

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1365

H.P. 987

House of Representatives, April 26, 1989

Reference to the Committee on Energy and Natural Resources suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative McGOWAN of Canaan.

Cosponsored by President PRAY of Penobscot and Representative MARSH of West Gardiner.

STATE OF MAINE

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

An Act to Amend the Law Relating to Commercial Whitewater Rafting.



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

3 Sec. 1. 12 MRSA §7363, sub-§6, as enacted by PL 1983, c. 502,
5 §4, is amended to read:

6 6. Commercial whitewater outfitter; outfitter. "Commercial
7 whitewater outfitter" or "outfitter" means a person who conducts
8 commercial whitewater trips or who collects dues or fees or
9 receives any form of compensation for providing whitewater
10 rafting services or for operating a whitewater rafting
11 organization.

13 Sec. 2. 12 MRSA §7364, sub-§§8 and 9, as enacted by PL 1983, c.
15 502, §4, are amended to read:

16 8. Communication. To encourage open communication with all
17 river users, both groups and individuals, on river management
18 matters; and

19 9. System of allocating river use. To provide a system of
20 allocating river use that is simple and fair, and that meets the
21 specific goals of section 7369; and

23 Sec. 3. 12 MRSA §7364, sub-§10 is enacted to read:

24 10. Encouragement of investment in outfitting
25 organizations. To provide incentives for outfitting
26 organizations to invest time, capital and labor in these
27 organizations by ensuring that investments may be subject to the
28 same risks and benefits as in other businesses.

31 Sec. 4. 12 MRSA §7365, sub-§9 is enacted to read:

32 9. Quality and safety enhancement. In administering the
33 terms of this subchapter and its rules, it shall be the policy of
34 the department to recognize and protect the value of ongoing
35 whitewater outfitting organizations and to encourage investment
36 in these organizations so that the quality and safety of
37 whitewater rafting opportunities is enhanced. The department
38 shall encourage business arrangements which make efficient use of
39 allocations and investments in whitewater outfitting
40 organizations.

43 Sec. 5. 12 MRSA §7367, as amended by PL 1985, c. 571, §2, is
44 repealed.

47 Sec. 6. 12 MRSA §7367-A is enacted to read:

49 §7367-A. Safety

51 1. Regulation of safety by the department. The department
shall promulgate rules pursuant to the Maine Administrative

1 Procedure Act, Title 5, chapter 375, to provide for the safety of
2 whitewater trips. This section shall promote rules to provide
3 for the safety of whitewater passengers and be effective October
4 31, 1989.

5
6 **Sec. 7. 12 MRSA §7369, sub-§2**, as amended by PL 1983, c. 786,
7 §3, is further amended to read:

8
9 2. Allocation required; 160 passenger limit on any river;
10 affiliated outfitters restricted. Except as provided in
11 subsection 10, operation of a commercial whitewater trip on the
12 Kennebec River between Harris Station and West Forks or on the
13 West Branch Penobscot River between McKay Station and
14 Pockwockamus Falls without an allocation or in excess of an
15 allocation is prohibited. No allocation is required for other
16 rivers nor for other stretches of those rivers, but no outfitter
17 may carry more than 80 160 passengers per day on any ~~rapidly~~
18 ~~flowing river within~~ the Kennebec River, Penobscot River or any
19 combination of those rivers State. Not more than one member of
20 an affiliated group may conduct whitewater trips on any river or
21 stretch of river on any day for which a specific allocation is
22 required, ~~even on days for which an allocation is not required.~~

23
24 Three or more years after the period of affiliation, the
25 department may, in its discretion, consider requests by any
26 former members of an affiliated group to run passengers on
27 allocated rivers. The burden shall rest on the former member of
28 an affiliated group to demonstrate that the reasons for any
29 finding of affiliation have been so diminished in effect that the
30 public interest will be served by considering the former member's
31 request to run passengers on an allocated river.

32
33 **Sec. 8. 12 MRSA §7369, sub-§3**, as enacted by PL 1983, c. 502,
34 §4, is amended to read:

35
36 3. Allocations, maximum, minimum. The department shall
37 allocate the right to conduct whitewater trips to licensed
38 outfitters. The maximum allocation for an outfitter is 80 160
39 passengers per day per river. The minimum allocation to be
40 awarded is 20 passengers per day on the Kennebec River and 16
41 passengers per day on the West Branch Penobscot, except that an
42 outfitter may request fewer passengers.

43
44 **Sec. 9. 12 MRSA §7369, sub-§5**, as amended by PL 1983, c. 786,
45 §5, is further amended to read:

46
47 5. Term of allocation; abandonment of allocation. All
48 allocations shall be awarded for a period not to exceed 3 5 years
49 ~~as determined by rule~~. Any outfitter may abandon all or part of
50 an allocation at any time by giving the department written
51 notice. In the event that the department reissues an abandoned

1 allocation, any duplicate portion of the allocation fee shall be
2 refunded.

3
4 **Sec. 10. 12 MRSA §7369, sub-§7, ¶¶A to D, as repealed and**
5 **replaced by PL 1983, c. 786, §6, are repealed and the following**
6 **enacted in their place:**

7
8 A. The department shall issue allocations to outfitters
9 based on the outfitter's ability to serve the public as
10 shown during the previous allocation period as follows.

11
12 (1) The industry average for passengers carried on
13 allocated rivers shall be determined as follows.

14
15 (a) Each outfitter's average of allocation use on
16 allocated days is the number of passengers carried
17 on the allocated day divided by the outfitter's
18 total allocation use on that day.

19
20 (b) All of the outfitters' average allocation use
21 scores shall be averaged to determine the industry
22 average annual allocation use.

23
24 (2) An outfitter shall retain the allocation held from
25 the previous allocation period if the outfitter's
26 average is at least 75% of the industry average annual
27 allocation use.

28
29 (3) An outfitter whose average annual allocation use
30 is less than 75% of the industry average shall be
31 classified by the department in one of the following
32 categories based on factors other than allocation use:
33 satisfactory, probationary or unsatisfactory. If an
34 outfitter is rated as satisfactory, the outfitter shall
35 retain the allocation. If the outfitter is rated as
36 probationary, the outfitter shall retain the allocation
37 for a one-year period, after which the department shall
38 again rate the outfitter. If an outfitter is rated as
39 unsatisfactory by the department, the outfitter's
40 allocation shall be reduced.

41
42 (4) If the outfitter is rated unsatisfactory by the
43 department, the outfitter's allocation shall be reduced
44 for the next allocation period until the outfitter's
45 total number of passengers carried for the allocated
46 period is at least 75% of the industry average annual
47 allocation use. The outfitter shall have the right to
48 request that the department allow the outfitter to
49 retain the previous allocation without reduction.

1 (5) The procedure outlined in subparagraphs (1) to (4)
3 shall be used to determine allocations for each
 allocated day on each allocated river.

5 (6) Any allocations not awarded in subparagraphs (1)
7 to (4) shall be awarded as follows.

9 (a) To apply for new allocations on the Kennebec
11 River, the applicant must have carried a total
13 average of 2.5% of the passengers carried on
 unallocated days during the preceding allocation
 period.

15 (b) To apply for new allocations on the west
17 branch of the Penobscot River, the applicant must
19 have carried a total of 2.9% of the passengers
 carried on unallocated days during the preceding
 allocation period.

21 (c) New applicants shall have priority for
23 available allocations provided that the minimum
 allocation for the allocated river is available.

25 (d) All allocations provided for under this
27 section shall be awarded in increments for the
29 Penobscot River and the Kennebec River in order of
 the outfitter's industry average. In performing
 this calculation, the industry average should be
 recalculated after each space is allocated.

31 **Sec. 11. 12 MRSA §7369, sub-§10, ¶A, as amended by PL 1985, c.**
33 **571, §5, is further amended to read:**

35 A. ~~Weekday use, except on the legal holidays of Memorial~~
37 ~~Day, July 4th and Labor Day,~~ does not require an allocation
39 so long as the recreational use limit has not been reached.
 If the department determines the recreational use limit of a
 river will be reached on weekdays, the department shall
 provide by rule for allocations.

41 **Sec. 12. 12 MRSA §7369, sub-§10, ¶C, as amended by PL 1985, c.**
43 **571, §7, is further amended to read:**

45 C. An outfitter may occasionally exceed the allocation by 2
47 passengers on a trip of up to 40 passengers, or 4 passengers
49 on a trip of up to 80 passengers, to accommodate problems in
51 booking, ~~provided that the average of the number of~~
 ~~passengers carried on an outfitter's 10 best allocated days~~
 ~~for each river and for each allocated day of the week does~~
 ~~not exceed his allocation for that river and day. Abuse of~~
 ~~this privilege will result in its loss.~~

1 Section 13 of the bill shortens the allocation season to the
period from June 1st to September 1st of each calendar year.

3
5 Section 14 of the bill dissolves the Whitewater Advisory
Committee.