

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1453

6
7 S.P. 478

In Senate, April 12, 1983

8 Submitted pursuant to Resolves, 1982, Chapter 67 and presented by the
9 President of the Senate on behalf of the Whitewater Rafting Study
10 Commission.

11 On Motion of Senator Pray of Penobscot, referred to the Committee on
12 Energy and Natural Resources. Sent down for concurrence and ordered
13 printed.

14 JOY J. O'BRIEN, Secretary of the Senate
15 Presented by Senator Conley of Cumberland.
16

17 STATE OF MAINE
18

19 IN THE YEAR OF OUR LORD
20 NINETEEN HUNDRED AND EIGHTY-THREE
21

22 AN ACT to Revise Laws Concerning
23 Commercial Whitewater Rafting.
24

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

27 Sec. 1. 12 MRSA c. 707, sub-c. X-A, first 2
28 lines, as enacted by PL 1979, c. 723, §14, are
29 repealed and the following enacted in their place:

30 SUBCHAPTER X-A

COMMERCIAL WHITEWATER RAFTING

31 Sec. 2. 12 MRSA §7361, as enacted by PL 1979, c.
32 723, §14, is repealed and the following enacted in
33 its place:

34 §7361. Legislative findings

1 The Legislature finds that the recreational use
2 of watercraft on rapidly flowing rivers in this State
3 has become an increasingly popular sport. This sport
4 may pose significant risks to the users of these
5 rivers not skilled and knowledgeable in the navi-
6 gation of that water. Many members of the public
7 rely on commercial outfitters to provide safe trips
8 on these rivers.

9 The Legislature further finds that increased use
10 of the state's water resources has increased the
11 environmental, physical and social burdens on that
12 resource.

13 The Legislature declares that it is in the public
14 interest, pursuant to the state's authority to pro-
15 tect the health, safety, and welfare of its citizens
16 and to preserve and protect the public's natural
17 water resources of rapidly flowing rivers.

18 Sec. 3. 12 MRSA §7362, as enacted by PL 1979, c.
19 723, §14, is repealed.

20 Sec. 4. 12 MRSA §§7363 to 7370-A are enacted to
21 read:

22 §7363. Definitions

23 As used in this subchapter, unless the context
24 indicates otherwise, the following terms have the
25 following meanings.

26 1. Affiliated outfitter. "Affiliated outfitter"
27 means a commercial whitewater outfitter which shares
28 with or provides to another outfitter management or
29 financing.

30 2. Allocation. "Allocation" means the annually
31 specified number of passengers per day which an
32 outfitter may take on whitewater trips on a partic-
33 ular river.

34 3. Bureau. "Bureau" means the Bureau of Parks
35 and Recreation in the Department of Conservation.

36 4. Commercial whitewater outfitter; outfitter.
37 "Commercial whitewater outfitter" or "outfitter"

1 means a person who conducts commercial whitewater
2 rafting, dory or bateau trips on rapidly flowing
3 ivers and who holds a current license, issued by
4 the department, to engage in this activity.

5 5. Rapidly flowing river. "Rapidly flowing
6 river" means a river or stretch of a river with
7 rapids classified as class IV or V or a river or
8 stretch of a river designated by the department by
9 rule on the basis of public safety.

10 6. Whitewater craft. "Whitewater craft" means
11 any raft, dory, bateau or similar watercraft which is
12 used to transport passengers along rapidly flowing
13 ivers, but does not include canoes or kayaks.

14 7. Whitewater guide. "Whitewater guide" means a
15 person who has met the criteria established by the
16 department to qualify as a whitewater guide and who
17 holds a current guide's license in the whitewater
18 classification.

19 8. Whitewater trip. "Whitewater trip" means any
20 commercial effort to transport passengers by means of
21 a whitewater craft on rapidly flowing rivers.

22 §7364. River management objectives

23 The following objectives are established for man-
24 agement of rapidly flowing rivers for the benefit of
25 the people of the State:

26 1. Safety and health requirements. To assure
27 that safety and health requirements are met by all
28 river users;

29 2. Minimize environmental impact. To minimize
30 environmental impact on the rivers and the river cor-
31 ridors, including access roads;

32 3. Recreational use. To allow a reasonable
33 level of recreational use; but to discourage signifi-
34 cant increases in public use on the West Branch of
35 the Penobscot, consistent with the goals and objec-
36 tives of the Recreation Management Plan for the
37 Penobscot;

1 4. Quality wilderness experience. To maintain a
2 quality wilderness experience on the rivers;

3 5. Multiple uses. To minimize conflicts between
4 different uses of the rivers in order to allow for
5 multiple use;

6 6. Diversity of whitewater experiences and ser-
7 vices. To encourage a diversity of whitewater trip
8 experiences and services;

9 7. River use and impact. To monitor river use
10 and its impact;

11 8. Communication. To encourage open communica-
12 tion with all river users, both groups and individu-
13 als, on river management matters; and

14 9. System of allocating river use. To provide a
15 system of allocating river use that is simple and
16 fair, and that meets the specific goals of section
17 7368.

18 §7365. Commercial whitewater outfitters' licenses

19 1. Requirement. A commercial whitewater
20 outfitter's license is required for all commercial
21 whitewater outfitters. Operation of a commercial
22 whitewater trip by an outfitter without a license is
23 prohibited.

24 2. Issuance; term. The commissioner may issue a
25 license to conduct commercial whitewater rafting,
26 bateau or dory trips on rapidly flowing rivers.
27 Licenses shall be issued for the calendar year.

28 3. Fee. The annual basic fee for a commercial
29 whitewater license shall be set by the department and
30 adjusted biennially by rule to reflect the actual
31 cost of administering the license program. The fee
32 for 1983-84 shall be no more than \$250. The fee for
33 transfer of a license shall be equal to the annual
34 basic fee for a license. These fees shall be cred-
35 ited directly to the department and used in accor-
36 dance with section 7074.

1 4. Exceptions. Nothing in this subchapter
2 applies to the operation of canoes or kayaks. This
3 subchapter does not apply to guides or camp trip
4 leaders licensed under subchapter VIII, or motorboat
5 operators licensed under chapter 715, subchapter I,
6 unless those persons are in the business of conduct-
7 ing commercial whitewater trips.

8 5. Nonrenewal, suspension or revocation.
9 Licenses are subject to nonrenewal, suspension or
10 revocation for good cause shown, such as unsafe prac-
11 tices, falsifications of reports, or serious or con-
12 tinued violation of this subchapter, subject to the
13 Maine Administrative Procedure Act, Title 5, chapter
14 375.

15 6. Sale of business. When a licensed whitewater
16 outfitter's business is sold, the license shall be
17 returned to the department. On application, the li-
18 cence shall be reissued to the purchaser, provided
19 that the purchaser meets the licensing requirements
20 of the department and pays the license fee. Profit
21 on the return and reissuance of the license itself is
22 prohibited, but nothing in this subchapter may be
23 construed to prohibit profit on the sale of any of
24 the assets of a business. The license is not an
25 asset. The department may require an affidavit from
26 the purchaser to aid in enforcement of this provi-
27 sion.

28 7. Affiliated outfitters. Affiliated outfitters
29 may not be licensed.

30 §7366. Whitewater guide license

31 A whitewater guide license shall be required for
32 all whitewater guides. The whitewater guide license
33 shall be issued by the department only to those per-
34 sons who pass or have passed the whitewater guide
35 examination established by the department and who
36 have met the other requirements of the department
37 established by rule. Waivers of the examination are
38 not permitted. Guide license fees shall be credited
39 to the department and used in accordance with section
40 7074.

41 §7367. Safety

1 1. Whitewater trip restrictions. The following
2 safety restrictions apply during whitewater trips.

3 A. There shall be at least one licensed
4 whitewater guide in each watercraft.

5 B. Outfitters shall ensure that each person
6 participating on a whitewater trip wears a se-
7 curately fastened type I or type V personal
8 flotation device.

9 C. Each whitewater craft shall be equipped with
10 at least one throw line, not less than 50 feet
11 long.

12 D. Each whitewater craft shall be equipped with
13 an adequate first aid kit.

14 2. Whitewater Safety Committee. The Whitewater
15 Safety Committee is established to review the
16 monthly safety reports and other relevant information
17 annually and recommend safety standards to the
18 department. The committee shall assist the depart-
19 ment with development of the public information pro-
20 gram on whitewater trip safety. The committee shall
21 submit a written report on each whitewater
22 outfitter's safety record to the Bid Committee.

23 A. The Whitewater Safety Committee shall be com-
24 posed of 8 members: Two members of the
25 whitewater guides board designated by the board;
26 2 commercial whitewater outfitters and 2
27 whitewater guides designated by the Governor; and
28 2 members from the general public, one designated
29 by the President of the Senate and one designated
30 by the Speaker of the House of Representatives.

31 B. Terms of members of the Whitewater Safety
32 Committee shall be for 2 years, expiring on
33 December 31st, except that initially the members
34 shall draw lots for a one-year or a 2-year term.
35 Terms shall be staggered so that the term of one
36 member in each category expires each year. Mem-
37 bers shall serve until their successors are nomi-
38 nated and qualified. Members shall serve without
39 compensation, except for per diem and reimburse-
40 ment for travel and actual expenses for up to 4
41 meetings per year.

1 3. Safety reports. In addition to the water-
2 craft accident report required by section 7801, sub-
3 section 19, each commercial outfitter shall submit a
4 complete monthly safety report on forms provided by
5 the commissioner containing the following:

6 A. A summary of any watercraft accident reports
7 filed during that month; and

8 B. A written report of all accidents during the
9 month where a whitewater craft overturns or a
10 passenger or whitewater guide involuntarily falls
11 out of or is thrown from a whitewater craft.

12 4. Safety information. The department shall
13 implement a public information program on whitewater
14 trip safety. In developing the program, the depart-
15 ment shall consult with the Whitewater Safety Commit-
16 tee.

17 5. Order of launch. The department shall
18 promulgate rules on the order of launch which shall
19 allow for voluntary agreement by a majority of the
20 licensed outfitters, to be registered with the
21 department by January 1st each year. Any other
22 outfitter that is aggrieved may appeal to the depart-
23 ment, which may modify the launch schedule for good
24 cause. If the outfitters fail to reach agreement,
25 the department shall establish the launch schedule by
26 February 1st.

27 §7368. Recreational use limits

28 1. Findings and goals. Increased use has
29 resulted in increased environmental impact on the
30 Kennebec and West Branch Penobscot Rivers, as well as
31 on their valleys, nearby roads and the social struc-
32 ture of the areas. Recreational use limits are
33 necessary to allow for rafting use and other compet-
34 ing uses, such as fishing, camping and canoeing,
35 while minimizing detrimental impacts and monitoring
36 the opportunity for a quality wilderness experience
37 for rafters and for other users.

38 2. Kennebec River. Recreational use limits for
39 the Kennebec River are set as follows.

1 A. On the Kennebec River, only enough rafts for
2 600 to 800 passengers can be physically launched
3 in an hour. Water releases average 6 to 9 hours
4 on weekdays, one or 2 hours on Saturdays and
5 never on Sundays. Weekday use has not increased
6 to a level which places a burden on the environ-
7 ment or the physical launching facilities.

8 B. There is little competing use of the stretch
9 of the Kennebec River where rafting occurs,
10 between Harris Station and West Forks, because of
11 its inaccessibility.

12 C. The recreational use limit on the Kennebec
13 River between Harris Station and West Forks is
14 specified as follows. Noncommercial recreational
15 use is not limited. The commercial recreational
16 use limits are set at a level which does not
17 interfere with noncommercial use. The commercial
18 limits are:

19 (1) Saturdays: 800 passengers for each hour
20 of water released;

21 (2) Sundays: No water released; no limit
22 set; and

23 (3) Weekdays: No recreational use limit.

24 D. Recreational use limits for weekday
25 whitewater trips on the Kennebec River may be
26 established, by rule, by the department and the
27 bureau upon a finding that the river or river
28 corridor is becoming subject to:

29 (1) Detrimental environmental deterio-
30 ration;

31 (2) Detrimental social conflicts; or

32 (3) Other hazardous circumstances.

33 These limits shall remain in effect until 90 days
34 after the adjournment of the next regular session
35 of the Legislature, unless superseded by law.
36 The department and the bureau shall jointly
37 report these limits to the Legislature, along

1 with a recommendation for legislation, if appro-
2 priate.

3 3. West Branch Penobscot River. Recreational
4 use limits for the West Branch Penobscot River are
5 set as follows.

6 A. On the West Branch Penobscot River, water
7 releases are typically continuous from McKay Sta-
8 tion every day, except a few days a year when the
9 mill at Millinocket is shut down; however, the
10 rapids are dangerous and rafts can get pinned in
11 the cribwork at low water. It is estimated that
12 an average interval of 5 minutes between rafts at
13 the cribwork is needed for safety. Rafts ordi-
14 narily carry 8 to 10 passengers. In addition,
15 regulations adopted by the Maine Land Use Regula-
16 tion Commission require that significant
17 increases in current river recreational use not
18 be encouraged.

19 B. It is found that use of the river is shared,
20 especially with salmon fishing. Rafts shall only
21 be allowed on the West Branch Penobscot River
22 between McKay Station and Pockwockamus Falls
23 between 9 a.m. and 5 p.m., in order to allow free
24 time for other uses.

25 C. The recreational use limit of the West Branch
26 Penobscot River between McKay Station and
27 Pockwockamus Falls is specified as follows. Non-
28 commercial recreational use is not limited. The
29 commercial limit is set at a level which does not
30 interfere with noncommercial use. The commercial
31 recreational use limit for whitewater trips is
32 320 passengers per day. This limit reflects the
33 current 1982 use of the river in order to:

34 (1) Maintain the present character and high
35 quality of the river environment;

36 (2) Provide for continued multiple use for
37 other recreation, such as fishing, camping,
38 canoeing, picnicking, driving for pleasure,
39 photography and hiking; and

1 (3) Provide a minimum of conflict with or
2 alteration of present use patterns and
3 safety margins.

4 §7369. Allocation system

5 1. Goals. The goals of the allocation system
6 are:

7 A. To encourage a wide diversity of whitewater
8 trip experiences and services;

9 B. To provide a fair distribution of river use
10 among existing and future users;

11 C. To maximize competition within the recrea-
12 tional use limits;

13 D. To allow for reasonable business stability
14 for outfitters;

15 E. To encourage efficient use of the allocation
16 system;

17 F. To be flexible enough to adapt to changes in
18 river use or river conditions;

19 G. To avoid creation of transferable asset
20 value; and

21 H. To provide opportunity for public access.

22 2. Allocation required. Operation of a commer-
23 cial whitewater trip on the Kennebec River between
24 Harris Station and West Forks on Saturday or on the
25 West Branch Penobscot River between McKay Station and
26 Pockwockamus Falls without an allocation is prohib-
27 ited. No allocation is required for other rivers nor
28 for other stretches of those rivers.

29 3. Allocation by bid. The department and the
30 bureau shall allocate the right to conduct whitewater
31 trips to licensed outfitters pursuant to the bid
32 procedures established in this subchapter. The com-
33 missioner of the department and the director of the
34 bureau shall establish a Bid Committee to receive,
35 review and approve bids received. All bids must be

1 received by the department by 5 p.m., November 1st of
2 the year preceding the 3-year bid period to be con-
3 sidered for approval. All bids shall be awarded by
4 December 1st.

5 Three classes of allocation categories shall exist
6 based on trip size:

7 A. Class A Allocation: From 61 to 80 passengers;

8 B. Class B Allocation: From 31 to 60 passengers;
9 and

10 C. Class C Allocation: Up to 30 passengers maxi-
11 mum.

12 The initial distribution of the allocation shall,
13 insofar as possible, be divided equally among all
14 categories allowed for each river. An equal number
15 of allocations shall be awarded in each class. The
16 department and the bureau may jointly vary the dis-
17 tribution of the allocations among the categories in
18 subsequent years based on river management goals.

19 4. Term of allocation. All allocations shall be
20 awarded for a 3-year period. All allocations shall
21 be rebid at the end of that period.

22 5. Abandonment or forfeiture of allocation;
23 transfer. Any outfitter which has not used all or a
24 portion of the allocation during a whitewater trip
25 season, June through September, will lose the unused
26 allocation for the next season. Allocations for-
27 feited in the middle of a bid period shall be open
28 for bid by any other licensed outfitter licensed for
29 that season.

30 Any outfitter wishing to abandon all or a portion of
31 an awarded allocation before the 3-year period
32 expires may do so by notifying the department in
33 writing. The abandoned allocation shall be open for
34 bid by any other licensed outfitter as soon as
35 practicable. If the allocation is awarded to another
36 licensed outfitter, an appropriate portion of the
37 financial consideration for the bid shall be rebated
38 to the original holder of the allocation.

1 Transfer between outfitters of all or a portion of an
2 allocation on an occasional basis will be permitted
3 in order to maximize recreational use within the
4 recreational use limits. All transfers shall be
5 reported to the department. Excessive use of this
6 privilege will result in loss of that privilege by
7 that outfitter. Sale of any portion of an allocation
8 is prohibited.

9 6. Acceptance of bids. Bids will be accepted as
10 follows.

11 A. Bids will be accepted for allocation in Class
12 A, Class B or Class C on the Kennebec River for
13 the initial one hour of water release on Satur-
14 days.

15 Allocations for water releases after the initial
16 hour are automatic and need not be bid for. An
17 outfitter who holds an allocation for the first
18 hour of water release automatically holds an
19 equal allocation for each additional hour of
20 water released. Order of launch shall duplicate
21 the initial order of launch.

22 B. Bids will be accepted for allocation in Class
23 B or Class C on the Penobscot River for each day
24 of the week. No bids will be permitted in Class
25 A. This will increase the number of outfitters
26 able to raft the Penobscot River and is justified
27 by the smaller recreational use limit.
28 Outfitters must bid separately for each day of
29 the week they wish to conduct whitewater trips.
30 The maximum allocation for any outfitter for the
31 weekend is a combined total of 80 passengers.

32 C. Each outfitter submitting a bid shall indi-
33 cate the priority of each bid in relation to
34 other bids submitted by that outfitter.

35 D. Bids should be made in units of 10 passen-
36 gers.

37 7. Bid criteria. Allocations shall be awarded
38 on the basis of how well they meet the bid criteria.
39 The bid criteria shall be weighted equally. The bid
40 criteria are:

1 A. Ability to contribute to the meeting of the
2 management and allocation objectives;

3 B. Experience and expertise;

4 C. Financial capacity, financial stability of
5 the company; and

6 D. Financial consideration, dollar amount of
7 bid.

8 8. Financial consideration of bid. The finan-
9 cial consideration of the bid shall go to the General
10 Fund.

11 9. Bid deadlines. All bids shall be submitted
12 by October 1st of the year preceding the year which
13 is bid for. All bids shall be awarded by November
14 2nd.

15 10. Reporting. Each outfitter shall report
16 monthly to the department the number of passengers
17 carried each day on each river. Inaccurate reporting
18 or failure to report may subject the outfitters to
19 the penalties prescribed in section 7370-A.

20 §7369-A. User fee

21 All licensed outfitters shall pay a user fee of
22 \$1 per passenger, excluding guides, carried on each
23 river. This fee shall be paid by the 30th day fol-
24 lowing the month in which the passengers were car-
25 ried, and shall be deposited in the Whitewater
26 Rafting Fund.

27 §7370. Whitewater Rafting Fund

28 1. Established. There is established a
29 Whitewater Rafting Fund to be used by the department
30 and the bureau to fund activities related to river
31 recreation, with primary emphasis on those activities
32 which relate to whitewater trips.

33 2. Funding. All user fees collected under
34 section 7369-A shall be credited to the Whitewater
35 Rafting Fund.

1 3. Budget. The expenditures from the Whitewater
2 Rafting Fund shall be subject to legislative approval
3 in the same manner as the General Fund budgets of the
4 department and the bureau are approved. The depart-
5 ment and the bureau shall report annually, before
6 February 1st, to the joint standing committee of the
7 Legislature having jurisdiction over inland fisheries
8 and wildlife on its planned expenditures for the next
9 fiscal year and on its use of funds in the current
10 year and the next previous year.

11 4. Use of the fund. The fund shall be used as
12 follows.

13 A. The moneys deposited in the fund shall be
14 credited as follows.

15 (1) 55% of each fee or surcharge shall be
16 credited to the department; and

17 (2) 35% of each fee or surcharge shall be
18 credited to the bureau.

19 (3) 10% of each fee or surcharge shall be
20 credited to the county in which the river is
21 located for distribution among the affected
22 municipalities and for use in the affected
23 unorganized townships.

24 B. All moneys from the fund shall be expended
25 solely for purposes related to river recreation,
26 with primary emphasis on those activities which
27 relate to whitewater trips, including, but not
28 limited to, administration, regulation, safety
29 education, enforcement, mitigation of environ-
30 mental and safety problems and mitigation of any
31 adverse effect on competing uses of the rivers.
32 The fund shall not be used to pay the cost of ad-
33 ministering the whitewater outfitters' license
34 program or the guide license program.

35 §7370-A. Penalties

36 The penalty for failure to comply with this sub-
37 chapter or for providing false information under this
38 subchapter may include nonrenewal, revocation or sus-
39 pension of the license, subject to the procedures of

1	Piscataquis County	\$ 2,500	\$ 2,500
2		<hr/>	<hr/>
3	Total	\$50,000	\$50,000

4 STATEMENT OF FACT

5 This bill is the Minority Report of the rafting
6 study.

7 The Maine Commercial Whitewater Rafting Study
8 Commission was established by the 110th Legislature
9 to study commercial whitewater rafting on the
10 Penobscot and Kennebec Rivers. That commission found
11 rapid growth in the commercial whitewater rafting
12 industry and a need to propose recreational use
13 limits for each river. As a result of that study, a
14 report with 2 legislative proposals (Majority Report
15 and Minority Report) was submitted to the Legis-
16 lature. One commission member approved a variation
17 of the Majority Report and will prepare amendments to
18 the Majority Report at the public hearing. This
19 bill reflects the Minority Report of the commission's
20 findings and conclusions.

21 Both reports agreed on river management objec-
22 tives, and the establishment of a Whitewater Rafting
23 Fund to fund river recreation activities. There was
24 general agreement on licensing requirements and
25 safety requirements. The Majority Report and Minor-
26 ity Report differ most dramatically in the actual
27 recreational use limits proposed and the method of
28 allocating the limited use among prospective
29 outfitters. The Minority Report provides:

30 Recreational use limits:

31	Kennebec River	
32	Saturday	800
33	Weekdays	no limit
34	Penobscot River, any day	320

1 Allocation system:

2 80 passengers per company limit for each day on
3 the Kennebec River and 80 total for Saturday and
4 Sunday combined on the Penobscot River. Allot-
5 ments will be awarded on a bid basis based on
6 ability to meet management objectives, experi-
7 ence, financial stability and the dollar amount
8 of the bid. No moratorium on commercial
9 licenses.

10 A more detailed analysis of the commission's
11 report and of the 2 legislative proposals is avail-
12 able in the complete commission report.

13

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