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RESOLUTION OF CONFLICTING ENACTMENTS

Staff Study
Final Report
to the

Joint Standing Committee on
Judiciary

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EXECUTIVE SUMMARY

LD 1718, An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments, was introduced in the First Regular Session of the 115th Legislature to reduce the amount of legislative time necessary to correct errors and inconsistencies in the statutes. It proposed an administrative mechanism to allow the Revisor of Statutes to make certain corrections without specific legislative action each time, and it proposed to establish a temporary commission to determine the most appropriate way to resolve conflicting enactments. The administrative correction mechanism won unanimous approval, but the study commission provisions were removed from the bill in lieu of a staff study to provide background and options on resolution of conflicting enactments. This report is the joint product of the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes in response to the staff study request.

The process to correct errors and inconsistencies that was used prior to the enactment of LD 1718 was lengthy and cumbersome for both legislators and staff. The administrative mechanism adopted in LD 1718 has already greatly improved the Errors Bill process by removing the most ministerial corrections from the committee process. That mechanism, however, does not affect "conflicting enactments." Conflicting enactments are, typically, multiple amendments to the same statutory section in the same legislative session that do not refer to each other. Conflicting enactments are traditionally resolved through the Errors Bill, handled each year by the Joint Standing Committee on Judiciary. Two recent court opinions resolved two separate instances of conflicting enactments before they could be resolved in the next Errors Bill. Both resolutions misconstrued the legislative intent behind the enactments. The cases helped to trigger the realization by the Legislature that the issue of resolution of conflicting enactments needs to be addressed to determine if there is a more appropriate way for the conflicts to be resolved.

This report reviews the administrative mechanisms and statutory rules of construction adopted in other states. It also generally lays out options that the Legislature may follow, including the option of not changing the current procedure, and the possible drawbacks of different courses of action. Specific issues to be addressed for each option are included. In addition, three sample statutory rules of construction can be found in Appendix F.

This report is the result of a staff study and does not, therefore, recommend any particular course of action.

I. INTRODUCTION

During the First Regular Session of the 115th Legislature, several members of the Joint Standing Committee on Judiciary introduced a bill designed to reduce the amount of legislative time necessary to correct errors and inconsistencies in the statutes. **LD 1718, An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments**, addressed the existing errors and inconsistencies process on two fronts. The bill proposed an administrative mechanism to make certain corrections without specific legislative action each time (see Part II, B, 2 of this report for discussion of the administrative mechanism), and it proposed to establish a temporary commission to determine the most appropriate way to resolve conflicting enactments.

The Joint Standing Committee on Judiciary agreed to the administrative correction proposal. Although the members also recognized the need to review the possible methods of resolving conflicting enactments, they determined that a study commission in times of fiscal stress was not feasible. The Committee therefore reported out the bill with only the administrative corrections language included, and requested the Legislative Council to approve a staff study to provide the Judiciary Committee with an outline of the experiences in other states, the various courses the Maine Legislature can follow and the possible effects of each of those courses.[1] The Legislative Council approved the staff study to be conducted by the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes.[2] This report is the result of that study.

II. BACKGROUND

A. Resolution of statutory errors and inconsistencies in general

1. Conflicting enactments

"Conflicting enactments" are currently defined in Maine statute as "multiple enactments, amendments, repeals, reallocations or reenactments, or any combination of these actions, that affect the same statutory unit and that have been adopted by Acts of the Legislature that do not refer to each other."[3] The purpose of this study is to examine various options for resolving conflicting enactments. The study focuses on administrative mechanisms, rules of statutory construction and other options available to address the problem.

1 Appendix B contains LD 1718 and the enacted version of LD 1718, PL 1991, c. 336.

2 See Appendix A for the letter authorizing the study.

3 1 MRSA §91, sub-§1, enacted by PL 1991, c. 336. Note that a bill has been accepted for introduction into the Second Regular Session of the 115th Legislature that proposes an amendment to this definition. See Appendix C.

An example of conflicting enactments can be found in PL 1989, c. 501 and c. 585, the pertinent texts of which can be found in Appendix D. Both of the chapters amended section 6, subsection 2 of Title 2, listing the employees who are categorized as in Salary Range 90. PL 1989, c. 501 amended subsection 2 to add three associate commissioners within the Department of Mental Health and Mental Retardation. PL 1989, c. 585 amended subsection 2 to add the Executive Director of the Maine Waste Management Agency. Both chapters reprinted subsection 2 in its entirety, and neither of the chapters referred to the other or included the language enacted by the other. Each of the amendments was for a different purpose, but the effect of neither would preclude the effect of the other.

Generally, the Legislature and its staff view these conflicts as technical conflicts only. By adding the Executive Director of the Maine Waste Management Agency to the Range 90 employees, the Legislature did not intend to delete the Associate Commissioners of the Department of Mental Health and Retardation, even though the Maine Waste Management Agency bill was enacted and signed (and, therefore, chaptered) after the Department of Mental Health and Mental Retardation bill. In these instances, the practice of the Legislature and its staff is to "read together" enactments that amend the same portion of statute to give each enactment its full effect to the greatest extent possible.[4]

The Legislature formally resolved the conflict created by these two amendments in PL 1989, c. 878 (the Errors Bill for 1990) by repealing subsection 2 as amended by both c. 501 and c. 585 and reenacting it, incorporating the language from both chapters. This was considered a technical, as opposed to substantive, change because the actual effect of both laws, in the Legislature's view, was not altered.

2. Resolution through the Errors Bill

Not until c. 336 of PL 1991 has the Legislature given authority to anyone to change, other than through specific legislative action, legislative enactments in even the most minor or ministerial way. All corrections, from those of the most minute nature to corrections of great weight, have always been made through additional legislative enactment. The usual vehicle for corrections has been an "errors and inconsistencies bill," most often referred to as the "Errors Bill." The Errors Bill is generated by the Office of the Revisor of Statutes and is traditionally sponsored

4 See Part IV, B of this report for discussion of the basis for this practice, as well as other practices and authorities.

by the chairs of the Judiciary Committee. Many legislative sessions have seen the introduction of more than one errors bill, sometimes based on particular subject matter and handled by the committee whose jurisdiction encompassed that subject matter.[5] For the past several sessions, however, the Judiciary Committee has handled the great bulk of errors no matter what the subject matter.[6] Departments often submit bills to the Legislature with titles that make the bills appear to be typical errors bills, when, in fact, the bills usually make "administrative" changes that are often minor in nature but substantive as opposed to technical.

Analysis of Errors Bills has changed over the years. Recent examinations focus on whether a proposed Errors Bill section would cause a change in the effect of the law from what the law would be without the Errors Bill. Clearly substantive changes are now deleted or left out of the Errors Bill. This is the Judiciary Committee's response to the past practice of using the voluminous Errors Bill to hide or slip in substantive changes that may not receive Legislative approval on their own; very few legislators have the time to examine the Errors Bill committee report section by section when it comes out of committee, as it most often has, at the extreme end of the legislative session. It is understandable that a controversial section buried in the Errors Bill would not be found until after enactment and gubernatorial approval. For the past several Legislative sessions, the Judiciary Committee has insisted on removing substantive changes from the Errors Bill and the Committee Amendment, preferring to not attach them at all, or, if the change is necessary even though substantive, amending the Committee Amendment with one or more floor (i.e., House or Senate) amendments to make those changes. The theory is that every member of the Legislature has a greater opportunity to review a proposed substantive change in a one- or two-page floor amendment than he or she has to review the entire Errors Bill to ferret out nontechnical changes.

For all Errors Bills, the review process has evolved into a lengthy, painstaking process. As the Judiciary Committee has formalized its commitment to keep substantive changes out of the Errors Bill, the review process has developed into a full-scale staff project, requiring documentation and analysis for every piece of legislation contributing to the error to provide to the Judiciary Committee all the information necessary to determine if the correction of a particular error truly makes a technical

5 See, for example, the seven errors bills introduced in the First Regular Session of the 106th Legislature (1973).

6 An excellent recent example is LD 1239 in the 115th Legislature which the Judiciary Committee handled even though the subject matter was entirely within the jurisdiction of the Energy and Natural Resources Committee.

correction. The Committee's review of the information has entailed hours of work sessions, often lasting late into the night and sometimes fragmented in order to coordinate with lengthy year-end House and Senate sessions.

B. Recent changes in the process

1. Causes and triggers

a. Overloaded errors bill

By the end of the Second Regular Session of the 114th Legislature, all parties concerned - the Judiciary Committee, the Office of Policy and Legal Analysis and the Office of the Revisor of Statutes - had reached the conclusion that the usual Errors Bill process was becoming unmanageable. As the number of bills flowing through the Legislature becomes larger, the chances of conflicts or other mistakes occurring increase. More thorough review of the statutory data base identifies more errors. Increasingly sophisticated computer systems have also contributed to finding additional errors. In short, the number of sections that could be legitimately included in the Errors Bill has increased dramatically over the last several years.

Although the Office of the Revisor of Statutes and the Office of Policy and Legal Analysis work together to eliminate duplication of efforts, the staff time necessary to analyze and fully document each Errors Bill section is often extremely difficult to make available. From a legislator's perspective, the members of the Judiciary Committee certainly do not have the time, even if they have the inclination at the end of a strenuous session, to fully examine the total number of potential Errors Bill sections. The shortage of time and other resources in 1991 made change inevitable. The Revisor of Statutes, with the Judiciary Committee's blessing, began seeking a way to reduce the process while maintaining the integrity the Committee over the years had worked so hard to achieve.

b. Recent court cases

Title 38, section 1310-X

Legislative pressures are not the only forces working for changes in the process. The issue of conflicting enactments, and the manner in which they are resolved, has also been presented in recent court cases. In 1990, the Superior Court in Kennebec County ruled in favor of a plaintiff, Hy-Tech Energy, Inc., appealing the Department of Environmental

Protection's denial of a permit for a new biomedical waste disposal facility.[7] The court was faced with two 1990 amendments to Title 38, section 1310-X, addressing a ban on new commercial solid waste disposal facilities. The court determined that the two amendments were irreconcilable, and therefore ruled that the amendment that was enacted, signed and chaptered later took precedence. The series of actions leading up to the decision, and the legislative response, are discussed below.

In 1989, the Legislature, upon the recommendation of the Joint Standing Committee on Energy and Natural Resources, enacted a ban on new commercial solid waste disposal facilities, effective as of September 30, 1989.[8] In 1990, the Judiciary Committee, through the Errors Bill, corrected technical format errors in section 1310-X by repealing and replacing the entire section, but ending up with the same effect intended with the original enactment. Unbeknownst to the Judiciary Committee, the Energy and Natural Resources Committee also took up section 1310-X, and a majority of that Committee supported the repeal and replacement of the entire section to not only correct the technical problems, but also to extend the ban to biomedical waste disposal facilities. The bills were reported out of the committees and to the floor within days of each other.

LD 2354, the Energy and Natural Resources Committee's bill, was reported out to the floor on April 5, 1990. The Majority report was eventually accepted in both houses. It was enacted in both the House and the Senate on April 7, 1990. Governor McKernan signed LD 2354 on April 19, 1990, and it became chapter 869 of the Public Law of 1989. It became effective on July 14, 1990, 90 days after the adjournment of the Legislature.

LD 2345 was the 1990 Errors Bill handled by the Judiciary Committee. Preliminary indications had been that the Energy and Natural Resources Committee would not address the ban on commercial waste disposal facilities in the 1990 Legislative Session. The Judiciary Committee agreed to correct the technical problems in section 1310-X in the Errors Bill, and completed its work before the Energy and Natural Resources bill was reported to the floor. By the time the Committee Amendment to the Errors Bill was printed and the bill reported to the floor, LD 2354 was already enacted. The Errors Bill was reported to the floor on April 9, 1990, enacted

7 Hy-Tech Energy v. Department of Environmental Protection, Me. Super. Ct., Ken. Cty., No. CV-90-405, November 19, 1990.

8 38 MRSA §1310-X, enacted PL 1989, c. 585, Pt. E, §34.

as an emergency on April 11, 1990, and signed by the Governor on April 20, 1990. LD 2345 is now chapter 878 of the Public Law of 1989. Because it was enacted as an emergency, the chapter became effective when the Governor signed it on April 20, 1990.

In the midst of this series of amendments and effective dates, Hy-Tech Energy, Inc., applied for a permit to construct a new biomedical waste disposal facility. The Department of Environmental Protection and the Board of Environmental Protection denied the permit based on the language of PL 1989, c. 869, banning new biomedical waste facilities beginning September 30, 1989. Hy-Tech appealed that denial (under Rule 80C of the Maine Rules of Civil Procedure) to the Superior Court.

The Superior Court determined that the two chapters were "in direct conflict." Because chapter 878 was enacted after chapter 869 and was adopted as emergency legislation, the court ruled that the changes in chapter 878, the Errors Bill, were in effect. Chapter 869 amendments to section 1310-X were, essentially, repealed by implication.

Because the State did not appeal the decision, the Superior Court's interpretation of legislative intent was the last word on these conflicting amendments. Both the Energy and Natural Resources Committee and the Judiciary Committee were dismayed at the decision and the unintended effect of the Errors Bill section correcting section 1310-X. In working on an early 1991 Errors Bill designed to correct errors in Title 38 only (LD 1239), both committees initially approved amendment of section 1310-X once again to make it identical to the version enacted in chapter 869. Because of the need to correct an incorrect retroactivity date in chapter 869, however, the Judiciary Committee deleted the section from LD 1239 to allow the Energy and Natural Resources Committee to handle that substantive change as well as to respond to comments and questions from several interested parties.[9] See Appendix E for materials regarding the legislative intent behind the amendments to Title 38, section 1310-X.

Title 38, section 569, subsection 2-A

Another case in which legislative intent was misunderstood occurred after two amendments to the Underground Oil Storage Facilities and Ground Water Protection Act were read to be in substantive conflict.

9 The conflict was resolved in LD 3, as amended by Committee Amendment "A", PL 1991, c. 297. The other questions were addressed in LD 1136, as amended by Committee Amendment "A", PL 1991, c. 382.

PL 1989, c. 865 repealed the language declaring that the third-party damage remedies under the Act are exclusive.[10] During the same legislative session, the Energy and Natural Resources Committee approved legislation clarifying the duties of the Board of Environmental Protection and the Department of Environmental Protection. The bill was not intended to make substantive changes outside of declaring who had responsibility and authority, the Board or the Department. One of the sections amended to clarify authority was the third-party damage claims subsection regarding groundwater contamination. PL 1989, c. 890 amended the subsection to transfer the third-party damages processing and fund management from the Board of Environmental Protection to the commissioner.

The Maine Supreme Judicial Court preliminarily indicated how it would resolve the conflict created by PL 1989, c. 865 and c. 890 in a footnote in Sirois V. Winslow,[11] although the case was not about the exclusivity of the remedies. Chapter 865 was enacted as an emergency before c. 890. The Law Court indicated that the later amendment by chapter 890, effective 13 days later, essentially repealed the chapter 865 version of subsection 2. This conflict was later resolved in LD 1239, as amended by Committee Amendment "A" and Senate Amendment "A", PL 1991, c. 66, to reinstate the chapter 865 version. This resolution was exactly opposite to the one the court indicted it would arrive at in Sirois. See Appendix E for supporting documentation.

2. LD 1718, administrative changes and conflicting enactments

LD 1718, An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments, was introduced in 1991 as a response to the problems in workload and interpretation of legislative intent surrounding Errors Bills and conflicting enactments.

a. Administrative corrections

A major objective of LD 1718 was to reduce the Errors Bill workload for both the Judiciary Committee and the Legislature as a whole. In the bill, the Legislature gave the Revisor of Statutes the power to correct specific technical errors in the statutes, while retaining legislative oversight over all the Revisor's actions.

10 38 MRSA §569, sub-§2-A.

11 585 A.2d 183 (Me. 1991).

The Revisor may do the following without specific legislative action:

1. Correct misspellings;
2. Correct erroneous enacting clauses and statutory histories;
3. Correct erroneous cross-references;
4. Delete obsolete dates;
5. Correct improper capitalization;
6. Edit or add to descriptive headings of titles, chapters, sections and subsections;
7. Correct or properly arrange numbering of statutory elements;
8. Correct improper punctuation, including hyphenation;
9. Change names or terminology authorized by a revision clause as required by the revision clause; and
10. Correct obvious clerical or typographical errors.[12]

The statute specifically states that the Revisor cannot make changes that would have a substantive effect on the law. If the Revisor makes a substantive change, it must be given no effect. If the Revisor is unclear about whether a specific change is authorized, he or she is not to make the change.

The instrument the Revisor uses to make these changes is a new report called "The Revisor's Report." It is assembled at the time the Office of the Revisor of Statutes is updating the statutory data base. The update process is the process by which the newly enacted laws are incorporated into the existing computer data base making up the Maine Revised Statutes. The process begins as soon as the Legislature adjourns and has to be completed before drafting of the next session's legislation begins. As the new laws are incorporated, inconsistencies, misspellings, conflicts and other errors are noted. Those appropriate for the Revisor's Report will be included in the report; all others will be set aside for the next Errors Bill or some other avenue of correction, such as another bill amending the section containing the conflict.

The Revisor submits the Revisor's Report to the Judiciary Committee by October 1st of each year. Copies are to be sent to the Secretary of State, the Executive Director of the Legislative Council and to the publisher of the Maine Revised Statutes Annotated. The publisher will incorporate the changes made in the report in all subsequent publications of the laws. The changes are also incorporated by the Office

12 1 MRSA §93. See also Appendix C for proposed modifications of this list.

of the Revisor of Statutes into the statutory data base. If the Judiciary Committee disagrees with any changes made by the Revisor's Report, the Committee may make corrections in any of three ways. The Committee may direct the Revisor to make the corrections during the next update. The Committee also may make the corrections through legislation by incorporating the corrections into the next Errors Bill, or by reporting out other legislation that makes the corrections.[13]

The Revisor of Statutes submitted the first Revisor's Report to the Judiciary Committee on October 1, 1991. It is a 30 page document containing 68 sections. The corrections included in the Report are now incorporated into the statutory data base and have been transmitted to the publisher of the Maine Revised Statutes Annotated as have all the legislative enactments. The Revisor's corrections have appeared in the materials supplementing the bound volumes of the Maine Revised Statutes. The description of the changes corrected by the Revisor's Report include a reference to that report.

The Office of the Revisor of Statutes has identified a few areas where the jurisdiction of the Revisor can be expanded without encroaching on the Legislature's law-making power. A few clarifications may also be in order for the statute authorizing the Revisor's Report. Legislation has been accepted by the Legislative Council for introduction to the Second Regular Session of the 115th Legislature to carry out those modifications. The proposed legislation is contained in Appendix C.

b. Conflicting enactments

As useful as the Revisor's Report will be in reducing the size of the Errors Bill, and the workload associated with it, there are still many errors that cannot be corrected through this administrative mechanism. The Revisor's Report corrects most of the errors that many people believed should not require separate legislation to correct because the errors are such obvious mistakes, such as misspellings. The question remains as to how to handle the other errors. This study focuses on the conflicting enactments, two possible new methods of providing for their resolution - an administrative mechanism and a rule of statutory construction - and other options.

13 1 MRSA §95.

III. ADMINISTRATIVE RESOLUTION OF CONFLICTING ENACTMENTS

A. Generally

Just as LD 1718 provided an administrative mechanism to correct more obvious errors, an administrative mechanism can be adopted that would provide the Revisor of Statutes with the authority to resolve conflicting enactments without affirmative legislative action for each conflict resolved. As with the Revisor's Report, the Legislature could refuse to accept any of the Revisor's resolutions, and opt for any of the existing mechanisms to reverse a revisor's correction.

B. Practice in other states

Several states have attempted to address the problem of conflicting enactments by giving a state official, other than the Legislature itself, the authority to resolve the conflict. This report summarizes the provisions of 13 states that have adopted one of various forms of administrative mechanisms.

Florida law says simply that the Joint Legislative Management Committee has the authority to "consolidate" any two or more sections, chapters or laws in the process of preparing the Florida statutes for publication. Because other states' statutes are more specific when directing handling of conflicting enactments, this may be authority for consolidating laws on the same subject, rather than legislative acts amending the same statute without reference to each other. Fla. Stat. Ann. §11.242 (West 1988). (Florida also has a rule of construction addressing conflicting enactments specifically. See Part IV, B of this report.)

The **Massachusetts** statutes are equally vague as to whether the counsel to the Senate and House, the official who prepares revisions, has the authority to resolve conflicting enactments. The statute speaks of "revis[ing] the General Laws," including "the correction of mistakes, inconsistencies and imperfections." Mass. Gen. Laws Ann. ch. 3 §53 (West 1986). A liberal reading of the statute would allow the counsel to resolve the conflict.

The **New Mexico** legislature provided the New Mexico Compilation Commission with more specificity by establishing a rule of construction to apply when two or more acts are enacted during the same session of the legislature that amend the same section of the statutes. It directs the compilation commission to compile into the New Mexico Statutes Annotated, and it presumes to be "the law," the act last signed by the governor. Effective dates are irrelevant under the rule. This is a direction to both the compilation commission and the advisory committee of the Supreme Court. Express legislative intent to the contrary, of course, overrides the rule. Note that the rule applies when two or more acts amend the same section; no finding that the

amendments are "irreconcilable" is required for the later-signed act to be presumed the law. This is in contrast to the provision covering "two or more *irreconcilable acts* dealing with the same subject matter" enacted in the same legislative session, although the treatment is the same: The act last signed by the governor is presumed to be law, and must be compiled in the NMSA. N.M. Stat. Ann. §12-1-8 (1988) [emphasis added].

New Jersey also provides explicit directions to its Office of Legislative Services. The office, through its legislative counsel, is authorized to correct errors caused when two or more amendments to the same section of law are enacted, at the same or different sessions of the legislature, if the amendments "inadvertantly" omit provisions of, or fail to refer to, each other. The part that may be difficult for the legislative counsel to apply is that only amendments that "may be put into simultaneous operation" may be reconciled. This requires the legislative counsel to make a judgment whether the two or more amendments can be given effect without impinging on each other's purposes. The corrections also require the concurrence of the Attorney General before they are to be printed. N.J. Stat. Ann. §1:3-1 (West 1991).

The **South Dakota** Code Commission is authorized to "correlate and integrate all the laws to harmonize," as well as to make the usual apparent errors corrections. "Harmonize" appears to be one of the terms used to authorize the reconciliation of conflicting enactments, giving each as much effect as possible. The statute, however, is not generous with directions or intentions with regard to conflicting enactments specifically. S.D. Codified Laws Ann. §2-16-9 (1985).

Nebraska gives the revisor of statutes the power, when preparing statutory supplements for publication, to "harmonize provisions with former acts of the Legislature." The statutes give specific direction, however, for conflicting enactments. The revisor must determine the extent to which bills amending the same statute in the same legislative session are "entirely reconcilable and not in conflict with each other." The revisor must correlate these to reflect all amendments and then oversee their publication. Each section is to be followed by a brief note explaining the action taken. Neb. Rev. Stat. §49-769 (1988). If, however, the revisor determines that the bills amending the same section are not entirely reconcilable and are in conflict with each other, the revisor must permit only the latest version to pass the Legislature to be published, followed by a brief note explaining the action taken. The revisor must also report these cases to the chair of the appropriate standing committee so the Legislature can take whatever action is appropriate. Neb. Rev. Stat. §49-770 (1988).

The law revision officer of the **Rhode Island** Legislature is directed to "consolidate the public laws and acts and resolves . . . so that . . . contradictions [may be] reconciled," without changing the law or altering the substance of the statutes. Although this language is a little vague, the last sentence of the section requires the law revision officer to file an annual report indicating which sections of the general laws had more than one amendment at the previous session, and "displaying a copy of the final version of the statute." This indicates that the law revision officer does consolidate amendments to the same section, producing what appears to be a "new" version of the statute because more than one amendment has been incorporated into it. R.I. Gen. Laws §22-11-3.4 (1989).

The **Louisiana** Law Institute is given the job of preparing the printer's copy of the updated statutes. The conflicting enactments language is actually quite specific. When a conflict between two or more legislative acts affecting the "*same subject matter* in the *same provision of law*" cannot be resolved "for the purpose of incorporating the text into the Revised Statutes," the institute notifies the secretary of the Senate and the clerk of the House of Representatives. The secretary and the clerk certify jointly which of the conflicting legislative acts was enacted last; the institute then incorporates that version in the printer's copy of the statutes. Although this is basically the same as the "last-enacted" rule, it is written narrowly to apply to subject matter conflicts within the same section of law. La. Rev. Stat. Ann. § 24:252 (West 1991) [emphasis added].

If a section of the statutes is added or amended by two or more chapters of law in the same legislative session, **Arizona** authorizes the director of the legislative council, when preparing the laws for publication, to combine the sections into a single section, provided that the combining does not effect a substantive change in the existing statutes or the new legislation. Ariz. Rev. Stat. Ann. §41-1304.03 (1990).

The Legislative Research Commission in **Kentucky** has the authority to incorporate conflicting enactments in the statute. This power exists only if the amendments, changes or alterations made by the multiple acts in the same session can be given effect and incorporated in the section in a manner that "makes the section intelligible." Ky. Rev. Stat. §7.136 (1985).

The **Wisconsin** revisor of statutes is required to incorporate the changes made by two or more acts of a legislative session that affect the same statutory unit if the revisor finds there is "no

mutual inconsistency in the changes made by each act." The incorporation must be documented in a note to the section. In addition, the revisor must include in a correction bill a provision formally validating the incorporation. Wis. Stat. Ann. §13.93 (West 1986 and 1991 Supp.).

Missouri also specifically addresses conflicting enactments. If any section of the statutes is amended or reenacted by more than one act at the same legislative session, the section may be published as amended or altered by the several acts if the amendments, changes or alterations can be incorporated in the section in such a manner "as to make the section intelligible." The revisor must insert a note at the end of the section explaining the incorporations. If the section cannot be made intelligible by incorporating the amendments, the section as enacted by each act must be published in full. Mo. Rev. Stat. §3.065 (1986).

If a section of the session laws or of the official code in **Washington** is amended without reference to other amendments to the same section, the code revisor, in consultation with the statute law committee, may publish that section of law or code incorporating all the amendments to that section. The statute law committee must first determine that the amendments do not conflict in purpose or effect. Wash. Rev. Code §1.12.025 (1989).

IV. RESOLUTION OF CONFLICTING ENACTMENTS THROUGH RELIANCE ON RULES OF CONSTRUCTION

A. Generally

There are generally two types of rules of construction that the courts use to officially construe the meaning of legislative enactments when the statutes themselves contain more than one reasonable interpretation. The first type consists of rules enacted by the legislature as part of the statutes to explain the legislature's intent in using particular words or phrases, or in enacting a coherent statutory scheme. The second general category of rules of construction are those established and used by courts, usually in the absence of any legislative pronouncements on the subject, to interpret ambiguous statutes.

B. Existing aids and rules

1. Maine statutes

The Maine Legislature has adopted rules of statutory construction to provide a court interpreting the statutes guidance as to what the Legislature intended by its enactments.

Title 1, section 71 includes twelve different rules of construction that apply generally throughout the statutes, unless applying one of the rules is inconsistent with the plain meaning of the enactment. In addition, there are several specific directions for construing or applying specific chapters or titles. For example, §1-102 of the Probate Code[14] says "This Code shall be liberally construed and applied to promote its underlying purposes and policies." The section goes on to list five purposes and policies that are to guide the application of its provisions.

A rule of statutory construction was contemplated, in the conceptual stages of LD 1718, as a useful method of clarifying legislative intent for other errors, in particular conflicting enactments. It was not incorporated in the bill in lieu of the further study and discussion proposed by the bill.

2. Case law and Attorney General Opinions

Because there is no existing statutory mechanism for the resolution of conflicting enactments, the primary source for guidance is in opinions from the courts and from the Attorney General.

Maine authority relating to the construction of conflicting enactments is contained in one Law Court opinion, one Opinion of the Justices and two Attorney General Opinions.[15] The opinions are not altogether consistent, but all recognize the general principles that the purpose of statutory construction is to save, rather than destroy a particular statute,[16] and that the entire statutory scheme must be read together to reach a harmonious result.[17] The major elements are as follows.

Reconcilable conflicts. All of the above opinions agree that when the conflicting enactments can be read together to be given effect in a harmonious manner, there is no "irreconcilable" conflict,[18] and in furtherance of the general

14 18-A MRSA.

15 Old Tavern Farm v. Fickett, 125 Me. 123, 131 A.2d 306 (1925); Opinion of the Justices, 311 A.2d 103 (Me. 1973); Op. Me. Att'y Gen. (December 19, 1975); Op. Me. Att'y Gen. (August 27, 1975).

16 State v. Crocker, 435 A.2d 58 (Me. 1981); State v. Davenport, 326 A.2d 1, 5-6 (Me. 1974).

17 See, Seven Islands v. Land Use Regulation Commission, 450 A.2d 475 (Me. 1982); In re Belgrade Shores, 359 A.2d 59 (Me. 1976).

18 See also, State v. London, 162 A.2d 150 (Me. 1960).

principle that all statutory language should be read to give it effect unless it is impossible to do so[19] the sections should be read together and given their full meaning. The closest definition of "reading together" that we have in Maine is found in the 1973 Opinion of the Justices:

> If two legislative instruments relate to the same subject matter and come from the same legislative session neither enactment is to be regarded as effecting a total repeal of the other; rather, as many of the provisions of each enactment will be given full effectiveness as are consistent with a single harmonious whole which may be reasonably perceived as the overall legislative purpose.[20]

Irreconcilable conflicts. When conflicting enactments cannot be read together in harmony, the authorities agree an irreconcilable conflict exists. When the conflict is irreconcilable, however, the authorities differ somewhat on the correct resolution.

The 1973 Opinion of the Justices sets forth one fairly amorphous scheme for resolution, and that scheme is followed by the August 27, 1975 Attorney General Opinion. It is as follows:

> 1. Read together those provisions that can be read together in accordance with legislative intent;
> 2. For inconsistent provisions, those facets of either statute which treat the common subject matter in the more direct, special and minute manner will usually prevail; but
> 3. The provisions of the later enactment which are consistent with the foundational legislative purpose will generally control unless a contrary result is plainly required.[21]

The December 19, 1975 Attorney General Opinion does not cite its predecessors, but suggests that the following hierarchy be used.

> 1. Read together those provisions which can be combined.

19 Opinion of the Justices, 460 A.2d 1341, 1346 (Me. 1982); see also, Maine State Society for the Protection of Animals v. Warren, 492 A.2d 1259 (Me. 1985); State v. Leonard, 470 A.2d 1262 (Me. 1984); State v. Taplin, 247 A.2d 919 (Me. 1968).

20 Opinion of the Justices, supra, 311 A.2d at 108.

21 Id.; Op. Me. Att'y Gen. (August 27, 1975).

2. If there is intrinsic expression of clear legislative intent, resolve the conflict as directed by that intent.
3. If there is no clear intrinsic expression of intent, the act that was last passed by the Legislature will prevail over previously passed acts, but only to the extent of the actual conflict.[22]

None of the cited authorities seem to give any weight to whether either of the conflicting enactments was passed as an emergency measure, or to the effect of varying effective dates, but the Superior Court did determine these attributes to be important in a recent case,[23] as discussed in Part II, B, 1, b of this report.

Maine authorities are consistent in holding that if there is an irreconcilable conflict and one section is construed as superior to a competitor, whether by expression of intent or by either construction scheme, the disfavored competitor is disregarded by the doctrine of repeal by implication. Implied repeals are not favored, however, and are limited in application to only those portions of the multiple enactments that actually conflict and cannot stand together.[24] When two enactments are both a comprehensive statement of the law governing the same subject matter and they cannot be read in accord with each other, the entire earlier enactment is impliedly repealed.[25]

3. Statutory rules of construction in other states

Several states have one or more rules of construction enacted into statute that specifically address conflicting enactments. The predominant treatment is to allow the last enacted or approved to

22 Op. Me. Att'y Gen. (December 19, 1975). It is important to note that the last passed act is not necessarily the same as the last chaptered version, as the Governor may have last signed the earlier of the two competing enactments. Compare, United States Steel Co. v. County of Allegheny, 86 A.2d 838 (Pa. 1952), with Peavy v. McCombs, 150 P. 965 (Idaho 1914).

23 Hy-Tech Energy v. Department of Environmental Protection, Me. Super. Ct., Ken. Cty., No. CV-90-405, November 19, 1990.

24 Opinion of the Justices, supra, 311 A.2d 103 (Me. 1973); Small v. Gartley, 363 A.2d 724 (Me. 1976); State v. Taplin, 247 A.2d 919 (Me. 1968).

25 Blair v. State Tax Assessor, 485 A.2d 957 (Me. 1984): State ex rel Tierney v. Ford Motor Co., 436 A.2d 866 (Me. 1981); Op. Me. Att'y Gen. 90-2 (January 19, 1990).

govern. The provisions summarized here usually come into play when multiple amendments are made to the same statute and the amendments do not make reference to each other or to the changes made by the other amendments.

Washington statutes provide that if there are two or more acts amending the same section of the session laws or the official code, each act must be given effect to the extent that the amendments do not conflict in purpose. If the amendments do conflict in purpose, the act last filed in the office of the Secretary of State controls. This rule applies to amendments enacted in regular sessions, special sessions and combinations of regular and special sessions. This avoids the problem caused by special sessions following so closely on the heels of a regular session that conflicts occur because the statutory amendments from the regular session have not yet been incorporated into the statutes or the data base. Wash. Rev. Code §1.12.025 (1989).

The **California** legislature adopted "general presumptions" for statutory construction. These are clearcut rules, and the only inquiries are whether there is an express indication of intent, and which date or number is later. In the absence of any express provision to the contrary in the statute that was enacted last, it is "conclusively presumed" that the statute that is enacted last is intended to prevail over statutes which are enacted earlier in the same session and, in the absence of any express provision to the contrary in the statute with the highest chapter number, it is "presumed" that a statute that has a higher chapter number was intended by the legislature to prevail over a statute enacted at the same session but that has a lower chapter number. Cal. Gov. Code §9605 (West 1980).

The **Connecticut** rule in statute provides that each amendment to the same section of the general statutes is effective except in the case of irreconcilable conflict. If such a conflict exists, the act that was passed last in the second house of the general assembly is deemed to have repealed the irreconcilable provision contained in the earlier act. Conn. Gen. Stat. §2-30b (1991).

Florida provides that acts passed during the same legislative session and amending the same statutory provision are *in pari materia* (to be construed together), and full effect should be given to each, "if that is possible." The statute explains that amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously. Fla. Stat. Ann. §1.04 (West 1988).

In the statutory construction sections of the **Idaho** statutes, the rule on multiple amendments also gives direction to the compiler of the statutes. If multiple amendments to a single section of the Idaho Code are made during a legislative session, and if the amendments "can be read into the section without conflict," all the amendments are effective and must be compiled as if made by a single enactment. Idaho Code §73-102 (1989). No direction is given if "conflict" exists.

Illinois requires that two or more acts relating to the same subject matter and enacted by the same general assembly must be construed together and in such a manner as to give full effect to each act except in the case of an "irreconcilable conflict." If an irreconcilable conflict exists, the act last acted upon by the general assembly controls to the extent of the conflict. The statute goes on to say that an irreconcilable conflict between two or more acts that amend the same section of an act exists only if the amendatory acts make "inconsistent changes" in the section as it existed before the amendments. Ill. Ann. Stat. ch. 1, §1105 (Smith-Hurd 1983).

The **Iowa** statute provides that amendments to the same section in the same or different legislative sessions are to be "harmonized, if possible," so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment by the legislature prevails. Iowa Code §4.8 (1991).

Although the **Louisiana** statute instructs the Louisiana State Law Institute to incorporate conflicting enactments that can be resolved, the statute also provides that the version to be printed as effective if the conflict cannot be resolved is the provision last enacted. The statute sets up a mechanism whereby the secretary of the Senate and the clerk of the House of Representatives certify which enactment was last. La. Rev. Stat. Ann. §24:252 (West 1991).

The rule governing conflicting enactments in **Maryland** takes into account the titles of the amendments. If two or more amendments to the same section or subsection of the code are enacted at the same or different legislative sessions, the amendments are to be construed together, and each is to be "given effect, if possible and with due regard to the wording of their titles." If the amendments are irreconcilable and it is not possible to construe them together, the latest in date of final enactment prevails. Md. Ann. Code art. 1, §17 (1990).

Minnesota provides rules for dealing with irreconcilable provisions and laws. When the provisions of two or more laws passed during the same session of the legislature are "irreconcilable," the law latest in date of final enactment, irrespective of its effective date, prevails from the time it becomes effective. When provisions from two or more laws enacted at different legislative sessions are irreconcilable, the law latest in date of final enactment prevails. Minn. Stat. §645.26 (1990).

The **New Mexico** statutes provide a rule of statutory construction and instructions to the compilation commission. If two or more acts are enacted during the same session of the legislature amending the same section of the statutes, regardless of effective dates of the acts, the act last signed by the governor is presumed to be the law. The compilation commission must incorporate that version into the statutes, followed by a note explaining the various amendments to that section. N.M. Stat. Ann. §12-1-8 (1988).

North Dakota requires amendments made to the same statute at the same or different sessions of the legislature to be "harmonized, if possible," so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails. N.D. Cent. Code §1-02-09 (1987).

If amendments to the same **Ohio** statute are enacted at the same or different sessions of the legislature, the amendments are to be "harmonized, if possible," so that effect may be given to each. If the amendments are "substantively irreconcilable," the latest in date of enactment prevails. Amendments are irreconcilable only when changes made by each cannot "reasonably be put into simultaneous operation." Ohio Rev. Code Ann. §1.52 (Baldwin 1990).

The **Pennsylvania** statutes directly address conflicting enactments. Whenever two or more amendments to the same provision of a statute are enacted at the same or different sessions, the changes made by each are to be given effect and "all the amendments shall be read into each other." If the changes made in the statute are "to any extent in direct conflict with each other," the amendment latest in date of enactment prevails. 1 Pa. Cons. Stat. Ann. §1955 (Purdon 1991).

Texas also requires conflicting enactments to be harmonized. If amendments to the same statutes are enacted at the same session of the legislature, the amendments are to be "harmonized, if possible," so that effect may be given to each. If the amendments are irreconcilable, the latest date of enactment prevails. Tx. Gov. Code Ann. §311.025 (Vernon 1988).

V. SPECIAL TREATMENT FOR REVISORY BILLS

Several states provide special instructions for handling conflicts between revisory bills, such as Maine's Errors Bill, and other bills enacted by the legislature. The purpose is to ensure that the other, substantive bills are given effect over the merely corrective revisory bills. These instructions are often written as a mix of administrative authority and rules of construction.

Under **Missouri** law, if a revision act affects a statutory section that is amended, reenacted or repealed by other acts passed at the same legislative session, the revision act is to be given effect only to the extent that its provisions do not conflict with the changes made by the other acts. The revisor must include a note to the section indicating the changes made by the several enactments. Mo. Rev. Stat. §3.065 (1986).

Oregon statutes actually list the reviser's bill by law chapter, and state that nothing in those bills is intended to alter the legislative intent or purpose of statutory sections affected by the reviser's bills. Or. Rev. Stat. §174.535 (1990).

There are two provisions in the **Kentucky** statutes addressing conflicts with revisory acts. Written as a rule of construction, one section states that if the revisory act amends or repeals and reenacts a statute section also amended or repealed and reenacted by another act adopted at the same session, both must be given effect "insofar as there is no conflict in substance." In the event of a conflict in substance, the nonrevisory act prevails to the extent of the conflict. This section also states that nothing in any "act to revise and correct the Kentucky Revised Statutes" adopted by the legislature is to be construed to effect any substantive change in the statute law of Kentucky. Ky. Rev. Stat. §7.123 (1985). Another section of the statutes appears to provide instructions to the Legislative Research Commission. If a conflict appears between any section amended in an "act to revise and amend the Kentucky Revised Statutes" and the same section in any other act adopted at the same session of the legislature, the change or alteration made by the nonrevisory act is to be inserted in the section as incorporated in the statute publication. Ky. Rev. Stat. §7.136 (1985).

Connecticut also provides special treatment for revisor's bills. In the case of an irreconcilable conflict between an act adopted earlier in the same session and an amendment in the "legislative commissioners' revisor's bill" to a section of the general statutes or to a section of any public or special act made solely for the purposes of correcting a clerical defect or imperfection, and which amendment does not alter

the substance of the section, the revisor's bill amendment is not to be construed to have repealed the irreconcilable provision in the earlier act, and the conflicting provision in the legislative commissioners' revisor's bill is not effective. Examples of clerical defects and imperfections are given: grammatical, spelling or computer or data processing errors and mistakes as to form. Conn. Gen. Stat. §2-30b (1991).

VI. OPTIONS

After reviewing the current treatment of conflicting enactments in Maine and other states, it is clear there are several options available to the Maine Legislature. In most instances, more than one option - such as direction to the revisor and a rule of statutory construction - can be combined, as long as they are consistent.

It is important to review the purposes to be served by addressing conflicting enactments when choosing which course to follow. Perhaps the most important purpose over time is to provide to the courts, and others interpreting legislation, information about what the Legislature intended when such conflicting enactments occur. This guidance is not intended to impinge on the courts' exclusive power to interpret the law, but is rather an opportunity the Legislature may take to further explain what was intended when the conflicts apparently obscure the plain meaning of the enactments.

A very practical purpose to be achieved by resolving conflicting enactments is to reduce the workload associated with processing and printing the Errors Bill. The current Revisor's Report cannot resolve even clearly reconcilable conflicting enactments; thus, under the current system, all conflicting enactment resolutions must still go through the Errors Bill process.

It must also be kept in mind that if any application of statute or procedure ends up with a result the Legislature did not intend, the Legislature can correct that result through further legislative enactments. The problem with relying on this procedure is that unwanted effects, including the creation or impairment of substantive rights, may occur before the Legislature can make the correction.

A. Statutory rule of construction for conflicting enactments

The Legislature has the option of adopting a rule of statutory construction. As noted in Part IV, B, 3 of this report, these rules can take different shapes. The two most prevalent forms seem to be the bright-line "last-enacted prevails" rule, and the rule requiring an assessment of whether the conflicts are "reconcilable;" if any irreconcilable conflicts remain they are then resolved through the last-enacted rule.

If a last-enacted prevails rule is adopted, several additional decisions should be made and included. The rule needs to spell out what last-enacted means: Last enacted by the Senate? Last signed by the Governor? Last chaptered (i.e., highest chapter number)? Also, is any weight given to the effective date? If the effective date is irrelevant in determining which act prevails, the rule should include that directive.

If the rule directs the incorporation of "reconcilable" conflicting enactments, some guidance must be given as to what the Legislature means by "reconcilable" (or any other similar term used). In addition, if conflicts are not reconcilable, the rule could state which act should prevail, or leave that up in the air (and subject to case law, as opposed to legislative direction) as Florida and Idaho appear to do.

There are other rules of statutory construction possible. The 1973 Opinion of the Justices and the August 27, 1975 Attorney General Opinion would insert an intermediate step before the last-enacted conclusion. That is, the provisions of the statute that treat the common subject matter in the more direct, special and minute manner would prevail.[26] Any statutory rule of construction would also resolve the conflict between current Maine authorities.

No matter what rule is adopted, it is very possible that application of the rule will cause a result that is not what the Legislature intended. An example is the Hy-Tech Energy decision applying the general rule of statutory construction that the last chaptered version prevails. See discussion in Part II, B, 1, b of this report.

Included in Appendix F are drafts of three sample rules of construction to implement the various methods of interpretation cited in Maine authorities.

B. Authority to resolve conflicting enactments through an administrative mechanism

The Legislature could also give the Revisor of Statutes the authority to correct "reconcilable" conflicting enactments. The statute could include either a description of what conflicts are reconcilable, or provide the Revisor with guidance as to how to discern what conflicts are reconcilable. An example of such guidance would be the legislative intent expressed within the public law chapters themselves, including titles of the legislative documents and statements of fact.

If one of the purposes of giving the Revisor this authority is to reduce the Errors Bill, it does not make sense to require, as does Wisconsin, that the resolved conflicting enactments also

26 Opinion of the Justices, supra, 311 A.2d 103 (Me. 1973); Op. Me. Att'y Gen. (August 27, 1975).

be included in the Errors Bill. The incorporation could be included in the annual "Revisor's Report," or a note to the statutory section could be added by the Revisor to indicate that the incorporation of reconcilable conflicting enactments has been made.

The administrative mechanism could also be modified to include additional protective mechanisms applicable to resolution of conflicting enactments, such as a delayed effective date or the concurrence of the Attorney General.

C. Special treatment for revisory bills

As noted in Part V of this report, several states have adopted legislation designed to resolve conflicting enactments created, in part, by revisory bills. The statute must be clear in how it defines such legislation to ensure inclusion of the true revisory bills, such as the Errors Bill, but to make sure substantive legislation is excluded.

1. Administrative mechanism

The Maine Legislature could adopt language giving the Revisor authority to correct conflicting enactments only when the conflict is caused by a revisory bill, such as the Errors Bill. This may be a simpler task for the Revisor to accomplish, because the purpose of the Errors Bill is to correct inconsistencies, not to change substantive law or policy. Because the mechanism would direct the Revisor to ignore substantive changes made by the Errors Bill if they are in conflict with other legislation, it would probably be best for the Legislature to give up the practice of adding non-corrective, substantive amendments to the Errors Bill as House and Senate Amendments if this type of mechanism is adopted.

2. Special statutory rule of construction

A statutory rule of construction that applies only to conflicting enactments in which the conflict is with a revisory bill is a more limited way to approach the problem. This type of rule would probably avoid most unintended results because it would ignore the Errors Bill amendments if they conflict with other amendments.

3. Unallocated intent section applicable to a particular act

Similarly, the most limited action possible is to add purpose or intent sections to particular bills. For example, an Errors Bill may contain an intent section explaining that conflicts between a section in the Errors Bill and any other act enacted in the same session should be resolved to give the other act's section effect to the extent of the conflict. The purpose or intent section would be describing the purpose or intent of the bill or Act itself, not the statutory changes made in the bill or Act.

In the wake of the Hy-Tech Energy decision, the Joint Standing Committee on Judiciary agreed to include a separate Part describing the legislative intent of LD 1239.[27] It is included here.

PART D

> **Legislative intent.** The purpose of this Act is to resolve conflicts created by 2 or more chapters of Public Law 1989 that amended or affected the same section, subsection, paragraph or subparagraph without reference to each other. Each conflict is resolved by reading the public laws together, consistent with the legislative purpose and intent for each chapter. If an Act of the 115th Legislature amends or affects the same section, subsection, paragraph or subparagraph without reference to this Act, and the statutory provisions can not be read together, it is the intent of the Legislature that the provisions of the other Act be given effect over the provisions of this Act.

Another type of bill in which a specific Legislative intent section may be appropriate is one in which a single function or entity is being revised throughout a substantial part of the statutes. The most obvious recent example is LD 2214 from the 114th Legislature, PL 1989, c. 890. **LD 2214, An Act to Clarify the Role of the Board of Environmental Protection,** was the recommendation of a study authorized by the Legislative Council. The study members had reviewed the functions of the Board and the Department of Environmental Protection, and adjusted some powers and duties according to a list of basic principles. No other changes were made by the bill. Its intent was not to override substantive changes made by other bills, and yet that result was mentioned by the Law Court in Sirois v. Winslow,[28] as discussed in Part II, B, 1, b of this

27 LD 1239, as amended by Committee Amendment "A" and Senate Amendment "A", PL 1991, c. 66.

28 585 A.2d 183 (Me. 1991).

report. An unallocated section defining the legislative intent of the bill might have avoided the unintended resolution.

D. No change in current practice

Finally, the Legislature has the option of not changing the existing process. In the case of conflicting enactments, not acting means no administrative mechanism or rule of statutory construction or intent clause, although the last can be added as determined necessary. If the Legislature elects to take no action, it is unclear what result will occur when conflicting enactments are presented to a court for resolution because the Maine authorities are inconsistent. Even if the Law Court were to definitively adopt the analysis outlined in the 1973 Opinion of the Justices (see Part IV, B, 2 of this report), the uncertainty would come from what the judicial interpretation is of "a single harmonious whole," which would necessarily be determined on a case by case basis.

While the current practice of resolving conflicts by inclusion in the Errors Bill neither provides an easy mechanism for legislative resolution of conflicting enactments, nor gives clear guidance as to the proper judicial construction of these sections, it has the virtue of bringing each of these issues to the Judiciary Committee for full debate, and resolution by proper enactment passed by the Legislature and signed by the Governor.

VII. CONCLUSION

The Legislature has several options to address the situation of the conflicting enactments. Most of the options available are not mutually exclusive and can be combined to provide a more definitive resolution of conflicting enactments. For example, granting the Revisor authority to correct reconcilable conflicting enactments could be strengthened by adopting a statutory rule of construction that explains the procedure for handling reconcilable conflicting enactments. The next step for the Legislature is to determine what resolution of conflicting enactments best reflects the Legislature's intentions, and then which procedure carries out that scheme for resolution most appropriately. The option of taking no generally-applicable action is always available, should the Legislature be uncomfortable in adopting a new rule of construction or administrative procedure.

APPENDIX A

SENATE

N. PAUL GAUVREAU, DISTRICT 23, CHAIR
GEORGETTE B. BERUBE, DISTRICT 16
MURIEL D. HOLLOWAY, DISTRICT 20

HOUSE

PATRICK E. PARADIS, AUGUSTA, CHAIR
CONSTANCE D. COTE, AUBURN
PATRICIA M. STEVENS, BANGOR
CUSHMAN D. ANTHONY, SOUTH PORTLAND
SUSAN FARNSWORTH, HALLOWELL
MARY R. CATHCART, ORONO
ANDREW KETTERER, MADISON
DANA C. HANLEY, PARIS
JOHN H. RICHARDS, HAMPDEN
DAVID N. OTT, YORK

STATE OF MAINE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

COMMITTEE ON JUDICIARY

June 12, 1991

President Charles P. Pray, Chair
Legislative Council
115th Maine Legislature

Re: Judiciary Committee staff study request: Resolution of conflicting enactments

Dear President Pray:

The Joint Standing Committee on Judiciary requests approval of a staff study to carry out the purposes of the study originally proposed in LD 1718, An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments. The Committee amended LD 1718 to delete the study commission, with the agreement that the study would still occur as a staff study.

LD 1718 provides for the administrative correction of technical errors in the statutes without going through the process of an Errors Bill. LD 1718 deferred resolving how conflicting enactments affecting the same section should be corrected to the Commission to Study Resolution of Conflicting Enactments. The two major questions the Commission was to answer are: 1) Whether administrative correction of errors and inconsistencies in the Maine Revised Statutes should be extended to conflicting enactments; and 2) Whether there is a need to enact a statutory rule of construction to aid in the resolution of conflicting enactments. The Judiciary Committee determined that a staff study could serve the same purposes as a commission study, plus would not necessitate the $3,380 appropriation included in the original bill.

While we do not expect the staff study to result in recommendations, the study should provide the Judiciary Committee with all the information necessary to consider the two questions and take any action, including reporting out legislation, necessary to implement the Committee's conclusions. We recommend that the staff of the Office of Policy and Legal Analysis, in conjunction with the Office of the Revisor of Statutes, do the following in preparing the Judiciary Committee to answer the two basic questions posed by the bill:

1. Procure and analyze relevant data:
2. Conduct legal research and prepare opinions on legal questions within the scope of the study;
3. Determine and summarize the legislative actions, statutes and rules adopted in other jurisdictions related to issues within the scope of the study; and
4. Report to the Joint Standing Committee on Judiciary no later than November 1, 1991.

Thank you for your consideration of our request for this staff study.

Sincerely,

N. Paul Gauvreau
Senate Chair

Patrick E. Paradis
House Chair

APPENDIX B

115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document **No. 1718**

H.P. 1177 House of Representatives, April 25, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.
Cosponsored by Senator GAUVREAU of Androscoggin, Senator HOLLOWAY of Lincoln and Representative HANLEY of Paris.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments.

(EMERGENCY)

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

Whereas, this bill provides a mechanism for remedying certain statutory errors during the annual update of the statutory data base; and

Whereas, the bill also establishes a commission to study mechanisms for resolving conflicting enactments; and

Whereas, the annual update will be well under way before the expiration of the 90-day period and the commission needs to begin work promptly in order to report back to the Second Regular Session; 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:

PART A

1 MRSA c. 4 is enacted to read:

CHAPTER 4

STATUTORY MAINTENANCE

§91. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Conflicting enactments. "Conflicting enactments" means multiple enactments, amendments, repeals, reallocations or reenactments, or any combination of these actions, that affect the same statutory unit and that have been adopted by Acts of the Legislature that do not refer to each other.

2. Executive director. "Executive director" means the Executive Director of the Legislative Council appointed under Title 3, section 162.

3. Revisor. "Revisor" means the Revisor of Statutes, or the person under Title 3, section 162 who is responsible for the form and format of legislative instruments.

4. Revisor's change. "Revisor's change" means a change made in the course of update under the authority of section 93.

5. Revisor's report. "Revisor's report" means the post-update report made by the revisor pursuant to section 95. This report may be cited as Revisor's Report 19XX, §X or RR 19XX, §X.

6. Revision clause. "Revision clause" means a section of a law that is not allocated to the Maine Revised Statutes and that changes a term throughout the laws and instructs the revisor to implement the revision as part of update.

7. Statutory unit. "Statutory unit" means a title, chapter or section or a part of a title, chapter or section of the laws of Maine.

8. Update. "Update" means the process by which enactments, amendments, repeals, reallocations or reenactments from a legislative session or sessions are integrated into the statutory data base of the Maine Revised Statutes.

§92. Statutory data base; update

The executive director shall ensure that the legislative staff maintains a statutory data base that contains the text of the Maine Revised Statutes and the appropriate history of each statutory unit.

The revisor shall update the statutory data base at least annually after the close of each regular legislative session and may update the data base more frequently.

The Legislative Council shall adopt policies governing access to and publication of the data contained in the statutory data base.

§93. Administrative changes and corrections

The revisor may make the following changes or corrections, when the corrections do not alter the sense or meaning of the laws, without specific legislative action as part of the statutory data base update.

1. Misspellings. Misspelled words may be corrected.

2. Histories. Erroneous enacting clauses or statutory histories may be corrected.

3. Cross-references. Cross-references to statutory units may be changed to agree with renumbered or reallocated statutory units.

4. Obsolete dates. Obsolete temporal references may be removed.

5. Capitalization. Improper capitalization may be corrected.

6. Headnotes. Descriptive headings of titles, chapters, sections or subsections may be edited or added to briefly and clearly indicate the subject matter of the title, chapter, section or subsection.

7. Renumbering. The numbering of statutory elements, including duplicative numbering created by conflicting enactments, may be corrected or properly arranged.

8. Punctuation. Punctuation, including hyphenization, may be corrected.

9. Revision clauses. Changes in nomenclature or terminology authorized by a revision clause must be made in accordance with the instructions of the revision clause.

10. Typographical errors. Obvious clerical or typographical errors may be corrected.

Any change made by the revisor may not change the substantive meaning of any statutory unit. Any error or inadvertent substantive change made by the revisor must be construed as a clerical error and given no effect. If the revisor is in doubt whether a specific change is authorized by this section, the revisor may not make the change but shall incorporate the proposed change into the legislation authorized by section 94.

§94. Omnibus errors and inconsistencies bill

The revisor shall prepare legislation containing proposed changes and consolidations identified but not made under section 93. The legislation may also contain any other statutory errors or inconsistencies identified by the revisor. The legislation must be submitted to the joint standing committee of the Legislature having jurisdiction over judiciary matters, with a copy to the executive director.

§95. Report and publication

The revisor shall submit an annual revisor's report containing a description of all changes made pursuant to section 93 to the joint standing committee of the Legislature having jurisdiction over judiciary matters by October 1st of the year in which the changes have been made and shall provide copies of the

report to the Secretary of State, to the executive director and to the publisher of the Maine Revised Statutes Annotated. The publisher shall incorporate the changes made in the report in all subsequent publications of the laws. The revisor's report must be published annually in the Laws of Maine.

If the joint standing committee of the Legislature having jurisdiction over judiciary matters disagrees with any change contained in the revisor's report, the committee may instruct the revisor to make appropriate corrections during the next update, may amend the legislation authorized by section 94 to reverse the change or may report out legislation overriding any revisor's change.

PART B

Sec. B-1. Commission established. The Commission to Study Resolution of Conflicting Enactments is established.

Sec. B-2. Commission membership. The commission consists of the following members: 4 Legislators who are members of the Joint Standing Committee on the Judiciary, jointly appointed by the President of the Senate and the Speaker of the House of Representatives, 2 from the majority party and 2 from the minority party; the Attorney General or the Attorney General's designee; and one representative of the Maine State Bar Association appointed by the Governor. The Revisor of Statutes and the Director of the Office of Policy and Legal Analysis shall serve in an advisory capacity. The Chair of the Legislative Council shall request the Chief Justice of the Supreme Judicial Court to appoint a justice or judge to serve in an advisory capacity.

Sec. B-3. Appointments; meetings. All appointments must be made no later than 30 days following the effective date of this Act. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. The President of the Senate and the Speaker of the House of Representatives shall jointly appoint the chair of the commission.

Sec. B-4. Duties. The commission shall study whether administrative correction of errors and inconsistencies in the Maine Revised Statutes should be extended to conflicting enactments and whether there is a need to enact a statutory rule of construction to aid in the resolution of conflicting enactments.

In examining these questions, the commission may:

1. Meet up to 4 times in Augusta;

2. Hold informational sessions for discussions with knowledgeable persons;

3. Procure and analyze relevant data;

4. Conduct legal research and prepare opinions on legal questions within the scope of the study; and

5. Determine and summarize the legislative actions, statutes and rules adopted in other jurisdictions related to issues within the scope of the study.

Sec. B-5. Staff assistance. The commission shall request staffing assistance from the Legislative Council.

Sec. B-6. Reimbursement. The members of the commission who are Legislators are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for each day's attendance of commission hearings.

Sec. B-7. Report. The commission shall submit its report together with any necessary implementing legislation to the Second Regular Session of the 115th Legislature no later than November 1, 1991.

Sec. B-8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1991-92
JUDICIAL DEPARTMENT	
Courts - Supreme, Superior, District and Administrative	
Personal Services	$600
All Other	200
Provides funds for the per diem and expenses of an Active Retired Judge to replace the Judge or Justice acting as advisor to the Commission to Study Resolution of Conflicting Enactments.	
JUDICIAL DEPARTMENT TOTAL	$800
LEGISLATURE	
Commission to Study Resolution of	

Conflicting Enactments

Personal Services	$880
All Other	1,700

Provides funds for the per diem of Legislative members and meeting expenses of the Commission to Study Resolution of Conflicting Enactments.

LEGISLATURE TOTAL	$2,580
TOTAL APPROPRIATIONS	$3,380

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

STATEMENT OF FACT

This bill establishes an administrative mechanism for the correction of technical errors and inconsistencies in the Maine Revised Statutes. Errors such as spelling, history line errors, headnote changes, erroneous cross-references, renumbering of sections and the like can be corrected by the Office of the Revisor of Statutes during the annual update of the statutory data base. Implementation of nomenclature changes authorized by revision clauses can be accomplished at the same time. The bill specifies that administrative corrections are not to be made in doubtful cases, and sets up mechanisms to provide for legislative review and adequate publication and citation of these changes. The purpose is to provide for a more manageable errors bill process and to avoid the necessity of printing extensive legislative documents merely to change a term that appears in many places throughout the statutes.

The bill also establishes the Commission to Study Resolution of Conflicting Enactments to study whether administrative correction should be extended to resolution of conflicting enactments, and whether a rule of construction for conflicting amendments should be placed in the statutes.

L.D. 1718

(Filing No. H-401)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1177, L.D. 1718, Bill, "An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments"

Amend the bill in the emergency preamble by striking out all of the 3rd paragraph (page 1, lines 9 and 10 in L.D.).

Further amend the bill in the emergency preamble in the 4th paragraph in the 2nd to 4th lines (page 1, lines 13 to 15 in L.D.) by striking out the following: "and the commission needs to begin work promptly in order to report back to the Second Regular Session"

Further amend the bill by striking out all of the first line after the enacting clause (page 1, line 25 in L.D.).

Further amend the bill in that part designated "**§91.**" in subsection 5 in the next to the last line (page 2, line 6 in L.D.) by striking out the following: "§X or RR 19XX," and inserting in its place the following: 'c. X, §X or RR 19XX, c. X,'

Further amend the bill by striking out all of Part B.

STATEMENT OF FACT

This amendment deletes from the bill the establishment of the Commission to Study Resolution of Conflicting Enactments. The Judiciary Committee may recommend to the Legislative Council that this issue be studied by legislative staff during the interim and that the staff report back to the committee with their information at the beginning of the next regular session. The amendment also clarifies the emergency preamble and a citation form.

Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the House
(5/22/91) (Filing No. H-401)

CHAPTER 336

H.P. 1177 - L.D. 1718

An Act to Provide for Administrative Correction of Certain Errors and Inconsistencies in the Maine Revised Statutes and to Establish the Commission to Study Resolution of Conflicting Enactments

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

Whereas, this Act provides a mechanism for remedying certain statutory errors during the annual update of the statutory data base; and

Whereas, the annual update will be well under way before the expiration of the 90-day period; 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:

1 MRSA c. 4 is enacted to read:

CHAPTER 4

STATUTORY MAINTENANCE

§91. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Conflicting enactments. "Conflicting enactments" means multiple enactments, amendments, repeals, reallocations or reenactments, or any combination of these actions, that affect the same statutory unit and that have been adopted by Acts of the Legislature that do not refer to each other.

2. Executive director. "Executive director" means the Executive Director of the Legislative Council appointed under Title 3, section 162.

3. Revisor. "Revisor" means the Revisor of Statutes, or the person under Title 3, section 162 who is responsible for the form and format of legislative instruments.

4. Revisor's change. "Revisor's change" means a change made in the course of update under the authority of section 93.

5. Revisor's report. "Revisor's report" means the post-update report made by the revisor pursuant to section 95. This report may be cited as Revisor's Report 19XX, c. X, §X or RR 19XX, c. X, §X.

6. Revision clause. "Revision clause" means a section of a law that is not allocated to the Maine Revised Statutes and that changes a term throughout the laws and instructs the revisor to implement the revision as part of update.

7. Statutory unit. "Statutory unit" means a title, chapter or section or a part of a title, chapter or section of the laws of Maine.

8. Update. "Update" means the process by which enactments, amendments, repeals, reallocations or reenactments from a legislative session or sessions are integrated into the statutory data base of the Maine Revised Statutes.

§92. Statutory data base; update

The executive director shall ensure that the legislative staff maintains a statutory data base that contains the text of the Maine Revised Statutes and the appropriate history of each statutory unit.

The revisor shall update the statutory data base at least annually after the close of each regular legislative session and may update the data base more frequently.

The Legislative Council shall adopt policies governing access to and publication of the data contained in the statutory data base.

§93. Administrative changes and corrections

The revisor may make the following changes or corrections, when the corrections do not alter the sense or meaning of the laws, without specific legislative action as part of the statutory data base update.

1. Misspellings. Misspelled words may be corrected.

2. Histories. Erroneous enacting clauses or statutory histories may be corrected.

3. Cross-references. Cross-references to statutory units may be changed to agree with renumbered or reallocated statutory units.

4. Obsolete dates. Obsolete temporal references may be removed.

5. Capitalization. Improper capitalization may be corrected.

6. Headnotes. Descriptive headings of titles, chapters, sections or subsections may be edited or added to briefly and clearly indicate the subject matter of the title, chapter, section or subsection.

7. Renumbering. The numbering of statutory elements, including duplicative numbering created by conflicting enactments, may be corrected or properly arranged.

8. Punctuation. Punctuation, including hyphenization, may be corrected.

9. Revision clauses. Changes in nomenclature or terminology authorized by a revision clause must be made in accordance with the instructions of the revision clause.

10. Typographical errors. Obvious clerical or typographical errors may be corrected.

Any change made by the revisor may not change the substantive meaning of any statutory unit. Any error or inadvertent substantive change made by the revisor must be construed as a clerical error and given no effect. If the revisor is in doubt whether a specific change is authorized by this section, the revisor may not make the change but shall incorporate the proposed change into the legislation authorized by section 94.

§94. Omnibus errors and inconsistencies bill

The revisor shall prepare legislation containing proposed changes and consolidations identified but not made under section 93. The legislation may also contain any other statutory errors or inconsistencies identified by the revisor. The legislation must be submitted to the joint standing committee of the Legislature having jurisdiction over judiciary matters, with a copy to the executive director.

§95. Report and publication

The revisor shall submit an annual revisor's report containing a description of all changes made pursuant to section 93 to the joint standing committee of the Legislature having jurisdiction over judiciary matters by October 1st of the year in which the changes have been made and shall provide copies of the report to the Secretary of State, to the executive director and to the publisher of the Maine Revised Statutes Annotated. The publisher shall incorporate the changes made in the report in all subsequent publications of the laws. The revisor's report must be published annually in the Laws of Maine.

If the joint standing committee of the Legislature having jurisdiction over judiciary matters disagrees with any change contained in the revisor's report, the committee may instruct the revisor to make appropriate corrections during the next update, may amend the legislation authorized by section 94 to reverse the change or may report out legislation overriding any revisor's change.

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

Effective June 18, 1991.

APPENDIX C

OFFICE OF THE REVISOR OF STATUTES

BILL DRAFT SUMMARY

LR #: 3116 ITEM #: 1 TYPE: O

(EMERGENCY)

TITLE:
An Act to Clarify the Scope of the Laws Governing Administrative Correction of Statutory Errors

SPONSOR: Rep. PARADIS of Augusta
COSPONSORS: Sen. GAUVREAU of Androscoggin

LEGEND: Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

AUTHORITY FOR INTRODUCTION: LCA

DRAFTER: JDK TECH: KWK

DATE/TIME LAST PRINTED: 12/05/91 15:34

LAST ACTION: ULT/GONE 12/05/91

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

Whereas, this Act refines a newly enacted mechanism for remedying certain statutory errors during the annual update of the statutory data base; and

Whereas, the annual update will be well under way before the expiration of the 90-day period; 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. 1 MRSA §91, sub-§§1 and 7, as enacted by PL 1991, c. 336, are amended to read:

1. Conflicting enactments. "Conflicting enactments" means multiple enactments, amendments, repeals, reallocations or reenactments, or any combination of these actions, that affect the same statutory unit and that have been adopted by multiple Acts ~~of the Legislature~~ passed within one legislative session or within a regular legislative session and any special sessions preceding the next regular legislative session that do not refer to each other.

7. Statutory unit. "Statutory unit" means a title, subtitle, part, subpart, chapter ~~or~~, subchapter, article, subarticle, section ~~or a part of a title, chapter or section~~, subsection, paragraph, subparagraph, division or subdivision of the laws of Maine.

Sec. 2. 1 MRSA §93, sub-§§2, 3, 4, 7, 9 and 10 as enacted by PL 1991, c. 336, are amended to read:

2. Histories. Erroneous ~~enacting~~ amending clauses or statutory histories may be corrected.

3. Cross-references. Cross-references ~~to~~ in statutory units may be changed to agree with new, amended, reenacted, renumbered ~~or~~, relettered, reallocated or corrected statutory units.

4. Dates. Obsolete temporal references may be removed and the appropriate calendar date for the phrase "effective date of this Act" or other phrases of similar meaning may be substituted.

7. Renumbering; relettering. The numbering or lettering of statutory ~~elements~~ units, including duplicative numbering or lettering created by conflicting enactments, may be corrected or properly arranged.

9. Revision clauses. ~~Changes~~ Grammatical changes necessary for the proper implementation of changes in nomenclature or terminology ~~authorized~~ enacted by a revision clause ~~must~~ may be made ~~in accordance with the instructions of the revision clause~~.

10. Errors. Obvious clerical ~~or~~, typographical or grammatical errors may be corrected.

Sec. 3. 1 MRSA §93, sub-§11 is enacted to read:

11. Gender. Gender-specific terms that occur in a statutory unit being corrected may be changed to gender-neutral terms and necessary grammatical changes to properly use the gender-neutral terms may be made.

Sec. 4. 1 MRSA §95, first ¶, as enacted by PL 1991, c. 336, is amended to read:

The revisor shall submit an annual revisor's report containing a description of all changes made pursuant to section 93 to the joint standing committee of the Legislature having jurisdiction over judiciary matters by October 1st of the year in which the changes have been made and shall provide copies of the report to the Secretary of State, to the executive director and to the publisher of the Maine Revised Statutes Annotated. The publisher shall incorporate the changes made in the report in all subsequent publications of the laws. The revisor's report must be published annually in the Laws of Maine. Changes made in the revisor's report take effect on October 1st of the year in which the report is made unless otherwise indicated in which case the changes take effect as specified.

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

STATEMENT OF FACT

Recently enacted law gives the Revisor of Statutes authority to administratively correct certain statutory errors. Preparation of the first revisor's report identified certain issues that could have been corrected if the enabling legislation had been broader. This bill makes the necessary changes to allow for correction of all erroneous cross-references, to allow for correction of gender-specific terms in sections being corrected

and to allow for minor grammatical changes, as long as the substance and sense of the laws are not affected.

APPENDIX D

CHAPTER 501

H.P. 475 - L.D. 640

An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1990, and June 30, 1991

PART BB

Sec. 1. 2 MRSA §6, sub-§2, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is amended to read:

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor; ~~and~~

Superintendent of Insurance.; ~~;~~

Associate Commissioner for Programs, Department of Mental Health and Mental Retardation;

Associate Commissioner of Administration, Department of Mental Health and Mental Retardation; and

Associate Commissioner for Institutional Management.

CHAPTER 585

H.P. 1025 - L.D. 1431

An Act to Promote Reduction, Recycling and Integrated Management of Solid Waste and Sound Environmental Regulation

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

PART A

Sec. 1. 2 MRSA §6, sub-§2, as repealed and replaced by PL 1981, c. 705, Pt. L, §§1 to 3, is amended to read:

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor; ~~and~~

Superintendent of Insurance.; ~~;~~ and

Executive Director, Maine Waste Management Agency.

CHAPTER 878

S.P. 927 - L.D. 2345

An Act to Correct Errors and Inconsistencies in the Laws of Maine

Sec. A-3. 2 MRSA §6, sub-§2, as amended by PL 1989, c. 501, Pt. BB, §1 and c. 585, Pt. A, §1, is repealed and the following enacted in its place:

2. Range 90. The salaries of the following state officials and employees shall be within salary range 90:

Superintendent of Banking;

Bureau of Consumer Credit Protection Superintendent;

State Tax Assessor;

Superintendent of Insurance;

Associate Commissioner for Programs, Department of Mental Health and Mental Retardation;

Associate Commissioner of Administration, Department of Mental Health and Mental Retardation;

Associate Commissioner for Institutional Management; and

Executive Director, Maine Waste Management Agency.

APPENDIX E

State of Maine

38 MRSA §1310-X

Kennebec, ss.

SUPERIOR COURT
CV- 90-405

Hy-Tech Energy Inc. *Plaintiff*

vs.

Me. Dept. of Environmental Protection and Me. Board of Environmental Protection *Defendant*

ORDER

This cause came on for hearing, and was argued by counsel, upon the ~~motion~~ petition of the Plaintiff For Review of Final Agency Action under Rule 80C.

IT IS ORDERED that: The Court has reviewed the written materials presented and has considered the oral arguments presented at hearing. The appeal is granted. The Court is convinced that Chapter 869 and Chapter 878 are in direct conflict. There is no question but that Chapter 878 was adopted after Chapter 869 and was adopted as emergency legislation. The only significant change to 869 made by 878 was to delete the prohibition on disposal of bio-medical waste. No adequate explanation for this action can be found except that the legislature meant to do just that - permit disposal of bio-medical waste once all requirements had been fulfilled. The entry will therefore be: Appeal granted. Case remanded to the Dept. of Environmental Protection for processing and consideration of plaintiff's application.

Dated: 11/19, 1990

Justice, Superior Court

CV-19 rev. 6/82

38 MRSA § 569

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 5669
Law Docket No. CUM-90-90

LEO A. SIROIS and SHIRLEY JONES

v.

RICHARD H. WINSLOW et al.

Argued September 7, 1990
Decided January 9, 1991

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, COLLINS, and BRODY, JJ.

GLASSMAN, J.

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[2] After the complaint in the instant case was filed in the Superior Court, we note that P.L. 1989, ch. 865, § 16, effective July 1, 1990 under an emergency preamble, repealed the exclusivity provision contained in the Underground Oil Storage Facilities and Ground Water Protection Act, 38 M.R.S.A. § 569(2-A)(E), and added a new provision, § 569(2-A)(G), expressly declaring that the third-party damage remedies under that Act were nonexclusive. P.L. 1989, ch. 890, § B-148, effective July 14, 1990, without referring to P.L. 1989, ch. 865, reenacted the Act with the original exclusivity provision intact. The exclusivity provision in the Oil Discharge Prevention and Pollution Control Act, 38 M.R.S.A. § 551(2)(D), remains unchanged. See P.L. 1989, ch. 890, § B-117.

LD 1239

C.869

Sec. A-9. 38 MRSA §1310-X, as enacted by PL 1989, c. 585, Pt. E, §34, is repealed and the following enacted in its place:

§1310-X. Future commercial landfills

1. New facilities. Notwithstanding the provisions of Title 1, section 302, the board may not approve an application for a new commercial solid waste [or biomedical waste disposal facility] after September 30, 1989, including any applications pending before the board on or after September 30, 1989.

2. Relicense or transfer of license. The board may relicense or approve a transfer of license for commercial solid waste disposal facilities [or biomedical waste disposal facilities] after September 30, 1989, if those facilities had been previously licensed by the board prior to September 30, 1989, and all other provisions of law have been satisfied.

3. Expansion of facilities. The board may license expansions of commercial solid waste disposal facilities [or biomedical waste disposal facilities] after September 30, 1989, if:

A. The board has previously licensed the facility prior to September 30, 1989;

B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. [For commercial solid waste disposal facilities and] prior to the adoption of the state plan and siting criteria under chapter 24, the board determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

C.878

Sec. H-8. 38 MRSA §1310-X, as enacted by PL 1989, c. 585, Pt. E, §34, is repealed and the following enacted in its place:

§1310-X. Future commercial landfills

1. New facilities. Notwithstanding Title 1, section 302, the board may not approve an application for a new commercial solid waste disposal facility after September 30, 1989, including any applications pending before the board on or after September 30, 1989.

2. Relicense or transfer of license. The board may relicense or approve a transfer of license for commercial solid waste disposal facilities after September 30, 1989, if those facilities had been previously licensed by the board prior to September 30, 1989, and all other provisions of law have been satisfied.

3. Expansion of facilities. The board may license expansions of commercial solid waste disposal facilities after September 30, 1989, if:

A. The board has previously licensed the facility prior to September 30, 1989;

B. The board determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. Prior to the adoption of the state plan and siting criteria under chapter 24, the board determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

4/1/91

LD 1239

TITLE 38 ERRORS AND INCONSISTENCIES

IN

OK

Sec. 39. 38 MRSA §569, sub-§2-A, as amended by PL 1989, c. 865, §16 and affected by §§24 and 25 and c. 890, Pt. A, §40 and amended by Pt. B, §148, is repealed and the following enacted in its place:

2-A. Third-party damages. Any person claiming to have suffered actual economic damages including, but not limited to, property damage, loss of income and medical expenses directly or indirectly as a result of a discharge of oil to ground water prohibited by section 543, in this subsection called the claimant, may apply within 2 years after the occurrence or discovery of the injury or damage, whichever date is later, to the ~~commissioner~~ stating the amount of damage alleged to be suffered as a result of that discharge. The commissioner shall prescribe appropriate forms and details for the applications. The commissioner may contract with insurance professionals to process claims. The board, upon petition and for good cause shown, may waive the 2-year limitation for filing damage claims. For claims made on discharges eligible for coverage by the 3rd-party commercial risk pool account, the commissioner shall pay the first $100,000 per claimant out of the 3rd-party commercial risk pool account as long as funds are available. The commissioner shall pay any claims that exceed $100,000 or available money in the 3rd-party commercial risk pool account from the fund.

A. If a claimant is not compensated for 3rd-party damages by the responsible party or the expenses are above the applicant's deductible and the claimant and the ~~commissioner~~ agree as to the amount of the damage claim, the ~~commissioner~~ shall certify the amount of the claim and the name of the claimant to the Treasurer of State and the Treasurer of State shall pay the amount of the claim from the Ground Water Oil Clean-up Fund.

B. If the claimant and the commissioner are not able to agree as to the amount of the damage claim, the claim is subject to subsection 3-A.

Section 39 corrects a section that was affected by 2 public laws. Public Law 1989, chapter 865 amended Title 38, section 569, subsection 2-A to broaden the compensable losses due to a discharge of oil to ground water, and to transfer the 3rd-party commercial damages processing and fund management from the board to the commissioner. Public Law 1989, chapter 890 amended this same subsection to transfer the administrative functions from the board to the commissioner.

C.865 also lengthened the filing period limitation and made the procedure a non-exclusive remedy.

Law Ct case footnote

MAINE STATE LEGISLATURE
Augusta, Maine 04333

February 15, 1991

Senator N. Paul Gauvreau, Senate Chair
Representative Patrick E. Paradis, House Chair
Joint Standing Committee on Judiciary
State House
Augusta, Maine 04333

Dear Senator Gauvreau and Representative Paradis:

With the assistance of our staff and your legislative analyst, Peggy Reinsch, we have reviewed proposed changes to certain provisions of Title 38 to resolve conflicts created during the Second Regular Session of the 114th Legislature. We unanimously recommend your favorable action on special legislation to correct these errors and inconsistencies. We understand that Ms. Reinsch will also be reviewing these proposals with you in the near future.

Recognizing the subtlety of judging the "technicality" of conflicting enactments, the committee carefully reviewed each of the proposed changes. We have examined each of the original enactments and are confident that the proposed language accurately incorporates the intent of the 114th Legislature.

We applaud your willingness to act on this legislation with dispatch. It will be very helpful in our efforts to avoid creating too many more conflicts this session. We appreciate your willingness to involve us in this portion of the errors process.

Please do not hesitate to contact us if we can be of any further assistance.

Regards,

Senator Bonnie L. Titcomb
Senate Chair

Representative Paul E. Jacques
House Chair

1604nrg

MARTHA E. FREEMAN, DIRECTOR
WILLIAM T. GLIDDEN, JR., PRINCIPAL ANALYST
J :LIE S. JONES, PRINCIPAL ANALYST
DAVID C. ELLIOTT, PRINCIPAL ANALYST
JON CLARK
D'YAN M. DYTTMER
GRO FLATEBO
DEBORAH C. FRIEDMAN
MICHAEL D. HIGGINS

KAREN L. HRUI
JILL IPPOL
JOHN B. KN(
PATRICK NORT(
MARGARET J. REINS(
PAUL J. SAUCI
HAVEN WHITESI
MILA M. DWELLEY, RES. AS
ROY W. LENARDSON, RES. AS
BRET A. PRESTON, RES. AS

STATE OF MAINE
OFFICE OF POLICY AND LEGAL ANALYSIS
ROOM 101/107/135
STATE HOUSE STATION 13
AUGUSTA, MAINE 04333
TEL.: (207) 289-1670

March 29, 1991

TO: Peggy Reinsch, Legislative Counsel
FROM: Tim Glidden, Principal Analyst

RE: Chronology of statutory prohibition on new commercial biomedical waste disposal facilities

You have asked for a brief review of the events surrounding the development of the prohibition on commercial solid waste disposal facilities and, subsequently, the extension of this prohibition to commercial biomedical waste disposal facilities. This memo provides that chronology and also describes the unforeseen and, I believe, unintended, impact on an existing commercial biomedical waste disposal facility.

Original Commercial Solid Waste Disposal Facility Ban

In the spring of 1989, the Legislature enacted comprehensive solid waste management legislation which included a ban on new commercial solid waste disposal facilities effective September 30, 1989 (the effective date of the bill). At that time, the DEP regulated the incineration of biomedical waste through the issuance of an air emissions license by the Air Bureau. The Solid Waste Bureau was not involved at all. The Department's understanding and position was that biomedical waste was separate from and not part of the overall solid waste stream. Consistent with this understanding, David Heald of Sanford received an air emissions license on October 5, 1989 to operate a biomedical waste incinerator.

AG clarification on definition of solid waste as regards biomedical waste

On October 31, 1989, the Attorney General's Office, in response to a question from the DEP, offered the advice that solid forms of biomedical waste were, in fact, a type of solid waste subject to all provisions of the solid waste management laws. The AG's advice prompted the DEP to apply the ban on to commercial biomedical waste disposal facilities. In addition, the AG's advice also highlighted a number of bureaucratic difficulties for the Department since it became unclear which Bureau should administer the biomedical waste management program.

Legislature acts to resolve ambiguities in definitions of solid and biomedical waste

The Legislature, in 1990 (P.L. 1989, c.869), resolved the debate over the definition of solid and biomedical waste by excluding biomedical waste from the definition of solid waste and defining biomedical waste as a separate waste stream under the jurisdiction of the Bureau of Oil and Hazardous Materials Control. In addition, the same piece of legislation explicitly extended the ban on new commercial solid waste disposal facilities to include commercial biomedical waste disposal facilities.

Effect on existing biomedical waste disposal facilities

At the time of passage of P.L. 1989, c.869, several Energy and Natural Resource Committee members and several other legislators asked whether or not the extension of the ban would affect any existing biomedical waste disposal facilities in unforeseen ways. The Department thought that this would not be the case. Most existing biomedical waste facilities are owned by the waste generators themselves and do not take appreciable quantities of biomedical waste generated by others. Thus, these facilities are not "commercial". What was missed was that Mr. Heald's air license was issued on October 5, 1989, five days after the effective date of the ban. The clear language of the prohibition also blocks the DEP from relicensing Mr. Heald's facility since it was not licensed before September 30, 1989.

Possible remedy

Insofar as the application of the ban on new commercial biomedical waste facilities was not intended to apply to existing facilities, it is reasonable to examine 38 MRSA §1310-X for the necessary changes to remedy the error. The intent is to change only those dates necessary to treat Mr. Heald in the manner the committee intended at the time (spring, 1990) and in the same manner as all existing licensed commercial solid waste disposal facilities are being treated.

Changing the date, September 30, 1989, to October 6, 1989 in 38 MRSA §1310-X, sub-§2 and sub-§3, ¶A accomplishes this purpose. Changing any other dates beyond these could have unanticipated consequences and, in any event, is unnecessary to remedy the known problem.

I hope this meets your needs. If I can be of any further assistance to you or the Judiciary Committee, please let me know.

1776nrg

HOUSE OF REPRESENTATIVES

STATE HOUSE AUGUSTA 04333
289-1400

Paul F. Jacques
41 Oakland Street, Apt. 2
Waterville, Maine 04901

March 27, 1991

Senator N. Paul Gauvreau
Rep. Patrick E. Paradis
Co-chairs, Judiciary Committee
State House
Augusta, Maine 04333

Dear Paul and Pat;

After conferring with the sponsors of L.D. 3, Senator Titcomb and I have concluded that the best solution to this is to correct all the errors at once and to substitute the date October 6, 1989 for the date September 30, 1989. We believe this will maintain the integrity of the Errors Bill.

Very Truly Yours,

Representative Paul F. Jacques

STATE OF MAINE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

COMMITTEE ON JUDICIARY

April 2, 1991

Senator Bonnie L. Titcomb, Senate Chair
Representative Paul F. Jacques, House Chair
Joint Standing Committee on Energy and Natural Resources
115th Maine State Legislature

Re: LD 1239, An Act to Remedy Statutory Inconsistencies

Dear Sen. Titcomb and Rep. Jacques:

The Joint Standing Committee on Judiciary today voted on LD 1239, An Act to Remedy Statutory Inconsistencies. We write to inform you of our action to report the bill out as Ought To Pass as Amended. A draft of the Committee Amendment is attached.

The Committee Amendment deletes four sections of the bill. Three of those sections are struck out because they would be in conflict with the Emergency Budget Bill passed last month, PL 1991, c. 9. The fourth section excised from the bill is section A-40 which would have corrected the conflict created by the Legislature in 38 MRSA §1310-X. We believe a brief explanation of our reasons for removing 1310-X is necessary.

Over the past several years, the Judiciary Committee has developed the well-respected practice of handling Errors Bills with great care. Sections of the bill which are substantive are removed, even if the proposed language correctly evinces the Legislature's intentions with regard to that section. If there is any question that the section may change the effect of the law, the Committee has consistently excised it from the bill itself; only if the change is necessary to the reasonable transaction of business has the Committee supported a floor amendment, offered by one of the Committee Chairs, to make that change.

With this history behind us, we reviewed 38 MRSA §1310-X. We believe, with all due respect, that Justice Chandler's November 19, 1990, decision in Hi-Tech Energy, Inc. v. DEP incorrectly interpreted the Legislature's intent with regard to the conflict created by PL 1989, c. 869 and PL 1989 c. 878. The conflict created by both these laws amending §1310-X is no different than most other conflicts we deal with in the usual Errors Bill. Clearly, the Legislature's intent is embodied in the c. 869 version of §1310-X. Chapter 869 makes substantive changes resulting from the actions of the committee of substantive jurisdiction, namely the Energy and Natural Resources Committee. Chapter 878 was the Errors Bill for the Second Regular Session of the 114th Legislature. The overall intent of any Errors Bill is to correct errors and not to make substantive changes. We believe that Justice Chandler did not fully understand the purposes of the legislation in question before him, and therefore applied an inappropriate rule of statutory construction.

Despite Justice Chandler's ruling, the Judiciary Committee determined that the conflict created by PL 1989, c. 869 and PL 1989 c. 878 was a technical error, in line with most other errors presented to the Committee, and we agreed to include it in the bill. It is important to correct statutory errors, and the fact that a trial court decision was contrary to the true legislative intent regarding a particular section should not remove that section from the Legislature's jurisdiction to correct. We were fully prepared to include §1310-X in LD 1239 as printed.

The question of changing the ban's effective date from September 30, 1989 to October 6, 1989 has raised more questions, however, than we are prepared to deal with and are comfortable handling. We understand that the Energy Committee specifically tried to cover Mr. Heald with the September 30, 1989 effective date, and that, through no fault of the Committee, that date was not correct. We cannot in good conscience, however, change September 30, 1989 to October 6, 1989 and still call the bill nonsubstantive in the usual Errors Bill sense. The fact that we have received so many comments about this section brings us to the conclusion that it is too controversial to be retained in LD 1239. The Energy and Natural Resources Committee is the appropriate forum to hear all sides, make the appropriate policy decision with regard to the September 30/October 6 date and correct the conflict which landed the section in this errors bill in the first place.

Please feel free to contact us if you have any questions. Good luck in dealing with this convoluted issue.

Sincerely,

N. Paul Gauvreau
Senate Chair

Patrick E. Paradis
House Chair

enclosure
2238

Committee: JUD
LA: Reinsch
LR (item)#: 576(2)
WPP Doc. #: 2164LHS
New Title?: no
Add Emergency?: no
Date: 04/01/91

COMMITTEE AMENDMENT "." TO S.P. 463, L.D. 1239, An Act to Remedy Statutory Inconsistencies.

Amend the bill in Part A by striking out Section A-12 (page 5, lines 23-50, page 6, lines 1-36)

Further amend the bill in Part A by striking out Section A-40 (page 22, lines 18 - 52 and page 23, lines 1 - 2)

Further amend the bill in Part B by striking out Sections B-3 and B-4 (page 27, lines 4-32)

Further amend the bill by renumbering the sections to read consecutively.

STATEMENT OF FACT

This amendment deletes 3 sections that were corrected in Public Law 1991, chapter 9.

This amendment also deletes Section A-40 to allow the Energy and Natural Resources Committee the opportunity to entertain substantive amendments to Title 38, section 1310-X.

APPENDIX F

Three sample rules of construction are contained in this appendix. They represent the three versions of Maine authorities on how to resolve conflicting enactments. Note that all three begin with two basic principles. First, the laws must be construed to give effect to all legislative actions as far as possible. Second, "reconcilable" enactments should be read together. All three sample rules explain this process as reading the enactments together to result in an intelligible and harmonious statutory unit. If incorporating the conflicting enactments will not reach this result, then each rule sets out three steps to follow.

Please note that in sample rules I and II, "last enacted" means last enacted by the Legislature, as determined by the date and time of the last vote taken to enact. Another option would be to determine "last enacted" by the higher chapter number.

Sample rule III reflects the rationale currently used by the Joint Standing Committee on Judiciary, and the Legislature more generally, in resolving conflicts for the Errors Bill. It should be noted that when correcting a conflict through an Errors Bill, both the Committee and the staff presume that the intrinsic intent of a so-called revisory bill is technical or stylistic rather than substantive, and a conflict would be reached in favor of the version in a substantive bill.

SAMPLE RULE I

1 MRSA §75 is enacted to read:

§75. Conflicting enactments

Conflicting enactments are Acts adopted within one session of the Legislature, including enactments, amendments, repeals, reallocations, reenactments or any combination of these actions, that affect a particular statutory unit without reference to each other.

In the construction of conflicting enactments the following steps must be used.

1. Validity of all enactments. The laws must be construed to give effect to all legislative actions as far as is possible.

2. Reconcilable enactments. If conflicting enactments can be read together so that each is given effect and is incorporated into the affected statutory unit in a manner that is intelligible and harmonious, the enactments must be read together.

3. Irreconcilable enactments. If the conflicting enactments can not be read together in a harmonious manner, the laws must be construed as follows.

A. If there is an intrinsic expression of legislative intent, the conflict must be resolved in accordance with that intent.

B. If there is no intrinsic expression of legislative intent, but the legislative history reliably indicates legislative intent, the conflict must be resolved in accordance with that intent.

C. If there is no reliable evidence of legislative intent, either the version last enacted by the Legislature, as determined by the date and time of the last vote taken to enact the section, or the version that treats the topic in the more specific and detailed manner may be given effect.

EXPLANATION

This sample rule is based on the 1973 Opinion of the Justices. It gives effect to the bill last passed or the bill that is more specific. It is not clear what how a conflict is to be resolved if the earlier bill treats the topic in a more specific and detailed manner.

SAMPLE RULE II

1 MRSA §75 is enacted to read:

§75. Conflicting enactments

Conflicting enactments are Acts adopted within one session of the Legislature, including enactments, amendments, repeals, reallocations, reenactments or any combination of these actions, that affect a particular statutory unit without reference to each other.

In the construction of conflicting enactments the following steps must be used.

1. Validity of all enactments. The laws must be construed to give effect to all legislative actions as far as is possible.

2. Reconcilable enactments. If conflicting enactments can be read together so that each is given effect and is incorporated into the affected statutory unit in a manner that is intelligible and harmonious, the enactments must be read together.

3. Irreconcilable enactments. If the conflicting enactments can not be read together in a harmonious manner, the laws must be construed as follows.

A. If there is an intrinsic expression of legislative intent, the conflict must be resolved in accordance with that intent.

B. If there is no intrinsic expression of legislative intent, but the legislative history reliably indicates legislative intent, the conflict must be resolved in accordance with that intent.

C. If there is no reliable evidence of legislative intent, the version last enacted by the Legislature, as determined by the date and time of the last vote taken to enact the section, must be given effect.

EXPLANATION

This sample rule is based on the Opinion of the Attorney General issued in December, 1975. Under this rule, the last enacted bill would be given effect.

SAMPLE RULE III

1 MRSA §75 is enacted to read:

§75. Conflicting enactments

Conflicting enactments are Acts adopted within one session of the Legislature, including enactments, amendments, repeals, reallocations, reenactments or any combination of these actions, that affect a particular statutory unit without reference to each other.

In the construction of conflicting enactments the following steps must be used.

1. **Validity of all enactments.** The laws must be construed to give effect to all legislative actions as far as is possible.

2. **Reconcilable enactments.** If conflicting enactments can be read together so that each is given effect and is incorporated into the affected statutory unit in a manner that is intelligible and harmonious, the enactments must be read together.

3. **Irreconcilable enactments.** If the conflicting enactments can not be read together in a harmonious manner, the laws must be construed as follows.

A. If there is an intrinsic expression of legislative intent, the conflict must be resolved in accordance with that intent.

B. If there is no intrinsic expression of legislative intent, but the legislative history reliably indicates legislative intent, the conflict must be resolved in accordance with that intent.

C. If there is no reliable evidence of legislative intent, the version that treats the topic in the more specific and detailed manner, must be given effect.

EXPLANATION

This sample rule gives the more specific bill effect over the more general bill. This is the methodology employed by the Legislature and the legislative staff in analyzing and preparing the Errors Bill.