

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2281

H.P. 1648

House of Representatives, February 5, 1990

Reported by Representative JACQUES for the Whitewater Advisory Committee pursuant to the Maine Revised Statutes, Title 12, section 7369-A.

Reference to the Joint Standing Committee on Fisheries and Wildlife suggested and printing ordered under Joint Rule 18.

*Ed Pert*  
EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

**An Act to Amend the Laws Relating to Whitewater Rafting.**

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

2  
3       **Sec. 1. 12 MRSA §7365, sub-§3**, as enacted by PL 1983, c. 502,  
4 §4, is amended to read:

6       **3. Fee.** The annual basic fee for a commercial whitewater  
7 license shall must be set by the department and adjusted  
8 biennially by rule to reflect the actual cost of administering  
9 the license program. ~~The fee for 1983-84 shall be \$250.~~ The fee  
10 for reissuance of a license shall must be equal to the annual  
11 basic fee for a license. These fees shall must be credited  
12 directly to the department and used in accordance with section  
13 7074.

14  
15       **Sec. 2. 12 MRSA §7367, sub-§2**, as amended by PL 1989, c. 503,  
16 Pt. B, §67, is further amended to read:

18       **2. Whitewater Safety Committee.** The Whitewater Safety  
19 Committee established by Title 5, section 12004-I, subsection 70  
20 shall advise the commissioner in establishing and reviewing  
21 safety requirements for whitewater trips, developing a safety  
22 information program and reviewing the safety record of whitewater  
23 guides and outfitters. The committee shall submit a written  
24 report annually on each outfitter's safety record to the  
25 ~~Whitewater Advisory Committee, while the advisory committee~~  
26 ~~remains in existence~~ Commissioner of Inland Fisheries and  
27 Wildlife.

28       A. The Whitewater Safety Committee shall must be composed  
29 of 8 members: ~~Two~~ two members of the whitewater guides  
30 board designated by the board; 2 commercial whitewater  
31 outfitters and 2 whitewater guides designated by the  
32 Governor; and 2 members from the general public, one  
33 designated by the President of the Senate and one designated  
34 by the Speaker of the House of Representatives.

35       B. Terms of members of the Whitewater Safety Committee  
36 shall must be for 2 years, expiring on December 31st, except  
37 that initially the members shall draw lots for a one-year or  
38 a 2-year term. Terms shall must be staggered so that the  
39 term of one member in each category expires each year.  
40 Members shall serve until their successors are nominated and  
41 qualified. Members appointed to fill a vacancy created by  
42 the resignation, death or incapacity of a member shall  
43 complete the term of the vacancy and be eligible for  
44 reappointment. Members shall are entitled to be compensated  
45 as provided in Title 5, chapter 379 for no more than 4  
46 meetings a year.  
47

48  
49       **Sec. 3. 12 MRSA §7368-A** is enacted to read:

50  
51       7368-A. Rapidly flowing rivers

2           1. User fee. Outfitters shall pay a user fee of \$1 per  
4           passenger, excluding guides, carried by any outfitter on any  
6           rapidly flowing river. This fee must be paid by the 30th day of  
            the month following the month in which the passengers were  
            carried.

8           2. Reporting. Each outfitter shall report monthly to the  
10           department the number of passengers carried each day on each  
12           rapidly flowing river. This report must be submitted by the 30th  
14           day of the month following the month in which the passengers were  
            carried. Inaccurate reporting or failure to report may subject  
            the outfitter to the penalties in section 7370-A.

16           3. Passenger limitation. The following limitations apply  
            to the number of passengers an outfitter may carry.

18           A. An outfitter may not carry more than 80 passengers per  
20           day on any rapidly flowing river.

22           B. Notwithstanding other provisions of this chapter, and  
24           subject to rules adopted as necessary by the department, an  
26           outfitter may carry up to 120 passengers on each of 10  
28           unallocated weekdays on any river. The established launch  
            order applies for all passengers up to and including 80 in  
            number. All passengers over 80 in number are to be carried  
            at the end of the established launch order.

30           **Sec. 4. 12 MRSA §7369, sub-§2, as amended by PL 1983, c. 786,**  
            **§3, is further amended to read:**

32           **2. Allocation required; affiliated outfitters restricted.**  
34           Except as provided in subsection 10, operation of a commercial  
36           whitewater trip on the Kennebec River between Harris Station and  
38           West Forks or on the West Branch Penobscot River between McKay  
40           Station and Pockwockamus Falls without an allocation or in excess  
42           of an allocation is prohibited. ~~No An~~ allocation is ~~not~~ required  
44           for other rivers nor for other stretches of those rivers, ~~but no~~  
46           ~~outfitter may carry more than 80 passengers per day on any~~  
48           ~~rapidly flowing river within the State.~~ Not more than one member  
50           of an affiliated group may conduct whitewater trips on any river  
52           or stretch of river for which a specific allocation is required,  
            even on days for which an allocation is not required.

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

2           **Sec. 5. 12 MRSA §7369, sub-§7, ¶A,** as repealed and replaced by  
PL 1983, c. 786, §6, is amended by amending sub-¶(7) to read:

4  
6           (7) When allocations are considered for subsequent  
8           years, the performance of the outfitter in providing  
10           the services proposed for the previous allocations and  
            compliance with the terms of the allocations, including  
            the submission of required reports and fees on time;  
            and

12           **Sec. 6. 12 MRSA §7369, sub-§7, ¶F** is enacted to read:

14           F. Notwithstanding other provisions of this chapter, the  
16           department shall adopt by rule a procedure for awarding  
18           allocations beginning in 1991 that provides that any  
20           outfitter that uses its allocation in an amount equal to or  
22           greater than 75% of the industry average use retains the  
            allocation for the subsequent allocation period, subject to  
            remaining a licensed commercial whitewater outfitter. The  
            rule must further provide a means for allocating lost  
            allocations among other outfitters.

24           **Sec. 7. 12 MRSA §7369, sub-§8,** as enacted by PL 1983, c. 502,  
26           §4, is amended to read:

28           **8. Allocation fee.** Outfitters shall pay the department the  
30           following--fees: an allocation fee, for either river when  
32           allocations are required, of \$250 per unit of 20 passengers or  
34           less allocated per day on either river in excess of a single unit  
            on a single river. This may be in quarterly payments, beginning  
            30 days after the allocation is awarded. The maximum allocation  
            fee is \$1,750 for the privilege of carrying 80 passengers per day  
            on both rivers.

36           ~~A.---An---allocation---fee,---for---either---river---for---which~~  
38           ~~allocations-are-required,--of-\$250-per-unit-of-20-passengers~~  
40           ~~or-fraction-thereof-allocated-per-day-on-either-river-in~~  
42           ~~excess-of-a-single-unit-on-a-single-river,--This-may-be-in~~  
            ~~quarterly-payments,--beginning-30-days-after-the-allocation~~  
            ~~is-awarded.--The-maximum-allocation-fee-is-\$1,750-for-the~~  
            ~~privilege-of-carrying-80-passengers-per-day-on-both-rivers;~~  
            and

44           ~~B.---A---user---fee---of---\$1---per---passenger,---excluding---guides,~~  
46           ~~carried-by-any-outfitter-on-any-rapidly-flowing-river,--This~~  
48           ~~fee-shall-be-paid-by-the-10th-day-following-the-month-in~~  
            ~~which-the-passengers-were-carried.~~

50           **Sec. 8. 12 MRSA §7369, sub-§9,** as enacted by PL 1983, c. 502,  
52           §4, is repealed.



- 2           1. Eliminates a reference to 1983-84 license fees;
- 4           2. Changes the recipient of the annual report of the  
6           Whitewater Safety Committee from the Whitewater Advisory  
          Committee to the Commissioner of Inland Fisheries and Wildlife;
- 8           3. Creates a separate section in the Maine Revised  
10          Statutes, Title 12, dealing with any rapidly flowing river and  
          adds a provision that allows an outfitter to carry up to 120  
12          passengers on each of 10 unallocated weekdays;
- 14          4. Removes provisions dealing with all rapidly flowing  
          rivers from the section of the law dealing with allocated rivers;
- 16          5. Requires that timely submission of reports and payment  
18          of fees be factors considered in granting allocations;
- 20          6. Requires that outfitters be allowed to keep their entire  
          allocation if they have a history of allocation that is at least  
22          75% of the industry average use;
- 24          7. Limits allocated days to Saturdays from June 8th to  
          August 31st and July 4th if the recreational use limit is not  
26          reached on other days;
- 28          8. States that the annual report on the Whitewater Rafting  
          Fund is to contain data on the last, current and next fiscal  
30          years;
- 32          9. Requires that counties and municipalities that receive  
          money from the Whitewater Rafting Fund certify annually to the  
34          Commissioner of Inland Fisheries and Wildlife that the money has  
          been spent on river recreation activities, with emphasis on  
36          rafting, as required by law; and
- 38          10. Requires that the Joint Standing Committee on Business  
          Legislation and the Joint Standing Committee on Fisheries and  
40          Wildlife submit a bill calling for transfer of responsibility for  
          regulating rafting from the Department of Inland Fisheries and  
42          Wildlife to the Department of Professional and Financial  
          Regulation.