

MAINE STATE LEGISLATURE

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STATE OF MAINE
113TH LEGISLATURE
SECOND REGULAR SESSION



BILL SUMMARY
JOINT STANDING COMMITTEE
ON
JUDICIARY

MAY 1988

MEMBERS

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Sen. Henry W. Black

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* Denotes Chair

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**ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST & SECOND SPECIAL SESSIONS
SECOND REGULAR SESSION**

**JOINT STANDING COMMITTEE
BILL SUMMARIES
MAY 1988**

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

All Adopted Amendments are listed, by paper number (e.g., H-584 or S-222), together with the sponsor for floor amendments. Final action is listed to the right of the title. If final House and Senate action differ, both are listed. Committee Reports and Floor Action are indicated as follows::

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

Each individual summary was prepared by the analyst assigned, as noted for each committee. But, this document was produced by the efforts of all the office staff, including Secretaries: Charlene Brann, Janet Jean, Earl Knox, Valarie Parlin; Research Assistant Hartley Palleschi. Finally, Secretary Laurette Knox, Legal Assistant Carolyn Chick, and Research Assistant Robert Dunn had special responsibilities in the preparation of the overall document.

Please give us your suggestions and comments on these summaries and tell us of any inaccuracies.

Committee Amendment "A" (S-482) stripped the emergency from the LD; restricted the expanded jurisdiction to the Penobscot Indian Tribal Court only; deleted the reference to the courts' subpoena powers; and added the necessary certification clause.

LD An Act to Amend the Maine Tort Claims Act
2443

PUBLIC
740

SPONSOR(S)
BRANNIGAN
PARADIS P

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
S-433

SUMMARY

The bill restructures and clarifies the Maine Tort Claims Act making primarily technical changes, and with a few substantive changes. One clarification concerns immunity for discretionary acts by government employees. The bill makes it clear that this immunity is absolute: that the exercise of discretion may be covered by the immunity though this exercise was not authorized by statute or rule; that a discretionary act is covered if it was important to the functioning of the governmental activity involved; that this immunity extends to lower level employees, rather than only to those in policy-making position. A substantive change in the bill concerns defense and indemnification of government employees. The revision:

1. Requires a governmental entity to retain outside counsel for an employee, rather than assume the employee's defense, when assuming the defense would create a conflict of interest between the entity and employee; and
2. Provides that a governmental entity may recoup attorneys' fees and defense costs paid to outside counsel for the defense of an employee if the entity proves that the employee acted in bad faith. Where applicable, the governmental entity is also relieved of the obligation to indemnify an employee for punitive damages.

LD An Act to Abolish the Office of Complaint Justice and
2452 Replace it with the Office of Justice of the Peace

PUBLIC
736
EMERGENCY

SPONSOR(S)
MACBRIDE
BEGLEY
COTE
GAUVREAU

COMMITTEE REPORT
OTP-AM

AMENDMENTS ADOPTED
H-600
H-676 PARADIS P

SUMMARY

LD 2452 abolishes the office of complaint justice and replaces it with the office of justice of the peace.

Committee Amendment "A" (H-600) amended the LD to retain certain traditional duties of notaries public related to the incorporation of parishes or religious societies and deleted superfluous language.

House Amendment "A" (H-676) provided a transition clause to allow complaint justices to continue serving until August 1, 1988.

LD An Act to Address Comprehensively Bail Relative to a PUBLIC
2456 Defendant in a Criminal Proceeding 758

<u>SPONSOR(S)</u>	<u>COMMITTEE REPORT</u>	<u>AMENDMENTS ADOPTED</u>
DIAMOND	OTP-AM	H-674
BRANNIGAN		H-688 PARADIS P
PARADIS P		H-741 PARADIS P
FOSTER		

SUMMARY

LD 2456 proposed a total revision of the statutes relating to bail and provided for standards and the procedure under which a court may refuse bail to defendants charged with formerly capital crimes.

Committee Amendment "A" (H-674) rewrote the substantive portions of the LD and made the following changes:

1. It removed the requirement that the State pay the fees of bail commissioners;
2. It permits a criminal defendant to designate the owner of cash put up for bail so as to avoid its potential set-off against other obligations of the defendant;
3. It raises the standard under which a court must refuse bail to a defendant in a formerly capital case from probable cause to clear and convincing evidence; and
4. Made several clarifications in the original language of the LD.

House Amendment "A" (H-688) deletes an appropriation section and fiscal note.

House Amendment "B" (H-741) added a transition clause that permits current bail commissioners to continue in office until 60 days after the effective date of the law.

LD An Act to Amend Maine's Domestic Relations Laws PUBLIC
2465 721

<u>SPONSOR(S)</u>	<u>COMMITTEE REPORT</u>	<u>AMENDMENTS ADOPTED</u>
ALLEN	OTP-AM	H-601
KILKELLY		

SUMMARY

LD 2465 proposed to require courts to apply the Department of Human Service's child support scale in divorce cases, to prevent the award of 3rd-party visitation privileges except where both parents of the child consented, and limited the extent of financial discovery in divorce actions.