

MAINE STATE LEGISLATURE

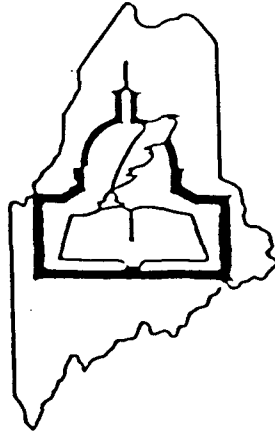
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STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
SECOND REGULAR SESSION

JOINT STANDING COMMITTEE ON
STATE GOVERNMENT
BILL SUMMARY



MAY 1986

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ONE HUNDRED AND TWELFTH LEGISLATURE
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JOINT STANDING COMMITTEE
BILL SUMMARIES
MAY 1986

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees and Joint Select Committees of the Maine Legislature, covering the Second Regular Session of the 112th Legislature. The summaries are arranged by LD number under each committee.

All Amendments are listed, by paper number (e.g., H-584 or S-222), together with the sponsor if it is a floor amendment or the designation "CA" if it is a committee amendment. If the amendment was adopted in the House, the letter H appears after the sponsor. If it was adopted in the Senate, the letter S appears.

Final action for each bill is listed to the right of the title. If final House action and Senate action differ, both are listed.

Key to Committee Reports and Floor Action:

OTP	Ought to Pass
OTP-ND	Ought to Pass in New Draft
OTP-ND-NT	Ought to Pass in New Draft, New Title
OTP-AM	Ought to Pass as Amended
ONTP	Ought Not to Pass
LVWD	Leave to Withdraw
INDEF PP	Indefinitely Postponed

LD AN ACT TO AUTHORIZE THE TREASURER OF STATE TO
2176 TEMPORARILY INVEST EXCESS MONEY INCLUDING
BOND PROCEEDS IN TAX-EXEMPT OBLIGATIONS

PL 1985
c. 757

Sponsor: VIOLETTE, Gwadosky, Cote
Committee Report: OTP

H-639 GWADOSKY H S

SUMMARY: This bill allows the Treasurer of State, with the concurrence of the State Controller or the Commissioner of Finance and Administration, and with the consent of the Governor, to invest excess money, including unspent bond proceeds in tax-exempt obligations and tax-exempt trusts and funds. House Amendment "A" defines tax exempt obligations as tax exempt commercial paper and tax-exempt bonds maturing in less than 2 years. If H.R. 3838, 99th Congress, First Session, the "Tax Reform Act of 1985," is enacted into law in its current form, these investments in tax-exempt obligations will allow the State to retain several hundreds of thousands of dollars of arbitrage earnings each year which otherwise would have to be rebated to the Federal Government.

LD AN ACT TO AMEND THE RULE-MAKING PROCEDURES OF
2180 CERTAIN AGENCIES

ND LD 2341

Sponsor: GWADOSKY, Hichborn, Lacroix, Andrews
Committee Report: OTP-ND-NT

SUMMARY: LD 2180 proposed to repeal provisions requiring specific types of rules of a very limited number of agencies, primarily the Department of Environmental Protection, to be approved or reviewed by various legislative committees.

The purpose of the bill was to bring Maine law regarding rules review and approval into compliance with the United States and Maine Constitutions. In 1983, the U.S. Supreme Court rendered a decision in the *Chadha vs the U.S.* Immigration and Naturalization Service that struck down the veto power of the U.S. Congress over executive agency rules. The court ruled that the Congressional veto power over the rules of the U.S. Immigration and Naturalization Service was a violation of the Separation of Powers Principle in the United States Constitution.

The Attorney General of Maine has also issued opinions that the Legislative veto power in Maine statutes is a violation of the Separation of Powers Principle in the Maine Constitution.

A number of other states have also been confronted with the same court ruling including Wisconsin and Connecticut.

The bill was completely redrafted to make technical changes in the Maine Administrative Procedure Act. The provisions of LD 2180 were abandoned.

The rule-making provisions of the Maine Administrative Procedure Act, the Maine Revised Statutes, Title 5, chapter 375, could be interpreted to require courts to invalidate administrative rules for certain technical, procedural errors, even though the rule is substantively valid and all public participation requirements of the Act have been met. This new draft eliminates technical grounds for invalidating rules. Judicial review of rules would measure a rule against the agency's rule-making authority, examine its consistency with the governing statute and review the agency's compliance with procedures affecting public notice and participation in the rule-making process.

Sections 1 and 2 of LD 2341 place greater responsibility for rule-making decisions on the officials actually authorized to adopt rules. Present law may prevent these officials from adopting any provision that was not either proposed by agency staff or by persons commenting on the staff proposal. As revised, the section would continue to protect against arbitrary action by requiring rule-making officials to respond to representative comments and state their reasons for any changes from the proposed rule.

Sections 3 and 4 of the bill amend the provision for legislative involvement in rulemaking to accommodate emergency rules. It also makes clear that legislative committees are to have notice of rules at the time they are proposed, when comments are being solicited, rather than later in the process, as the existing language might be interpreted.

Sections 5 and 6 of the bill limit the procedural grounds that automatically invalidate a rule. Violation of those procedures affecting public participation in the rule-making process, or the specific time limits for rulemaking, will still void a rule. The Maine Administrative Procedure Act, Title 5, chapter 375, requirements concerning the effective date of a rule, the basis statements, the agency's response to representative public comments and reference to underlying laws would provide grounds for invalidating a rule only if it is found that the error had a substantial potential to affect the rule in a significant way.

Sections 8 and 9 of LD 2841 clarify the original intention of the Maine Administrative Procedure Act, Title 5, chapter 375, for judicial review of those decisions where no administrative hearing is required by the relevant statute. Section 8 makes clear that written decisions are required and must be made only on the basis of relevant evidence. For most of these decisions, a written decision is already required by the Maine Revised Statutes, Title 1, section 407.

Section 9 carries out the basic premise of the Maine Revised Statutes, Title 5, section 11006, by having judicial review of licensing decisions on the basis of an administrative record. Where no reviewable record is available to the court, for any reason, judicial review cannot proceed. The method of recreating a record is left to the parties and the court, but the existing law's reference to an administrative hearing is deleted, since by definition licensing decisions are ones that the Legislature has authorized to be made without hearing.

LD	AN ACT TO PROVIDE FOR THE ALLOCATION OF THE	PL 1985
2189	STATE CEILING ON BONDS FOR NONGOVERNMENTAL	c. 594
	PURPOSES	

Sponsor: MARTIN, J., Clark, N., Perkins, Gwadosky
Committee Report: OTP-AM

H-592 CA H S

SUMMARY: LD 2189, in its original form, proposed to allow the Governor to determine the distribution of tax-exempt bond financing among various uses of these bond proceeds. The Governor could allocate portions of the state ceiling to the Maine State Housing Authority, Treasurer of State, Finance Authority of Maine and Maine Municipal Bond Bank, each of which may further allocate portions of the state ceiling to specific issuers for bonds requiring an allocation in order to be tax exempt.