage outside NMW</u>						
Great Northern Paper	46.7	0	48.7	4.6	0	1,500,000
Scott Paper ²	100	0	0	0	0	886,900
Prentiss & Carlisle ²	100	0	0	0	0	850,000
Champion International ²	100	0	0	0	0	693,500
International Paper	87.1	12.5	0	0	0.4	542,000
Georgia-Pacific ²	100	0	0	0	0	475,000
Bureau of Public Lands	99.4	0.6 ⁴	0	0	0	377,000
Seven Islands	85.5	8.9 ⁵	5.6	0	0	323,579
Penobscot Nation ^{2 3}	100	0	0	0	0	155,000
Passamaquoddy Tribe ²	100	0	0	0	0	89,500

TOTAL	55.8%	1.1%	41.7%	1.4%	0.1%	100% 8,917,479

^{1/} Includes acreage for Scott (18,100), Champion (36,500), Great Northern (600,000), International Paper (511,000), Bureau of Public Lands (73,000), Prentiss & Carlisle (150,000), and Seven Islands (634,461). Baxter State Park not included in this summary.

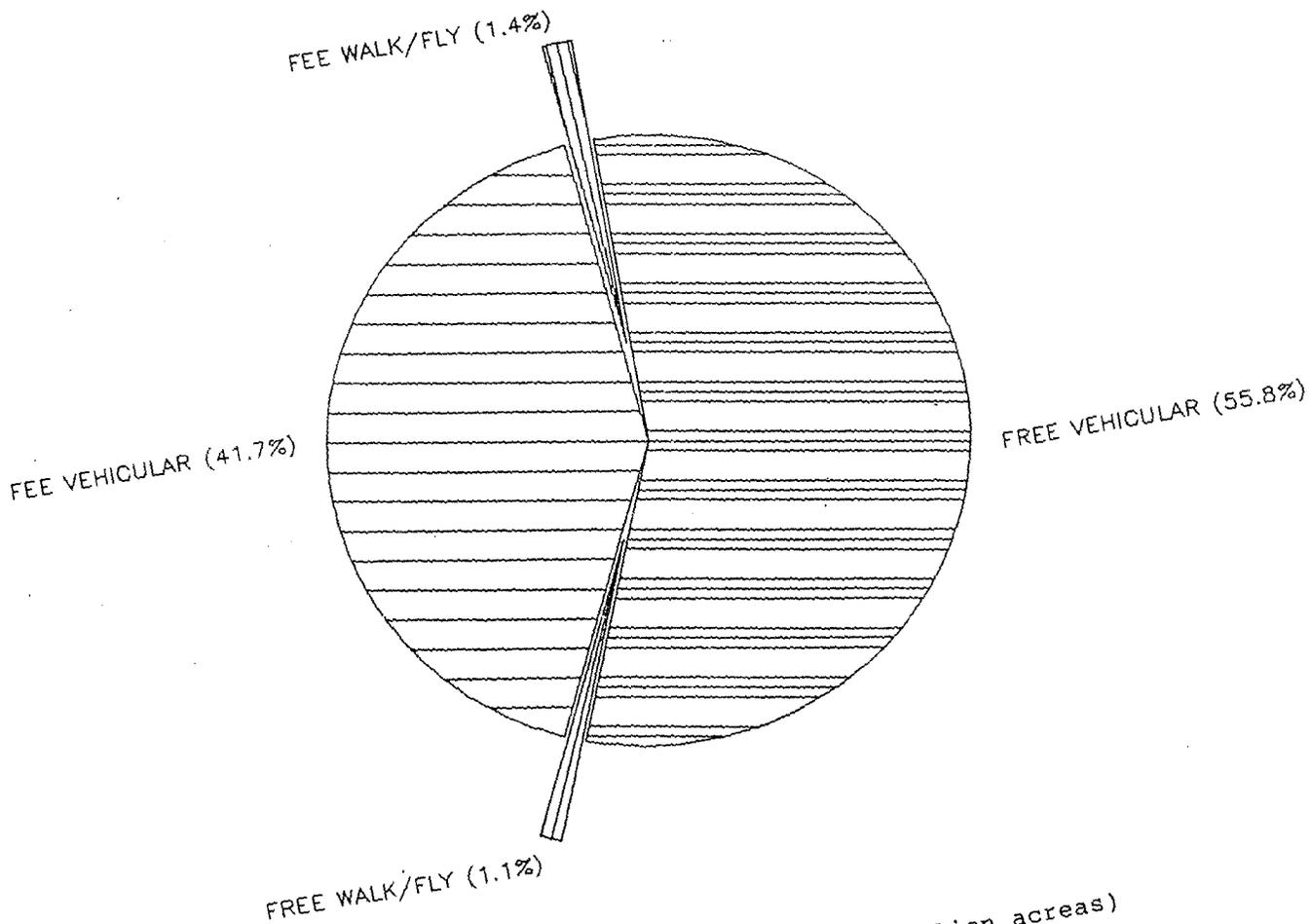
^{2/} Data taken from survey conducted by Sportsman's Alliance of Maine Summer, 1986
Note: several of these firms have very small acreages posted ie. less than 0.01% of their respective holdings

^{3/} Trapping, duck and fiddlehead collecting fees charged by Tribe. No simple access fee.

^{4/} Includes approximately 8000 acres accessible only by water at Sugar and Gero islands.

^{5/} Represents lands with roads closed due to logging operations or because roads are inadequate for recreational traffic.

Figure 1:
TYPES OF ACCESS TO SURVEYED FOREST AREA



Note: Less than 0.1% of surveyed area (8.9 million acres) is posted as closed to all public access.

Simple access. This is the broadest form of access. From the evidence reviewed to date, most of the 17 million plus acres of forest land in the state is open to some form of access (free, fee, foot, vehicular). The Commission's survey which covered almost 9 million acres concentrated in the northern half of the state, found that over 99% of the surveyed forest land was accessible. Small lot, camp leases limit access to a small percentage of forest land (probably less than 0.1%) although the percentage is misleading since the camps are situated along key water bodies of great recreational value.

Simple access is also limited by "posting" or closure of the land to public use. While the staff has found no reliable sources of data, anecdotal evidence suggests that more and more land is being closed to recreational use. This trend appears to be concentrated in the southern half of the state among relatively smaller forest landowners many of whom don't manage the land for timber.

Simple access is also limited directly by land development patterns. With land development concentrating near and around water bodies, the impact of development goes beyond the proportion of acres developed. Little data is available that directly measures this trend although increases in DEP, LURC and local permitting load clearly indicates a growth trend.

Free access. Of the forest lands open to public use, two subsets can be identified; no-charge (free) and fee use. Until recently, most forest land has been open to free access. The exceptions to this have been state parks. Over the past ten years or so, an increasing fraction of forest land is now accessible only upon payment of a fee. The two best known examples of this are the North Maine Woods program (3,025,000 acres) and the very recent Great Northern Paper program (850,000 acres). The Commission's survey found that over half of the acreage surveyed (56%) was accessible at no charge. The Maine Forest Products Council (MFPC) survey of a somewhat larger area (10,324,576 acres) found that 66% of the surveyed area was accessible at no charge.

The most pervasive change in the form of recreational access is the loss of free access to over 3.5 million acres in the north woods now subject to user fees. It is useful to note that despite these fees, figures on recreational use of the area managed by the North Maine Woods organization (subject to fees) demonstrate continued growth in use (see Table 3). The data presented in this table for use of Great Northern Paper's holdings (free during this period) also shows rapid growth. No data is currently available on the level of demand that may not be met as a result of the access fees.

Vehicular access. Widespread vehicular access to the Maine woods is not traditional. Only since the cessation of the river log drives in the late 1970's, the subsequent explosion of private road building and the availability of high quality

Table 3
Levels of Recreational Use in Various Areas
(# annual visitors)

<u>Area</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
North Maine Woods	43,407	50,889	56,602	56,659	60,418	65,806	66,613	71,053	69,988	74,306	71,323
Great Northern	67,719	68,340	84,433	73,872	91,357	109,227	121,221	135,057	154,976	156,196	146,214
State Parks	2,103,012	2,024,607	2,176,190	1,929,328	2,328,500	2,363,661	2,386,094	2,801,377	2,623,658	2,691,649	2,013,006 ¹

¹/Attendance down due to cold, rainy summer and more accurate counting procedure.

Sources: North Maine Woods and Great Northern Maine Woods submissions, Bureau of Parks & Recreation data

guide maps has vehicular access to large portions of the Maine woods become commonplace. This form of access has become quickly rooted, however, and has drawn large numbers of new users into areas which previously saw only limited recreational use. Vehicular access is being limited in some areas for three reasons.

Some land managers, in an attempt to preserve the remote character of portions of the Maine woods, have limited vehicular access to some areas. Great Northern Paper Co. has two areas in its West Branch District which are closed to vehicular access although access is still available by foot, canoe, snowmobile, and float plane. This area comprises 69,500 acres. The State, through the Land Use Regulation Commission, Bureau of Public Lands and the Allagash Wilderness Waterway, is imposing similar restrictions on certain public and private holdings. This technique has also been employed by landowners and state agencies on a more limited basis to restrict access to ponds subject to overfishing.

Some land managers have also restricted vehicular access to areas under large lot lease to private and commercial sporting camps. While this phenomenon has existed in Maine for many years, the acreage under lease appears to have increased substantially in recent years. However, the total amount of land in the category still represents a small fraction of the overall land base.

Some private roads are also closed by their owners in order to limit damage to the road or to maintain safety in areas undergoing active forest harvest operations. Such access restrictions are typically not permanent and change from year to year. The data are incomplete on the amount of land in this category.

The Commission's survey found that 97.5% of the surveyed acreage was open to vehicular access either with or without a fee. Only 2.5% of the surveyed acreage was open to public access but closed to vehicles on a permanent basis (ie: fly/walk/water only). This figure is very close to the results of the MFPC survey (2.68%).

Conclusion. The data collected through the Commission's and other surveys demonstrates conclusively that the issue at hand is not simply recreational access to forest land. Maine citizens and visitors are not being shut out of the Maine woods. In fact, viewed from the long term perspective (10-20 years), access has increased dramatically and continues to increase as the private forest road network expands. However, the form of access is changing. First and most importantly, an increasing fraction of the forest land base is accessible only upon payment of a user fee. There is no easy way to project this trend.

Second, a fraction of the land base with roads is being

consciously managed for access only by air, foot or water (currently 2.5% of the 8.9 million acres surveyed). There are two, currently co-equal reasons for this. One is the decision on the part of land managers to manage for "remote recreation" in the face of growing use pressures and degradation of the resource. The second is the trend in large lot leasing which has restricted vehicular access though usually not foot access.

Third, development pressure in some areas, particularly shoreland, is reducing public access. The amount of reduction is unknown although it is expected to increase.

Finally, it is vitally important to note that the quality and special character of the outdoor recreation experience in Maine is dependent on the existence of large, unbroken tracts of forest land under management with similar objectives. This attribute of Maine, shared with northern New Hampshire and Vermont is unique in the northeastern United States.

Economic climate for forest land ownership

Given the trends in access documented by the Commission's survey, the obvious question is "why are landowners limiting or charging for recreational access?". To answer this question, the Commission spent the better part of two work sessions examining the broader economic climate that influences the decisions of the private land managers who own the vast majority of the forest land in question.

While this complicated topic could easily have absorbed the attention of several study groups (and in fact is relevant to the concurrent efforts of the Commission on Forest Taxation), the Commission was fortunate to have access to Dr. Perry Hagenstein, an independent forest policy consultant based in Massachusetts. Dr. Hagenstein outlined several trends in forest landownership in Northern New England which are directly relevant to the Commission's concerns.

First, a trend among the major forest land owners is underway to separate the management of timberlands assets from the management of production facilities (mills). Redefining the forest holdings of these companies as profit centers in their own right has intensified the pressure on these assets to carry their own costs without cross-subsidies from other corporate revenues. Simply put, the return from timber sales is expected to cover all costs associated with holding the land and a return on the investment. Increasingly, companies are managing their holdings to supply wood to the open market and to maximize the return on the forest land itself. At the same time, the forest assets of these companies have come under greater scrutiny by stock holders and the investment community. The acquisition of Diamond International Corporation (now Diamond Occidental) by Sir James Goldsmith is only the most obvious example of this.

A second general trend has been an increase in the demand for development properties, primarily residential. The main effect of this second trend is to make obvious to land managers the skyrocketing value of a portion of their holdings for uses other than forest management. Virtually all forest industry land managers contacted by Dr. Hagenstein and those participating in the Commission's discussions indicated their desire to hold onto their forest properties. Nonetheless, Dr. Hagenstein found that "no owner appears willing to forgo entirely the potential gains..."¹ that development represents.

In the context of these two trends, attention turns to the economics of timber management. Figures supplied to the Commission by Dr. Hagenstein and by Commission members indicate that timber production in and of itself (ie: separate from mill operations) is currently a marginal proposition. Dr. Hagenstein's analysis indicates that, under the assumption of no increase in real timber prices (ie: net of inflationary increases), timber management does not generate a positive return even with current use taxation (ie: Tree Growth Tax). Timber management generates a positive return only if an increase in timber values over the coming years is assumed. He points out that even assuming a real increase in timber value, the value of the forest land itself for the production of timber is very low and in no way compares favorably with the development value of the same property.

In addition to the issues discussed above, the Commission briefly reviewed other factors affecting the economic climate including recent changes in the federal tax code and the trends in interregional and international competition in the forest products sector.

Conclusion. A quote from Dr. Hagenstein's recent report summarizes the economic climate well:

"The national forest products firms are under greater pressure today to rationalize their investments than at any time in the past two or three decades. A kind of mob psychology rules securities analysts, who in turn put pressure on corporate leaders. The theme in the forest products industry now is "asset management." Although they are under pressure, forest products firms have not wholly abandoned the idea that timber growing is profitable. But their commitment to continued ownership of large tracts does not extend to keeping their ownerships just as they are. Sale or development of separated tracts and of tracts with especially high recreation and development values are increasingly likely."²

1/ & 2/ Hagenstein, Perry, A Challenge for New England: Changes in Large Forest Landholdings, The Fund for New England, Boston, MA 1987

The significance of this analysis is that any return that can be generated from forest holdings can increase the competitiveness of forest land investment compared to other, less risky, investments. Thus, if a landowner is able to realize a return on the recreational value of the property without sacrificing ongoing timber management activities, the landowner's continued management of the property in its relatively wild state is much more likely. The two common avenues for realizing this return are leasing arrangements and user fees.

Legal Issues

Throughout the course of its review of the recreational access situation and economic climate for land ownership, the Commission returned repeatedly to the question of the public's interest in various natural resources (great ponds, waterways and wildlife) and in its rights of access to these resources. The Commission consulted with staff attorneys and with the Attorney General's staff. The following discussion summarizes the topics covered.

General Property Law. The general rule of property law maintains that a property owner may use his land for any purpose he pleases as long as that purpose is lawful. Property is conceived of as a bundle of rights, one of which is the right to exclude others from one's land.

In practice there are some limitations on the rights of private property owners to exclude members of the public from their land.

- The Colonial Ordinance provides a public right to fish, fowl and navigate in the intertidal zone. However, there is no explicit right to cross private land without permission to exercise those rights.
- The Colonial Ordinance provides a public right of access by foot over private land to great ponds for the purpose of fishing and fowling. This access is limited to access which does not involve trespass upon corn, meadow or cultivated field.
- Maine statutes prohibit the denial of access by foot over "unimproved land" to great ponds not used in providing a public water supply.
- The public may acquire prescriptive rights of access to private land; however, these rights are very hard to establish, especially for recreational purposes and especially in the unorganized areas of the state.
- Rights of access may be acquired through customary usage; however, this theory has received little recent legal acceptance.

- It is quite questionable whether a State law requiring public access for hunting, fishing or recreation would be constitutional in light of the Maine and United States Constitutional prohibitions against taking property without just compensation.

The Colonial Ordinance and Statute: Ordinance. The most common source cited for public rights to use private land for hunting, fishing and recreation is the Colonial Ordinance of 1648. When Maine became a separate state from Massachusetts in 1820, many aspects of Massachusetts and colonial law were incorporated through the Articles of Separation into the new state's common law. Bell v. Town of Wells, 510 A.2d 509, 513 (Me. 1986). (See Tannenbaum, The Public Trust Doctrine in Maine's Submerged Lands: Public Rights, State Obligation and the Role of the Courts, 37 Me. L. Rev. 105 (1985). One of these laws was the Colonial Ordinance which reads:

Sec. 2. Every inhabitant who is an householder shall have free fishing and fowling in any great ponds, bays, coves and rivers, so far as the sea ebbs and flows within the precincts of the town where they dwell, unless the freemen of the same town, or the general court, have otherwise appropriated them:

Provided, that no town shall appropriate to any particular person or persons, any great pond, containing more than ten acres of land, and that no man shall come upon another's propriety without their leave, otherwise than as hereafter expressed.

The which clearly to determine;

Sec. 3. It is declared, that in all creeks, coves, and other places about and upon salt water, where the sea ebbs and flows, the proprietor, of the land adjoining, shall have propriety to the low water mark, where the sea doth not ebb above a hundred rods, and not more wheresoever it ebbs further:

Provided, that such proprietor shall not by this liberty have power to stop or hinder the passage of boats or other vessels, in or through any sea, creeks or coves, to other men's houses or lands.

Sec. 4. And for great ponds lying in common, though within the bounds of some town, it shall be free for any man to fish and fowl there, and may pass and repass on foot through any man's propriety for that end, so they trespass not upon any man's corn or meadow.

The Colonial Ordinance, by its terms, provides certain public rights in private lands under specified circumstances. These are:

Salt water. The land owner owns to the low water mark or 100 rods from the high water mark, whichever is less. He may not restrict navigation. The public has the right to fish and fowl within the intertidal zone. The public may

not enter on private land without permission.

Great ponds. Great ponds containing more than 10 acres belong to the State. The public may fish and fowl there. The public may pass over private land on foot for the purposes of fishing and fowling on a great pond as long as they do not trespass on "any man's corn or meadow."

Massachusetts courts have held that the Colonial Ordinance does not grant any greater rights than fishing and fowling. Opinion of the Justices, 365 Mass. 681, 313 N.E.2d 561 (1974). However, the Colonial Ordinance may be interpreted differently by Maine Courts than it is in Massachusetts. The meaning of the public's right of access to coastal areas is currently being tested in the Moody Beach case, Bell v. Inhabitants of the Town of Wells, No. CV-84-125 (Me. Super. Ct., York Cty, Sep. 14, 1987). In that case, the Superior Court refused to recognize a public right to use the intertidal zone for recreational purposes. The case is currently under appeal.

Public access to great ponds for fishing and fowling has been recognized many times by the Maine Supreme Judicial Court; however, the meaning of the public's right to travel over private land to get to great ponds has only been interpreted once. In Barrows v. McDermott, 73 Me. 441 (1882), the Law Court held that the right granted by the Colonial Ordinance does not permit crossing a cleared and cultivated field ("unenclosed woodlands" was permitted; "tillage or mowing land" was not). It is not clear from this case whether access is permitted along a road. Although public rights to use great ponds have been extended to include recreation, Opinion of the Justices, 118 Me. 503, 106 A. 865 (1919), it is unclear whether that purpose extends to the right of access across private land. It is also not clear what if any timber harvesting operations might permit a land owner to refuse access. One thing that is clear from the language of the ordinance is that whatever access is permitted must be by foot travel. (See, Freeman, Public Access to Great Ponds, LAM 86-4, July 1, 1986.)

The Colonial Ordinance and Statute: Statute. In the absence of Constitutional limitations, common law, such as the Colonial Ordinance may be changed or repealed by action of the Legislature.

The Legislature has, on occasion, enacted statutes relating to the public's right of access to great ponds. Since 1973, the right of access to great ponds has also been protected by 17 MRSA §3860 which states

No person on foot shall be denied access or egress over unimproved land to a great pond except that this provision shall not apply to access or egress over the land of a water company or a water district when the water from the great pond is utilized as a source of water....

The section also provides for prosecution by the Attorney General of a complaint by a member of the public who is denied access. It authorizes declaratory and equitable relief as well as criminal penalties.

Section 3860 varies from the Colonial Ordinance in three respects. First it protects access over "unimproved land" as opposed to land which is neither "corn nor meadow." Second, it does not require that access be sought for the purposes of fishing or fowling. Third, the statute permits restrictions on access to land of a water company providing a public water supply.

The 1973 legislation enacting 17 MRSA §3860 also contained a provision protecting certain rights of the public on great ponds. That provision amended Title 12 to include a provision which stated:

Any person on foot may engage in any activity on the great ponds not inconsistent with any other law or regulation of the State or its political subdivisions.
(Currently 12 MRSA §7551, sub-§2.)

It is unclear whether this bill was intended to expand public rights on great ponds. There is no statement of fact on the bill and no legislative debate. The Law Court does not appear to have had occasion to interpret either of these statutes.

Rights Acquired by Long Standing Usage: Prescriptive Rights. An alternative method of establishing public rights of access to private land in the absence of a statutory or common law right is by means of establishing a prescriptive easement. In order to establish a prescriptive easement, it is necessary for the person or group claiming the easement to prove "continuous use for at least 20 years under a claim of right adverse to the owner, with his knowledge and acquiescence or by a use so open, notorious, visible, and uninterrupted that knowledge and acquiescence will be presumed." (A standard specified in many cases; see Curtis, Coastal Recreation: Legal Methods for Securing Public Rights in the Seashore, 33 Me. L. Rev. 69 (1981).)

The most difficult element of the standard to prove is that of "adverseness." "Adverseness" means that the person claiming the easement must demonstrate that the landowner did not give permission to use the land. Under ordinary circumstances, a court will presume, in the absence of evidence to the contrary, that no permission was given. However, if the claim is of a recreational easement and if the land is "wild and uncultivated," a minority of courts, including Maine's, will presume that the land owner granted permission unless the person claiming the easement can demonstrate otherwise. Town Manchester v. Augusta Country Club, 477 A.2d 1124 (Me. 1984). This presumption makes a prescriptive easement for recreational

purposes over wild and uncultivated land very difficult to prove particularly in the unorganized areas of the state.

Rights Acquired by Long Standing Usage: Customary Rights. Ancient legal doctrine permits rights to be established through customary practice. The person claiming the right must show that the usage is "ancient, continuous, peaceable and free from dispute, reasonable, compulsory, certain, and consistent with other customs." See Curtis, Coastal Recreation, 91 to 96. Although the doctrine of customary rights has fallen into disuse in recent times, it was resurrected recently in Oregon to uphold public rights to recreational use of beaches. State ex rel. Thornton v. Hay, 254 Or. 584, 462 P.2d 671 (1969). The Superior Court in the second round of the Bell case recognized the principle of customary rights but found that the facts of that case did not meet the requirements, especially as to duration of the custom and freedom from dispute of the custom. There is no way of predicting whether the Maine Supreme Judicial Court would be inclined to rely on this little used legal doctrine to recognize public rights of access to private land for hunting, fishing or recreational purposes.

Police Power of the State. If the public has not acquired rights of access to private land for hunting, fishing or recreation, the question arises whether the State may require private landowners to permit those activities on their land. Both the United States and Maine Constitutions prohibit the taking of land without compensation and without due process. Maine Constitution, Article I, Section 21; United States Constitution, Fifth and Fourteenth Amendments. The distinction between impermissible takings and the valid exercise of the State's regulatory power is sometimes hard to find. It is quite possible, given recent court decisions, that a State law requiring public access to private might be considered a taking requiring compensation. If the Legislature wishes to consider such action, more detailed analysis of the "takings" issue should be pursued.

The State's interest in wildlife as trustee may have an interesting role in determining the validity of such a law, however. In Seven Islands Land Co. v. Maine Land Use Regulation Commission, 450 A.2d 475 (ME. 1982), the Law Court upheld the action of a State regulatory agency restricting timber harvesting operations for the purposes of protecting deer habitat. It found that the restriction was not a taking because it did not result in a substantial diminution in the value of the property and it was not sufficiently burdensome as to render the property substantially useless. Seven Islands, supra, at 482. Similar arguments could be made about a law requiring public access to wildlands for hunting or recreational purposes.

The Public's Relationship to Wildlife. From time immemorial, wild animals have held a special status under the law. Until killed or domesticated, they are not controlled by

any entity and cannot be reduced to individual ownership. Traditionally, courts and legal commentators have described wildlife as belonging to the sovereignty, the State or the People. State v. McKinnon, 133 A.2d 855, 153 Me. 15 (1957). More recently, courts have expressed the State's relationship to wildlife as one of public trust rather than ownership. In State v. Goyette, 407 A.2d 1104 (Me 1979), the Law Court described the Legislature as "trustee of wild game (at 1112). The United States Supreme Court has described the state's interests in wildlife as interests of conservation and protection and the concept of state ownership as a "fiction." Hughes v. Oklahoma, 441 U.S. 322, 99 S. Ct. 1727 (1979).

The State's trusteeship of wildlife does not and has never been interpreted to authorize members of the public to enter on to private land for purposes of hunting or fishing. It is long established; however, that the State's interest in wildlife does permit it to regulate hunting and fishing. To a certain extent, the State's authority extends to interference with traditional property rights. In McKinnon, supra, a state law prohibiting landowners from hunting on their own land, if that land was designated by the State as a game preserve, was held not to constitute a "taking of property" in violation of the Constitution because of the special role of the State as the protector of wildlife.

Considering the State's role as trustee of the wildlife, it is unclear whether the Legislature could require landowners to permit hunting or fishing on private land without violating the "takings" prohibition of the Maine and U.S. Constitutions. Restrictions on the use of private land have been upheld in cases where they were only marginally intrusive and were considered necessary by the Legislature in the protection of public welfare and safety. (See Seven Islands and McKinnon discussed above). It is unclear whether a state statute authorizing public access to remote private land for purposes of hunting or fishing would survive constitutional scrutiny. If such a law were passed and held to constitute a "taking," it is also unclear what compensation would be required. It seems likely that mandated public access would have little impact on the value of remote land in most instances; however, no analysis has been made of this question.

Conclusions. While it is not possible to be definitive on all of the complex legal issues raised, several points did emerge that guided subsequent committee deliberations.

1. While the public has a clear interest in fish and wildlife which justifies state management actions, this interest does not translate into the right of any individual to enter onto private property to hunt or fish without at least the acquiescence of the landowner.

2. Under the Colonial Ordinance and state statutes (17 MRSA §3860) individual members of the public do have the right to cross private property on foot to gain access to a great pond (this does not apply to rivers and streams). This right is limited to passage over "unimproved" land although this definition of this term is not entirely clear.
3. The question of eligibility for various tax treatments (e.g. Tree Growth Tax) for landowners leasing forest land or charging an access fee is more a matter for legislative policy than judicial interpretation.
4. The ability of the state to impose an increased level of public access to private property is constrained primarily by the Due Process clause of the U.S and State constitutions concerning the taking of private property.

Findings & Recommendations

The Commission has made a series of findings and recommendations which are described below. Some of these will require legislative action; the proposed legislation can be found in Appendix A.

Goals. The Commission finds that the interests of the State and its citizens are best served by maintaining a full range of outdoor recreational opportunities. Furthermore, the Commission finds that the unique attribute which Maine possesses, its large tracts of unbroken forest land, is an irreplaceable asset of utmost importance to Maine's outdoor recreation resources. This resource is overwhelmingly held in private ownerships. Therefore, the Commission recommends that the State acknowledge the importance of this resource by establishing three goals as follows:

1. The State should seek to support and maintain the integrity of the large forested area of the State with wildland characteristics.
2. The State should strive through its actions and policies to keep forested land open for public recreational use.
3. The State should recognize and maintain the historical rights of private ownership, favoring incentives over punitive measures in its efforts to keep the forest resource open for public, recreational use.

Land for Maine's Future. The Commission finds that the role of the Land for Maine's Future Board (LMFB) in the expenditure of the recent \$35 million public lands bond will play a vital role in ensuring adequate public access to recreational opportunities. The Commission finds that public input to this process is crucial. Therefore, the Commission

recommends that the membership of the LMFB be expanded to include two additional public members, appointed by the Governor and confirmed by the Legislature. This action will improve public input to the Board's actions and will allow broader geographical representation to ensure that land conservation needs throughout the state are addressed.

As a separate issue, the Commission strongly recommends that the LMFB take full advantage of its flexible authority to make creative use of the available funds. The Commission encourages the LMFB to consider all alternatives to fee simple acquisition which will meet public objectives while conserving capital and minimizing the operations and maintenance burden on state government. These alternatives include long-term leasing, easements, right-of-way acquisition and vigorous cooperation with the private, non-profit sector in land conservation.

Public Forum. The Commission finds that the central obstacle to rational and reasoned discussion of conflicts over the use of recreational resources is the lack of an effective, open forum with broad participation from all interested parties. Several state agencies have responsibilities for outdoor recreation. State tax policy set by the Legislature and administered by municipalities and the Bureau of Taxation acts separately to influence management decisions. Numerous private parties, including landowners and organized user groups, influence the management and use of outdoor recreational resources.

The Brennan Commission on Outdoor Recreation concluded that adequate public and private institutions existed to carry out all management functions that related to outdoor recreation. However, it suggested the creation of a permanent advisory commission with broad representation to provide the necessary focal point for the development and dissemination of state policy.

The current Commission endorses this recommendation. To accomplish this, the Commission recommends the establishment of a permanent Maine Advisory Commission on Outdoor Recreation (MACOR). The following description of advisory functions of this group is extracted from the more detailed and comprehensive recommendations included in the final report of the Brennan Commission. The relevant sections of that report have been attached as Appendix B. Legislation to enact this recommendation is included in Appendix A.

While the focus of this Commission's efforts has been on the topic of public, recreational use of private forest land, it is the intent of the Commission that MACOR be given a broader mandate to include the full range of outdoor recreation issues. The Commission does recommend that MACOR give high priority attention to the subject of forest-based recreation.

The Commission recommends that the legislation charge MACOR with responsibility to:

1. Review and assess the plans, programs, policies, and priorities of State agencies, local government, and those outside of government that affect the quality and availability of Maine's outdoor recreation resources on a continuing basis, and periodically report its findings and any recommendations for action to the Governor and the Legislature;
2. Advise the Land for Maine's Future Board on the assessment of outdoor recreation acquisition needs and on the development and revision of acquisition strategies and guidelines.
3. Serve as a high-level public forum for the discussion of outdoor recreation issues and for the resolution of conflict between competing demands upon Maine's outdoor recreation resources;
4. Assess public opinion about the status of outdoor recreation periodically, and determine, from a marketing perspective, the public's changing tastes and demand for various outdoor recreation pursuits;
5. Foster communication, coordination, and improved relationships among State agencies, State and local government, landowners, commercial recreation interests and the recreating public; and
6. Act as a clearinghouse for public education and information regarding the use of Maine's outdoor recreation resources.

The Commission recommends that MACOR give priority attention to measures that will foster the public's access to and use of outdoor recreation opportunities either on private land or requiring access across private land. Specifically, the Commission recommends that:

1. The MACOR, with assistance from the Attorney General, Department of Conservation, and the Department of Inland Fisheries and Wildlife, assess the extent and the limitations of the public's legal rights of access to and use of outdoor recreation resources, to clarify any ambiguities, and to report their findings with any recommendations to the Governor and the Legislature by January 1, 1989;
2. At the earliest possible date following completion of this assessment and periodically thereafter, MACOR undertake a public information campaign to educate the public regarding their rights and their responsibilities in using these resources;

3. MACOR develop, in association with hunters, anglers, other recreationists, and landowners, a statement of "user ethics," establishing high standards of courtesy and responsibility, and promote this user ethic, as well, through a public information campaign;
4. MACOR with assistance from the Attorney General, Department of Conservation, and the Department of Inland Fisheries and Wildlife, assess the adequacy of laws and enforcement measures designed to control the abuse of public recreation rights and privileges, and report its findings and recommendations to the Governor and the 114th Legislature;
5. MACOR serve as a ombudsman and advocate for the public's rights to use outdoor recreation resources, and as a forum to resolve disputes between recreationists and landowners; and
6. MACOR work closely with private landowners to address their legitimate concerns about the problems and costs of public recreation use of their lands, to foster public acceptance of reasonable user fees and other legitimate measures to manage recreation, and to secure long-term agreements wherever possible that assure public recreation use under reasonable conditions.

The Commission recommends that the legislation direct MACOR to include in its annual reports to the Governor and Legislature, specific findings assessing the overall quality of outdoor recreation in Maine, and any recommendations regarding policies and programs needed to assure the continued quality of Maine's outdoor recreation opportunities.

Liability. The Commission finds that the character and type of outdoor recreation in the north woods is changing. The improving recreational access to the north Maine woods has encouraged a new kind of visitor to these parts. No longer are the backwoods the exclusive preserve of the people skilled in woods lore and survival skills. Increasingly, visitors to the north woods have come to resemble visitors to the national park system. They expect more services, are less aware of the hazards of remote recreation experiences and may be completely unprepared for the problems that exist when recreation and a vigorous industrial forestry operation coexist.

Many landowners have found it necessary to substantially increase their budgets for recreation management in order to accommodate these new users. Included in these costs is the cost of liability insurance. At the same time, those landowners that have enacted user charges have assumed a higher standard of responsibility for the safety of their visitors.

Existing state law (14 MRSA §159-A) provides a partial liability shield for those landowners who permit recreational

use of their property without charging any fee. Those charging a fee of any amount are not afforded this protection. The existing law is attached as Appendix C. It is important to note that the provisions do not preclude tort action by an injured party nor do these provisions provide the landowner with complete immunity from any allegation of negligence. The existing statute does provide for an award of direct legal costs to the landowner assessed against the plaintiff if a suit is brought and the landowner is found to be not liable.

The Commission recommends that the provisions of 14 MRSA §159-A regarding the award of legal fees be amended and extended to those landowners who charge fees for the use of their land.

Access fees, leasing and eligibility for Tree Growth Tax treatment. In the original debate over access during the first regular session of the 113th Legislature, the linkage between eligibility for the tree growth tax program and the existence of leases or user fees was discussed. The Legislature chose to create two, separate commissions to study the broader questions of outdoor recreation and forest tax policy. The reader should consult the final report of the Commission on Forest Taxation for recommendations directly related to the Tree Growth Tax and other forest taxation issues.

The Commission on Outdoor Recreation considered the question of access fees at length, particularly in the context of the economic climate for private forest land management. The Commission, by majority vote (3 opposed), endorsed the practice of charging reasonable users fees that reflect the costs landowners incur from public use of their lands. The Brennan Commission on Outdoor Recreation endorsed similar practices. The Commission explicitly rejected a proposal to link tree growth tax eligibility to the user fee issue. The Commission reasoned that the proposal in question (essentially LD 847) would unfairly penalize those landowners whose land was open to public use for a fee while allowing other land owners to close their land to public use entirely and still remain in the tree growth tax program.

The Commission discussed large lot leasing activity but choose not to directly address the question of tree growth tax eligibility for certain categories of leased forest land. The Commission, however, is concerned about the long-term implications about continued growth in the amount of acreage being leased in large lots. While the current acreage in this category is small as a proportion of the entire forest land base, the Commission recommends that the new MACOR (see legislation) monitor the trends in leased acreage.

The Commission decided that the questions related to tree growth tax are more properly considered in the context of a broader analysis of state and federal forest tax policy. Thus, rather than attempting to craft an amendment to the Tree Growth

Tax law from the narrow context of outdoor recreation, the Commission recommends that the Commission on Forest Taxation and the Joint Standing Commission on Taxation examine the criteria for eligibility in the Tree Growth Tax program as those relate to public access and recreation.

2927

APPENDIX A
Proposed Legislation

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY SEVEN

AN ACT to Enhance Outdoor Recreation Opportunities

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

Sec. 1. 5 MRSA §6204, sub§§ 1 through 4 are amended to read:

1. Composition. The board shall consist of 9 11 members, ~~4~~ 6 of whom shall be appointed private citizens and 5 of whom shall be permanent members. The permanent members shall be the Commissioner of Conservation; the Commissioner of Inland Fisheries and Wildlife; the Commissioner of Transportation; the Commissioner of Agriculture, Food and Rural Resources and the Director of the State Planning Office.

2. Appointments. The ~~4~~ 6 appointed private citizens members shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature with jurisdiction over natural resources and to confirmation by the Legislature.

3. Qualifications. The ~~4~~ 6 appointed members shall be selected based on their knowledge of the State's natural resources and their demonstrated commitment to land conservation. At least two of the private citizen members shall reside north of the 45th parallel.

4. Terms; compensation. The appointed private citizen members shall be appointed to staggered 4-year term. The initial appointments shall be as follows: one 2 members for a 2-year terms; and one 2 members for a 3-year terms;

and 2 members for 4-year terms. Appointed private citizen members ~~may shall-be-allowed-to~~ serve no more than 2 consecutive 4-year terms. The appointed members shall receive the legislative per diem pursuant to chapter 375.

Sec. 2. 5 MRSA §6205, sub§4 is amended to read:

4. Quorum. A quorum of the board for the transaction of business shall be 6 ~~7~~ members.

Sec. 3. 5 MRSA §6206, §§A and E are amended to read:

A. Complete by June 1988, an assessment of the State's public land acquisition needs ~~which shall-be-conducted with opportunities-for-participation-by-interested-state agencies-and-the-public~~ and to develop a strategy and guidelines, based on this assessment, for use in allocating the proceeds of the Land for Maine's Future Fund. Both the assessment and the development of a strategy and guidelines shall be conducted with opportunities for participation by the Maine Advisory Commission on Outdoor Recreation, interested state agencies and the public;

E. Report biennially to the joint standing committee of the Legislature with jurisdiction over natural resources on expenditure of the fund and revisions to the strategies and guidelines.

Sec. 4. 12 MRSA chapter 432 is enacted to read:

CHAPTER 432

Maine Advisory Commission on Outdoor Recreation

§5210 Board advisory function.

There is established a Maine Advisory Commission on Outdoor Recreation. The commission shall undertake a continuing effort to assess and coordinate outdoor recreation policy in the state. The commission shall advise the Governor and the Legislature on all aspects of such policy as described in this section.

1. Composition. The commission shall consist of 15 members, representing a broad range of interests in outdoor recreation. These members shall include 6 private citizens and 4 legislative members. In addition, the Commissioner of Conservation, the Commissioner of Inland Fisheries and Wildlife, the Director of the Bureau of Public Lands, the Director of the Bureau of Parks and Recreation and the Director

of the Maine Forest Service shall be permanent members.

2. Appointments. The appointed private citizen members shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature with jurisdiction over natural resources and to confirmation by the Legislature. The President of the Senate shall appoint 2 legislative members and the Speaker of the House shall appoint 2 legislative members.

3. Qualifications. The appointed private citizen members shall be selected based on their knowledge of outdoor recreation issues. The membership shall be selected so as to provide representation for a wide range of outdoor recreation interests including without limitation, fishing and hunting clubs, forest landowners, camp lease holders, commercial sporting camp operators, conservation groups, and local government. Three of the private citizen members shall reside north of the 45th parallel and 3 shall reside south of the 45th parallel.

4. Terms; compensation. The appointed private citizen members shall be appointed to staggered 3-year terms. The initial appointments shall be as follows: 2 members for 1-year terms; and 2 members for 2-year terms; and 2 members for 3-year terms. Appointed members may serve no more than 2 consecutive 3-year terms. The appointed members shall receive no compensation but shall be reimbursed for direct expenses. Any member whose term has expired may serve until a successor has been appointed and confirmed.

5. Quorum. A quorum of the commission for the transaction of business shall be 9 members.

6. Meetings. The commission shall meet at least 4 times each year at the call of the chair.

7. Chair. The commission shall select a chair from amongst its membership.

8. Staff. The Department of Conservation shall provide staff assistance as necessary to support the activities of the commission. The Department of Inland Fisheries and Wildlife and the State Planning Office shall also provide assistance as required by the commission.

9. Advisory goals. The commission, through its advisory function, shall seek to:

A. Protect outstanding scenic values;

B. Maintain a diversity of recreation opportunities;

C. Resolve conflicts between different outdoor recreation uses, and between outdoor recreation and other uses for

Maine's natural resources; and

D. Protect the special character of specific recreation experiences.

10. Responsibilities. Specifically the commission shall:

A. Review and assess the plans, programs, policies, and priorities of State agencies, local government, and those outside of government that affect the quality and availability of Maine's outdoor recreation resources on a continuing basis, and report its findings and any recommendations for action to the Governor and the Legislature as provided in this section;

B. Advise the Land for Maine's Future Board on the assessment of outdoor recreation acquisition needs and on the development and revision of acquisition strategies and guidelines.

C. Serve as a high-level public forum for the discussion of outdoor recreation issues and for the resolution of conflict between competing demands upon Maine's outdoor recreation resources;

D. Assess public opinion about the status of outdoor recreation periodically, and determine, from a marketing perspective, the public's changing tastes and demand for various outdoor recreation pursuits;

E. Serve as a forum for State and local government, private landowners, commercial recreation providers, and the public to discuss the State's outdoor recreation promotional efforts, advising the Office of Tourism, the Department of Transportation, the Maine Publicity Bureau, and others on public information and education policies.

F. Foster communication, coordination, and improved relationships among State agencies, State and local government, landowners, commercial recreation interests and the recreating public;

G. Act as a clearinghouse for public education and information regarding the use of Maine's outdoor recreation resources; and

H. Serve as the chief advisory body to the Bureau of Parks and Recreation in the preparation of the State Comprehensive Outdoor Recreation Plan.

11. Priority issues. The commission shall give priority attention to measures that will foster the public's access to and use of outdoor recreation opportunities either on private land or requiring access across private land. Specifically, the commission shall:

A. Conduct, in cooperation with the Commissioners of the Departments of Conservation and Inland Fisheries and Wildlife and with assistance from the Attorney General, an assessment of the extent and the limitations of the public's legal rights of access to and use of outdoor recreation resources, to clarify any ambiguities. The commission shall report its findings with any recommendations to the Governor and the Legislature by January 1, 1989;

B. Conduct, at the earliest possible date following completion of this assessment conducted under this section and periodically thereafter, a public information campaign to educate the public regarding their rights and their responsibilities in using these resources;

C. Develop, in association with hunters, anglers, other recreationists, and landowners, a statement of "user ethics," establishing high standards of courtesy and responsibility, and promote this user ethic, as well, through a public information campaign;

D. Assess, with assistance from the Attorney General, Department of Conservation, and the Department of Inland Fisheries and Wildlife, the adequacy of laws and enforcement measures designed to control the abuse of public recreation rights and privileges, and report its findings and recommendations to the Governor and the 114th Legislature;

E. Serve as a ombudsman and advocate for the public's rights to use outdoor recreation resources, and as a forum to resolve disputes between recreationists and landowners; and

F. Work closely with private landowners to address their legitimate concerns about the problems and costs of public recreation use of their lands, to foster public acceptance of reasonable user fees and other legitimate measures to manage recreation, and to secure long-term agreements wherever possible that assure public recreation use under reasonable conditions.

12. Local cooperation. The commission shall work closely with local governments to address special concerns about public recreation use rights and responsibilities on private land in Maine cities and towns. Specifically, the commission shall facilitate the local public input into the development of management plans for parcels of public land under the control of the Bureau of Public Lands and the Bureau of Parks and Recreation.

13. Annual report. The commission shall report annually to the Governor and the joint standing committee of the Legislature with jurisdiction over natural resources with

specific findings assessing the overall quality of outdoor recreation in Maine, and any recommendations regarding policies and programs needed to assure the continued quality of Maine's outdoor recreation opportunities.

Sec. 5. 14 MRSA §159-A, sub§ 6 is amended to read:

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee or occupant of premises:

A. ~~who~~ Who is found not to be liable for injury to a person or property pursuant to this section; or

B. Who is found not to be liable for injury to a person or property in an action for negligence that, but for the limitation of subsection 4, paragraph B, would have been governed by this section.

Statement of Fact

The purpose of this legislation is to implement the recommendations of the Commission on Outdoor Recreation established pursuant to P&SL 1987, c.68.

The first and second sections of the bill amend the membership provisions of the Land for Maine's Future board to add two additional public members and adjust other technical provisions to fit the increased size of the board. The amendment also adds a geographic distributional requirement to ensure representation from northern Maine and due attention to the land conservation needs of northern Maine.

The third section of the bill improves the level of public input to the Land for Maine's Future program.

The fourth section establishes a Maine Advisory Commission on Outdoor Recreation with broad responsibilities to assess and coordinate outdoor recreation issues, needs and policies. The responsibilities of the advisory commission are described fully in the final report of the legislative Commission on Outdoor Recreation.

Finally, the fifth section of the bill amends the limited liability protection currently afforded to private landowners who allow public recreational use of their land without receiving compensation. This amendment provides that the court shall assess legal costs against the unsuccessful plaintiff suing a landowner who charges access fees. Currently, this provision applies only in situations in which landowners receive no compensation. The standard of liability is not changed.

APPENDIX B

Recommendations of the
Brennan Commission on Outdoor Recreation
concerning the establishment and responsibilities of
the Maine Advisory Commission on Outdoor Recreation
(MACOR)

Brennan Commission on Outdoor Recreation
Recommendations

Recommendations

- 1) The Commission recommends legislation to establish, in the Executive Branch, a permanent Maine Advisory Commission on Outdoor Recreation (MACOR), comprised of eminent Maine citizens appointed by the Governor, subject to approval by the Legislature.
- 2) The Commission recommends that the legislation charge this MACOR with responsibility to:
 - a) Review and assess the plans, programs, policies, and priorities of State agencies, local government, and those outside of government that affect the quality and availability of Maine's outdoor recreation resources on a continuing basis, and periodically report its findings and any recommendations for action to the Governor and the Legislature;
 - b) Serve as a high-level public forum for the discussion of outdoor recreation issues and for the resolution of conflict between competing demands upon Maine's outdoor recreation resources;
 - c) Assess public opinion about the status of outdoor recreation periodically, and determine, from a marketing perspective, the public's changing tastes and demand for various outdoor recreation pursuits;
 - d) Foster communication, coordination, and improved relationships among State agencies, State and local government, landowners, commercial recreation interests and the recreating public; and
 - e) Act as a clearinghouse for public education and information regarding the use of Maine's outdoor recreation resources.
- 3) The Commission recommends that the MACOR assess the current State Comprehensive Outdoor Recreation Plan (SCORP), and that in the future, the Bureau of Parks and Recreation use the MACOR as its chief advisory body in the preparation of the SCORP.
- 4) The Commission recommends that this MACOR have an Executive Director to serve as its principal staff, and that the legislation direct other State agencies to assist the MACOR and its Executive Director to fulfill their responsibilities.

- 5) The Commission recommends that the new MACOR give priority attention to measures that will foster the public's access to and use of outdoor recreation opportunities either on private land or requiring access across private land. Specifically, the Commission recommends that:
- a) The Governor direct the Commissioners of the Departments of Conservation and Inland Fisheries and Wildlife, with assistance from the Attorney General, to assess the extent and the limitations of the public's legal rights of access to and use of outdoor recreation resources, to clarify any ambiguities, and to report their findings with any recommendations to the Governor and the Legislature by January 1, 1988;
 - b) At the earliest possible date following completion of this assessment and periodically thereafter, the MACOR undertake a public information campaign to educate the public regarding their rights and their responsibilities in using these resources;
 - c) The MACOR develop, in association with hunters, anglers, other recreationists, and landowners, a statement of "user ethics," establishing high standards of courtesy and responsibility, and promote this user ethic, as well, through a public information campaign;
 - d) The MACOR with assistance from the Attorney General, Department of Conservation, and the Department of Inland Fisheries and Wildlife, assess the adequacy of laws and enforcement measures designed to control the abuse of public recreation rights and privileges, and report its findings and recommendations to the Governor and the 113th Legislature;
 - e) The MACOR serve as a ombudsman and advocate for the public's rights to use outdoor recreation resources, and as a forum to resolve disputes between recreationists and landowners;
 - f) The MACOR work closely with private landowners to address their legitimate concerns about the problems and costs of public recreation use of their lands, to foster public acceptance of reasonable user fees and other legitimate measures to manage recreation, and to secure long-term agreements wherever possible that assure public recreation use under reasonable conditions; and

- g) The MACOR conduct a study, including an assessment of State taxation policies, to identify impediments and incentives the State may address to foster the cooperation of private landowners to provide public recreation use of their lands, and report its findings and recommendations to the Governor and the 113th Legislature.
- 6) The Commission encourages the Department of Inland Fisheries and Wildlife to continue its current efforts, and to explore new opportunities to use its fish and wildlife management policies to foster improved relations between landowners and the recreating public.
- 7) The Commission recommends that the MACOR work closely with local governments to address special concerns about public recreation use rights and responsibilities on private land in Maine cities and towns.
- 8) The Commission encourages the outstanding efforts of sportsman's groups, organized recreation clubs, and others to promote and foster "user ethics" and to improve landowner relations.
- 9) The Commission recommends that the legislation establishing the MACOR, direct it to include in its biennially-mandated reports to the Governor and Legislature, specific findings assessing the overall quality of outdoor recreation in Maine, and any recommendations regarding policies and programs needed to assure the continued quality of Maine's outdoor recreation opportunities.

Specifically, the MACOR should address:

- a) Protection of outstanding scenic values;
 - b) Maintenance of a diversity of recreation opportunities;
 - c) Conflicts between different outdoor recreation uses, and between outdoor recreation and other uses for Maine's natural resources; and
 - d) Protection of the special character of specific recreation experiences.
- 10) The Commission recommends that the MACOR serve as a forum for State and local government, private landowners, commercial recreation providers, and the public to discuss the State's outdoor recreation promotional efforts, advising the State Development Office/Division of Tourism, Maine Department of Transportation, Maine Publicity Bureau, and others on public information and education policies.

APPENDIX C

Existing Liability Provisions - 14 MRSA §159-A

TITLE 14

§ 159-A. Limited liability for recreational or harvesting activities

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

A. "Premises" shall mean improved and unimproved lands, private ways, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands.

B. "Recreational or harvesting activities" means recreational activities conducted out of doors, including hunting, fishing, trapping, camping, hiking, sight-seeing, operation of snow-traveling and all-terrain vehicles, skiing, hang-gliding, boating, sailing, canoeing, rafting or swimming or activities that involve harvesting or gathering forest products. It shall include entry, use of and passage over premises in order to pursue these activities.

2. Limited duty. An owner, lessee or occupant of premises shall owe no duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes.

3. Permissive use. An owner, lessee or occupant who gives permission to another to pursue recreational or harvesting activities on the premises shall not thereby:

A. Extend any assurance that the premises are safe for those purposes;

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or

C. Assume responsibility for or incur liability for any injury to person or property caused by any act of per-

sons to whom the permission is granted.

4. Limitations on section. This section shall not limit the liability which would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity;

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the landowner by the State; or

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

5. No duty created. Nothing in this section shall create a duty of care or ground of liability for injury to a person or property.

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee or occupant who is found not to be liable for injury to a person or property pursuant to this section.

APPENDIX D

Commission Membership & Affiliations

MEMBERSHIP OF
MAINE COMMISSION ON OUTDOOR RECREATION
(Resolve 1987, ch. 68)

Appointed by the President of the Senate

Sen. R. Donald Twitchell
Norway, ME

Sen. Charles Dow
West Gardiner, ME

Mr. Darrell Morrow
Millinocket Fin & Feather
Millinocket, ME

Sen. Zachary E. Matthews
Winslow, ME

Appointed by the Speaker of the House

Rep. Herbert E. Clark (Chair)
Millinocket, ME

Rep. Paul F. Jacques
Waterville, ME

Rep. Carl B. Smith
Island Falls, ME

Rep. Carol Allen
Liberty, ME

Rep. Willis A. Lord
No. Waterboro, ME

Rep. Clyde A. Hichborn
Lagrange, ME

Mr. Paul E. Martin
Public Member
Eagle Lake, ME

Appointed by the Governor

James McBreairty (Vice-chair)
Snowmobile Operators
Caribou, ME

Wesley Smith
Sportsmans Alliance
Augusta, ME

Roger Milliken, Jr.
Maine Forest Products Council
Brookton, ME

Ron Lovaglio
International Paper
Augusta, ME

Ernest Caliendo
Sporting Camp Operator
Bangor, ME

Ronald L. Masure
Greenville, ME

Ralph Leavitt
Journalist
Hampden, ME