

# MAINE STATE LEGISLATURE

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**STATE OF MAINE  
117TH LEGISLATURE**

**SECOND REGULAR SESSION**

**BILL SUMMARIES  
JOINT STANDING COMMITTEE  
ON  
JUDICIARY**

**JUNE 1996**

**MEMBERS:**

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*Sen. Joan M. Pendexter*

*Sen. Sean F. Faircloth*

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**Staff:**

*Margaret J. Reinsch, Principal Analyst*

*Lisa Copenhaver, Legislative Analyst*

*Office of Policy and Legal Analysis*

*Room 101/107/135, 13 State House Station*

*Augusta, ME 04333*

*(207)287-1670*



**Maine State Legislature  
OFFICE OF POLICY AND LEGAL ANALYSIS**

13 State House Station, Augusta, Maine 04333-0013  
Telephone: (207) 287-1670  
Fax: (207) 287-1275

**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:

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

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.

### ***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)  
MILLS

Committee Report  
OTP

Amendments Adopted

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

to add the requirement that the shareholder must have directly supervised and controlled that portion of a professional service rendered by another that was performed negligently in order for that shareholder to be held liable.

***Enacted law summary***

Public Law 1995, chapter 526 amends the laws governing the liability of a shareholder of a professional corporation to provide 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 directly supervised and controlled that portion of a professional service rendered by another that was performed negligently. Current law does not specify that the shareholder must directly supervise or control the service rendered by another.

**LD 1667      Resolve, to Improve Tribal and State Relations**

RESOLVE 84

Sponsor(s)  
JACQUES

Committee Report  
OTP-AM

Amendments Adopted  
H-856  
S-537

LD 1667 proposed to improve tribal and state relations by strengthening the Maine Indian Tribal-State Commission by adding to the commission's membership and by providing a modest increase in the budget. The bill was originally titled "An Act to Improve Tribal and State Relations by Strengthening the Maine Indian Tribal-State Commission."

**Committee Amendment "A" (H-856)** proposed to replace the original bill and make it a resolve with a new title. The amendment would have required the Maine Indian Tribal-State Commission to establish a Task Force on Tribal-State Relations to report back to the Legislature and all the federally recognized Indian tribes within the State by December 15, 1996 with recommendations to improve tribal-state relations. The amendment proposed to retain the increase of funding of the Maine Indian Tribal-State Commission contained in the original bill.

**Senate Amendment "A" To Committee Amendment "A" (S-537)** proposed to correct language in an appropriation section to remove an incorrect reference to the Maine Indian Claims Settlement Act.

***Enacted law summary***

Resolve 1995, chapter 84 requires the Maine Indian Tribal-State Commission to establish a Task Force on Tribal-State Relations to report back to the Legislature and all the federally recognized Indian tribes within the State by December 15, 1996 with recommendations to improve tribal-state relations. The task force shall examine possible roles in the Maine Indian Tribal-State Commission for the Houlton Band of Maliseets and the Aroostook Band of Micmacs and evaluate the effectiveness of the commission. The commission must establish the membership of the task force based on its determination of what composition will be the most effective.

Resolve 1995, chapter 84 increases the ongoing funding obligation of the Maine Indian Tribal-State Commission. Funding for the task force will be paid from the State's and the tribes' matching contributions to the funding of the commission.