

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

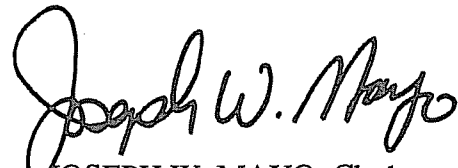
No. 674

H.P. 516

House of Representatives, February 25, 1993

An Act to Amend the Laws on Whitewater Rafting.

Reference to the Committee on Fisheries and Wildlife suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative ROTONDI of Athens.

Cosponsored by Representative: MARSH of West Gardiner, Senator: WEBSTER of Franklin.

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

2
4 Sec. 1. 5 MRSA §12004-I, sub-§69, as amended by PL 1989, c.
503, Pt. A, §34, is repealed.

6 Sec. 2. 12 MRSA §7365, sub-§6, as amended by PL 1989, c. 883,
§4, is further amended to read:

8
10 6. Sale of business. When a licensed whitewater
12 outfitter's business is sold, the license must be returned to the
14 department. On application, the license must be reissued to the
16 purchaser, provided that the purchaser meets the licensing
18 requirements of the department and pays the license fee. Profit
20 on the return and reissuance of the license itself is prohibited,
22 but nothing in this subchapter may be construed to prohibit
profit on the sale of any of the assets of a business. The
license is not an asset and may not be transferred as part of any
sale or transaction. The department may require an affidavit
from the purchaser to aid in enforcement of this provision.
~~Allocations may be transferred, pursuant to this chapter, from a
selling outfitter to one or more buying outfitters only if the
license of the selling outfitter is returned to the department.~~

24 Sec. 3. 12 MRSA §7368, sub-§2-A, ¶B, as amended by PL 1989, c.
26 883, §9, is further amended to read:

28 B. Sundays: 800 commercial passengers, ~~which shall be set
30 by the department by rule if the department anticipates a
sufficient release of water on the Kennebec River for
commercial use; and~~

32 Sec. 4. 12 MRSA §7369, sub-§6, as amended by PL 1983, c. 786,
34 §5, is further amended to read:

36 6. Allocation procedure. Except for the initial allocation
38 in 1983, which shall ~~be~~ is governed by subsection 4, the
40 department shall award allocations to licensed outfitters on the
42 basis of the criteria established in this section. Any outfitter
44 desiring an allocation shall submit a proposal to the department
46 in the year preceding the year for which the allocation is
48 desired, on or before a date specified by rule. Allocations
shall must be awarded on or before December 1st, but, if any open
allocation remains, it may be awarded at any time. Allocations
shall must be awarded in accordance with the Maine Administrative
Procedure Act, Title 5, chapter 375, subchapter V. The
department shall hold at least one public hearing prior to final
issuance of allocations. The department shall ~~promulgate~~ adopt
rules as necessary to facilitate the allocation process.

2 ~~Based on the demand for noncommercial public use, the department~~
3 ~~shall set aside up to 10% of the recreational use limit on any~~
4 ~~particular rapidly flowing river for noncommercial public use of~~
5 ~~whitewater craft.~~

6 **Sec. 5. 12 MRSA §7369, sub-§7, ¶A**, as amended by PL 1989, c.
7 883, §12, is further amended to read:

8
9 A. Individual proposals shall must be evaluated according
10 to the following specific criteria:

11
12 (1) The experience of the outfitter and any employee
13 in providing whitewater trips on the river or rivers
14 for which the allocation is sought, including, but not
15 limited to, such factors as the number of trips and
16 passengers carried, length of time as an outfitter,
17 safety record and experience of guides and staff. The
18 company experience of only one company within an
19 affiliated group at the time of that experience may be
20 counted as company experience for purposes of
21 allocation;

22
23 (2) The experience of the outfitter and any employee
24 in providing whitewater trips on rivers other than
25 those for which the allocation is sought, including,
26 but not limited to, such factors as the number of trips
27 and passengers carried, length of time as an outfitter,
28 safety record and experience of guides and staff. The
29 company experience of only one company within an
30 affiliated group at the time of that experience may be
31 counted as company experience for purposes of
32 allocation. For purposes of this subparagraph, "rivers
33 other than those for which the allocation is sought"
34 means all rapidly flowing rivers in the State,
35 including any river on which commercial recreational
36 use limits are imposed, for which an allocation is not
37 being sought by the outfitter in the allocation period;

38
39 (3) The safety record of the outfitter and any
40 employee in whitewater outfitting or similar
41 enterprises;

42
43 (4) The financial investment of the outfitter in
44 equipment, training, insurance, facilities and services
45 directly related to commercial whitewater rafting
46 trips;

47
48 (5) Ability of the outfitter to serve the interests of
49 the State by providing safe, economical,
50 environmentally sound commercial whitewater trips on
the particular river or rivers;

2 (6) Ability of the outfitter to serve the interests of
4 the consuming public by providing a type of trip
experience that is in the public interest as determined
by the department;

6 (7) When allocations are considered for subsequent
8 years, the performance of the outfitter in providing
the services proposed for the previous allocations and
10 compliance with the terms of the allocations, including
the submission of required reports and fees on time;
12 and

14 (8) Other matters which that in the judgment of the
department relate to orderly business development,
16 including growth, new entry or extreme hardship on the
part of an applicant.

18 **Sec. 6. 12 MRSA §7369, sub-§10, ¶A,** as repealed and replaced
20 by PL 1989, c. 883, §15, is amended to read:

22 A. Allocations are required for Saturdays for the period of
June 8th to August 31st. ~~Allocations--are--required--for~~
24 ~~Sundays-on-the-Penobscot-River-for-the-period-of-June-8th-to~~
~~August--31st.~~ If the department determines that the
26 recreational use limit will be reached other days, the
department shall provide by rule for allocations.

28 **Sec. 7. 12 MRSA §7369-A,** as amended by PL 1989, c. 503, Pt.
30 B, §68, is repealed.

32
34

STATEMENT OF FACT

36 This bill deals with 6 different matters related to
whitewater rafting in this State.

38 1. Under current law, the Commissioner of Inland Fisheries
40 and Wildlife reviews an outfitter's whitewater experience in
making decisions about granting commercial whitewater rafting
42 allocations on the Penobscot River and the Kennebec River. There
are 2 types of experience that are reviewed: experience on the
44 river for which the allocation is sought and experience on rivers
other than the those for which the allocation is sought. There
46 has been some controversy about the proper interpretation of what
the 2nd type of experience includes. The bill clarifies this
48 provision.

- 2 2. Current law provides that the Commissioner of Inland
4 Fisheries and Wildlife must establish an 800 commercial passenger
6 limit for Sundays on the Kennebec River if the commissioner
8 anticipates sufficient releases of water. The bill establishes
10 an 800 commercial passenger limit for Sundays and removes the
12 requirement that the commissioner establish the limit by rule.
- 14 3. The bill removes the requirement that there be
16 allocations on the Penobscot River on Sundays.
- 18 4. The bill removes obsolete references to the Whitewater
20 Advisory Committee, which was terminated by sunset on June 30,
22 1990.
- 24 5. Under current law, an outfitter may not transfer
26 allocations, through the Department of Inland Fisheries and
28 Wildlife, to another outfitter unless the first outfitter
surrenders that outfitter's license to the department. This
stands in the way of an outfitter transferring a portion of the
outfitter's business to another outfitter. The bill removes this
impediment. It leaves in place the requirement that if an
outfitter sells the outfitter's entire business the outfitter
must surrender the outfitter's license to the department.
6. The bill removes the provision of law requiring the
Department of Inland Fisheries and Wildlife to set aside 10% of
the recreational use on rapidly flowing rivers for noncommercial
use.