

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(New Draft of H.P. 1576, L.D. 2086)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2368

H.P. 1793

House of Representatives, March 27, 1984

Reported by Representative Jacques from the Committee on Energy and Natural Resources and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

AN ACT to Clarify the Timber-harvesting
Provisions of the Allagash Wilderness Waterway
Statutes.

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

Sec. 1. 12 MRSA §662, sub-§§9-A and 9-B are enacted to read:

9-A. Timber-harvesting operation. "Timber-harvesting operation" means the cutting and removal of trees from their growing site and the attendant operation of mobile or portable chipping mills, and of cutting and skidding machinery, including the creation and use of skid trails, skid roads and winter haul roads, and the construction or creation of land management roads.

1 9-B. Visible from the watercourse. "Visible from
2 the watercourse" means what a person at any point on
3 the watercourse from Churchill Dam north can see
4 without the aid of any magnifying devices.

5 Sec. 2. 12 MRSA §666, sub-§3, as amended by PL
6 1973, c. 460, §17, is further amended to read:

7 3. Camps. Other than structures permitted under
8 subsection 1, camps shall be prohibited within the
9 restricted zone. Existing commercial sporting camps
10 shall be acquired and may be leased back to present
11 owners or others on terms and conditions determined
12 by the bureau; except that as of the effective date
13 of this subsection, as amended, the bureau may not
14 change the existing type of use of Jalbert's Sporting
15 Camps on Round Pond and Nugents Sporting Camps on
16 Chamberlain Lake, nor destroy nor abandon these camps
17 without legislative approval.

18 Sec. 3. 12 MRSA §670, as amended by PL 1973, c.
19 460, §17, is repealed and the following enacted in
20 its place.

21 §670. Control of timber-harvesting operations

22 1. Restricted zone. Timber-harvesting opera-
23 tions shall not be permitted within the restricted
24 zone, except:

25 A. By direction of the bureau for the purpose of
26 maintaining healthy forest conditions; or

27 B. By direction of the bureau for the purpose of
28 correcting situations arising from natural disas-
29 ters.

30 2. Waterway outside restricted zone. No person
31 may commence a timber-harvesting operations in the
32 waterway outside of the restricted zone without con-
33 sultation with or, when required under paragraph B,
34 approval from the bureau.

35 A. Before a timber-harvesting operation is com-
36 menced in the waterway outside the restricted
37 zone, a management plan shall be submitted to the
38 bureau. The plan shall contain:

- 1 (1) A plan of the proposed timber-har-
2 vesting operation, setting forth the type of
3 cutting proposed;
- 4 (2) The amount of timber proposed to be re-
5 moved;
- 6 (3) The time of year of cutting and remov-
7 al;
- 8 (4) The location of principal haul road and
9 crossings in the waterway to be used in con-
10 nection with the proposed timber-harvesting
11 operation;
- 12 (5) The plan for reforestation;
- 13 (6) A stand table indicating species compo-
14 sition, size class and health of the origi-
15 nal and residual stands;
- 16 (7) Expected date of reentry;
- 17 (8) Pesticide or other chemical treatment
18 planned; and
- 19 (9) Proposed plans to mitigate evidence of
20 harvesting.

21 When an application for approval is not required
22 under paragraph B, the bureau shall seek coopera-
23 tion from those submitting the management plan in
24 addressing any concerns of the bureau.

25 B. When the bureau determines that the
26 timber-harvesting operation is proposed for an
27 area in the waterway outside of the restricted
28 zone and visible from the watercourse, the
29 timber-harvesting operation may commence only
30 with approval from the bureau. Application forms
31 for approval, provided by the bureau, shall be
32 completed and signed by the applicant. This par-
33 agraph shall not be construed to excuse the ap-
34 plicant from requirements for other permits re-
35 quired by law.

1 C. The bureau shall, within 30 days of receipt
2 of an application for approval, either approve
3 the proposed timber-harvesting operation, upon
4 such terms and conditions as are appropriate and
5 reasonable, or disapprove the proposed
6 timber-harvesting operation setting forth in
7 writing the reasons therefor. If a decision is
8 not made within the 30 days, the
9 timber-harvesting operation shall be considered
10 approved under the provisions of the management
11 plan submitted.

12 D. The bureau shall approve an application for a
13 timber-harvesting operation when it finds that
14 the management plan provides for the silvicultur-
15 al alternative which:

16 (1) Produces the least adverse impact upon
17 the natural character of the area in the wa-
18 terway outside the restricted zone and visi-
19 ble from the watercourse for which the
20 timber-harvesting operation is proposed; and

21 (2) Is economically feasible, except that
22 an applicant may waive the requirement of a
23 finding of economic feasibility.

24 E. Notwithstanding the provisions of paragraph
25 D, the bureau shall not deny an application for
26 the removal of trees that are dead, dying or dam-
27 aged by natural causes.

28 F. Before disapproving an application or impos-
29 ing terms and conditions under paragraph C, the
30 bureau shall have the application and management
31 plan reviewed by an experienced professional for-
32 ester.

33 3. Report to Legislature. The bureau shall re-
34 port, in January 1987, to the First Regular Session
35 of the 113th Legislature, on its experience in con-
36 trolling timber-harvesting operations under subsec-
37 tion 2. The report shall indicate and describe any
38 inadequacies the bureau has found in subsection 2, or
39 in any other provision of this chapter, that have
40 hindered its ability to control timber-harvesting op-
41 erations within the waterway, so as to carry out the

1 policy established in section 661. The report shall
2 also include a proposal for transferring authority to
3 regulate timber-harvesting operations within the
4 Allagash Wilderness Waterway from the Bureau of Parks
5 and Recreation to the Maine Land Use Regulation Com-
6 mission.

7 Sec. 4. 12 MRSA §674, as amended by PL 1973, c.
8 460, §17, is repealed and the following enacted in
9 its place.

10 §674. Enforcement, inspection and penalties for vio-
11 lations

12 Rules, regulations and permits issued by the bu-
13 reau under this chapter shall have the force and ef-
14 fect of law. No timber-harvesting operation may be
15 undertaken, except in conformance with this chapter.

16 For the purposes of inspection and to assure com-
17 pliance with permits issued or adopted by the bureau,
18 authorized bureau staff or consultant personnel may
19 conduct investigations, examinations, tests and site
20 evaluations deemed necessary to verify information
21 presented to the bureau, and may obtain access to any
22 lands and structures regulated under this chapter.

23 Any person who violates any provision of this
24 chapter, other than section 670, rules promulgated or
25 permits issued under it commits a civil violation for
26 which a forfeiture of up to, but not more than, \$50
27 for each day of the violation may be adjudged.

28 A person who violates any provision of section
29 670, except as otherwise provided in this paragraph,
30 rules promulgated or permits issued under it commits
31 a civil violation for which a forfeiture of up to,
32 but not more than, \$1,000 for each day of the viola-
33 tion may be adjudged. A person who willfully or know-
34 ingly falsifies any statement contained in a manage-
35 ment plan or application under section 670 commits a
36 civil violation for which a forfeiture of up to, but
37 not more than \$1,000 may be adjudged.

38 In addition, the bureau may, in the name of the
39 State, institute any appropriate action, injunction
40 or other proceeding to prevent, restrain, correct or

1 abate any violation of this chapter or of the rules
2 or permits issued under it. This action may include,
3 but is not limited to, proceedings to revoke or sus-
4 pend any bureau permit or approval taken before the
5 Administrative Court, in accordance with Title 4,
6 section 1151, subsection 2, and sections 1152 to 1157
7 or, notwithstanding the provisions of Title 5, sec-
8 tion 10051, before the Superior Court, as part of an
9 enforcement action brought by the bureau.

10 Sec. 5. 12 MRSA §680, as amended by PL 1973, c.
11 460, §17, is repealed and the following enacted in
12 its place.

13 §680. Appeals

14 Any applicant for a timber-harvesting permit ag-
15 grieved by a decision of the bureau relating to
16 timber-harvesting operations may appeal therefrom in
17 accordance with Title 5, chapter 375, subchapter VII.

18 STATEMENT OF FACT

19 This new draft assures that no change in use, de-
20 struction or abandonment of Jalbert's Sporting Camps
21 on Round Pond or Nugents Sporting Camps on Chamber-
22 lain Lake will occur without legislative approval.
23 The sporting camps have historical significance in
24 the Allagash Wilderness Waterway. Their existence al-
25 so provides a measure of safety for waterway users.

26 The new draft removes a redundant word from sec-
27 tion 2 of the bill. "Herbicide" is included within
28 the meaning of "pesticide" which appears in the per-
29 tinent provision.

30 The new draft addresses the situation of an ap-
31 plicant for a timber-harvesting permit within the
32 Allagash sensitive areas wishing to proceed with an
33 operation that may not be economically feasible.
34 This new draft makes it clear that an applicant may
35 proceed with a timber harvesting operation producing
36 the least adverse impact upon natural characters,
37 though the operation is not economically feasible, if
38 the applicant so chooses.

1 The new draft adds a requirement for the Bureau
2 of Parks and Recreation to include in its report to
3 the 112th Legislature a proposal for transferring au-
4 thority for timber-harvesting regulation along the
5 Allagash Wilderness Waterway to the Maine Land Use
6 Regulation Commission. The Joint Standing Committee
7 on Energy and Natural Resources is interested in this
8 possible transfer. Currently, both the Bureau of
9 Parks and Recreation and the Maine Land Use Regula-
10 tion Commission have some authority over timber har-
11 vesting within the waterway and it may be more rea-
12 sonable to have one agency have sole responsibility.
13 Time is needed to develop and examine such a propos-
14 al.

15 The new draft revises the penalties provided for
16 in the bill. The new draft raises the monetary penal-
17 ties for violation of the timber-harvesting provi-
18 sions of the Allagash statutes, but leaves the mone-
19 tary penalty for other violations of the Allagash
20 statutes and regulations the same as in current law.
21 The new draft also makes all of these penalties civil
22 rather than criminal.

23

6443032484