

# 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)

L.D. 1801

DATE: *March 17, 1998*

(Filing No. S- *531* )

## INLAND FISHERIES AND WILDLIFE

Reported by: *MINORITY*

Reproduced and distributed under the direction of the Secretary of the Senate.

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

COMMITTEE AMENDMENT "*B*" 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-allocations-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

COMMITTEE AMENDMENT "B" to S.P. 604, L.D. 1801

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

COMMITTEE AMENDMENT "B" to S.P. 604, L.D. 1801

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 ~~their dates of~~ 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-§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 be only be 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 to allow free time for other uses.~~

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

Sec. 6. 12 MRSA §7369, sub-§1, ¶D, as enacted by PL 1983, c. 502, §4, is amended to read:

D. To allow for reasonable business stability for

COMMITTEE AMENDMENT "B" to S.P. 604, L.D. 1801

outfitters by allowing stable, 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 allocations are reviewed;

Sec. 7. 12 MRSA §7369, sub-§5, as repealed and replaced by PL 1989, c. 493, §26, is repealed.

Sec. 8. 12 MRSA §7369, sub-§5-A is enacted to read:

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

Sec. 9. 12 MRSA §7369, sub-§6, as amended by PL 1993, c. 438, §22, is repealed.

Sec. 10. 12 MRSA §7369, sub-§7, as amended by PL 1993, c. 438, §23, is repealed.

Sec. 11. 12 MRSA §7369, sub-§7-A is enacted to read:

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

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

Sec. 13. 12 MRSA §7370, sub-§4, ¶D is enacted to read:

D. The Legislature shall appropriate to the department in each fiscal year an amount equal to the administrative costs incurred by the department in collecting revenue under this

section. Those costs must be verified by the Department of Administrative and Financial Services.

**Sec. 14. Rules.** The Department of Inland Fisheries and Wildlife shall adopt rules necessary to implement this Act prior to January 1, 1999. Rules adopted to implement this Act are minor technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A. The effective date of those rules is January 1, 1999.

**Sec. 15. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**1998-99**

**INLAND FISHERIES AND WILDLIFE,  
DEPARTMENT OF**

**Savings Fund Program**

All Other \$1,800

Appropriates funds to be used  
only to offset future fee  
increases.

**Sec. 16. Effective date.** All sections of this Act take effect on January 1, 1999, except that section directing the Department of Inland Fisheries and Wildlife to adopt rules takes effect 90 days after adjournment of the Second Regular Session of the 118th Legislature.'

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

**FISCAL NOTE**

**1998-99**

**APPROPRIATIONS/ALLOCATIONS**

General Fund \$1,800

**REVENUES**

General Fund \$1,800

2

6

8

## 12

## 14

18

24

26

COMMITTEE AMENDMENT "B" to S.P. 604, L.D. 1801

are distributed among outfitters based on their historical use of  
the river on that day. Outfitters are required to pay the  
appropriate allocation fee for those allocations as well.

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