

MAINE STATE LEGISLATURE

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INLAND FISHERIES AND WILDLIFE

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 604, L.D. 1801, Bill, "An Act to Adopt Long-range Changes in the Methods by Which Whitewater Rafting Trips Are Allocated among Licensees"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 12 MRSA §7361, last ¶, as enacted by PL 1983, c. 502, §2, is amended to read:

The Legislature further finds that it is in the public interest to allow stable, ~~well---qualified~~ well-qualified outfitters who are providing excellent service and meeting the conditions of their allocations to continue to do so, subject to periodic review ~~when-allocation-are-reviewed~~.

Sec. 2. 12 MRSA §7363, sub-§2, as amended by PL 1989, c. 883, §1, is further amended to read:

2. Affiliated outfitter. "Affiliated outfitter" means:

A. Any outfitter who owns directly, indirectly or through a chain of successive ownership 10% or more of the financial interest in any other outfitter;

B. Any outfitter, 10% or more of whose financial interests are owned directly or indirectly or through a chain of successive ownership by any other outfitter;

C. Any outfitter, 10% or more of whose financial interests are owned directly or indirectly or through a chain of successive ownership by a person who owns 10% or more of the financial interest in another outfitter; or

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D. Any outfitter who, in the year 1982 or thereafter:

(1) Purchases, leases, borrows, accepts, receives or otherwise obtains on a nonarms-length basis from another whitewater outfitter, either directly or indirectly, more than 1/2 of its real or personal property; or

(2) Receives from another outfitter on a nonarms-length basis more than 1/2 of the ordinary services related to the business of whitewater outfitting, including, but not limited to, mail, telephone, reservations, repair, maintenance, personnel training and management.

A person may not be found to be an affiliated outfitter solely because of blood relationship, marriage or previous employment. An outfitter who purchases the business of another outfitter whose license has been returned to the department as provided in section 7365, subsection 6, has 60 days from the date of sale to submit an affidavit applying for the selling outfitter's allocation, assuring that the level and quality of services of the selling outfitter will be maintained. If the department transfers the selling outfitter's allocation to the buying outfitter or outfitters, these transferred allocations must be added to the buyer's allocations and may not be considered as affiliated. No An outfitter may not receive more than the maximum allocation of 80 passengers a day allocations allowed under section 7369, subsection 3.

Sec. 3. 12 MRSA §7365, sub-§6-A, as enacted by PL 1989, c. 883, §5, is amended to read:

6-A. Sale of business; allocations. When a licensed whitewater outfitter's business is sold, the selling outfitter's allocations or portions of the allocations subject to the sale must be returned to the department. On application to the department, allocations may be reissued to the purchaser, provided that as long as the purchaser meets the licensing and allocation requirements of the department and pays the license and allocation fees. ~~Profit on the return and reissuance of any allocations is prohibited, but nothing in this subchapter prohibits a profit on the sale of any of the assets of a business.~~ The allocations are not assets of a business. ~~The department may require an affidavit from the selling outfitter or purchaser, or both, to aid in enforcement of this provision.~~ Allocations or portions of the allocations may be transferred, pursuant to this chapter, from a selling outfitter to one or more purchasers only if the selling outfitter's allocations or

portions of the allocations subject to the sale are returned to the department. When allocations are forfeited or when new allocations become available as a result of increases in the commercial use limits on an allocated river, the department shall sell those allocations at public auction to qualified recipients. Net proceeds from the sale of allocations must be paid to the General Fund and are considered revenues of the department.

Sec. 4. 12 MRSA §7367, sub-§5, as enacted by PL 1983, c. 502, §4, is amended to read:

5. **Order of launch.** Launch order of commercial outfitters on a particular river or portion of river may be determined and enforced by the department to protect public health and safety. The department shall provide for the outfitters to choose, in the order of their first documented dates of continuous commercial operation on the particular river or portion of river, their preferred launch positions. ~~The department shall establish and publish the launch schedule by February 1st annually, except that the launch schedule for 1983 shall be promulgated within 30 days after the effective date of this subchapter.~~ To facilitate that determination, each outfitter shall submit a sworn affidavit to the department stating the date the outfitter first began continuous commercial operation. ~~For 1983, in order to expedite promulgation of the launch order, the notice and hearing provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, may be modified, to the minimum extent necessary in the judgment of the department to meet the promulgation date.~~

Sec. 5. 12 MRSA §7368, sub-§2-A, as amended by PL 1995, c. 667, Pt. B, §5, is further amended to read:

2-A. **Kennebec River.** The recreational use limit on the Kennebec River between Harris Station and West Forks is specified ~~as follows~~ 1,000 commercial passengers per day. Noncommercial recreational use is not limited. ~~The commercial limits are:~~

A. ~~Saturdays, 800 commercial passengers;~~

B. ~~Sundays, 1,000 commercial passengers; and~~

C. ~~Weekdays, 1,000 commercial passengers.~~

Sec. 6. 12 MRSA §7368, sub-§3, as repealed and replaced by PL 1985, c. 571, §4, is amended to read:

3. **West Branch Penobscot River. Whitewater** In order to allow free time for other uses, whitewater craft shall are only be

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2 allowed on the West Branch Penobscot River between McKay Station
and Pockwockamus Falls between 8:30 a.m. and 5:00 p.m. ~~in order~~
4 ~~to allow free time for other uses.~~

6 The recreational use limit of the West Branch Penobscot River
between McKay Station and Pockwockamus Falls is ~~specified as~~
8 ~~follows~~ 560 commercial passengers per day. Noncommercial
recreational use is not limited. ~~The commercial limit is 560~~
10 ~~commercial passengers a day, any day.~~

12 **Sec. 7. 12 MRSA §7368-A, sub-§3,** as amended by PL 1995, c.
455, §20, is further amended to read:

14 **3. Passenger limitation.** Except as provided in this
subsection, an outfitter may not carry on any rapidly flowing
16 river more than 80 92 passengers per day on any rapidly flowing
~~river or more than the allocations for that outfitter's largest~~
18 single day on that river, whichever number is greater. On
allocated days, that limit may be exceeded only as provided in
20 section 7369, subsection 10, paragraph C. On unallocated days,
an outfitter may occasionally carry up to 4 additional passengers
22 to accommodate problems in booking. Abuse of this privilege
results in its loss.

24 **Sec. 8. 12 MRSA §7369, sub-§1, ¶D,** as enacted by PL 1983, c.
502, §4, is amended to read:

28 D. To allow for reasonable business stability for
outfitters by allowing stable, well-qualified outfitters who
30 are providing excellent service and meeting the conditions
of their allocations to continue to do so, subject to
32 periodic review ~~when allocations are reviewed;~~

34 **Sec. 9. 12 MRSA §7369, sub-§3,** as enacted by PL 1983, c. 502,
§4, is amended to read:

36 **3. Allocations, maximum, minimum.** The department shall ~~may~~
38 allocate the right to conduct whitewater trips to licensed
outfitters. The maximum allocation for an outfitter is ~~80~~ 120
40 passengers per day. The minimum allocation to be awarded is ~~20~~
10 passengers per day on the Kennebec River and 16 passengers per
42 day on the West Branch Penobscot, ~~except that an outfitter may~~
~~request fewer passengers.~~ The total number of allocations issued
44 for an allocated day may not exceed the use limits established in
46 section 7368. The department may declare a day to be an
allocated day when the department determines that the regular and
48 persistent use of the river on that day from year to year may
exceed the use limits for that day.

50 **Sec. 10. 12 MRSA §7369, sub-§5,** as repealed and replaced by PL
1989, c. 493, §26, is repealed.

COMMITTEE AMENDMENT

2 **Sec. 11. 12 MRSA §7369, sub-§5-A** is enacted to read:

4 **5-A. Conditions for holding allocations.** Allocations are a
6 privilege extended by the State for the use of a limited public
8 resource. The department may suspend, revoke or reduce the
10 number of allocations when it is advisable to do so for better
12 management of the resource or for protection of public safety and
14 welfare. An outfitter's allocations are subject to forfeiture or
16 suspension by the department if the outfitter fails to maintain
18 the conditions of its license, fails to continue using its
20 allocations productively or fails to maintain a quality of
22 service consistent with the public interest.

24 **Sec. 12. 12 MRSA §7369, sub-§6**, as amended by PL 1993, c. 438,
26 §22, is repealed.

28 **Sec. 13. 12 MRSA §7369, sub-§7**, as amended by PL 1993, c. 438,
30 §23, is repealed.

32 **Sec. 14. 12 MRSA §7369, sub-§7-A** is enacted to read:

34 **7-A. Allocation criteria.** The department may adopt rules
36 specifying a schedule for reviewing outfitters who hold
38 allocations and setting forth the criteria for awarding
40 allocations. An outfitter shall submit periodic public reports
42 to the department documenting river use for both allocated and
44 unallocated days. If the department determines that additional
46 allocated days are required, the allocation of trips on any such
48 additional day must be distributed among existing licensed
50 outfitters, upon payment of the appropriate allocation fee, in
52 accordance with their percentage of total use averaged over the
54 rafting season on that rapidly flowing river on that particular
56 day, up to the limit on allocations established in subsection 3.

58 **Sec. 15. 12 MRSA §7369, sub-§8**, as amended by PL 1989, c. 883,
60 §13, is further amended to read:

62 **8. Allocation fee.** Outfitters shall pay the department an
64 annual allocation fee, for either river when allocations are
66 required, of \$250 per unit of 20 passengers or less allocated per
68 day on either river in excess of a single unit on a single
70 river. This may be in quarterly payments, beginning 30 days
72 after the allocation is awarded. The maximum allocation fee is
74 ~~\$1,750~~ \$2,625 for the privilege of carrying ~~80~~ 120 passengers per
76 day on both rivers.

78 **Sec. 16. 12 MRSA §7369, sub-§10, ¶C**, as amended by PL 1985, c.
80 571, §7, is further amended to read:

2 C. An outfitter may occasionally exceed the allocation by 2
3 passengers on a trip of up to 40 passengers, or 4 passengers
4 on a trip of up--to--80 more than 40 passengers, to
5 accommodate problems in booking, ~~provided that~~ as long as
6 the average of the number of passengers carried on an
7 outfitter's 10 best allocated days for each river and for
8 each allocated day of the week does not exceed his the
9 outfitter's allocation for that river and day. Abuse of
10 this privilege will--result results in its loss.

12 Sec. 17. 12 MRSA §7369, sub-§11, as enacted by PL 1983, c.
13 786, §9, is repealed.

14 Sec. 18. 12 MRSA §7370, sub-§4, ¶D is enacted to read:

16 D. The Legislature shall appropriate to the department in
17 each fiscal year an amount equal to the administrative costs
18 incurred by the department in collecting revenue under this
19 section. Those costs must be verified by the Department of
20 Administrative and Financial Services.

22 Sec. 19. Distribution of 200 new allocations on the Kennebec on
24 Saturday. The Department of Inland Fisheries and Wildlife shall
25 distribute 200 new Saturday allocations created by this Act on
26 the Kennebec River equally among all whitewater outfitters who
27 held a valid commercial whitewater outfitter's license in 1997
28 and conducted commercial whitewater rafting trips in that year.
29 An outfitter eligible to receive allocations under this section
30 shall pay the appropriate allocation fee to the department prior
31 to receiving those allocations.

32 Sec. 20. Rules. The Department of Inland Fisheries and
33 Wildlife shall adopt rules necessary to implement this Act prior
34 to January 1, 1999. Rules adopted to implement this Act are
35 minor technical rules as defined in the Maine Revised Statutes,
36 Title 5, chapter 375, subchapter II-A. The effective date of
37 those rules is January 1, 1999.

40 Sec. 21. Appropriation. The following funds are appropriated
41 from the General Fund to carry out the purposes of this Act.

42 1998-99

44 INLAND FISHERIES AND WILDLIFE,
46 DEPARTMENT OF

48 Savings Fund Program

2 All Other \$4,300
4 Appropriates funds to be used
6 only to offset future fee
increases.

8 **Sec. 22. Effective date.** All sections of this Act take effect on
10 January 1, 1999, except that section directing the Department of
12 Inland Fisheries and Wildlife to adopt rules takes effect 90 days
after adjournment of the Second Regular Session of the 118th
Legislature.'

14 Further amend the bill by inserting at the end before the
16 summary the following:

18 **FISCAL NOTE**

1998-99

20 **APPROPRIATIONS/ALLOCATIONS**

22 General Fund \$4,300

24 **REVENUES**

26 General Fund \$4,300
28 Other Funds 2,250

30 Certain changes in the allocation requirements for
32 commercial whitewater rafting and the establishment of certain
revenue reimbursements for administrative costs will increase
annual General Fund revenue collected by the Department of Inland
34 Fisheries and Wildlife by \$4,300 beginning in fiscal year 1998-99.

36 The Department of Inland Fisheries and Wildlife will require
38 additional General Fund appropriations of \$4,300 annually
beginning in fiscal year 1998-99 to meet the constitutional
40 requirement that appropriations to the department are at least
equal to the undedicated revenues collected by the department.

42 Increases in certain passenger limitations for commercial
44 whitewater rafting will increase passenger fee collections. The
estimated annual increase of dedicated revenue to the Department
of Inland Fisheries and Wildlife is \$2,250 beginning in fiscal
46 year 1998-99.

48 The Department of Inland Fisheries and Wildlife will incur
50 some minor additional costs to adopt certain rules pertaining to
whitewater allocations. These costs can be absorbed within the
department's existing budgeted resources.

2 This bill may reduce prosecutions for Class E crimes. If
3 jail sentences are reduced, the savings to the counties are
4 estimated to be \$86.45 per day per prisoner. These savings do
5 not affect reimbursement by the State. The reduction in the
6 number of prosecutions that would have resulted in a jail
7 sentence and the resulting savings to the county jail system are
8 expected to be insignificant.

10 The Judicial Department may realize some minor savings from
11 reductions of workload and administrative costs associated with
12 the minimal number of cases that will no longer be filed in the
13 court system. Reductions in the collection of fines may decrease
14 General Fund revenue by minor amounts.'

16 SUMMARY

18 This is the majority report of the Joint Standing Committee
19 on Inland Fisheries and Wildlife. This amendment replaces the
20 bill.

22 The amendment increases from 800 to 1,000 the commercial use
23 limit on the Kennebec River on Saturdays and reduces from 20 to
24 10 the minimum number of allocations that may be awarded for that
25 river. The Department of Inland Fisheries and Wildlife is
26 directed to distribute the 200 new allocations created by this
27 increase equally among the 17 whitewater outfitters who were
28 licensed and ran trips in 1997. Each outfitter is required to
29 pay the appropriate allocation fee prior to being issued those
30 allocations. The amendment also increases from 80 to 120 the
31 maximum number of allocations that may be held by an outfitter.
32

34 The amendment also repeals the statutory whitewater rafting
35 allocation procedure and criteria for awarding allocations and
36 repeals the provisions that require allocations to be reissued
37 every 5 years. The Department of Inland Fisheries and Wildlife
38 is charged with adopting rules governing the allocation procedure
39 and criteria for awarding allocations and for the review of
40 outfitters and allocations. The law prohibiting profit on the
41 return and reissuance of allocations is repealed, but allocations
42 are not assets of the outfitter and must be returned to the
43 department when the business is sold. The department retains the
44 right to suspend, revoke or reduce the number of allocations for
45 resource management reasons or for failure of the outfitter to
46 perform.

48 The amendment also directs the department to sell, at a
49 public auction, any new allocations that are forfeited to the
50 department or that are created as a result of an increase in

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2 river use limits. Allocations created as a result of the
department designating new allocated days by rule are distributed
4 among outfitters based on their historical use of the river on
that day. Outfitters are required to pay the appropriate
6 allocation fee for those allocations as well.

8 This amendment also adds an appropriation section and fiscal
note to the bill.

COMMITTEE AMENDMENT