MAINE STATE LEGISLATURE

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STATE OF MAINE
117TH LEGISLATURE

SECOND REGULAR SESSION

BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
JUDICIARY

JUNE 1996

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ONE HUNDRED SEVENTEENTH LEGISLATURE
SECOND REGULAR SESSION

Summary Of Legislation Before The Joint Standing Committees
June 1996

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

CARRIED OVER.. Bill carried over to Second Session
CON RES XXX................................. Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE................. Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES... House & Senate disagree; bill died
DIED ON ADJOURNMENT....................................Action incomplete when session ended; bill died
EMERGENCY...Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT....................................Emergency bill failed to get 2/3 vote
FAILED ENACTMENT ....Bill failed to get majority vote
FAILED MANDATE ENACTMENT.....................Bill imposing local mandate failed to get 2/3 vote
INDEF PP ....Bill Indefinitely Postponed
ONTP.. Ought Not To Pass report accepted
P&S XXX...Chapter # of enacted Private & Special Law
PUBLIC XXX...Chapter # of enacted Public Law
RESOLVE XXX.. Chapter # of finally passed Resolve
UNSIGNED ....Not signed by Governor within 10 days
VETO SUSTAINED ....Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 4, 1996.

LD 1626   **An Act to Allow Recovery by the State of Costs Incurred by**   ONTP
the Department of the Attorney General for Making
Intelligence and Investigative Information Available to the
Public

Sponsor(s)	Committee Report	Amendments Adopted
MILLS	ONTP	

LD 1626 would have established the funding mechanism required by the Maine Revised Statutes, Title 16, section 623, which was enacted by Public Law 1993, chapter 719, section 9, to cover the costs associated with providing access to and copying intelligence and investigative information available to the public pursuant to the Maine Revised Statutes, Title 1, chapter 13 and Title 16, chapter 3, subchapter VIII. All funds collected would have to be deposited to the General Fund.

LD 1629   **An Act to Implement the Recommendations of the Study**   PUBLIC 537
Commission on Property Rights and the Public Health, Safety
and Welfare Establishing a Land Use Mediation Program and
Providing for Further Review of Rules

Sponsor(s)	Committee Report		Amendments Adopted
	OTP-AM	MAJ	H-711
	ONTP	MIN	

LD 1629 was the unanimous report of the Study Commission on Property Rights and the Public Health, Safety and Welfare, created by Resolve 1995, Chapter 45. The bill proposed to establish a mediation program for landowners aggrieved by government regulation.

The bill proposed to require that the Attorney General disapprove any proposed agency rule that is reasonably expected to result in an unconstitutional taking of private property unless the taking is expressly authorized by the Legislature or unless there are sufficient variance provisions to avoid a taking.

Under current law, before adoption of any "major substantive" rule, the issuing department must submit the rule for review by the appropriate legislative committee of jurisdiction that oversees that department. The committee ensures that the rule is consistent with statutory authority, that it conforms with legislative intent, that it does not conflict with other laws and that it is necessary, reasonable and not overly complex. LD 1629 would have added the following 2 review criteria for agency rules identified as possibly causing significant reductions in property values.
1. Are there variances available to avoid an unconstitutional taking of private property?
2. Regardless of whether a taking might result, is the expected reduction in property values necessary or appropriate for the public protection advanced by the rule?

Committee Amendment "A" (H-711) is the Majority Report. It proposed several minor changes to the mediation program proposed by the original bill governing immunity for mediators, fees, filing periods, stay of appeal periods, mediator authority and reports.

Enacted law summary

Enacted law summary

Public Law 1995, chapter 537 accomplishes three main objectives. First, it establishes a mediation program to provide landowners with a prompt, independent, inexpensive and local forum in which to resolve land use disputes without going to court. Second, it specifically requires the Attorney General, when reviewing proposed agency rules under the Administrative Procedure Act, to disapprove any rule that is reasonably expected to result in an unconstitutional taking of private property unless the taking is expressly authorized by the Legislature or unless there are sufficient variance provisions to avoid a taking. Third, the Administrative Procedure Act is amended with regard to Legislative Committee review of "major substantive" rules. In addition to the existing criteria for rules, Committees will also take into consideration the following 2 criteria for those rules that may cause significant reductions in property values.
1. Are there variances available to avoid an unconstitutional taking of private property?
2. Regardless of whether a taking might result, is the expected reduction in property values necessary or appropriate for the public protection advanced by the rule? This second criterion is based on public policy judgments and is not limited to any constitutional standard. It is not necessary for the landowner to claim a "taking."

Mediation is available under the Land Use Mediation Program for governmental land use actions, including failure and refusal to act, that occur after the effective date of the law. Once an application is filed with the Court Mediation Service, the time for further appeal is stayed for a period of no more than 120 days while the attempt is made to achieve a mediated settlement.

The program is self-funded through fees, paid by the requesting party. The mediator is responsible for scheduling the mediation sessions and providing all the information necessary for the Superior Court clerk to mail notice of the schedule to participants. One of the responsibilities of the mediator is to balance the need for public access to proceedings involving a governmental entity with the appropriate alternative dispute resolution techniques necessary for effective mediation of the conflict. The mediator has the power to determine who is necessary for effective mediation and include them in the process. Although state agencies are required to participate when determined by the mediator to be necessary to the mediation, municipal participation is voluntary.

The mediator must file a report with the Superior Court clerk within 90 days after the landowner applies for mediation. The report must be filed as soon as possible if the mediator determines a mediated agreement is not possible. The report must contain the names of the participants, the nature of any agreements and what further action is anticipated, the nature of unresolved issues and a copy of the signed mediation agreement.

The existing Land and Water Resources Council is required to report on the functioning of the program in December 1998 and in December 2000. The program is repealed October 1, 2001.

LD 1634   An Act to Clarify Professional Liability   PUBLIC 526

Sponsor(s)	Committee Report	Amendments Adopted
MILLS	OTP	

LD 1634 proposed to amend the laws governing the liability of a shareholder of a professional corporation for negligence in rendering a professional service. Current law provides that a shareholder is jointly and severally liable for claims arising from the rendering of a professional service by a professional corporation if that shareholder either personally and directly participated in providing the service that was performed negligently or supervised and controlled that portion of a professional service rendered by another that was performed negligently. LD 1634 proposed