

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2501

S.P. 1005

In Senate, April 12, 1990

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GOULD of Waldo.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act Relating to the Whitewater Rafting Laws.

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not
2 become effective until 90 days after adjournment unless enacted
as emergencies; and

4
Whereas, this legislation affects the whitewater rafting
6 industry, which operates primarily during the spring, summer and
fall seasons; and

8
Whereas, this legislation should be in effect before the
10 start of the whitewater rafting season to allow these provisions
to be implemented uniformly throughout the entire rafting season;
12 and

14
Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
16 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
18 safety; now, therefore,

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

22 **Sec. 1. 12 MRSA §7363, sub-§2, as amended by PL 1985, c. 571,**
§1, is further amended to read:

24
26 **2. Affiliated outfitter.** "Affiliated outfitter" means:

28 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;

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

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

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

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

48 (2) Receives from another outfitter on a
nonarms-length basis more than 1/2 of the ordinary
50 services related to the business of whitewater
outfitting, including, but not limited to, mail,

2 telephone, reservations, repair, maintenance, personnel
training and management.

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

18 **Sec. 2. 12 MRSA §7365, sub-§3**, as enacted by PL 1983, c. 502,
20 §4, is amended to read:

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

30 **Sec. 3. 12 MRSA §7365, sub-§6**, as enacted by PL 1983, c. 502,
32 §4, is amended to read:

34 **6. Sale of business.** When a licensed whitewater
outfitter's business is sold, the license shall must be returned
36 to the department. On application, the license shall must be
reissued to the purchaser, provided that the purchaser meets the
38 licensing requirements of the department and pays the license
fee. Profit on the return and reissuance of the license itself
40 is prohibited, but nothing in this subchapter may be construed to
prohibit profit on the sale of any of the assets of a business.
42 The license is not an asset. The department may require an
affidavit from the purchaser to aid in enforcement of this
44 provision. Allocations may be transferred, pursuant to this
chapter, from a selling outfitter to one or more buying
46 outfitters only if the license of the selling outfitter is
returned to the department.

48 **Sec. 4. 12 MRSA §7367, sub-§1**, as amended by PL 1983, c. 786,
50 §2, is repealed and the following enacted in its place:

1 **1. Whitewater trip safety restrictions.** The commissioner
2 shall by rule establish safety restrictions for whitewater trips.

4
5 **Sec. 5. 12 MRSA §7367, sub-§2,** as amended by PL 1989, c. 503,
6 Pt. B, §67, is further amended to read:

8 **2. Whitewater Safety Committee.** The Whitewater Safety
9 Committee established by Title 5, section 12004-I, subsection 70
10 shall advise the commissioner in establishing and reviewing
11 safety requirements for whitewater trips, developing a safety
12 information program and reviewing the safety record of whitewater
13 guides and outfitters. The committee shall submit a written
14 report annually on each outfitter's safety record to the
15 ~~Whitewater--Advisory--Committee,--while--the--advisory--committee~~
16 ~~remains--in--existence~~ Commissioner of Inland Fisheries and
17 Wildlife.

18 A. The Whitewater Safety Committee shall-be is composed of
19 8 members: Two two members of the whitewater guides board
20 designated by the board; 2 commercial whitewater outfitters
21 and 2 whitewater guides designated by the Governor; and 2
22 members from the general public, one designated by the
23 President of the Senate and one designated by the Speaker of
24 the House of Representatives.

25 B. Terms of members of the Whitewater Safety Committee
26 shall-be are for 2 years, expiring on December 31st, except
27 that initially the members shall draw lots for a one-year or
28 a 2-year term. Terms shall must be staggered so that the
29 term of one member in each category expires each year.
30 Members shall serve until their successors are nominated and
31 qualified. Members appointed to fill a vacancy created by
32 the resignation, death or incapacity of a member shall
33 complete the term of the vacancy and be eligible for
34 reappointment. Members shall are entitled to be compensated
35 as provided in Title 5, chapter 379 for no more than 4
36 meetings a year.

37
38
39 **Sec. 6. 12 MRSA §7367, sub-§3,** as enacted by PL 1983, c. 502,
40 §4, is amended to read:

41 **3. Safety reports.** Each commercial outfitter shall submit
42 a-complete-monthly safety report reports on forms provided by the
43 commissioner ~~containing--the--following~~ as follows:

44 A. A written report of any accident occurring in connection
45 with a whitewater trip conducted by that outfitter and which
46 results in the death of a person, a person's losing
47 consciousness or receiving medical treatment, a person's
48 becoming disabled for more than 24 hours, a person's
49 disappearance from a whitewater craft under circumstances
50
51
52

2 indicating death or injury, or damage to the whitewater
craft or other property of more than \$100,--A summary of the
4 watercraft--accident--reports--required--by--section--7801,
subsection 19 may be used to satisfy this requirement; and

6 B. A written report of such other dangerous accidents and
occurrences as the department may, by rule, require.

8
9 Sec. 7. 12 MRSA §7368-A is enacted to read:

10 **§7368-A. Rapidly flowing rivers**

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

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

26 **3. Passenger limitation.** An outfitter may not carry more
than 80 passengers per day on any rapidly flowing river.

28 Sec. 8. 12 MRSA §7369, sub-§2, as amended by PL 1983, c. 786,
30 §3, is further amended to read:

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

44
46 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
48 allocated rivers. The burden shall ~~rest~~ rests on the former
member of an affiliated group to demonstrate that the reasons for
50 any finding of affiliation have been so diminished in effect that
the public interest will be served by considering the former
52 member's request to run passengers on an allocated river.

2 **Sec. 9. 12 MRSA §7369, sub-§7, ¶A**, as repealed and replaced by
4 PL 1983, c. 786, §6, is amended by amending sub-¶(7) to read:

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
12 compliance with the terms of the allocations, including
14 the submission of required reports and fees on time;
16 and

18 **Sec. 10. 12 MRSA §7369, sub-§8**, as enacted by PL 1983, c. 502,
20 §4, is amended to read:

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

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

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

62 **Sec. 11. 12 MRSA §7369, sub-§9**, as enacted by PL 1983, c. 502,
64 §4, is repealed.

66 **Sec. 12. 12 MRSA §7369, sub-§10, ¶A**, as amended by PL 1985, c.
68 571, §5, is repealed and the following enacted in its place:

70 A. Allocations are required for Saturdays for the period of
72 June 8th to August 31st. Allocations are required for
74 Sundays on the Penobscot River for the period of June 8th to
76 August 31st. If the department determines that the
78 recreational use limit will be reached other days, the
80 department shall provide by rule for allocations.

82 **Sec. 13. 12 MRSA §7370, sub-§3**, as enacted by PL 1983, c. 502,
84 §4, is amended to read:

2 **3. Budget.** The expenditures from the Whitewater Rafting
4 Fund shall ~~be~~ are subject to legislative approval in the same
6 manner as the General Fund budgets of the department and the
8 bureau are approved. The department and the bureau shall report
10 annually, before February 1st, to the joint standing committee of
12 the Legislature having jurisdiction over inland fisheries and
14 wildlife on its planned expenditures for the next fiscal year and
the next previous, its actual and planned expenditures for the
16 current fiscal year and its final expenditures for the last
18 fiscal year.

Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved.

FISCAL NOTE

Any additional costs associated with this bill would be
absorbed by the Department of Inland Fisheries and Wildlife
utilizing existing budgeted resources.

STATEMENT OF FACT

This bill:

1. Eliminates a reference to 1983-84 license fees;
2. Amends the provisions of current law concerning
transfers of allocations in regard to the sale of a whitewater
rafting business;
3. Allows the Commissioner of Inland Fisheries and Wildlife
to set the whitewater rafting safety restrictions;
4. Changes the recipient of the annual report of the
Whitewater Safety Committee from the Whitewater Advisory
Committee to the Commissioner of Inland Fisheries and Wildlife;
5. Deletes a redundant rafting report;
6. Creates a separate section in the Maine Revised
Statutes, Title 12, dealing with any rapidly flowing river;
7. Removes provisions dealing with all rapidly flowing
rivers from the section of the law dealing with allocated rivers;
8. Requires that timely submission of reports and payment
of fees be factors considered in granting allocations;

2 9. Limits allocated days to Saturdays from June 8th to
August 31st and, on the Penobscot River, to Sundays as well, if
the recreational use limit is not reached on other days;

4
6 10. States that the annual report on the Whitewater Rafting
Fund is to contain data on the last, current and next fiscal
years; and

8 11. Adds a fiscal note.