

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SECOND LEGISLATURE

Legislative Document

No. 1556

S. P. 554

In Senate, May 19, 1965

Reported by Majority, from Committee on Natural Resources. Printed under Joint Rules No. 10.

EDWIN H. PERT, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FIVE

AN ACT Creating the Allagash Wilderness Waterway.

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

Sec. 1. R. S., T. 12, c. 206, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 206, to read as follows:

‘CHAPTER 206

ALLAGASH WILDERNESS WATERWAY

SUBCHAPTER I

GENERAL PROVISIONS

§ 661. Policy

The preservation, protection and development of our natural scenic beauties, waterways, wildlife habitats and wilderness recreational resources for this generation and all succeeding generations; the prevention of erosion, droughts, freshets and the filling up of waters; and the promotion of peace, health, morals and general welfare of the public being the concern of the inhabitants, the Legislature declares it to be in the public interest, for the public benefit and for the good order of the people of this State to establish an area known as the Allagash Wilderness Waterway.

§ 662. Definitions

The following terms as used in this chapter are defined as follows:

1. Commission. “Commission” means the Maine State Park and Recreation Commission.

2. **Control station.** "Control station" means a regular stopping place maintained by the commission where users of the waterway may be registered.

3. **Cutting plan.** "Cutting plan" means a plan of timber harvesting operations for areas within the Allagash Wilderness Waterway.

4. **Emergency use.** "Emergency use" means a use resulting from an unforeseen combination of circumstances calling for immediate action to protect persons or property.

5. **The watercourse.** "The watercourse" means the natural flow of water in the defined bed or channel of the Allagash Stream and Allagash River from the west boundary of T. 8, R. 14 down-stream approximately 100 miles east and north to the confluence of the river with West Twin Brook. It shall include Allagash Lake, that part of Chamberlain Lake north of a line due west from Lock Dam, Eagle Lake, Churchill Lake, Umsaskis Lake, Long Lake, Harvey Pond, Round Pond and all intervening and connecting small bodies of water.

6. **Watercraft.** "Watercraft" means any type of vessel, boat or craft used or capable of being used as a means of transportation on waters other than a seaplane.

§ 663. Establishment; area

The Allagash Wilderness Waterway is established covering an area as defined in this section and shall hereinafter be called "the waterway." The area of the waterway means the watercourse of the Allagash Stream and the Allagash River beginning at the west boundary of T. 8, R. 14 where said boundary crosses the inlet to Allagash Lake and thence down-stream approximately 100 miles east and north to the confluence of the Allagash River with West Twin Brook. It shall include from said place of beginning, said inlet, Allagash Lake, the part of Chamberlain Lake north of a line due west from Lock Dam to the southeast corner of the public lot on the west shore of Chamberlain Lake within T. 7, R. 13, Eagle Lake, Churchill Lake, Umsaskis Lake, Long Lake, Harvey Pond, Round Pond and all waters intervening and connecting the foregoing. It shall include all land area and all waters within one mile of the shore line of the aforementioned lakes and ponds, intervening and connecting waters, and within one mile of the high water mark of either bank of the aforementioned streams and rivers.

§ 664. Administration

The State Park and Recreation Commission shall administer the waterway pursuant to this chapter, except for the power to control activities previously delegated by law to the Departments of Forestry and Inland Fisheries and Game.

§ 665. Control of water areas; permitted and prohibited uses

1. **Power watercraft.** No watercraft equipped with power propulsion of any kind or any other motorized equipment used for recreational purposes shall be allowed in the waterway, except for motors of such size, not exceeding 10 horsepower, and in such areas as the commissioner may from time to time permit by rule and regulation.

2. Landing of aircraft. The landing use of aircraft shall be prohibited within the waterway, except for

A. Emergency use;

B. Necessary use by state agencies and departments;

C. Use within such landing areas and for such purposes as may be designated by the commission.

3. When water frozen. The commission may by rule and regulation permit the foregoing uses during such times as the water areas are frozen.

§ 666. Control of land areas

1. Camp sites. Camp sites for public use shall be kept small in size, and shall be located by the commission in cooperation with the Maine Forestry District.

2. Structures. No new structures or expansion of existing structures shall be permitted within 300 feet of the high water mark of the river and stream banks and shores of other bodies of water of the watercourse, except those structures essential to state service agencies, those structures determined by the commission to be essential in maintaining water level controls, and such temporary structures as may be determined by the commission to be necessary for watercourse crossing and access.

3. New construction. Any new construction within $\frac{1}{2}$ mile of the watercourse shall be done only with the prior approval of the commission.

4. Private owners. Privately owned camps now existing may be continued and maintained for 25 years or until abandoned, whichever occurs first.

5. Advice by Forestry Department. The Forestry Department shall advise in all matters pertaining to forest management within the waterway.

§ 667. Authority to acquire property, accept gifts and make agreements

The commission is empowered to acquire on behalf of the State, land or any interest therein, water and power rights, within the boundaries of the waterway or adjacent thereto, by purchase, lease or gift and to enter into agreements concerning the same. Any land adjacent to the waterway so acquired shall become part of the waterway. The commission is authorized to accept and receive gifts and bequests of money or other property, including funds from the Federal Government, for purposes consistent with the intent of the Legislature in establishing the waterway.

Within 300 feet of the high water mark of the river and stream banks and shores of other bodies of water of the watercourse, the commission is empowered to acquire by eminent domain on behalf of the State, land or any interest therein, water and power rights.

§ 668. Manner of acquisition by eminent domain

Any acquisition of property by the commission by eminent domain pursuant to the provisions of section 667 shall be made in the manner provided in Title 35, chapter 263.

§ 669. Initial plan for acquisition

As soon as practicable after the effective date of this Act the commission shall proceed to acquire such rights in the land within 300 feet of the high water mark of river and stream banks and shores of other bodies of water of the watercourse as the commission shall determine necessary or convenient to accomplish the purposes of this chapter; provided, that neither anything in this section contained nor any action under this section shall in any way limit any of the powers or authority of the commission under this chapter or the exercise thereof by the commission.

§ 670. Control of timber-harvesting operations

1. **Limitations.** No timber-harvesting operation shall be permitted within 300 feet of the high water mark of river and stream banks and shores of other bodies of water of the watercourse except

A. By direction of the commission for the purpose of maintaining healthy forest conditions, or

B. By direction of the commission for the purpose of correcting situations arising from natural disasters.

2. **Exceptions.** Subject to limitations set forth in subsection 1, timber-harvesting operations shall be permitted within the waterway provided as follows:

A. A cutting plan shall be submitted to and approved by the commission before cutting. Such plan shall designate:

- (1) The amount of timber to be removed, and
- (2) The time of cutting and removal.

B. All timber to be cut and removed within one-quarter of a mile of the high water mark of river and stream banks and shores of other bodies of water of the watercourse must be marked before cutting.

§ 671. Use of roads

1. **New roads.** No new public roads will be constructed except upon approval of the commission.

2. **Existing roads.** Existing private roads within the waterway shall remain privately owned as existing. The commission may direct the discontinuance and relocation of such portions of said roads as may be within 300 feet of the high water mark of the river and stream banks and shores of other bodies of water of the watercourse, such relocation to be at the expense of the commission.

§ 672. Access points and control stations

Access points, control stations and watercourse crossings may be located at such places as may be determined by the commission.

§ 673. Rules and regulations

The commission may from time to time establish such rules and regulations as it deems necessary and desirable for the protection and safety of the public,

and for the proper observance of the conditions and restrictions of this chapter. The rules and regulations shall provide for proper observance of rules of human behavior to preserve the natural beauty and wilderness character of the waterway. The rules and regulations may provide for the registration of users of the waterway and the commission may collect fees for the use of the waterway and its services.

Before promulgating rules and regulations, they shall be submitted to the Attorney General, and if he shall certify that in his opinion they are in conformity with the law, they shall thereupon be published once a week for 2 successive weeks in the state newspaper, and posted in at least 4 places within said waterway, whereupon they shall take effect. A certificate of such publication and posting shall be executed by a majority of the members of the commission and filed with the Secretary of State, who shall record the same.

§ 674. Penalties

Whoever violates any provision of this chapter except section 670, or whoever violates any rules and regulations of the commission promulgated in conformity with section 673, other than those properly promulgated rules and regulations pertaining to section 670, shall be punished by a fine of not more than \$50 for each day of such violation or by imprisonment for not more than 30 days, or by both.

Any person, corporation or other legal entity who shall violate any of the provisions of section 670 or any properly promulgated rule and regulation pertaining to section 670 shall be punished by a fine of not less than \$200 nor more than \$1,000 for each day of such violation.

§ 675. Employees

The commission shall fix the duties of and employ permanently or part-time such employees and other personnel, subject to the Personnel Law, as the commission may from time to time deem necessary in the discharge of its duties under this chapter

§ 676. Allocation of funds

All moneys received by the Commission shall be deposited with the Treasurer of State to be credited to the General Fund

§ 677. Forest fire protection tax exemption

No special forest fire tax shall be levied against landowners within the one mile area encompassed in the total boundary of the waterway. The commission shall make payments to the Maine Forest District in lieu of taxes on the basis of 6c per acre per year for all land within the said one-mile area for the prevention, control and extinguishment of forest fires.

SUBCHAPTER II

ARBITRATION BOARD

§ 681. Creation of arbitration board

The Allagash Arbitration Board is created and hereinafter in this chapter

called the "board", whose duty it shall be to arbitrate controversies between owners of land within the waterway and the commission arising from decisions of the commission pertaining to timber-harvesting within the waterway.

§ 682. Composition; appointment; term; compensation; powers

The board shall consist of 3 members, who shall be appointed by the Governor with the advice and consent of the Council to serve for 3 years and until their successors are duly appointed and qualified. One member of the board shall be chairman and shall be a member of the Maine bar, other than the Attorney General or a member of his staff. One member of the board shall be a person who has knowledge of and belief in natural resource conservation principles. One member of the board shall be an owner of land within the waterway or his representative. They shall be sworn and for willful neglect of duty or malfeasance in office may, after notice and hearing, be removed by the Governor and Council. In case of a vacancy occurring through death, resignation or removal, the Governor, with the advice and consent of the Council, shall appoint a successor for the remaining term of the member whose place he takes, subject to removal as aforesaid.

The Governor, with the advice and consent of the Council, shall set the rate of pay on a per diem basis which each member of the board shall receive and they shall be remunerated for all expenses necessarily incurred in the performance of their official duties.

In carrying out its duties, the board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. It shall admit all testimony having reasonable probative value but shall exclude irrelevant or repetitious testimony. All members of the board shall be present at an arbitration hearing. A majority of the board may determine all matters at the hearing, but the chairman shall resolve all questions of admissibility.

The board shall have authority to make rules and regulations and prescribe forms to secure a speedy, efficient and inexpensive disposition of all proceedings. Each member of the board, for its official purposes, may administer oaths, certify official acts and issue all processes necessary to the performance of the duties of the board.

§ 683. Initiation of arbitration

Any owner of land within the waterway, hereinafter called the landowner, who feels himself aggrieved by a decision of the commission pertaining to timber-harvesting may commence arbitration within 30 days of the decision of the commission by giving written notice to the commission of intention to arbitrate, which notice shall hereinafter be called a statement for arbitration, and by simultaneously filing the statement for arbitration with the chairman of the board.

The statement for arbitration will set forth the disputed decision of the commission, grounds for modifying or overruling the decision and a requested decision by the board.

The commission upon receipt of a statement for arbitration may, if it so desires, file an answering statement with the chairman of the board within 7 days of said

receipt, in which event it shall simultaneously send a copy of its answer to the landowner. If no answering statement is filed within the stated time, it will be assumed the commission denies that there are sufficient grounds to modify or overrule the disputed decision.

§ 684. Time and place for hearing

The chairman of the board shall fix the time and place for each hearing within 30 days of receipt of an arbitration statement and shall mail at least 5 days prior thereto notice thereof to the landowner and the commission.

§ 685. Hearing

The arbitration hearing shall be opened and be presided over by the chairman of the board. A stenographic record shall be kept of proceedings of the hearing. The record of the hearing shall note the place and time of the hearing, the presence of the board members and parties, and counsel, if any, and the receipt by the chairman of the board of the statement for arbitration and answering statement, if any.

The chairman may, at the beginning of the hearing, ask for statements clarifying the issues involved. The landowner or his counsel may then present his claim and proofs and his witnesses who shall submit to questions or other examination. The commission or its counsel may then present its defense and proof and its witnesses who shall submit to questions or other examination. The board may in its discretion vary this procedure but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proofs. Exhibits when offered by any party may be received in evidence by the board and any so received shall be ruled and made a part of the record. The board shall inquire of all parties whether they have any further proof to offer or present witnesses to be heard. Upon receiving negative replies, the chairman shall declare the hearing closed.

§ 686. Expenses

The board shall have a reporter to record each hearing. The cost of the stenographic record shall be borne equally by the parties. The expense of witnesses on either side shall be paid by the party producing such witnesses or proof.

§ 687. Decision

The board shall render its decision promptly and unless otherwise agreed by the parties no later than 30 days from the date of the closing of the hearing. The chairman of the board shall notify the landowner and the commission of the results of the hearing by sending a copy of the decision to each party or his attorney of record by certified mail, return receipt requested.

The decision shall affirm, overrule or modify the disputed decision of the commission. The decision shall include findings of fact and conclusions of law.

§ 688. Appeals

The commission shall have no appeal from a decision of the board.

The landowner, if aggrieved by a decision of the board, may appeal to the Superior Court in the same manner as provided in the Administrative Code, Title 5, section 2451, for appeals from final decisions of the Hearing Commissioner.

The landowner may appeal from the decision of the Superior Court to the Supreme Judicial Court as in other civil cases.'

§ 689. Separability clause

If any provision of this chapter, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.'

Sec. 2. Appropriation. There is appropriated from the General Fund to the State Park and Recreation Commission to carry out the purposes of this Act the sum of \$140,400 for the fiscal year ending June 30, 1966 and the sum of \$53,900 for the fiscal year ending June 30, 1967. The breakdown shall be as follows:

Department	1965-66	1966-67
PARK AND RECREATION COMMISSION		
Personal Services	\$ 19,600	\$19,600
All Other (Fire protection Maine Forestry District, \$10,000)	48,800	24,300
Capital Expenditures	72,000	10,000
Total	<u>\$140,400</u>	<u>\$53,900</u>