

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2011

13. One representative of the Office of the Attorney General; and

14. One representative of the Maine Quality Forum; and be it further

Sec. 3. Cochairs. Resolved: That the members of the working group shall select 2 of the members to serve as cochairs; and be it further

Sec. 4. Evaluation. Resolved: That the working group shall consider changes to the State's all-payer claims database system to improve the availability of and access to health care data by:

1. Reviewing the current structures of and relationships among the Maine Health Data Organization, the Maine Health Data Processing Center and Onpoint Health Data in order to evaluate the timeliness and effectiveness of the data received;

2. Reviewing the current purposes and uses of the data and limitations on access to the data and considering additional uses for the data and changes that might be necessary to achieve and facilitate additional uses;

3. Considering federal and state privacy and security laws regarding the use and release of protected health information, including policy and technical changes needed to allow increased access to protected health information and the feasibility of those changes; and

4. Considering the availability of the data, the most appropriate sources of the data and the cost of providing the data; and be it further

Sec. 5. Funding and staffing. Resolved: That the department shall provide staffing assistance to the working group through contracted professional services and shall seek outside nonstate funding to support staffing services and administrative costs for the working group. If adequate funding is not obtained, the working group may not convene or incur any expenses; and be it further

Sec. 6. Report. Resolved: That, by January 31, 2012, the department shall report the recommendations based on the findings and conclusions, determined by vote, of the working group, along with any recommended implementing legislation, to the Joint Standing Committee on Health and Human Services.

See title page for effective date.

Sec. 1. MaineCare Benefits Manual. Resolved: That the Department of Health and Human Services shall adopt rules to amend its Chapter 101: MaineCare Benefits Manual to permit neuropsychological testing assistants, also known as psychometricians, to administer and score neuropsychological and psychological tests of MaineCare patients under the supervision of a licensed psychologist. Rules adopted pursuant to this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

See title page for effective date.

CHAPTER 111

H.P. 1086 - L.D. 1477

Resolve, To Review Issues Dealing with Regulatory Takings

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

Whereas, the Committee to Review Issues Dealing with Regulatory Takings is established to study issues associated with property rights and the public welfare; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative 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

Sec. 1. Committee established. Resolved: That, notwithstanding Joint Rule 353, the Committee to Review Issues Dealing with Regulatory Takings, referred to in this resolve as "the committee," is established; and be it further

Sec. 2. Committee membership. Resolved: That the committee consists of 11 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives appointed by the Speaker of the House, including no more than 2 members from the party holding the largest number of seats in the Legislature;

CHAPTER 110

H.P. 940 - L.D. 1281

Resolve, To Ensure Cost-effective Services for Persons Needing Neuropsychological Testing

3. One member representing private property owners with over 100 acres of real property, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Maine Farm Bureau, the Maine Forest Products Council and the Small Woodland Owners Association of Maine;

4. One member representing municipal government, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Maine Municipal Association;

5. One member representing conservation interests, appointed by the President of the Senate. The President of the Senate may consider recommendations made by the Natural Resources Council of Maine, the state chapter of the Nature Conservancy and Maine Audubon;

6. One member representing the business sector, appointed by the Speaker of the House. The Speaker of the House may consider recommendations from the Maine State Chamber of Commerce and the Maine National Federation of Independent Business;

7. One member representing private attorneys who have experience practicing in the subject area of takings law in the State, appointed by the Speaker of the House; and

8. The Attorney General or the Attorney General's designee; and be it further

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the committee; and be it further

Sec. 4. Appointments; convening of committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the committee to meet and conduct its business; and be it further

Sec. 5. Duties. Resolved: That the committee shall study the issues associated with property rights and the public welfare. In examining these issues, the committee shall review whether barriers to relief from a regulatory taking currently exist. The committee may, without limitation, in the course of evaluating whether such barriers exist:

1. Review and analyze the Report of the Study Commission on Property Rights and the Public Health,

Safety and Welfare, completed in 1995, and the recommendations made in the report;

2. Study the experiences of the land use mediation program, established in the Maine Revised Statutes, Title 5, section 3341 by the 117th Legislature for the purpose of providing private landowners with an independent forum for mediation of governmental land use actions as an alternative to court action;

3. Study regulatory takings legislation considered in other states, including Oregon and Florida, and also states where such legislation has been considered and not adopted and the experiences of landowners, municipalities, State Government and the public. The committee shall evaluate fiscal, legal and policy matters raised by these laws;

4. Examine specific cases in which state and municipal laws, regulations, ordinances and investments have affected property values in this State, both positively and negatively; and

5. Suggest measures to mitigate and remove any barriers to relief as may be identified; and be it further

Sec. 6. Consideration of legislation elements. Resolved: That the committee in determining whether to recommend legislation as part of its report shall consider at least the following legislation elements:

1. An appropriate definition of "land use regulation" that should be considered in determining whether a regulatory taking has occurred;

2. An appropriate percentage of diminution in value to establish a compensable regulatory taking;

3. Appropriate governmental agencies and entities to which new regulatory takings standards and procedures should apply;

4. Whether the cumulative effect of multiple land use regulations should be considered in determining whether a compensable regulatory taking has occurred;

5. If multiple land use regulations are cumulated to determine whether a compensable regulatory taking has occurred, how compensation should be allocated among the governmental agencies and entities responsible for those land use regulations;

6. How fair market value is established, including whether written bona fide appraisals are required;

7. Whether property value increases resulting from land use regulations should be taken into account;

8. An effective system for resolution of compensable regulatory takings claims, including payment of compensation when appropriate, without resorting to filing a claim in court;

9. Creation of a Superior Court cause of action seeking appropriate compensation for regulatory takings, including standards for awarding damages;

10. The appropriateness of awarding attorney's fees and costs to a landowner or governmental entity;

11. How to ensure that a claim for a compensable regulatory taking can proceed in a timely manner without unnecessary delay based on ripeness;

12. Whether a new compensable regulatory takings program should be applied to existing land use regulations;

13. Whether the "whole parcel rule" should be part of a new compensable regulatory takings program;

14. Establishment of an appropriate statute of limitations for filing claims for compensation for regulatory takings;

15. Whether a waiver of sovereign immunity is necessary; and

16. Whether a dedicated state fund should be established to pay claims for compensation; and be it further

Sec. 7. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the committee; and be it further

Sec. 8. Reimbursement. Resolved: That public members of the committee are not entitled to reimbursement for expenses; and be it further

Sec. 9. Report. Resolved: That, no later than December 7, 2011, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary may report out legislation relating to the report to the Second Regular Session of the 125th Legislature.

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

Effective July 8, 2011.

CHAPTER 112

H.P. 1144 - L.D. 1558

Resolve, To Study Allocations of the Fund for a Healthy Maine

Sec. 1. Commission established. Resolved: That the Commission To Study Allocations of the Fund for a Healthy Maine, referred to in this resolve as "the commission," is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of no more than 13 members appointed as follows:

1. The President of the Senate shall:

A. Appoint 3 members of the Senate, including a member from each of the 2 parties holding the largest number of seats in the Legislature. At least one of the appointees must serve on the Joint Standing Committee on Appropriations and Financial Affairs and at least one of the appointees must serve on the Joint Standing Committee on Health and Human Services; and

B. Appoint one person representing municipal public health departments and one person representing a major voluntary nonprofit health organization; and

2. The Speaker of the House of Representatives shall:

A. Appoint 4 members of the House of Representatives, including members from each of the 2 parties holding the largest number of seats in the Legislature. At least one of the appointees must serve on the Joint Standing Committee on Appropriations and Financial Affairs and at least one of the appointees must serve on the Joint Standing Committee on Health and Human Services; and

B. One person representing a statewide organization of public health professionals, one person representing a public health organization or agency operating in a rural community, one person representing the organizations providing services supported by funds from the Fund for a Healthy Maine and one person who possesses expertise in the subject matter of the study under this resolve; and be it further

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission; and be it further

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 10 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. The chairs of the commission shall call and convene the first meeting of the commission within 15 days of the effective date of this resolve. If a majority of but not all appointments have been made within 10 days of the effective date of this resolve, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business; and be it further

Sec. 5. Meetings. Resolved: That the commission may meet only when the Legislature is not in