

MAINE STATE LEGISLATURE

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125TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

TO: Kevin L. Raye, Chair
Robert W. Nutting, Vice-Chair
Legislative Council

And Members of the Legislative Council

FROM: *D.B.*
David E. Boulter, Executive Director

DATE: April 18, 2012

RE: **Consideration of Proposed Legislative Studies**

Immediately following completion of its regular agenda at the Legislative Council meeting on Tuesday, April 24, 2012, the Legislative Council is scheduled to consider proposed legislative studies, including those placed on the Study Table. Attached are background materials on the proposed studies for the upcoming legislative interim. The materials consist of:

1. A suggested protocol for considering the proposed studies;
2. A copy of Joint Rule 353 regarding the Legislative Studies (see subsection 10 for reference to the study table);
3. A copy of the Legislative Council policy for legislative studies;
4. A spreadsheet listing the proposed legislative study commissions and task forces (blue paper) and interim committee meetings (green paper) along with summary information related to each proposed study, including the estimated cost of each study. The studies are sorted by committee/policy area; and
5. Copies of the engrossed version (or the latest version available) of the applicable bill, resolve or joint order.

PLEASE BRING THESE MATERIALS WITH YOU TO THE LEGISLATIVE COUNCIL MEETING. Thank you.

Attachments

cc: Joseph Carleton, Jr., Secretary of the Senate
Heather Priest, Clerk of the House
Marion Hylan Barr, OPLA Director
Grant Pennoyer, OFPR Director
Suzanne Gresser, Revisor of Statutes
Rose Breton, Leg. Finance Director
Chiefs of Staff

125th Legislature
Legislative Council Meeting
Review of Legislative Study Proposals
April 2012

Requirements Relevant to Studies in the Second Regular Session

Under the terms of the Joint Rules of the 125th Legislature, section 353, all joint orders and legislation proposing legislative studies regardless of funding source must be placed on a special study table. The legislative Council must review proposed studies and establish priorities for allocation of budgetary and staffing resources.

For studies authorized by the Legislative Council, the Legislative Council must provide funds sufficient to enable the committee to reasonably conduct and complete the requirements of the studies.

Also under the Joint Rules, The Legislative Council must adopt a policy relating to preparing study legislation. During the 123rd Legislature, the Legislative Council unanimously adopted a policy on legislative studies. Joint Rules and the related council policy specify the manner of appointment, selection of chair, compensation of members, report date and other relevant as part of study legislation. Copies of the Joint Rule and adopted policy are attached.

Suggested Protocol for Authorizing Legislative Studies

- The Legislative Council will review study requests alphabetically by policy area.
- Voting will be by a show of hands, and each Council Member's vote on each bill will be recorded. The record of each vote will be made available for public inspection following the meeting. A 2/3rds majority is required to authorize any study reporting to a subsequent Legislature.
- Committee chairs and others are welcome to observe the Council's deliberations on the study requests, but discussion of the requests will be confined to Council Members. However, Legislative Council members may ask questions of committee chairs and other Legislators regarding the proposed study if needed.
- Unless otherwise specified by the Legislative Council, authorized studies are to be drafted consistent with applicable standards and policies approved by the Council. Floor amendments to authorized studies making Council-authorized changes will be prepared in the name of the Senate Majority Leader, except for studies tabled in the House which will be in the name of the House Majority Leader.

Policy Issues Needing Decision

1. **Number of authorized meetings and meeting location-Recommendation:** Unless otherwise specified by the Legislative Council, the number of meetings is not to exceed four (4) and meetings are to be held in the Augusta area.
2. **Studies conducted using non-General Fund sources-Recommendation:** When a study committee is required to be funded by outside funds, the study committee may not convene until sufficient funds are received to pay for the study.
3. **Interim committee meetings –Recommendation:** Unless authorized by law or joint order, joint standing committees may not meet during the interim for any purpose without prior written

approval of the presiding officers. Committees wishing to meet must submit a written request to meet to the presiding officers indicating the number of meetings requested, the purpose of the meetings and the date of the meeting. Committee clerks will not be authorized for interim committee meetings.

JOINT RULE 353 LEGISLATIVE STUDIES

Rule 353. Legislative Studies.

To assist in the exercise of its duties, the Legislature may establish legislative study committees or may alternatively refer matters to joint standing committees or subcommittees of joint standing committees for study. This Joint Rule establishes standards that govern the drafting of legislative study instruments and the authorization of legislative studies. All legislative studies must be consistent with this Joint Rule and with Legislative Council policies adopted under this Joint Rule. A joint standing or joint select committee may not, except upon the prior approval of the Legislative Council, report to the Legislature any bill, resolve or joint order proposing a legislative study that is inconsistent with this Joint Rule.

- 1. Definitions. For the purposes of this Joint Rule, the following terms have the following meanings:
 - A. The term “legislative study” or “legislative study committee” means any group of individuals established in an Act, Resolve or Joint Order or by the Legislative Council, except those exempted under policies adopted by the Legislative Council, whose duties include studying and reporting to the Legislature on any matter or advising the Legislature on any matter and that requires the use of legislative resources;
 - B. The term “legislative resources” means the expenditure of any funds appropriated or allocated to the Legislative Account, the appointment of one or more persons by the Legislature, the inclusion of one or more legislators as members of the legislative study committee or the use of Legislative Council staff; and
 - C. The term “non-legislative study” or “non-legislative study group” means any group of individuals directed by legislation to report back to the Legislature on any issue but that is not otherwise a legislative study.
- 2. Establishing legislative studies. A legislative study may only be created by joint study order, unless the instrument directs an agency or a person who is not a legislator to take an action or has an existence that extends beyond the Legislature in which it is introduced. A joint standing committee may report out a joint study order requesting that a study be conducted.
- 3. Appointment of members. A majority of legislative study members must be legislators and the legislative study committee must be chaired by legislators appointed in a manner consistent with subsection 4. The legislative study committee must include members of the 2 parties holding the largest number of seats in the Legislature. All members of legislative study committees established

by joint study order must be appointed by the presiding officers: Senate members by the President and House members by the Speaker. Members of a legislative study created by joint study order who are not legislators must be appointed either by the President or the Speaker. Legislative studies may include a minority of non-legislative members appointed by someone outside the Legislature. Joint appointment of members is not permitted.

- 4. Appointment of chairs. Legislative studies having more than 5 members must be cochaired by legislators. The first appointed Senate member must be the Senate chair and the first appointed House member must be the House chair. Legislative studies having 5 or fewer members must have a single legislative chair appointed by the presiding officer of the body of the originating study order or legislation. The chair of a legislative study having 5 or fewer members shall appoint a chair pro tem from among the appointed members to serve in the chair's absence.
- 5. Committee size. Legislative study committees may consist of no fewer than 3 and no more than 13 members.
- 6. Staffing. Unless the Legislative Council directs otherwise, Legislative Council staff will only be assigned to legislative studies that conform to this Joint Rule.
- 7. Reporting dates. All reports of legislative study committees that are to be submitted to a first regular session must be completed and submitted not later than the first Wednesday in November preceding the convening of the first regular session of the next legislature. All reports of legislative study committees that are to be submitted to a second regular session must be completed and submitted not later than the first Wednesday in December preceding the convening of the second regular session. Upon request of the study committee, the Legislative Council may extend the reporting date, except that the extension may not go beyond December 15th in odd numbered years or beyond the first Wednesday of December in even numbered years.
- 8. Legislation may not be introduced by legislative studies or non-legislative study groups. Legislative and non-legislative study committees or groups may include proposed legislation in their reports to the Legislature, but are not authorized to introduce legislation. Upon receipt of a report submitted by a legislative or non-legislative study committee or group, the joint standing committee to which the report is submitted, or the appropriate joint standing committee of jurisdiction in the event that the report is submitted to the Legislature as a whole, may introduce a bill during the session to which the report is submitted to implement its recommendations on matters relating to the study.
- 9. Compensation. Legislative members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of a study committee. Public members not otherwise compensated by their employers or other entities whom they represent are entitled to receive reimbursement of necessary expenses and, upon demonstration of financial

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125TH MAINE STATE LEGISLATURE
LEGISLATIVE COUNCIL

**Maine Legislative Council Policy
On Legislative Studies
For 125th Legislature**

1. Introduction

On March 22, 2007, the Legislative Council unanimously endorsed revisions to Joint Rule 353 and revisions to Legislative Council policies proposed by a Legislative Council subcommittee established to study the legislative study process. On May 15, 2007, the Legislative Council's proposed revisions to Joint Rule 353 were adopted by the House and the Senate, as amended by the Joint Select Committee on Joint Rules. Joint Rules adopted by each successive legislature have included Joint Rule 353.

Joint Rule 353, Section 11, requires the Legislative Council to adopt policies governing legislative studies at the beginning of each legislative biennium. Pursuant to that authority, the Legislative Council adopts this policy on legislative studies to establish policies and procedures governing the Legislative Council's authorization of legislative studies, conditions on the funding of legislative studies, exceptions to the definition of legislative study, legislative study drafting standards and other provisions necessary to satisfy the requirements of that Joint Rule 353.

2. Council authorization of legislative studies

Legislative studies are authorized only upon the approval of a majority of the Legislative Council during its review of the study table, except that the approval of a 2/3rd majority of the Legislative Council is required to authorize a legislative study that is required to submit a report to a subsequent Legislature.

3. Funding of legislative studies

The Legislative Council shall establish a study line in the Legislative Account to which legislative studies are budgeted and study expenses charged. That study line must include funds appropriated by the Legislature for those purposes and funds allocated by the Legislature from other departmental accounts to the Legislative Account for the purposes of funding a legislative study. The Legislative Council shall also establish budgets and provide sufficient money from the legislative account for studies to be conducted by joint standing committees, joint select committees and other study committees of the Legislature. The Legislative Council shall provide money sufficient

to enable the committees to reasonably conduct and complete the requirements of the studies.

4. Acceptance of private contributions to support legislative studies

Private financial or in-kind contributions to support the work of legislative studies may not be accepted from any party having a pecuniary or other vested interest in the outcome of the study. Any person, other than a state agency, authorized and desiring to make a financial or in-kind contribution must certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the study. All such contributions are subject to the approval of the Legislative Council. All accepted contributions must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of contributions, the date the contributions were received, from whom the contributions were received and the purpose of and any limitation on the use of those contributions. The Executive Director of the Legislative Council shall administer the contributions and shall notify the chairs of the legislative study committee when those contributions have been received. If funding for a legislative study is contingent upon receipt of private contributions and sufficient contributions have not been received within 30 days after the effective date of the study instrument, then no meetings of the study are authorized and no study-related expenses of any kind may be incurred or reimbursed.

5. Exceptions to Joint Rule 353

The following limited exemptions to Joint Rule 353 are provided:

- A. Boards and commissions created in statute and codified in Title 5, chapter 379 are exempted from the provisions of this Joint Rule, except that the use of new legislative financial resources or Legislative Council staffing by a new Board or commission or as the result of an amendment to an existing Board or commission shall be referred to a special study table for review and approval by the Legislative Council regarding the use of those resources;
- B. Legislation directing an agency or a group of stakeholders to study and report to the Legislature on any matter may include the appointment of not more than two members of the Legislature, provided that the report of the agency or group is required to be submitted within the biennium in which the legislation is introduced, that there are no other legislative appointments required, that the legislators are appointed consistent with subsection 3 and that no other legislative resources are required. Legislation creating such groups must be referred to a special study table for review and approval by the Legislative Council regarding the use of those resources; and
- C. Notwithstanding Joint Rule 353, section 8, a joint select committee established in a manner consistent with Joint Rule 351 may, if so authorized in

joint order establishing the joint select committee, introduce legislation to implement its recommendations.

6. Council review of committee requests to vary from Joint Rule 353

Pursuant to Joint Rule 353, joint standing and joint select committees may not, except upon the prior approval of the Legislative Council, report to the Legislature any bill, resolve or joint order proposing a legislative study that is inconsistent with that joint rule. Such requests must be made in writing to the Legislative and must include the committee's recommended draft language for the proposed study along with a list of the ways in which proposed study does not conform to Joint Rule 353 and an explanation of why those nonconforming provisions are needed. Such instruments reported to the Legislature by a committee with the prior approval of the Legislative Council remain subject to the provisions of Joint Rule 353 which requires that all legislative studies be referred to a special study table for review and funding authorization by the Legislative Council.

7. Authority and effective date

Pursuant to its authority under Joint Rule 353, Section 11, the Legislative Council hereby adopts this policy governing legislative studies on this 3rd day of March, 2011.

This policy takes effect on immediately.

BY: David E. Boulter
David E. Boulter, Executive Director

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LD/Paper Emer?	Study Name	Policy Area	Purpose	# Members / # Legislators	Start Date	Report Date(s)	Compensation/ Fiscal Costs	Staff	Notes
1 LD1756 pg. 15	N State Council for Juvenile Supervision (on-going)	CJPS	Provide oversight and guidance to the State's participation in the Interstate Compact for Juveniles. (New Juvenile Council split off from existing Adult and Juvenile Council)	7 / 2	Not specified		Legislative per diem and expenses Fiscal Costs: FY13 \$840.00 Source: GF Ongoing costs beginning in FY 13. Budget reflects the payment of per diem and expenses to 2 legislative members of the council for 4 meetings.	Not specified	On study table ; Enacted in House with Committee A
2 00000 pg. 18	N OPLA Staff Study on Creation of a Sewer District Enabling Law	EUT	Develop model or standard language for sewer district charters.	0 / 0			No additional compensation needed	OPLA	Requested by letter to Presiding Officers
3 LD1705 pg. 20	Y Task Force on The Prevention of Sexual Abuse of Children	HHS	Recommend policies to prevent and address the sexual abuse of children, including developing curricula and increasing parent, teacher and student awareness.	13 / 4	Not specified	November 7, 2012: HHS Committee	Legislative per diem and expenses Fiscal Costs: FY13 \$2,430.00 Source: GF Budget reflects the payment of per diem and expenses to the 4 legislative members of the task force for 4 meetings.	Legislative Council	On study table; Enacted in House with Committee A

LD/Paper	Emergency?	Study Name	Policy Area	Purpose	# Members / # Legislators	Start Date	Report Date(s)	Compensation / Fiscal Costs	Staff	Notes
4 LD1884 Pg. 26	N	Fund for Healthy Maine Study Commission	HHS	Review the alignment of allocations from the FHM with the State's current public health care and preventive health priorities and goals, and recommend a process to ensure alignment remains consistent with those priorities and goals.	13 / 7	Beginning in 2015 and every 4 years thereafter (new commission every 4 years)	December 7, 2015 (report every 4 years): AFA and HHS Committees	Legislative per diem and expenses; public members may receive expenses Fiscal Costs: FY15 \$6,960.00 Source: GF Future costs beginning in FY 15 and every 4 years thereafter for 6 meetings of the Fund for a Healthy Maine Commission.	Legislative Council	On Appropriations table
5 LD1810 Pg. 39	N	Committee on Regulatory Fairness (min rpt. and maj rpt.; committee established by joint rule of the Legislature)	JUD	Review effectiveness and fairness of land use laws and rules, solicit input and make recommendations for changes in land use laws.	14 / 14	Not specified (to be established by joint rule)	February 15, 2017 review of Title 1, chapter 22: Judiciary Committee	Legislative per diem and expenses Fiscal Costs: FY13 \$5,000.00 Source: GF Ongoing costs beginning in FY 13 of \$5,000 per year for 2 interim committee meetings for the JSC on Regulatory Fairness Review.	Legislative Council	Engrossed in House with Committee B; Unfinished business in Senate

LD/Paper	Emer?	Study Name	Policy Area	Purpose	# Members/ # Legislators	Start Date	Report Date(s)	Compensation/ Fiscal Costs	Staff	Notes
6 LD1675 Pg. 44	N	Response Team to Facilitate the Redevelopment of Unoccupied Mills and Other Unoccupied Buildings (to be created by DECD)	LCREI	Creation of a response team by DECD, in cooperation with DEP, MSHA and representatives from the private sector, to facilitate the redevelopment of unoccupied mills and other unoccupied buildings.	0 / 0	Not specified	February 1, 2013: DECD to LCRED Committee, AFA Committee and Gov.	Fiscal Costs: FY13 \$0.00 Source: No Fiscal Impact to the Legislature	DECD	On study table; Enacted in House with Committee A and Senate A

PM

Main State Legislature - Proposed Study Bills										
LD/Paper	Emer?	Study Name	Policy Area	Purpose	# Members / # Legislators	Start Date	Report Date(s)	Compensation / Fiscal Costs	Staff / Notes	
7	LD1897	N	Commission to Develop a Competitive Bidding Process for the Operation of Additional Casinos or Slot Machines in the State	VLA	Examine the impact of existing casinos on the local and state economy, any impacts on other forms of legal gambling conducted within the State, feasibility of expanding gambling activities; and develop recommendations for a competitive bidding process.	19 / 4	Not specified; appts. by 2/1/13	February 15, 2014: VLA	Legislative per diem and expenses Fiscal Costs: FY13 \$560.00 Source: GF Budget reflects the payment of expenses for 4 legislative members for 2 meetings anticipated to be held during the session. If drafting assistance is required during the session, it may be necessary for the Legislature to contract for staff services. FY14 \$2,000.00 Source: GF Budget reflects the cost of 4 meetings during the interim for 4 legislative members of the commission.	DAFS with OPLA drafting assistance only On study table; Enacted in House with Committee A and House B and Senate A

LD/Paper Emer?	Study Name	Policy Area	Purpose	# Members / # Legislators	Start Date	Report Date(s)	Compensation/ Fiscal Costs	Staff	Notes
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Totals:	2013	\$0.00
	GF	\$8,830.00
	2014	
	GF	\$2,000.00
	2015	
	GF	\$6,960.00
		\$17,790.00

PROPOSED MEETINGS OF COMMITTEES TO REVIEW OTHER POLICY ISSUES or CONDUCT COMMITTEE STUDIES
(Funded from Interim Committee Meeting Budget)

LD/Paper #	Emer?	Study Name	Policy Area	Purpose	# Members/ # Legislators	Start Date	Report Date	Compensation/ Fiscal Costs	Staff	Current Status
LD 1830 Pg. 58	Y	Interim Meetings of the ACF Committee on the Establishment of the Department of Agriculture, Conservation and Forestry	ACF	Requires the ACF committee to meet during the 2012 legislative interim to discuss and hear reports regarding planning, program operation and implementation issues related to the establishment of the Department of Agriculture, Conservation and Forestry.	13/13	Not specified	No report required	Legislative per diem and expenses Fiscal Costs: FY13 \$9,750 Source: GF Budget reflects the cost for the ACF Committee to meet up to 6 times during the legislative interim.	OPLA	Engrossed in House and Senate with Committee A as amended by House C; on Appropriations Table
LD 958 Pg. 66	Y	Education Committee Review of the Contract for an Independent Review of the Essential Programs and Services Funding Act	EDU	Requires the EDU Committee to meet during the legislative interim to select a contractor to conduct an independent review of the Essential Programs and Services Funding Act, and to review and accept deliverables.	13/13	Not specified	Final report to EDU due 12/01/13	Legislative per diem and expenses Fiscal Costs: FY13 \$6,500.00 Source: GF Budget reflects the costs for the EDU Committee to meet up to 4 times during the legislative interim.	OPLA	Engrossed in House and Senate with Committee B; on Appropriations Table
LD 1882 Pg. 72	N	Interim Meeting of the VLA Committee on Establishing a Presidential Primary	VLA	Requires the VLA Committee to meet during the interim in order to study the creation of a presidential primary in Maine.	13/13	By October 15, 2012, but may not be sooner than July 1, 2012	December 1, 2012	Legislative per diem and expenses Fiscal Costs: FY13 \$2,125 Source: GF Budget reflects the cost of one interim meeting of the VLA committee and the estimated cost of the required report.	OPLA	On Study Table; Engrossed in House and Senate with Committee A

TOTALS: 2013
GF \$18,375.00

CJPS

LD 1756

**State Council for Juvenile Supervision
(on-going)**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 604 - L.D. 1756

An Act To Establish a Separate State Council for Juveniles under the
Interstate Compact for Juveniles

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

Sec. 1. 34-A MRSA §9921, as enacted by PL 2003, c. 706, Pt. B, §9, is amended to read:

§9921. State Council for Adult Offender Supervision established

The State Council for ~~Juvenile and~~ Adult Offender Supervision, referred to in this section as "the council," is established to provide oversight and guidance to the State's participation in the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles.

1. Membership. The council consists of ~~at least 8~~ 7 members as follows:

A. ~~One member of the The Senate, appointed by the President of the Senate chair of the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters or the chair's designee;~~

B. ~~One member of the The House of Representatives, appointed by the Speaker of the House chair of the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters or the chair's designee;~~

C. Three members who are appointed by the ~~Governor~~ commissioner for a term of 4 years, or until a successor is appointed, and who are eligible for reappointment at the discretion of the ~~Governor~~ commissioner:

(1) One prosecutor;

(2) One representative of a statewide association representing victims of crime;
and

(3) One representative representing law enforcement;

D. The compact ~~administrators~~ administrator for the Interstate Compact for Adult Offender Supervision and the ~~Interstate Compact for Juveniles~~, who may be ~~designees~~ a designee appointed by the ~~Commissioner of Corrections~~ commissioner to

administer the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles; and

E. The Associate Commissioner for Adult Services or the associate commissioner's designee; and

~~F. The Associate Commissioner for Juvenile Services or the associate commissioner's designee.~~

The council shall invite the Chief Justice of the Supreme Judicial Court to designate a trial judge to act as advisor to the council.

Sec. 2. 34-A MRSA §9922 is enacted to read:

§9922. State Council for Juvenile Supervision established.

The State Council for Juvenile Supervision, referred to in this section as "the council," is established to provide oversight and guidance to the State's participation in the Interstate Compact for Juveniles.

1. Membership. The council consists of 7 members as follows:

A. The Senate chair of the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters or the chair's designee;

B. The House chair of the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters or the chair's designee;

C. Three members who are appointed by the commissioner for a term of 4 years, or until a successor is appointed, who are eligible for reappointment at the discretion of the commissioner and who are members of the Juvenile Justice Advisory Group appointed by the Governor under section 1209;

(1) One prosecutor;

(2) One representative of a statewide association representing victims of crime; and

(3) One representative representing law enforcement;

D. The compact administrator for the Interstate Compact for Juveniles, who may be a designee appointed by the commissioner to administer the Interstate Compact for Juveniles; and

E. The Associate Commissioner for Juvenile Services or the associate commissioner's designee.

The council shall invite the Chief Justice of the Supreme Judicial Court to designate a trial judge to act as advisor to the council.

Sec. 3. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 34-A, chapter 9, subchapter 8, in the subchapter headnote, the words "state council" are amended to read "state councils" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

EUT

Requested By Letter

**OPLA Staff Study on
Sewer District Charters**

SENATE

MICHAEL D. THIBODEAU, district 23, Chair
CHRISTOPHER W. RECTOR, District 22
PHILIP L. BARTLETT, District 6

JEAN GUZZETTI, Legislative Analyst
JON CLARK, Deputy Director, OPLA
KRISTEN GOTTLIEB, Committee Clerk



HOUSE

STACEY A. FITTS, Pittsfield, Chair
JAMES M. HAMPER, Oxford
DEAN A. CRAY, Palmyra
LARRY C. DUNPHY, Embden
AARON F. LIBBY, Waterboro
JON HINCK, Portland
ALEXANDER CORNELL DU HOUX, Brunswick
ROBERTA B. BEAVERS, South Berwick
MARK N. DION, Portland
LOUIS J. LUCHINI, Ellsworth

State of Maine
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY

TO: Senator Kevin L. Raye, Chair
Representative Robert W. Nutting, Vice-Chair
Legislative Council
Members of the Legislative Council

FROM: Michael D. Thibodeau, Senate Chair *MDT*
Stacey Allen Fitts, House Chair *SAF*
Joint Standing Committee on Energy, Utilities and Technology

DATE: 29 March 2012

RE: Request for legislative staff study relating to sewer district enabling law

We are writing to request a legislative staff study on issues related to sewer district charters.

Our committee regularly deals with sewer district charters and a great deal of committee and staff time can become devoted to dealing with technical, structural and other issues that could be avoided if a more streamlined and process were established.

We note that similar issues led to a staff study in 1995 that resulted in the creation of the Standard Water District enabling law, which has greatly streamlined the processing of water district charters and has provided a model that many older districts have used to update their charters. We are seeking to have staff develop similar model or standard language for sewer districts.

We would request that staff work with House Chair Fitts in developing the appropriate standard language.

Thank you for your consideration of this request. If you have any questions, please let us know.

cc: David Boulter, Executive Director
Marion Hylan Barr, OPLA Director

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HHS

LD 1705

**Task Force on the Prevention of
Sexual Abuse of Children**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1257 - L.D. 1705

**Resolve, To Create the Task Force on the Prevention of Sexual Abuse of
Children**

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 Task Force on the Prevention of Sexual Abuse of Children is established to create and adopt a policy addressing sexual abuse of children; 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. Task force established. Resolved: That the Task Force on the Prevention of Sexual Abuse of Children, referred to in this resolve as "the task force," is established; and be it further

Sec. 2. Task force membership. Resolved: That the task force consists of 13 members appointed as follows:

1. Two members of the Senate, appointed by the President of the Senate;
2. A representative of an organization representing law enforcement, appointed by the President of the Senate;
3. A representative of a statewide professional teachers organization, appointed by the President of the Senate;
4. Two members of the House of Representatives, appointed by the Speaker of the House;

5. A representative of a sexual assault crisis and support center involved in the prevention of child sexual abuse, appointed by the Speaker of the House;

6. A person who is a victim of sexual abuse, appointed by the Speaker of the House;

7. A representative of an organization representing school management, appointed by the Speaker of the House;

8. A representative of a statewide coalition against sexual assault, appointed by the President of the Senate;

9. The Commissioner of Education, or the commissioner's designee;

10. The Commissioner of Health and Human Services, or the commissioner's designee; and

11. A representative of a community-based youth-serving organization, appointed by the President of the Senate; and be it further

Sec. 3. Compensation. Resolved: That, notwithstanding Joint Rule 353, members of the task force shall serve without compensation and may not be reimbursed for their expenses; and be it further

Sec. 4. 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 task force; and be it further

Sec. 5. Appointments; convening of task force. 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 task force. 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 task force to meet and conduct its business; and be it further

Sec. 6. Duties. Resolved: That the task force shall make recommendations for preventing child sexual abuse. In making those recommendations, the task force shall:

1. Gather information concerning child sexual abuse throughout the State;

2. Receive reports and testimony from individuals, state and local agencies, community-based organizations and other public and private organizations; and

3. Recommend policies to prevent and address sexual abuse of children, including age-appropriate curricula for students in prekindergarten to grade 5; methods for increasing teacher, student and parent awareness of issues regarding sexual abuse of children, including warning signs indicating that a child may be a victim of sexual abuse; actions that a child who is a victim of sexual abuse may take to obtain assistance and

intervention; and available counseling options for children affected by sexual abuse; and be it further

Sec. 7. Staff assistance. Resolved: That, notwithstanding Joint Rule 353, the Legislative Council shall provide necessary staffing services to the task force; and be it further

Sec. 8. Report. Resolved: That, no later than November 7, 2012, the task force shall submit a report that includes its findings and recommendations, including suggested legislation, to the joint standing committee of the Legislature having jurisdiction over health and human services matters. That joint standing committee is authorized to introduce a bill to the First Regular Session of the 126th Legislature related to the subject matter of the report.

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

HHS

LD 1884

**Fund for Healthy Maine Study
Commission
(future costs)**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 661 - L.D. 1884

An Act To Revise the Laws Regarding the Fund for a Healthy Maine

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

Sec. 1. 5 MRSA §12004-I, sub-§47-I is enacted to read:

47-I.

<u>Human Services:</u>	<u>Fund for a Healthy</u>	<u>Legislative Per</u>	<u>22 MRSA §1513</u>
<u>Public Health</u>	<u>Maine Study</u>	<u>Diem and Expenses</u>	
	<u>Commission</u>	<u>for Legislators and</u>	
		<u>Expenses Only for</u>	
		<u>Other Members</u>	

Sec. 2. 22 MRSA §1511, sub-§1, as enacted by PL 1999, c. 401, Pt. V, §1, is amended to read:

1. **Fund established.** The Fund for a Healthy Maine, referred to in this chapter as the "fund," is established as an ~~Other Special Revenue fund~~ for the purposes specified in this chapter as a separate and distinct fund for accounting and budgetary reporting purposes.

Sec. 3. 22 MRSA §1511, sub-§§13 and 14 are enacted to read:

13. Separate accounts; annual reporting. A state agency that receives allocations from the fund and a contractor or vendor that receives funding allocated from the fund shall maintain that money in a separate account and shall report by September 1st of each year to the Commissioner of Administrative and Financial Services providing a description of how those funds for the prior state fiscal year were targeted to the prevention and health-related purposes listed in subsection 6. The Commissioner of Administrative and Financial Services shall by October 1st of each year compile the reports provided under this subsection and forward the information in a report to the Legislature.

14. Legislative committee review of legislation. Whenever a proposal in a resolve or bill before the Legislature, including but not limited to a budget bill, affects the fund,

the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the joint standing committee of the Legislature having jurisdiction over health and human services matters to review and evaluate the proposal as it pertains to the fund. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall conduct the review and report to the committee of jurisdiction and to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

Sec. 4. 22 MRSA §1513 is enacted to read:

§1513. Periodic study commission review

Beginning in 2015 and every 4 years thereafter, the Legislature shall establish a Fund for a Healthy Maine study commission, referred to in this section as "the commission," to review allocations of the fund and to report by December 7th of the year in which the commission is established to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over health and human services matters.

1. Commission membership. The commission consists of 13 members appointed as follows.

A. The President of the Senate shall appoint:

(1) Three members of the Senate, at least one belonging to the political party holding the largest number of seats in the Senate and at least one belonging to the political party holding the 2nd largest number of seats in the Senate. At least one of the appointees must serve on the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and at least one of the appointees must serve on the joint standing committee of the Legislature having jurisdiction over health and human services matters;

(2) One person representing municipal public health departments; and

(3) One person representing a major voluntary nonprofit health organization.

B. The Speaker of the House of Representatives shall appoint:

(1) Four members of the House of Representatives, at least one belonging to the political party holding the largest number of seats in the House of Representatives and at least one belonging to the political party holding the 2nd largest number of seats in the House of Representatives. At least one of the appointees must serve on the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and at least one of the appointees must serve on the joint standing committee of the Legislature having jurisdiction over health and human services matters;

(2) One person representing a statewide organization of public health professionals;

(3) One person representing a public health organization or agency operating in a rural community;

(4) One person representing an organization providing services supported by funds from the fund; and

(5) One person who possesses expertise regarding the fund and allocations from the fund.

2. Chairs. The first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission.

3. Appointments; convening of commission. All appointments must be made no later than June 1st in the year in which the study is being performed. 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 notification that all appointments have been made. After the report under this section has been completed, the commission disbands and new members are appointed 4 years later.

4. Meetings. The commission may meet only when the Legislature is not in regular or special session. The commission is authorized to meet up to 6 times to accomplish its duties under subsection 5.

5. Duties. The commission shall review the alignment of allocations from the fund with the State's current public health care and preventive health priorities and goals. The commission shall gather information and data from public and private entities as necessary to:

A. Identify or review the State's current public health care and preventive health priorities and goals;

B. Identify or review strategies for addressing priorities and goals and the potential effectiveness of those strategies;

C. Assess the level of resources needed to properly pursue the strategies identified in paragraph B;

D. Make recommendations for how funds from the fund should be allocated to most effectively support the State's current public health and preventive health priorities, goals and strategies; and

E. Make recommendations for processes to be used to ensure that fund allocations stay aligned with the State's health priorities and goals.

6. Cooperation. The commissioner, the Commissioner of Administrative and Financial Services, the Commissioner of Education and the Director of the Maine Center for Disease Control and Prevention within the department shall provide information and data to the commission as necessary for its work.

7. Staff assistance. The Legislative Council shall provide necessary staffing services to the commission.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Information Services 0155

Initiative: Provides one-time funds for the computer programming costs associated with establishing the Fund for a Healthy Maine as a separate fund.

GENERAL FUND	2011-12	2012-13
All Other	\$0	\$131,028
GENERAL FUND TOTAL	<hr/> \$0	<hr/> \$131,028

JUD

LD 1810

**Committee on Regulatory Fairness
(on-going)**

COPY

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1334 - L.D. 1810

An Act To Implement Recommendations of the Committee To Review Issues
Dealing with Regulatory Takings

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

PART A

Sec. A-1. 1 MRSA c. 22-A is enacted to read:

CHAPTER 22-A

REGULATORY TAKINGS

§851. Definitions

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

1. Affiliate. "Affiliate" means a legal person that is related to another corporation by one owning shares of the other, by common ownership or by other means of control.

2. Fact finder. "Fact finder" means a jury or, if the right to a jury is waived, the court.

3. Property owner. "Property owner" means the holder of legal or equitable title to an interest in real property. "Property owner" does not include a governmental entity.

4. Real property. "Real property" means land and any appurtenances or improvements to the land.

5. Regulation. "Regulation" means any law, rule, ordinance or other governmental limitation imposed by the State or a state agency on the use of real property.

6. Regulatory taking. "Regulatory taking" means a burden caused by regulation imposed on a property owner's use of the property owner's real property resulting in a diminution in fair market value of 50% or greater.

7. Takings variance. "Takings variance" means a decision by the State to permit departure from the requirements of a regulation that imposes a regulatory taking.

8. Underlying governmental land use action. "Underlying governmental land use action" means a regulatory proceeding preceding mediation pursuant to section 831 in which a property owner seeks and fails to obtain governmental approval for a use of that property owner's real property and in which the property owner has a right to judicial review under Title 5, section 1101 due to either a final agency action or the failure or refusal of an agency to act.

§852. Right to jury trial

There is a right to trial by jury in any action brought under this chapter.

§853. When a regulatory taking occurs

If the right to use, divide, sell, occupy or possess real property is reduced by the enactment or application of any regulation, the property owner may seek relief in accordance with the provisions of this chapter.

1. Determination. A property owner is entitled to a determination by the fact finder as to whether a regulatory taking has occurred upon the submission of prima facie evidence, supported by a professional appraisal, of a diminution in the fair market value of real property of 50% or greater caused by regulation.

2. Factors to be weighed. After a prima facie showing has been made under subsection 1, in determining whether a regulatory taking has in fact occurred, the fact finder shall weigh 3 factors:

A. The extent of the diminution in fair market value of the real property caused by the regulation;

B. The reasonable investment-backed expectations of the property owner at the time of acquisition or immediately prior to the implementation of the regulation at issue, whichever is later, under the regulations then in effect and under common law; and

C. The character of the use regulated.

3. Cause of action cumulative. This section provides a cause of action for governmental actions that do not rise to the level of a taking under the Constitution of Maine or the United States Constitution. The remedies provided under this section are cumulative and do not abrogate any other remedy lawfully available, including any remedy lawfully available for governmental actions that rise to the level of a taking under the Constitution of Maine or the United States Constitution.

§854. Entire parcel

For the purposes of this chapter, the diminution of fair market value of real property caused by a regulation must be measured by the diminution of the fair market value of the entire contiguous parcel owned in whole or in part by the property owner and its affiliates and not merely the portion of any such parcel to which the regulation directly applies. A

property owner whose entire contiguous parcel, along with that of its affiliates, has not been diminished by at least 50% is not entitled to relief under this chapter.

§855. Excluded regulations

The cause of action established under section 853 does not apply to the following regulations, narrowly construed:

1. Nuisance. Regulations restricting or prohibiting activities recognized as public nuisances under common law;

2. Public health and safety. Regulations restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes and health and sanitation regulations;

3. Compliance with federal law. Regulations required to comply with federal law; and

4. Prospective application. Regulations enacted prior to August 1, 2013.

§856. Relief

Damages or a takings variance is available as relief for a regulatory taking, at the option of the State.

1. Damages. If the State chooses to pay damages, the fact finder shall award the property owner an amount it determines comprises the diminution in fair market value caused by regulation, and title in the real property remains with the property owner. Payment of damages pursuant to this section operates to grant to and vest in the State the right to enforce the regulation as to the real property. Damages are limited to damages pursuant to Title 14, section 8105, subsection 1.

2. Takings variance. If the State chooses to grant a takings variance, the regulation causing the regulatory taking may not be applied to the real property upon which a regulatory taking would otherwise occur.

§857. Limitations

1. Time period to sue. An action or proceeding may not be brought or maintained under section 853 unless commenced within 3 years after the cause of action first accrues.

2. Accrual. A cause of action accrues on the date that regulation first limits the use of the real property that a property owner claims has been subject to a regulatory taking.

3. Multiple regulations. If an action under section 853 is based on the cumulative impact of multiple regulations, each regulation must have been enacted after the effective date of this chapter.

4. Tolling. The limitations period is tolled during the period of mandatory mediation under section 859 and during the period of any relevant underlying governmental land use action and appeal thereof pursuant to Title 5, section 11001. If a settlement does not

result from mandatory mediation under section 859, the limitations period is tolled for the period ending on the March 15th first occurring after the Attorney General submits the report required under section 859, subsection 8.

§858. Municipal mandates

1. **Municipal regulation required by State.** If a state regulation requires a municipality to enact regulation, the municipality may not be held liable under this chapter for any regulation it enacts pursuant to that regulation. Such regulation must instead be deemed state regulation for which only the State may be held liable. If the municipality expressly provides in its enactment of the mandated regulation that it endorses the regulation, the regulation must be considered municipal regulation and not actionable as state regulation under this chapter.

2. **Municipal immunity.** A municipality is immune from any liability under this chapter for any application of a regulation, state mandated or otherwise, and may not be considered a necessary or proper party in any mediation or action under this chapter, although the municipality may participate in mediation or an action under section 853, if and only to the degree it chooses.

3. **Appearance costs.** Any party in an action under this chapter who for whatever reason calls a municipal officer, employee or representative as a witness or deponent, or otherwise seeks action from the municipality, such as the production of documents, shall compensate the municipality for its actual costs in responding, as determined by the court.

§859. Mandatory mediation

1. **Commencement.** Prior to filing an action pursuant to section 853, a property owner must pursue relief under the land use mediation program established under section 831, except as provided in this section.

2. **Application.** The application of the property owner for mediation must include a professional appraisal indicating a 50% or greater diminution in value of real property caused by a regulation or regulations enacted after the effective date of this chapter. By applying for mediation, the property owner consents to grant the mediator and the State reasonable access to the real property with advance notice at a time and in a manner acceptable to the property owner.

3. **Ripeness.** Unless the impact of a regulation on the real property clearly and unequivocally in its terms acts as a 50% diminution in value of the real property, a property owner must seek a formal denial of a written request for development or variance in an underlying governmental land use action before the property owner may commence mediation. The findings made in such an underlying governmental land use action are not admissible and have no estoppel effect in an action pursuant to section 853. The property owner may, but need not, appeal the underlying governmental action under Title 5, section 11001 in order to make either the application for mediation or an action pursuant to section 853 ripe, and mediation must be tolled during the period any such appeal is pending.

A property owner may only seek to mediate and thereafter pursue a claim under section 853 when a regulation affects a use existing on the real property at the time the regulation is enacted or a reasonably foreseeable, nonspeculative use that is suitable for the subject real property and is compatible with adjacent land uses. A use is reasonably foreseeable if there is evidence that the property owner intended in fact to develop that use or a similar use of similar intensity.

4. Notice. All abutters to the property that the property owner claims has been taken, as well as any participant in any relevant underlying governmental land use action must be notified by the property owner of the commencement of mediation under section 831, subsection 8. Notice must be made by sending a copy of the mediation application by United States mail or hand delivery at the address on the latest property tax roll.

5. Identification of allowed uses; settlement offer. If the State has not previously identified in any preceding underlying governmental land use action what land uses, if any, it will permit the owner to carry out on the real property that the property owner claims has been taken, the State shall do so in the mediation. Additionally, the State may present a written settlement offer to:

- A. Adjust permit standards or other provisions controlling the development or use of the real property;
- B. Increase or modify the density, intensity or uses of the real property;
- C. Swap or exchange real property;
- D. Accept mitigation, including payments in lieu of on-site mitigation;
- E. Accept location of development on the least sensitive portion of the regulated real property;
- F. Condition the amount of development or use permitted;
- G. Issue a variance, special exception or other extraordinary relief; or
- H. Purchase the real property, or an interest in the real property or a portion of the real property, or pay compensation.

If the State chooses, it may submit in an action under section 853 the list of identified allowed uses it previously provided the property owner and the content of any settlement offer previously proposed by the State, and it may ask the fact finder to determine whether a regulatory taking would be averted by the allowance of such previously identified uses or the terms of the settlement offer. If the jury so finds, the State may, if it chooses, allow the previously identified uses or terms of the settlement offer in lieu of damages or a takings variance as relief.

6. Timing. The schedule to be followed in the mediation must be set by the mediator, but mediation must be completed no later than one year after the property owner applies for mediation, unless the State and the property owner agree to an extension.

7. Execution of settlement. A settlement reached pursuant to mediation must be formalized in writing and self-executing, and sovereign immunity to enforce a settlement against the State is waived.

8. Failure to reach settlement. If a property owner and the State fail to agree to a settlement during the mandatory mediation process, the property owner shall notify the Office of the Attorney General. The Office of the Attorney General shall catalog this information and present it to the joint legislative committee created to review effectiveness and fairness of land use laws and rules under Title 3, chapter 39 by January 15th of each year. If mediation fails to produce a settlement, the property owner may file an action against the State under section 853 beginning on the March 15th after the Attorney General has reported the failure under this subsection. If during mediation the State makes a bona fide settlement offer and the owner rejects that offer and proceeds to file a claim under section 853, the property owner is liable for the costs and fees of the State from the point in time of rejection of the State's bona fide settlement offer until resolution of the claim under section 853 as long as the resolution of the claim under section 853 is either a finding of no taking or the damages awarded under the claim under section 853 are of a smaller dollar value than that contained in the State's bona fide settlement offer.

9. Fees. The cost of the mediation is as set forth in section 831, supplemented by an administrative fee to be determined by the judicial branch.

§860. Attorney's fees and costs

In an action brought under section 853, the prevailing party is, at the discretion of the court, entitled to reasonable attorney's fees and costs. The court may at its discretion also award to either party attorney's fees and costs for the mediation if it concludes that the State did not make or the property owner did not accept a bona fide settlement offer in the mediation.

Sec. A-2. Judicial branch report on case load. The judicial branch shall compile information regarding the number of cases filed in state courts pursuant to the Maine Revised Statutes, Title 1, section 853. This information must include whether the cases at issue involve only a cause of action under Title 1, section 853 or whether these cases involve multiple causes of action, including a cause of action under Title 1, section 853. The judicial branch shall submit this information to the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than February 1, 2014 and every 2 years thereafter.

PART B

Sec. B-1. 1 MRSA c. 22 is enacted to read:

CHAPTER 22

LAND USE MEDIATION PROGRAM

§831. Land use mediation program

1. Program established. The land use mediation program is established to provide eligible private landowners with a prompt, independent, inexpensive and local forum for mediation of governmental land use actions as an alternative to court action. State agencies with responsibilities for land use laws shall assist in promoting awareness of the program.

2. Provision of mediation services; forms, filing and fees. The Court Alternative Dispute Resolution Service created in Title 4, section 18-B shall provide mediation services under this chapter. The Court Alternative Dispute Resolution Service shall:

A. Assign mediators under this chapter who are knowledgeable in land use regulatory issues and environmental law;

B. Establish a simple and expedient application process. Not later than January 10th of each year, the Court Alternative Dispute Resolution Service shall send a copy of each completed application received and each agreement signed during the previous calendar year to the chairs of the joint legislative committee created to review effectiveness and fairness of land use laws and rules under Title 3, chapter 39; and

C. Establish a fee for services in an amount not to exceed \$175 for every 4 hours of mediation services provided. In addition, the landowner is responsible for the costs of providing notice as required under subsection 8.

3. Application; eligibility. A landowner may apply for mediation under this chapter if that landowner:

A. Has suffered significant harm as a result of a governmental action regulating land use;

B. Applies for mediation under subsection 4 within the time allowed under law or rules of the court for filing for judicial review of that governmental action;

C. Has:

(1) For mediation of municipal governmental land use action, sought and failed to obtain a permit, variance or special exception and has pursued all reasonable avenues of administrative appeal; or

(2) For mediation of state governmental land use action, sought and failed to obtain governmental approval for a land use of that landowner's land and has a right to judicial review under Title 5, section 11001 either due to a final agency action or the failure or refusal of an agency to act; and

D. Submits to the Superior Court clerk all necessary fees at the time of application.

4. Submission of application for mediation. A landowner may apply for mediation under this chapter by filing an application for mediation with the Superior Court clerk in the county in which the land that is the subject of the conflict is located. The Superior Court clerk shall forward the application to the Court Alternative Dispute Resolution Service. The Court Alternative Dispute Resolution Service shall make available online

brochures about the land use mediation program and applications for landowner participation in the land use mediation program.

5. Agency responsibilities; publicity. State agencies that administer land use laws shall provide information about the land use mediation program, along with the right of appeal, when making regulatory decisions, including any decisions that deny approval of a permit application or license. The special advocate appointed by the Secretary of State pursuant to Title 5, section 90-P shall provide the land use mediation program brochure to businesses that are pursuing permit applications with state agencies. State agencies that administer land use laws and the Court Alternative Dispute Resolution Service shall ensure that information about the land use mediation program is available in an electronic format on agency publicly accessible websites.

6. Stay of filing period. Notwithstanding any other provision of law, the period of time allowed by law or by rules of the court for any person to file for judicial review of the governmental action for which mediation is requested under this chapter is stayed for 30 days beyond the date the mediator files the report required under subsection 13 with the Superior Court clerk, but in no case longer than 120 days from the date the landowner files the application for mediation with the Superior Court clerk.

7. Purpose; conduct of mediation. The purpose of a mediation under this chapter is to facilitate, within existing land use laws, ordinances and rules, a mutually acceptable solution to a conflict between a landowner and a governmental entity regulating land use. The mediator, whenever possible and appropriate, shall conduct the mediation in the county in which the land that is the subject of the conflict is located. When mediating that solution, the mediator shall balance the need for public access to proceedings with the flexibility, discretion and private caucus techniques required for effective mediation.

8. Schedule; notice; participants. The mediator is responsible for scheduling all mediation sessions. The mediator shall provide a list of the names and addresses and a copy of the notice of the mediation schedule to the Superior Court clerk, who shall mail the notices. The mediator shall include on the list persons identified in the following ways.

A. The landowner and the governmental entity shall provide to the mediator the names and addresses of the parties, intervenors and other persons who significantly participated in the underlying governmental land use action proceedings.

B. Any other person who believes that person's participation in the mediation is necessary may file a request with the mediator to be included in the mediation.

C. The mediator shall determine if any other person's participation is necessary for effective mediation.

9. Parties to mediation. A mediator shall include in the mediation process any person the mediator determines is necessary for effective mediation, including persons representing municipal, county or state agencies and abutters, parties, intervenors or other persons significantly involved in the underlying governmental land use action. A mediator may exclude or limit a person's participation in mediation when the mediator

determines that exclusion or limitation necessary for effective mediation. This subsection does not require a municipality to participate in mediation under this chapter.

10. Sharing of costs. Participants in the mediation may share the cost of mediation after the initial 4 hours of mediation services have been provided.

11. Admissibility. The admissibility in court of conduct or statements made during mediation, including offers of settlement, is governed by the Maine Rules of Evidence, Rule 408(a) for matters subsequently heard in a state court and Federal Rules of Evidence, Rule 408 for matters subsequently heard in a federal court.

12. Agreements. A mediated agreement must be in writing. The landowner, the governmental entity and all other participants who agree must sign the agreement as participants and the mediator must sign as the mediator.

A. An agreement that requires any additional governmental action is not self-executing. If any additional governmental action is required, the landowner is responsible for initiating that action and providing any additional information reasonably required by the governmental entity to implement the agreement. The landowner must notify the governmental entity in writing within 30 days, after the mediator files the mediator's report under subsection 13, that the landowner will be taking action in accordance with the agreement.

B. Notwithstanding any procedural restriction that would otherwise prevent reconsideration of the governmental action, a governmental entity may reconsider its decision in the underlying governmental land use action in accordance with the agreement as long as that reconsideration does not violate any substantive application or review requirement.

13. Mediator's report. Within 90 days after the landowner files an application for mediation, the mediator shall file a report with the Superior Court clerk. The mediator shall file the report as soon as possible if the mediator determines that a mediated agreement is not possible. The report must contain:

A. The names of the mediation participants, including the landowner, the governmental entity and any other persons;

B. The nature of any agreements reached during the course of mediation, which mediation participants were parties to the agreements and what further action is required of any person;

C. The nature of any issues remaining unresolved and the mediation participants involved in those unresolved issues; and

D. A copy of any written agreement under subsection 12.

Sec. B-2. 2 MRSA §8, as amended by PL 2001, c. 184, §1, is further amended to read:

§8. Land use mediation; obligation to participate

Agencies within the executive branch shall participate in mediation under Title 5, ~~chapter 314, subchapter II 1, chapter 22~~, when requested to participate by the Court Alternative Dispute Resolution Service.

Sec. B-3. 3 MRSA c. 39 is enacted to read:

CHAPTER 39

REGULATORY FAIRNESS REVIEW

§1101. Committee on regulatory fairness

1. Committee defined. "Committee" means a joint legislative committee established by joint rule of the Legislature to provide a forum for ongoing legislative review of the effectiveness and fairness of land use laws and rules.

2. Membership. The membership of the committee and the selection of chairs are established by joint rule of the Legislature. The President of the Senate and the Speaker of the House may use the following as guidance for appointing members to the committee:

A. The Senate chair, the House chair, the ranking minority Senate member and the ranking minority House member of the joint standing committee of the Legislature having jurisdiction over environment and natural resources matters;

B. The Senate chair, the House chair, the ranking minority Senate member and the ranking minority House member of the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters;

C. The Senate chair, the House chair, the ranking minority Senate member and the ranking minority House member of the joint standing committee of the Legislature having jurisdiction over judiciary matters;

D. One additional member of the Senate, appointed by the President of the Senate; and

E. One additional member of the House, appointed by the Speaker of the House.

3. Meetings. The committee shall meet at least 2 times a year and as needed to fulfill its responsibilities. A meeting may be called by the chairs or by any 4 members.

4. Duties and powers. The committee:

A. Shall conduct public meetings to obtain information concerning the effectiveness and efficiency of rules affecting land use, including specific information on laws and rules that may have resulted in more than a minor reduction in the economically beneficial or productive uses of land. The primary focus of such review must be on laws and rules that have been adopted within the previous 3 years;

B. Shall request from relevant state agencies the purpose and background surrounding any law or rule alleged to have resulted in more than a minor reduction

in the economically beneficial or productive uses of land, including but not limited to any major substantive rule to be submitted to the Legislature pursuant to Title 5, section 8072, and any information the agency has about the specific application of the law or rule in question, including any benefit-cost analysis conducted by the agency pursuant to Title 5, section 8063-A, and any other data that would assist the committee in reviewing the benefits and costs of the law or rule;

C. Shall receive and review information from the Office of the Attorney General regarding activities of the Attorney General, pursuant to Title 5, section 8056, subsection 6, to review proposed rules to determine whether they may reasonably be expected to result in a taking of private property under the Constitution of Maine, including whether the rules provide sufficient variance provisions to avoid such a taking;

D. Shall review information about the land use mediation program pursuant to Title 1, chapter 22, including information about completed applications received and each agreement signed during the previous calendar year;

E. Shall solicit input from organizations that may be interested in providing input to the committee, including but not limited to organizations that represent small farmers and woodlot owners;

F. May develop recommendations for changes in land use laws and rules and refer such recommendations, with supporting documentation, to the joint standing committee of the Legislature with appropriate jurisdiction, including any recommendations that further analysis of benefits and costs, pursuant to Title 5, section 8063-A, be conducted by the relevant state agency. A joint standing committee of the Legislature that receives a recommendation from the committee may submit a bill for subsequent reference and public hearing;

G. May make recommendations to the joint standing committee of the Legislature with appropriate jurisdiction regarding major substantive rules, pursuant to Title 5, section 8072, as appropriate;

H. Shall receive and review information from the Office of the Attorney General regarding claims in the past year that were not successfully resolved pursuant to Title 1, section 859 and whose claimants are allowed to proceed to litigation pursuant to Title 1, section 859, subsection 8. Upon receipt of this information, the committee may report out legislation to amend the underlying law or to direct the relevant agency to amend the underlying rule in such a way that the complaining property owner no longer suffers a 50% diminution in real property value. If a new law or resolve takes effect that ensures that the complaining property owner no longer suffers a 50% diminution in real property value, that property owner no longer has a valid claim under Title 1, section 853;

I. Shall undertake a review of Title 1, chapter 22 by February 15, 2017 and every 5 years thereafter. The review must include an assessment of the number of mediations entered into by the State, the number of claims filed in court, the number of variances granted to property owners and the costs of the land use mediation program under Title 1, chapter 22 to the State in terms of both administration and damages awarded to property owners. Based upon this review, the committee may recommend

legislation that amends or repeals Title 1, chapter 22 to the joint standing committee of the Legislature having jurisdiction over judiciary matters, which may report out legislation based on the committee's recommendations; and

J. May undertake other activities consistent with its listed responsibilities under this subsection.

5. Information protocol. The committee shall develop a user-friendly form that may be used by members of the public to assist the committee in understanding the history, land use issues, regulatory impacts and agency interactions associated with cases presented to the committee. Completed forms and associated documents submitted to the committee are public records.

6. Staffing. Based on available resources, the Legislative Council shall provide staff support for the committee.

Sec. B-4. 4 MRSA §18-B, sub-§10, as amended by PL 2001, c. 184, §2, is further amended to read:

10. Land use mediation. The land use mediation program is a program within the Court Alternative Dispute Resolution Service.

A. The Director of the Court Alternative Dispute Resolution Service shall administer the land use mediation program established in Title ~~5, chapter 314, subchapter II 1,~~ chapter 22.

B. A land use mediation fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected for mediation services pursuant to Title ~~5, chapter 314, subchapter II 1, chapter 22~~ must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title ~~5, chapter 314, subchapter II 1, chapter 22.~~

Sec. B-5. 5 MRSA c. 314, sub-c. 2, as amended, is repealed.

Sec. B-6. 5 MRSA §8056, sub-§6, as amended by PL 1995, c. 537, §6, is further amended to read:

6. Attorney General review and approval. The review required in subsection 1 may not be performed by any person involved in the formulation or drafting of the proposed rule. The Attorney General may not approve a rule if it is reasonably expected to result in a taking of private property under the Constitution of Maine unless such a result is directed by law or sufficient procedures exist in law or in the proposed rule to allow for a variance designed to avoid such a taking. By December 15th of each year, the Attorney General shall provide to the joint legislative committee created to review effectiveness and fairness of land use laws and rules under Title 3, chapter 39 a copy of each proposed rule reviewed under this subsection that was the subject of public comment suggesting either that the rule might result in a potential taking of real property under the Constitution of Maine or that a variance was necessary to avoid such a taking.

PART C

Sec. C-1. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

Initiative: Provides funds for one full-time Assistant Attorney General position and related costs to address an anticipated increase in workload as a result of regulatory takings.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$78,101
All Other	\$0	\$5,178
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$83,279</u>

ATTORNEY GENERAL, DEPARTMENT OF THE

DEPARTMENT TOTALS

	2011-12	2012-13
GENERAL FUND	\$0	\$83,279
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$83,279</u>

LEGISLATURE

Legislature 0081

Initiative: Provides funding to increase one Legislative Analyst position from part-time to full-time to provide staff assistance to the committee on regulatory fairness.

GENERAL FUND	2011-12	2012-13
POSITIONS - LEGISLATIVE COUNT	0.000	0.500
Personal Services	\$0	\$20,693
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$20,693</u>

LEGISLATURE

DEPARTMENT TOTALS

	2011-12	2012-13
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GENERAL FUND	\$0	\$20,693
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$20,693</u>
SECTION TOTALS	2011-12	2012-13
GENERAL FUND	\$0	\$103,972
SECTION TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$103,972</u>

LCRED

LD 1675

**Response Team to Facilitate the
Redevelopment of Unoccupied Mills
and Other Unoccupied Buildings**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 574 - L.D. 1675

**Resolve, To Establish a Response Team To Facilitate the Redevelopment of
Unoccupied Mills and Other Unoccupied Buildings**

Sec. 1. Coordinate and establish a response team to facilitate redevelopment of unoccupied mills. Resolved: That, beginning August 1, 2012, the Department of Economic and Community Development shall establish and coordinate a response team to facilitate the redevelopment of unoccupied mills and other large unoccupied buildings. The Department of Environmental Protection, the Finance Authority of Maine and the Maine State Housing Authority shall participate in the response team, and the Department of Economic and Community Development shall invite the participation in the response team of a representative of a commercial real estate developer, a representative from an economic development district, a local economic development representative and a private sector representative knowledgeable in the mill redevelopment process. The response team shall facilitate the Department of Economic and Community Development's efforts to redevelop unoccupied mills, other large unoccupied buildings and former schools that are now unoccupied. The response team shall provide assistance upon request to a municipality that is actively working to implement a redevelopment business plan for an unoccupied building and that has identified within the business plan possible financing resources and marketing plans for the redevelopment of the unoccupied site. The response team may assist by visiting the unoccupied site and engaging in discussions with local officials regarding the availability of federal, state and local financing resources for municipalities seeking to redevelop such sites as well as identifying and removing whenever possible any regulatory obstacles to the redevelopment of the site; and be it further

Sec. 2. Report. Resolved: That, no later than February 1, 2013, the Department of Economic and Community Development shall provide a report to the joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the Governor on the coordinated response efforts under section 1. The Department of Economic and Community Development shall submit with the report any recommendations for changes that may be required in statute or local ordinances to remove obstacles to the redevelopment of the sites under section 1. The joint standing committee of the Legislature having jurisdiction over labor, commerce, research and economic development matters is authorized to

report out a bill implementing the recommendations to the First Regular Session of the 126th Legislature.

VLA

LD 1897

**Commission to Develop a Competitive
Bidding Process for the Operation of
Additional Casinos or Slot Machines
in the State**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1400 - L.D. 1897

**An Act Regarding the Issuance of Licenses by the Gambling Control Board
and To Establish a Competitive Bidding Process for Future Operation of Slot
Machines and Table Games in the State**

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

Sec. 1. 8 MRSA §1011, sub-§2-B is enacted to read:

2-B. Licenses for a slot machine facility or casino issued on or after September 1, 2012. Beginning September 1, 2012, the board may not accept any application for an initial license to operate a slot machine facility or casino or any other gambling facility for which the board has licensing authority where slot machines or table games may be operated; except that the board may accept an application submitted by a federally recognized Indian tribe in the State that was licensed to conduct high-stakes beano at a gaming facility in Washington County as of January 1, 2012 if that tribe is authorized expressly by law to operate slot machines at that gaming facility. This subsection does not apply to a casino licensed for operation in the State as of September 1, 2012.

Sec. 2. 8 MRSA §1018, sub-§1-A is enacted to read:

1-A. Fees for slot machine and casino operator licenses on or after September 1, 2012. Notwithstanding subsection 1, paragraphs C and C-1, beginning September 1, 2012, an applicant for a slot machine operator license or a casino operator license must pay a \$250,000 nonrefundable privilege fee to be submitted with the application for the license and a minimum license fee, or cash bid if the license is part of a competitive bidding process established by law, of \$5,000,000. This subsection does not apply to a casino licensed for operation in the State as of September 1, 2012.

Sec. 3. Commission established to develop a competitive bidding process for the operation of additional casinos or slot machine facilities. Notwithstanding Joint Rule 353, the Commission To Develop a Competitive Bidding Process for the Operation of Additional Casinos or Slot Machine Facilities, known in this section as "the commission," is established as follows.

1. Membership. The membership of the commission is as follows:

A. Two Senators who are not enrolled in the same political party and who serve on the joint standing committee of the Legislature having jurisdiction over casino matters appointed by the President of the Senate. The Senators appointed to serve on the commission pursuant to this paragraph continue to serve until the commission has completed its work;

B. Two members of the House of Representatives who are not enrolled in the same political party and who serve on the joint standing committee of the Legislature having jurisdiction over casino matters appointed by the Speaker of the House. The members of the House of Representatives appointed to serve on the commission pursuant to this paragraph continue to serve until the commission has completed its work;

C. One representative from each federally recognized Indian tribe in the State who expresses interest in serving on the commission appointed by the President of the Senate;

D. A representative of charitable nonprofit organizations, as described in the federal Internal Revenue Code of 1986, Sections 501(c)(8) and 501(c)(10), in the State that conduct beano or games of chance appointed by the Speaker of the House;

E. A representative of veterans' service organizations in the State that conduct beano or games of chance appointed by the Speaker of the House;

F. A representative of the harness horse racing industry in the State appointed by the President of the Senate;

G. An operator or representative of a commercial harness horse racing track in the State that is not authorized to operate slot machines appointed by the Speaker of the House;

H. An off-track betting facility operator licensed in the State appointed by the President of the Senate;

I. An operator or representative of each casino licensed in the State appointed by the Speaker of the House;

J. An economist or consultant with experience studying the gambling industry appointed by the President of the Senate;

K. Representatives from 2 groups who represent those who oppose the expansion of gambling in the State, one from a statewide religious organization, appointed by the Speaker of the House;

L. A representative of the agricultural fairs in this State appointed by the President of the Senate; and

M. A representative of the hospitality industry appointed by the Speaker of the House.

2. Appointments; cochair. Appointments to the commission must be made by February 1, 2013. The first-named Senate member and the first-named House of Representatives member are cochair of the commission.

3. Commission duties. The commission shall examine the impact of existing casinos on local economies and the state economy overall and any impacts on other forms of legal gambling conducted within the State. The commission shall examine the impact of the establishment of casinos or similar facilities in the states of New Hampshire and Massachusetts and neighboring provinces in Canada on the state economy and on the revenue generated by existing casinos in the State. The commission shall also gather information to determine the potential market for the establishment of new gambling opportunities in the State. The commission shall consider the feasibility of the licensing of expanded gambling activities by persons or groups who are eligible for existing licenses to conduct games of chance, beano, high-stakes beano, harness horse racing and off-track betting, including but not limited to the operation of slot machines and table games. The commission shall develop recommendations for a competitive bidding process for the privilege to submit an application to the Department of Public Safety, Gambling Control Board for the operation of a slot machine facility or a casino. The recommendation for a competitive bidding process must include a minimum nonrefundable application privilege fee of \$250,000 as provided in the Maine Revised Statutes, Title 8, section 1018, subsection 1-A. The recommendation must also include a minimum cash bid or license fee of \$5,000,000 in order to submit an application to the Gambling Control Board for an initial license to operate a slot machine facility or a casino except that the commission may recommend a minimum cash bid or license fee in an amount other than \$5,000,000 when a deviation from the \$5,000,000 amount is warranted based on the geography or demographics of the location of a proposed slot machine facility or casino or the size of the proposed slot machine facility or casino.

4. Meetings; compensation. The commission shall hold no more than 6 meetings. The commission may seek comment from members of the public to assist in the development of the recommendations required by subsection 3. Legislative members are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the commission when the Legislature is not in session.

5. Report and legislation. By February 15, 2014, the commission shall submit a report based on its findings under subsection 3, including any recommendations for legislation, to the joint standing committee of the Legislature having jurisdiction over casino matters, which is authorized to report out legislation to the Second Regular Session of the 126th Legislature.

6. Staff. The Department of Administrative and Financial Services shall provide staff to the commission. The Office of Policy and Legal Analysis shall provide drafting assistance to the commission.

ACF

LD 1830

**Interim Meetings of the ACF
Committee on the Establishment of
the Department of Agriculture,
Conservation and Forestry**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

H.P. 1350 - L.D. 1830

An Act To Establish the Department of Agriculture, Conservation and Forestry

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

Whereas, this legislation consolidates the Department of Agriculture, Food and Rural Resources and the Department of Conservation into a new Department of Agriculture, Conservation and Forestry and the establishment of the new department on July 1, 2012 is necessary for an orderly transition; 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

Sec. A-1. 7-A MRSA is enacted to read:

TITLE 7-A

AGRICULTURE, CONSERVATION AND FORESTRY

SUBTITLE 1

DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND OPERATION

SUBCHAPTER 1

GENERAL PROVISIONS

§101. Definitions

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

1. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

2. Department. "Department" means the Department of Agriculture, Conservation and Forestry.

3. Seal. The department has an official seal, which must be judicially noticed.

SUBCHAPTER 2

ORGANIZATION

§201. Department

1. Establishment. The Department of Agriculture, Conservation and Forestry is established as a cabinet-level department.

2. Divisions. The department consists of the divisions necessary to carry out the work of the department.

§202. Mission; guiding principles

1. Mission. The mission of the department is to serve as the steward of Maine's agricultural, forestry, water and land resources for the State.

2. Guiding principles. The following principles are adopted to guide the department in the performance of its duties:

A. Forestry, farming, conservation, public lands and other natural resource-based economic activity are important to the State's economy and quality of life; and

B. Strengthening farming, forestry, conservation, recreation, state parks, public lands and public access to the State's natural resources is vital to enhancing the State's natural resources economy.

§203. Commissioner

The department is under the control and supervision of the Commissioner of Agriculture, Conservation and Forestry, who reports directly to the Governor.

1. Appointment. The Governor shall appoint the commissioner, subject to review by the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters and confirmation by the Senate. The commissioner serves at the pleasure of the Governor.

2. Deputies; staff. The commissioner shall appoint 2 deputy commissioners, one of whom assists the commissioner with operations and administration of the department and one of whom assists the commissioner with agriculture, forestry and natural resources-based economic development.

3. Vacancy; commissioner. A vacancy in the office of the commissioner must be filled as follows.

A. A vacancy in the commissioner's position must be filled in accordance with Title 5, section 1.

B. The commissioner shall appoint one of the department's deputy commissioners to perform the duties of the commissioner, in addition to the duties of that deputy commissioner, during the commissioner's temporary absence or disability.

§204. Powers and duties of commissioner

The commissioner has all of the powers and duties necessary to carry out the mission and responsibilities of the department. The commissioner has the power to distribute the functions and duties given to the commissioner under this Title, Title 7 and Title 12 among the various divisions of the department so as to integrate the work properly and to promote the most economical and efficient administration of the department. Powers and duties given to the commissioner or the department in this Title, Title 7 or Title 12 must be assumed and carried out by the divisions that the commissioner designates and may in turn be delegated to subordinates by division directors with the approval of the commissioner.

1. Administration. The commissioner shall administer the department in accordance with the requirements of this Title and shall fulfill the duties prescribed to the commissioner by state and federal law.

2. Rulemaking. The commissioner shall adopt rules to implement this Title. Rules adopted pursuant to this subsection are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A, unless otherwise specified.

3. Employees. The commissioner may employ personnel as necessary to carry out the work of the department. Except as otherwise provided by law, all personnel of the department are under the immediate supervision, direction and control of the commissioner. Department personnel are subject to the Civil Service Law, except for positions subject to appointment by the commissioner under subsection 4 and as otherwise specified.

4. Appointments. The deputy commissioners and division directors of the department are appointed by the commissioner and serve at the pleasure of the commissioner, except as otherwise provided by law. Deputy commissioners and division directors appointed pursuant to this Title must have educational qualifications and professional experience directly related to the functions of and services provided by the relevant unit or division.

§205. Department organization; divisions

The department is composed of the following divisions, each of which is under the direction and supervision of a director:

1. Division of Agricultural Resource Development. The Division of Agricultural Resource Development, whose director must be qualified by training, experience and skill in agricultural management;

2. Division of Forestry. The Division of Forestry, also known as the Maine Forest Service, whose director must be qualified by training, experience and skill in forestry;

3. Division of Parks and Public Lands. The Division of Parks and Public Lands, whose director must be qualified by training, experience and skill in parks, public lands, outdoor recreation or natural resource management. The commissioner shall appoint a deputy director to assist the director. The deputy director serves at the pleasure of the commissioner;

4. Division of Quality Assurance and Regulation. The Division of Quality Assurance and Regulation, whose director must be qualified by training, experience and skill in food quality and regulatory inspections;

5. Division of Animal and Plant Health. The Division of Animal and Plant Health, whose director must be qualified by training, experience and skill in scientific crop and animal production;

6. Division of Geology and Natural Areas. The Division of Geology and Natural Areas, whose director must be qualified by training, experience and skill in geology, natural areas or applied natural sciences; and

7. Division of Land Use Planning, Permitting and Compliance. The Division of Land Use Planning, Permitting and Compliance, whose director must be qualified by experience in planning and administration. The director provides the principal administrative, operational and executive support to the Maine Land Use Regulation Commission. The director is subject to appointment and removal by the commissioner, with the consent of a majority of members of the Maine Land Use Regulation Commission.

Sec. A-2. Legislative intent; contingent repeal. It is the intent of the Legislature that a bill submitted pursuant to Part B, section 4 that consolidates the Maine Revised Statutes, Title 7 and portions of Title 12 in Title 7-A be enacted into law by the 126th Legislature. If a bill submitted pursuant to Part B, section 4 has not been enacted into law by December 3, 2014, Title 7-A is repealed on that date.

Sec. A-3. Contingent revision clause. This section takes effect if the Maine Revised Statutes, Title 7-A is repealed pursuant to section 2.

1. Wherever in the Maine Revised Statutes, Title 7, the words "Department of Agriculture, Conservation and Forestry" appear or reference is made to that department, they are amended to read or mean, as the case may be, "Department of Agriculture, Food

and Rural Resources." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

2. Wherever in the Maine Revised Statutes, Title 12, the words "Department of Agriculture, Conservation and Forestry" appear or reference is made to that department, they are amended to read or mean, as the case may be, "Department of Conservation." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

3. Wherever in the Maine Revised Statutes, Title 7, the words "Commissioner of Agriculture, Conservation and Forestry" appear or reference is made to that position, they are amended to read or mean, as the case may be, "Commissioner of Agriculture, Food and Rural Resources." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

4. Wherever in the Maine Revised Statutes, Title 12, the words "Commissioner of Agriculture, Conservation and Forestry" appear or reference is made to that position, they are amended to read or mean, as the case may be, "Commissioner of Conservation." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

PART B

Sec. B-1. Transition. Notwithstanding the Maine Revised Statutes, Title 7 and Title 12, the following provisions apply to the reassignment of the duties and responsibilities of the Department of Agriculture, Food and Rural Resources and the Department of Conservation to the Department of Agriculture, Conservation and Forestry.

1. The Department of Agriculture, Food and Rural Resources and the Department of Conservation as heretofore created and established by law are incorporated into the Department of Agriculture, Conservation and Forestry. All references to, responsibilities of and authority conferred upon the Department of Agriculture, Food and Rural Resources and the Department of Conservation, and those departments' predecessors, throughout the Maine Revised Statutes are deemed to refer to and vest in the Department of Agriculture, Conservation and Forestry created by this Act, as the successor department. The Department of Agriculture, Conservation and Forestry is the successor in every way to the powers, duties and functions as assigned in the Maine Revised Statutes, Title 7 to the Department of Agriculture, Food and Rural Resources and Title 12 to the Department of Conservation, as they pertain to services provided in agriculture, conservation and forestry under this Act.

2. Notwithstanding the provisions of the Maine Revised Statutes, Title 5, all accrued expenditures, assets, liabilities, balances of appropriations, allocations, transfers, revenues or other available funds in an account or subdivision of an account of the Department of Agriculture, Food and Rural Resources and the Department of Conservation that pertain to the duties of the Department of Agriculture, Conservation and Forestry as set forth in this Act must be transferred to the proper accounts of the Department of Agriculture,

Conservation and Forestry by the State Controller or by financial order upon the request of the State Budget Officer and with the approval of the Governor.

3. All rules of the Department of Agriculture, Food and Rural Resources and the Department of Conservation, as they pertain to the duties of the Department of Agriculture, Conservation and Forestry as set forth in this Act, that are in effect on the effective date of this Act remain in effect until rescinded, revised or amended.

4. All contracts, agreements and compacts of the Department of Agriculture, Food and Rural Resources and the Department of Conservation, as they pertain to the duties set forth in this Act, that are in effect on the effective date of this Act remain in effect until they expire or are altered by the parties involved in the contracts, agreements or compacts. The Department of Agriculture, Conservation and Forestry is the successor agency for all federal grants and programs administered by the United States Department of Agriculture and any other federal programs, grants and contracts.

5. All records of the Department of Agriculture, Food and Rural Resources and the Department of Conservation, as they pertain to the duties set forth in this Act, must be transferred to the Department of Agriculture, Conservation and Forestry as necessary to implement this Act.

6. All property and equipment of any bureau, division or program of the Department of Agriculture, Food and Rural Resources and the Department of Conservation pertaining to the duties set forth in this Act are transferred to the Department of Agriculture, Conservation and Forestry as necessary to implement this Act.

7. Notwithstanding the Maine Revised Statutes, Title 7-A, section 203 or any other provision of law, upon the effective date of this Act, the individual holding the position of Commissioner of Agriculture, Food and Rural Resources becomes the Commissioner of Agriculture, Conservation and Forestry without the need of appointment or confirmation. The Commissioner of Agriculture, Conservation and Forestry shall assume and is vested with all of the duties and powers of that office, as well as the duties and powers of the office of the Commissioner of Agriculture, Food and Rural Resources and the office of the Commissioner of Conservation. This provision is intended to change the procedure for appointment and confirmation of the first Commissioner of Agriculture, Conservation and Forestry.

8. Employees of the Department of Agriculture, Conservation and Forestry who were employees of the Department of Agriculture, Food and Rural Resources and the Department of Conservation immediately prior to the effective date of this Act retain all their employee rights, privileges and benefits, including sick leave, vacation and seniority, provided under the Civil Service Law or collective bargaining agreements. The Department of Administrative and Financial Services, Bureau of Human Resources shall provide assistance to the affected departments and shall assist with the orderly implementation of this subsection.

Sec. B-2. Conflicts and inconsistencies. If the Commissioner of Agriculture, Conservation and Forestry finds a conflict or inconsistency between provisions in the Maine Revised Statutes, Title 7 and Title 12 or rules adopted under those titles, the

commissioner shall attempt to resolve that conflict or inconsistency by interpreting the laws or rules together to give effect to the intent of the Legislature or agency, as the case may be. If the commissioner determines rulemaking is required to resolve a conflict or inconsistency, the commissioner may adopt rules as authorized under Title 7-A, section 204, subsection 2. In adopting rules under this section, the commissioner has sole discretion to determine whether an emergency exists. The commissioner shall notify the members of the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters prior to adopting any emergency rule under this section.

Sec. B-3. Interim meetings; authorized. The joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters is authorized to meet up to 6 times during the 2012 legislative interim to hear and discuss reports regarding planning, program operation and implementation issues related to the establishment of the Department of Agriculture, Conservation and Forestry. At these meetings, the Commissioner of Agriculture, Conservation and Forestry shall brief the committee on program operation issues, progress, challenges and the timeline for implementation. The committee shall provide opportunities for stakeholders to communicate with the committee.

Sec. B-4. Legislation; review. Following the development of a department budget pursuant to section 9, the Department of Agriculture, Conservation and Forestry shall review those parts of the Maine Revised Statutes governing the Department of Agriculture, Conservation and Forestry, including but not limited to the Maine Revised Statutes, Titles 7, 7-A and 12. Based upon the review, the department, working with the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters, shall develop and submit a bill for introduction to the 126th Legislature to consolidate existing law in Title 7-A, to update Title 7-A and to correct any errors and inconsistencies in law that result from this Act.

Sec. B-5. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Department of Agriculture, Food and Rural Resources" or "Department of Conservation" appear or reference is made to either or both of those departments with reference to the duties transferred to the Department of Agriculture, Conservation and Forestry as set forth in this Act, they are amended to read or mean, as the case may be, "Department of Agriculture, Conservation and Forestry." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-6. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Commissioner of Agriculture, Food and Rural Resources" or "Commissioner of Conservation" appear or reference is made to either or both of these positions with reference to the duties transferred to the Commissioner of Agriculture, Conservation and Forestry as set forth in this Act, they are amended to read or mean, as the case may be, "Commissioner of Agriculture, Conservation and Forestry." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-7. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Bureau of Forestry," "Bureau of Parks and Lands" or "Bureau of Geology and Natural Areas" appear or reference is made to any of these bureaus with reference to the duties transferred to the Department of Agriculture, Conservation and Forestry as set forth in this Act, they are amended to read or mean, as the case may be, "Division of Forestry," "Division of Parks and Public Lands," "Division of Geology and Natural Areas" and "the division." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-8. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Division of Forest Protection" appear or reference is made to the Division of Forest Protection, they are amended to read or mean "the forest protection unit within the Department of Agriculture, Conservation and Forestry." The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. B-9. Budget. The Department of Administrative and Financial Services, Bureau of the Budget shall work with the employees of the Department of Agriculture, Food and Rural Resources and the Department of Conservation with regard to the duties transferred to the Department of Agriculture, Conservation and Forestry as set forth in this Act to develop the budget for the Department of Agriculture, Conservation and Forestry in conjunction with the Natural Resources Service Center of the Department of Administrative and Financial Services.

Sec. B-10. Federal approval. If the Commissioner of Agriculture, Conservation and Forestry determines that federal approval will not be obtained for any part of this Act that requires federal approval, the commissioner shall notify the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters, the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the Executive Director of the Legislative Council.

Sec. B-11. Functions and duties; rules, guidelines, policies and manuals. Notwithstanding any provision of law to the contrary, the divisions established within the Department of Agriculture, Conservation and Forestry pursuant to the Maine Revised Statutes, Title 7-A, section 205 shall assume the functions and the duties of the bureaus, divisions and offices within the former Department of Agriculture, Food and Rural Resources and the former Department of Conservation in accordance with all rules, guidelines, policies, manuals and similar documents adopted by or distributed by either the former Department of Agriculture, Food and Rural Resources and the former Department of Conservation that are in effect on the effective date of this Act. These rules, guidelines, policies, manuals and similar documents remain in effect until rescinded, revised or amended, without regard to references therein to departmental offices, bureaus, divisions, units or employee titles or classifications that may no longer exist or that may be changed in the future.

PART C

Sec. C-1. 5 MRSA §7-B, as amended by PL 2003, c. 688, Pt. A, §1, is further amended to read:

§7-B. Use of state vehicles for commuting

A state-owned or state-leased vehicle may not be used by any employee to commute between home and work, except for those vehicles authorized and assigned to employees of the Baxter State Park Authority and to law enforcement officials within the following organizational units: Bureau of State Police; Maine Drug Enforcement Agency; Office of the State Fire Marshal; the division within the Department of Public Safety designated by the Commissioner of Public Safety to enforce the law relating to the manufacture, importation, storage, transportation and sale of all liquor and to administer those laws relating to licensing and collection of taxes on malt liquor and wine; Bureau of Motor Vehicles; Bureau of Marine Patrol; ~~Bureau of Forestry, Division of Forest Protection~~ the forest protection unit within the Division of Forestry; Bureau of Warden Service; and ~~Bureau of Parks and Lands~~ Division of Parks and Public Lands.

Sec. C-2. 5 MRSA §1582, sub-§4, as amended by PL 2011, c. 1, Pt. S, §1, is further amended to read:

4. Use of savings; personal services funds. Savings accrued from unused funding of employee benefits may not be used to increase services provided by employees. Accrued salary savings generated within an appropriation or allocation for Personal Services may be used for the payment of nonrecurring Personal Services costs only within the account where the savings exist. Accrued savings generated from vacant positions within a General Fund account's appropriation for Personal Services may be used to offset Personal Services shortfalls in other General Fund accounts that occur as a direct result of Personal Services appropriation reductions for projected vacancies, and accrued savings generated within a Highway Fund account's allocations for Personal Services may be used to offset Personal Services shortfalls in other Highway Fund accounts that occur as a direct result of Personal Services allocation reductions for projected vacancies; except that the transfer of such accrued savings is subject to review by the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs. Costs related to acting capacity appointments and emergency, unbudgeted overtime for which it is impractical to budget in advance may be used with the approval of the appointing authority. Other actions such as retroactive compensation for reclassifications or reallocations and retroactive or one-time settlements related to arbitrator or court decisions must be recommended by the department or agency head and approved by the State Budget Officer. Salary and employee benefits savings may not be used to fund recurring Personal Services actions either in the account where the savings exist or in another account. At the close of each fiscal year, except for the ~~Division of Forest Protection~~ forest protection unit account within the Department of Agriculture, Conservation and Forestry, the Disproportionate Share - Riverview Psychiatric Center and the Disproportionate Share - Dorothea Dix Psychiatric Center accounts within the Department of Health and Human Services and the Education in the Unorganized Territory account within the Department of Education, any unexpended General Fund

Personal Services appropriations to executive branch agencies including accounts that are authorized to carry unexpended balances forward must lapse to the Salary Plan program, General Fund account in the Department of Administrative and Financial Services.

Sec. C-3. 5 MRSA §6204, sub-§1, as amended by PL 1993, c. 728, §6, is further amended to read:

1. **Composition.** The board consists of ~~11~~ 10 members, 6 who are private citizens and ~~5~~ 4 who are permanent members. The permanent members are ~~the Commissioner of Conservation;~~ the Commissioner of Inland Fisheries and Wildlife; the Commissioner of Marine Resources; the Commissioner of Agriculture, ~~Food and Rural Resources~~ Conservation and Forestry; and the Director of the State Planning Office.

Sec. C-4. 5 MRSA §6204, sub-§6, as amended by PL 1993, c. 728, §6, is further amended to read:

6. **Assistance.** ~~The Department of Conservation;~~ the Department of Inland Fisheries and Wildlife; the Department of Transportation; the Department of Agriculture, ~~Food and Rural Resources~~ Conservation and Forestry; the State Planning Office; and all other state agencies shall provide staff support and assistance considered necessary by the board to fulfill the objectives of this chapter. If agency assistance is not available, consultants may be hired from the proceeds of either the Land for Maine's Future Fund or the Public Access to Maine Waters Fund to assist the board in carrying out its responsibilities.

Sec. C-5. 12 MRSA §8003, sub-§3, ¶M, as amended by PL 1999, c. 155, Pt. A, §2, is further amended to read:

M. Except for lands acquired under the authority of paragraph N, the director is authorized, with the consent of the commissioner, to sell, grant, lease, transfer or otherwise convey any real or personal property under the jurisdiction of the ~~Bureau division~~. The director shall deposit the proceeds from the sale or lease of property into the ~~Division of Forest Protection Account~~ forest protection unit account. At least 60 days prior to offering any surplus property for sale under this paragraph, the director shall notify the Executive Director of the Legislative Council and the joint standing committee of the Legislature having jurisdiction over forest resources of the director's intent to sell the property.

Sec. C-6. 12 MRSA §8003, sub-§3, ¶M-1, as amended by PL 1999, c. 155, Pt. A, §3, is further amended to read:

M-1. The proceeds under paragraph M may be used only to upgrade existing structures owned by the ~~Division of Forest Protection~~ forest protection unit within the division, to consolidate operations of the ~~division~~ unit through the improvement, repair, replacement, purchase or construction of structures and to purchase land upon which to build structures. Ownership of any land purchased under this paragraph or structures purchased or constructed under this paragraph must be held in the name of the ~~division~~ unit. Ownership of land or property purchased under this paragraph may also be held in the name of the Bureau of General Services when the ~~division~~ unit participates in the consolidation of facilities with other state agencies. Any purchase

of land or a structure pursuant to this paragraph must be approved by the Director of the Bureau of General Services.

Sec. C-7. 12 MRSA §8901, sub-§1, as amended by PL 1999, c. 155, Pt. A, §4, is further amended to read:

1. Appointment. The Director of the ~~Bureau~~ Division of Forestry shall appoint forest rangers, subject to the Civil Service Law and the State Supervisor, ~~Division of Forest Protection~~ of the forest protection unit of the Division of Forestry. Rangers assigned to posts at Clayton Lake, St. Pamphile, Estcourt Station, Daaquam, Musquacook Lake, Snare Brook and Baker Lake must be bilingual in French and English.

Sec. C-8. 38 MRSA §1871, sub-§1, as enacted by PL 2001, c. 434, Pt. B, §2 and amended by PL 2003, c. 689, Pt. B, §7, is further amended to read:

1. Membership. The task force consists of ~~17~~ 16 members as follows:

A. The following ~~5~~ 4 ex officio voting members:

- (1) The commissioner or the commissioner's designee, who serves as the chair of the task force;
- (2) The Commissioner of Inland Fisheries and Wildlife or the commissioner's designee;
- (3) The Commissioner of Health and Human Services or the commissioner's designee; and
- (4) The Commissioner of Agriculture, Food and Rural Resources Conservation and Forestry or the commissioner's designee; and
- ~~(5) The Commissioner of Conservation or the commissioner's designee; and~~

B. Twelve members representing the public appointed by the Governor:

- (1) One representative of the State's lake associations;
- (2) One representative of a statewide recreational watercraft owners association;
- (3) One representative of a statewide organization of marina owners;
- (4) One representative of a lakes education program;
- (5) One representative of public drinking water utilities;
- (6) One representative of commercial tree and garden nurseries;
- (7) One representative of home gardeners;
- (8) One representative of municipal government;
- (9) One representative of a statewide sporting association;
- (10) One representative of a statewide outdoor recreational group;
- (11) One person with demonstrated expertise in lake ecology; and

(12) One public member who has demonstrated experience or interest in the area of threats to fish and wildlife posed by invasive aquatic plants and nuisance species.

PART D

Sec. D-1. 2 MRSA §6, sub-§1, as repealed and replaced by PL 2005, c. 397, Pt. A, §1, is amended to read:

1. Range 91. The salaries of the following state officials and employees are within salary range 91:

Commissioner of Transportation;
~~Commissioner of Conservation;~~
Commissioner of Agriculture, Conservation and Forestry;
Commissioner of Administrative and Financial Services;
Commissioner of Education;
Commissioner of Environmental Protection;
Executive Director of Dirigo Health;
Commissioner of Public Safety;
Commissioner of Professional and Financial Regulation;
Commissioner of Labor;
~~Commissioner of Agriculture, Food and Rural Resources;~~
Commissioner of Inland Fisheries and Wildlife;
Commissioner of Marine Resources;
Commissioner of Corrections;
Commissioner of Economic and Community Development;
Commissioner of Defense, Veterans and Emergency Management; and
Executive Director, Workers' Compensation Board.

Sec. D-2. 2 MRSA §6, sub-§3, as amended by PL 2011, c. 380, Pt. WWW, §1, is further amended to read:

3. Range 89. The salaries of the following state officials and employees are within salary range 89:

Director, Bureau of General Services;
Director, Bureau of Alcoholic Beverages and Lottery Operations;
State Budget Officer;
State Controller;

~~Director of the Bureau of Forestry;~~

~~Director, Division of Forestry;~~

Director, State Planning Office;

Director, Energy Resources Office;

Director of Human Resources;

~~Director, Bureau of Parks and Lands;~~

Director, Division of Parks and Public Lands;

Director of Econometric Research; and

Director of the Governor's Office of Communications.

Sec. D-3. 2 MRSA §6, sub-§5, as amended by PL 2005, c. 405, Pt. D, §4, is further amended to read:

5. Range 86. The salaries of the following state officials and employees are within salary range 86:

Director of Labor Standards;

State Archivist;

~~Director, Bureau of Geology and Natural Areas;~~

~~Executive Director, Maine Land Use Regulation Commission;~~

Director, Division of Geology and Natural Areas;

Director, Division of Land Use Planning, Permitting and Compliance;

Chair, Maine Unemployment Insurance Commission;

Child Welfare Services Ombudsman; and

Director of the Maine Drug Enforcement Agency.

PART E

Sec. E-1. Appropriations and allocations. The following appropriations and allocations are made.

CONSERVATION, DEPARTMENT OF

Office of the Commissioner 0222

Initiative: Reduces funding by eliminating one Commissioner of Conservation position. This initiative relates to the creation of the new Department of Agriculture, Conservation and Forestry.

EDU

LD 958

**Interim Meetings of the Education
Committee to Review the Contract for
an Independent Review of the
Essential Programs and Services
Funding Act**

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

—
H.P. 702 - L.D. 958

Resolve, To Authorize the Legislature To Contract for an Independent Review To Evaluate the Essential Programs and Services Funding Act

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

Whereas, since enactment of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B, the Legislature has debated both incremental and comprehensive funding reform proposals to remedy perceived flaws in the school funding formula and the state subsidy distribution mechanism; and

Whereas, in order to obtain information in a timely manner to make informed policy decisions, the Legislature should provide for an independent review of education finance policies and practices associated with the Essential Programs and Services Funding Act; and

Whereas, the Legislature should promptly contract with a qualified research entity to conduct an objective evaluation of the Essential Programs and Services Funding Act as it relates to the best practices of other states' school funding systems that are considered to be fair and equitable; 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. Legislature to contract for independent review of the essential programs and services model. Resolved: That the Legislature, through the Joint Standing Committee on Education and Cultural Affairs, may contract with a qualified research entity to conduct pursuant to sections 5 and 6 an independent review of the Essential Programs and Services Funding Act established under the Maine Revised Statutes, Title 20-A, chapter 606-B; and be it further

Sec. 2. Assistance; request for proposals process. Resolved: That, at the direction of the Joint Standing Committee on Education and Cultural Affairs, referred to

in this resolve as "the joint standing committee," the Office of Program Evaluation and Government Accountability, referred to in this resolve as "the office," shall develop and administer a request for proposals process to permit the Legislature, through the joint standing committee, to award a contract pursuant to section 1. The office, with the advice and assistance of the Independent Review Advisory Committee, established under section 4 and referred to in this resolve as "the advisory committee," and in consultation with and with the approval of the joint standing committee, shall:

1. Develop and administer a request for proposals process in accordance with section 3;
2. Administer the contract entered into pursuant to section 1, including monitoring the research entity's performance in meeting deadlines, providing deliverables pursuant to sections 5 and 6 and complying with other terms of the contract; and
3. Within available resources, provide other assistance to the joint standing committee relating to the contract and the purposes of this resolve; and be it further

Sec. 3. Request for proposals; standards and selection process. Resolved: That the office, with the advice and assistance of the advisory committee, and in consultation with and with the approval of the joint standing committee, shall administer a request for proposals process in accordance with this section.

1. The qualifications of a research entity providing proposals must include, but are not limited to, the financial, technical and operational capacity of the entity to conduct state-level education policy research and fiscal analysis, as demonstrated by the entity's professional experience and expertise.

2. With the approval of the joint standing committee, the office shall issue a request for proposals and publish notice of the request on the Legislature's publicly accessible website and through advertisements in 2 or more public newspapers circulated wholly or in part in the State and may provide any further notice of the request to any other media or entities, as approved by the joint standing committee. The notice must provide that the office will accept, for 30 days after the first date of publication, proposals from qualified research entities that meet the standards approved by the joint standing committee.

3. After proposals have been received and the period for accepting proposals has expired, the office, with the advice and counsel of the advisory committee, shall evaluate the proposals and present a ranking of or recommendations regarding the proposals to the joint standing committee. The joint standing committee shall review the recommendations and choose the proposal it wishes to accept. The joint standing committee shall notify the Executive Director of the Legislative Council of its selection of a proposal. The executive director shall execute a contract with the selected research entity on behalf of the Legislature.

4. Notwithstanding the Maine Revised Statutes, Title 1, section 402, except for the name and mailing address of a research entity that submits a proposal, the proposal and all other materials prepared, used or submitted in connection with the proposal are

confidential and are not subject to public review until the period for accepting proposals has expired; and be it further

Sec. 4. Independent Review Advisory Committee. Resolved: That the Independent Review Advisory Committee is established to advise the office and joint standing committee on matters related to developing a request for proposals and administering the contract entered into pursuant to this resolve. The advisory committee consists of the following members:

1. The Commissioner of Education or the commissioner's designee;
2. The Chair of the State Board of Education or the chair's designee;
3. A Co-director of the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10;
4. The Executive Director of the Maine School Management Association or the executive director's designee; and
5. The Director of the Margaret Chase Smith Policy Center at the University of Maine or the director's designee who is a faculty researcher, research associate or policy fellow at the Margaret Chase Smith Policy Center.

The advisory committee shall elect a chair from among its members. The office shall provide to the members of the joint standing committee notice of the meetings of the office with the advisory committee so that members of the joint standing committee may attend; and be it further

Sec. 5. Scope of the review. Resolved: That the contract entered into pursuant to section 1 must require an objective evaluation of the Essential Programs and Services Funding Act and must require a review of the school funding formula. The evaluation must include, but is not limited to, comparisons between municipalities within this State and between this State and other comparable states and must address the following issues:

1. Whether the school funding formula and the subsidy distribution method in the laws of the State are fair and equitable and how the Essential Programs and Services Funding Act compares to other states' school funding systems that are considered to be fair and equitable;
2. The various ways that school funding systems in other states determine and calculate the costs and components of a comprehensive education system and the advantages and disadvantages of those different approaches;
3. The percentage of the total cost of public education that is provided by the state in other states' school funding systems and how the state share is funded in the other states;
4. The advantages and disadvantages of calculating state aid to school administrative units based on student enrollment count and property valuation;

5. How other states define a municipality's ability to pay for public education and what the arguments are in favor of and against those definitions;

6. The effectiveness of state aid provided by other states' school funding systems to support economically disadvantaged students in local school districts as compared to the support provided to economically disadvantaged students in school administrative units under the laws of the State; and

7. Changes that should be made to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State; and be it further

Sec. 6. General requirements of the review. Resolved: That the contract entered into pursuant to section 1 must require:

1. A review of previous studies and available data related to the State's school funding laws; a review of school funding systems in comparable states; an assessment of each of the issues in section 5, including the arguments in favor of and against the provisions of the State's school funding laws; recommended alternatives to the Essential Programs and Services Funding Act; and a review of:

A. The existing studies of the Essential Programs and Services Funding Act, including research that was conducted to develop the State's school funding system and research conducted since the enactment of the Essential Programs and Services Funding Act;

B. The existing school finance data collected by the Department of Education and state and local tax revenue data collected by the Department of Administrative and Financial Services, Bureau of Revenue Services related to the education finance system under the Essential Programs and Services Funding Act; and

C. The education finance systems in comparable states with an emphasis on other states in New England and states committed to education quality, student equity and taxpayer equity; and

2. An in-depth analysis of the recommended alternatives to the Essential Programs and Services Funding Act included in subsection 1 and an evaluation of:

A. The recommended alternatives necessary to provide adequate resources for a comprehensive education system and to more accurately determine the percentage of essential programs and services funding levels that each school administrative unit should receive from the State;

B. The recommended alternatives to the definitions of the cost components and to the funding distribution method in the Essential Programs and Services Funding Act; and

C. The costs and benefits of the recommended alternatives, including comparative analyses and calculations related to education quality, student equity and taxpayer equity.

The Department of Education, the Department of Administrative and Financial Services, Bureau of Revenue Services and the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10 shall provide the qualified research entity selected with access to previous reports on school funding in the State and access to database information necessary to carry out the evaluation.

The contract entered into pursuant to section 1 must require the qualified research entity selected to provide opportunities for input from education stakeholder groups in the State as part of its evaluation; and be it further

Sec. 7. Disqualification. Resolved: That the Education Research Institute established pursuant to the Maine Revised Statutes, Title 20-A, section 10, due to its prior involvement with the development, review and analysis of the essential programs and services funding model, is disqualified from being considered or selected to enter into the contract pursuant to section 1; and be it further

Sec. 8. Preliminary and final reports. Resolved: That the qualified research entity selected to conduct the independent review pursuant to this resolve shall present a preliminary report of the results of the review under section 6, subsection 1 to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs no later than April 1, 2013. The research entity shall present the final report, including the results of the review under section 6, subsection 2, to the joint standing committee of the Legislature having jurisdiction over education and cultural affairs by December 1, 2013. The joint standing committee of the Legislature having jurisdiction over education and cultural affairs may submit a bill relating to the final report to the Second Regular Session of the 126th Legislature; and be it further

Sec. 9. Suspension of contract to review essential programs and services components. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education may not contract with a statewide education research institute to review certain cost components of the Essential Programs and Services Funding Act in accordance with the schedule established in Title 20-A, section 15686-A; and be it further

Sec. 10. Contract to compile and analyze education data. Resolved: That, notwithstanding the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 6, for fiscal year 2011-12 and fiscal year 2012-13, the Commissioner of Education and the Legislature may contract with a statewide education research institute for the compilation and analysis of education data in accordance with Title 20-A, section 10, except that the contract for these 2 fiscal years may not exceed the balance of funds remaining after funds allocated for this purpose are transferred pursuant to this resolve to the Legislature to fund the contract authorized under section 1; and be it further

Sec. 11. Committee meetings authorized. Resolved: That the joint standing committee may meet up to 4 times to carry out its responsibilities under this resolve; and be it further

Sec. 12. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

EDUCATION, DEPARTMENT OF

General Purpose Aid for Local Schools 0308

Initiative: Deappropriates funds no longer required for the contract to review the cost components of the Essential Programs and Services Funding Act pursuant to the Maine Revised Statutes, Title 20-A, section 15689-A, subsection 3 and for a portion of the contract with a statewide education policy research institute for the compilation and analysis of education data in accordance with the provisions established pursuant to Title 20-A, section 10.

GENERAL FUND	2011-12	2012-13
All Other	(\$150,000)	(\$300,000)
GENERAL FUND TOTAL	<u>(\$150,000)</u>	<u>(\$300,000)</u>

**EDUCATION, DEPARTMENT OF
DEPARTMENT TOTALS**

	2011-12	2012-13
GENERAL FUND	(\$150,000)	(\$300,000)
DEPARTMENT TOTAL - ALL FUNDS	<u>(\$150,000)</u>	<u>(\$300,000)</u>

LEGISLATURE

Legislature 0081

Initiative: Provides funds for a contract to conduct an independent review of the school funding formula and related state subsidy distribution method in the Essential Programs and Services Funding Act. Funds appropriated for this purpose may not lapse but must be carried forward to be used to complete the independent review authorized by this resolve.

GENERAL FUND	2011-12	2012-13
All Other	\$150,000	\$300,000
GENERAL FUND TOTAL	<u>\$150,000</u>	<u>\$300,000</u>

VLA

LD 1882

**Interim Meetings of the VLA
Committee on Establishing a
Presidential Primary**

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND TWELVE

S.P. 659 - L.D. 1882

**Resolve, Directing the Committee on Veterans and Legal Affairs To Develop
Legislation Establishing a Presidential Primary**

Sec. 1. Committee to meet. Resolved: That, by October 15, 2012 but no sooner than July 1, 2012, the Joint Standing Committee on Veterans and Legal Affairs shall hold a meeting to consider options for legislation to establish a presidential primary in the State. The committee may work with the Secretary of State to develop the timeline for a presidential primary and to ensure compliance with existing state and federal law governing the conduct of elections and consult with representatives of political parties regarding party rules; and be it further

Sec. 2. Report. Resolved: That, no later than December 1, 2012, the joint standing committee of the Legislature having jurisdiction over elections matters shall complete its report detailing the options considered at its meeting held in accordance with section 1 and develop necessary implementing legislation. The joint standing committee may report out a bill to establish a presidential primary to the First Regular Session of the 126th Legislature.

**Background Material on On-going
Commissions/Studies
Staffed by OPLA**

Informational Purposes Only

NO COUNCIL ACTION REQUIRED

OPLA Staffed On-going Commissions/Studies

Statutory Authority	Study/Commission	Members/ Legislators	Staffing
10 MRSA §11	Citizen Trade Policy Commission	22/6	Contract Staff through June 30, 2012 OPLA staffed after June 30, 2012
3 MRSA §168-B	Legislative Youth Advisory Council	20/4	OPLA
1 MRSA §411	Right to Know Advisory Commission	15/2	OPLA
Resolve 2011, c. 102	Task Force on Franco-Americans	13/3	OPLA