

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
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1990

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

1989-90

**EDUCATIONAL AND CULTURAL
SERVICES, DEPARTMENT OF**

Education in Unorganized Territory

Capital Expenditures \$200,000

Provides funds for the roof repairs at Connor and Edmond schools and the purchase of school buses needed for the safety of the children in the unorganized territory. These funds will be reimbursed to the General Fund from the Unorganized Territory Education and Services Fund.

Sec. 4. Aroostook County, Sinclair Sanitary District. The Aroostook County Commissioners are authorized to guarantee 2 loans to be made by the Sinclair Sanitary District. The first loan may not exceed \$150,000 for an engineering study.

The 2nd loan, if the project is approved by the federal Environmental Protection Agency and the Department of Environmental Protection, may not exceed \$150,000 to continue the project. It is the intent of the Legislature that the Sinclair Sanitary District should consider expanding the boundaries of the district to include Mud Lake and Cross Lake (T17R5) for implementation in this engineering study and design.

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

Effective April 20, 1990.

CHAPTER 882

H.P. 1828 - L.D. 2500

**An Act to Allow the Harness Racing
Commission More Flexibility**

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

8 MRSA §268, last ¶, as enacted by PL 1987, c. 886, §1, is repealed and the following enacted in its place:

The commission may authorize licensees of extended meets to provide for the simulcasting of entire racing cards during the first 6 weeks of each year. This paragraph is repealed January 1, 1992.

See title page for effective date.

CHAPTER 883

S.P. 1005 - L.D. 2501

An Act Relating to the Whitewater Rafting Laws

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

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

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

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

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

Sec. 1. 12 MRSA §7363, sub-§2, as amended by PL 1985, c. 571, §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

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 ~~shall~~ 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, ~~shall have~~ has 60 days from ~~license reissue~~ 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 ~~shall~~ must be added to the buyer's allocations and ~~shall~~ may not be considered as affiliated. No outfitter may receive more than the maximum allocation of 80 passengers a day.

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

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

Sec. 3. 12 MRSA §7365, sub-§2-A, as enacted by PL 1985, c. 669, is repealed and the following enacted in its place:

2-A. Insurance requirements. All outfitters shall carry liability insurance covering the operation of whitewater trips and motor vehicles carrying passengers. The department shall establish, by rule, the minimum limits of liability insurance.

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

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

Sec. 5. 12 MRSA §7365, sub-§6-A is enacted 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 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.

Sec. 6. 12 MRSA §7367, sub-§1, as amended by PL 1983, c. 786, §2, is repealed and the following enacted in its place:

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

Sec. 7. 12 MRSA §7367, sub-§2, as amended by PL 1989, c. 503, Pt. B, §67, is further amended to read:

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

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

B. Terms of members of the Whitewater Safety Committee ~~shall be~~ are for 2 years, expiring on December 31st, except that initially the members shall draw lots for a one-year or a 2-year term. Terms ~~shall~~ must be staggered so that the term of one member in each category expires each year. Members ~~shall~~ serve until their successors are nominated and qualified. Members appointed to fill a vacancy created by the resignation, death or incapacity of a member shall complete the term of

the vacancy and be eligible for reappointment. Members ~~shall~~ are entitled to be compensated as provided in Title 5, chapter 379 for no more than 4 meetings a year.

Sec. 8. 12 MRSA §7367, sub-§3, as enacted by PL 1983, c. 502, §4, is amended to read:

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

A. A written report of any accident occurring in connection with a whitewater trip conducted by that outfitter and which results in the death of a person, a person's losing consciousness or receiving medical treatment, a person's becoming disabled for more than 24 hours, a person's disappearance from a whitewater craft under circumstances indicating death or injury, or damage to the whitewater craft or other property of more than \$100.—~~A summary of the watercraft accident reports required by section 7801, subsection 19 may be used to satisfy this requirement;~~ and

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

Sec. 9. 12 MRSA §7368, sub-§2-A, ¶B, as enacted by PL 1985, c. 571, §3, is amended to read:

B. Sundays: ~~No limit set 800 commercial passengers, which shall be set by the department by rule if the department anticipates a sufficient release of water on the Kennebec River for commercial use;~~ and

Sec. 10. 12 MRSA §7368-A is enacted to read:

§7368-A. Rapidly flowing rivers

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

2. Reporting. Each outfitter shall report monthly to the department the number of passengers carried each day on each rapidly flowing river. This report must be submitted by the 30th 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.

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

Sec. 11. 12 MRSA §7369, sub-§2, as amended by PL 1983, c. 786, §3, is further amended to read:

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

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

(7) When allocations are considered for subsequent years, the performance of the outfitter in providing 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

Sec. 13. 12 MRSA §7369, sub-§8, as enacted by PL 1983, c. 502, §4, is amended to read:

8. Allocation fee. Outfitters shall pay the department the following fees: an allocation fee, for either river when allocations are required, of \$250 per unit of 20 passengers or 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.

~~A.—An allocation fee, for either river for which allocations are required, of \$250 per unit of 20 passengers or fraction thereof 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; and~~

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

Sec. 14. 12 MRSA §7369, sub-§9, as enacted by PL 1983, c. 502, §4, is repealed.

Sec. 15. 12 MRSA §7369, sub-§10, ¶A, as amended by PL 1985, c. 571, §5, is repealed and the following enacted in its place:

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

Sec. 16. 12 MRSA §7370, sub-§3, as enacted by PL 1983, c. 502, §4, is amended to read:

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

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

Effective April 20, 1990.

CHAPTER 884

H.P. 332 - L.D. 451

An Act to Create a Fuel Assistance Reserve Fund

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

Sec. 1. 5 MRSA §3518-B is enacted to read:

§3518-B. Fuel Assistance Reserve Fund

1. Fuel Assistance Reserve Fund. The division shall use funds appropriated pursuant to this section to establish and capitalize the Fuel Assistance Reserve Fund. The division shall keep the Fuel Assistance Reserve Fund separate from all other funds managed by the division and use the fund only, without exception, under the conditions set forth in this section. The Division of Community Services shall use the Fuel Assistance Reserve Fund to ensure that fuel assistance benefits for the State's eligible elderly and low-income residents are available prior to the beginning of the heating season.

2. Timely distribution of benefits. The Division of Community Services shall make available to local program operators and municipal administrators of the fuel assistance program, no later than October 1st of each year, funds sufficient to cover anticipated fuel assistance payments and program administrative costs for at least the months of October, November and December.

3. Conditional use of the fund. The division's use of the fund is subject to the following conditions and limitations.

A. If the director reasonably anticipates that federal fuel assistance block grant funds are not available for distribution to the local program operators and municipal administrators by October 1st of each year, the division shall withdraw and distribute sufficient money from the fund as is necessary for the purposes set forth in this section. The division may withdraw funds prior to October 1st, provided that those funds are used only for costs incurred on or after October 1st.

Money may not be withdrawn from the fund if sufficient block grant funds are available to pay reasonably anticipated fuel assistance program and administrative costs for the months of October, November and December.

B. Money withdrawn from the fund must be sufficient to cover anticipated fuel assistance payments and fuel assistance program administrative costs for all local program operators and municipal administrators for the months of October, November and December.

C. The division may not withdraw money from the fund between October 1st and June 30th.

D. The fund may not be used if the Director of Community Services knows, or is reasonably certain, that no federal fuel assistance money will be received.

4. Recapitalization. If money is withdrawn from the fund for the purposes of this section, the Division of Community Services shall ensure that the fund is fully recapitalized by June 30, 1991.

5. Expiration of fund. Authorization for the fund expires on June 30, 1991. The division shall ensure that the fund is fully recapitalized and that all money in the fund is transferred to the General Fund no later than June 30, 1991.

Sec. 2. Working capital advance. The State Controller is authorized to advance to the Executive Department, Division of Community Services, \$8,000,000 from the General Fund to the Fuel Assistance Reserve Fund. These funds will be used to provide the working capital advance necessary to make timely fuel assistance payments to elderly and low-income residents until receipt of Low-income Home Energy Assistance