

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**September 27, 2011**

**SECOND REGULAR SESSION**  
**January 4, 2012 to May 31, 2012**

**THE EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**LAWS IS**  
**SEPTEMBER 28, 2011**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 30, 2012**

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

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**Augusta, Maine**  
**2012**

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

Effective April 4, 2012.

**CHAPTER 146**

**H.P. 1360 - L.D. 1838**

**Resolve, Regarding  
Legislative Review of Chapter  
33: Regulations Governing  
Timeout Rooms, Therapeutic  
Restraints and Aversives in  
Public Schools and Approved  
Private Schools, a Major  
Substantive Rule of the  
Department of Education**

**Mandate preamble.** This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

**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 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas,** the above-named major substantive rule has been submitted to the Legislature for review; and

**Whereas,** immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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. Adoption. Resolved:** That final adoption of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools, a provisionally adopted major substantive rule of the Department of Education that has been submitted to the Legislature for review pursuant to the Maine Revised

Statutes, Title 5, chapter 375, subchapter 2-A, is authorized only if the following changes are made:

1. The rule must be amended in section 2 to provide that public charter schools are covered entities;

2. The rule must be amended in section 2 to clarify that physical restraint does not include:

A. Physical contact when the purpose of the contact is to comfort a student and the student voluntarily accepts the contact; or

B. Momentarily deflecting the movement of a child when the child's movements would be destructive, harmful or dangerous to the child or to others;

3. The rule must be amended in section 6 to clarify that when a staff person who is not certified in a state-approved training program initiates physical restraint, trained personnel must be summoned to the scene only if the emergency situation continues;

4. The rule must be amended in section 7 to clarify that a staff person who initiates physical restraint or seclusion that involves a student who has been placed in an out-of-district placement must report the incident to the entity responsible for the student's education within 24 hours or by the next business day;

5. The rule must be amended in section 8 to clarify that the incident report documenting the use of physical restraint or seclusion must indicate if any of the personnel involved in the incident were certified in a state-approved training program; and

6. The rule must be amended in section 12 to clarify that the state-approved training programs may include regional training programs and regional "train the trainer" program models to provide the required training for personnel in the covered entities; and be it further

**Sec. 2. Department of Education; non-regulatory guidance. Resolved:** That, no later than September 1, 2012, the Department of Education shall provide nonregulatory guidance to school administrative units, public charter schools, private schools and other covered entities that are subject to the requirements of Chapter 33: Regulations Governing Timeout Rooms, Therapeutic Restraints and Aversives in Public Schools and Approved Private Schools. The guidance provided by the department to the covered entities must include, but is not limited to, examples of what is and is not considered to be physical restraint or seclusion. The guidance must be disseminated to all covered entities in writing, and the department shall post the guidance on the department's publicly accessible website.

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

Effective April 4, 2012.

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**CHAPTER 147**  
**S.P. 570 - L.D. 1671**

**Resolve, To Require the  
Department of Transportation  
To Facilitate and Oversee a  
Study of the Feasibility of an  
East-west Highway**

**Sec. 1. Department of Transportation to facilitate and oversee a study of the feasibility of an east-west highway. Resolved:** That the Department of Transportation shall facilitate and oversee an independent investment-grade traffic and revenue analysis to assess the feasibility of a privately funded, privately operated and publicly accessible east-west highway; and be it further

**Sec. 2. Reporting date established. Resolved:** That the Department of Transportation shall report the study findings to the joint standing committee of the Legislature having jurisdiction over transportation matters by January 15, 2013; and be it further

**Sec. 3. Reimbursement for cost of analysis. Resolved:** That, upon obtaining final authorization to construct an east-west highway, the developer shall reimburse the Department of Transportation for the cost of the analysis under section 1.

See title page for effective date.

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**CHAPTER 148**  
**S.P. 444 - L.D. 1437**

**Resolve, Directing the Maine  
Economic Growth Council To  
Develop the Maine Prosperity  
Action Plan of 2012**

**Preamble. Whereas,** per capita income in the other New England states is 38% higher than per capita income in Maine; and

**Whereas,** numerous advisory groups have convened in recent years to assess Maine's policy environment, government systems and public sector costs, with the objective of creating a more prosperous Maine economy; and

**Whereas,** the reports that have emerged from these efforts have been widely praised and overlap substantially in their recommendations; and

**Whereas,** although these reports have informed ongoing work by legislative policy committees and have influenced legislation on certain issues, those reports have not been translated into a single, comprehensive, economically transformative and legislatively specific action plan; and

**Whereas,** the Maine Economic Growth Council is a 19-member panel of established and trusted Maine leaders, appointed jointly over time by the Governor, the President of the Senate and the Speaker of the House of Representatives and empowered by statute to set the long-term plan for the sustainable economic development of Maine; and

**Whereas,** the Maine Economic Growth Council appointees are established Maine leaders who have earned broad respect for their leadership, vision and commitment to Maine and have broad public credibility and a deep understanding of Maine's economic conditions, challenges and opportunities; now, therefore, be it

**Sec. 1. Development of Maine Prosperity Action Plan. Resolved:** That the Maine Economic Growth Council, established in the Maine Revised Statutes, Title 10, section 929-A and referred to in this resolve as "the council," shall develop the Maine Prosperity Action Plan, referred to in this resolve as "the plan," which must contain a comprehensive and specific action plan for a sustainable state economy. In developing the plan, the council shall undertake a thorough review of the proposals and recommendations contained in recent reports assessing the State's policy environment, government systems and public sector costs, with the objective of creating a more prosperous Maine economy. Specifically, the council's review must include its own annual report on economic indicators, "Measures of Growth in Focus," as well as:

1. "Charting Maine's Future: An Action Plan for Promoting Sustainable Prosperity and Quality Places," prepared by the Brookings Institution in collaboration with GrowSmart Maine and published in 2006;

2. "Time for Change," the final report of the Joint Select Committee on Future Maine Prosperity, issued in 2008;

3. "Reinventing Maine Government," prepared by Envision Maine and published in 2010; and

4. "Making Maine Work: Critical Investments for the Maine Economy," the 3-part series prepared by the Maine State Chamber of Commerce and the Maine Development Foundation and published in 2010 to 2012.