

MAINE STATE LEGISLATURE

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*State Of Maine
120th Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Judiciary*

May 2002

Members:

Sen. Anne M. Rand, Chair

Sen. Michael J. McAlevey

Sen. Norman K. Ferguson, Jr.

Rep. Charles C. LaVerdiere, Chair

Rep. Thomas D. Bull

Rep. Patricia T. Jacobs

Rep. Charles E. Mitchell

Rep. Christopher T. Muse

Rep. Deborah L. Simpson

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Rep. G. Paul Waterhouse

Rep. Stavros J. Mendros

Rep. Roger L. Sherman

Rep. Donna M. Loring

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Maine State Legislature
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120th Legislature
Second Regular Session

Summary Of Legislation Before The Joint Standing Committees
May 2002

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session. The document is a compilation of bill summaries which describe each bill and relevant amendments, as well as the final action taken. 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 considered by the committees. It is arranged alphabetically by committee name 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. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

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>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 & Senate disagree; bill died</i>
<i>DIED IN CONCURRENCE</i>	<i>One body accepts ONTP report; the other indefinitely postpones the bill</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/FINAL PASSAGE</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</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>NOT PROPERLY BEFORE THE BODY</i>	<i>Ruled out of order by the presiding officers; bill died</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed</i>
<i>ONTP</i>	<i>Ought Not To Pass report accepted</i>
<i>OTP ND</i>	<i>Committee report Ought To Pass In New Draft</i>
<i>OTP ND/NT</i>	<i>Committee report Ought To Pass In New Draft/New Title</i>
<i>P&S XXX</i>	<i>Chapter # of enacted Private & Special Law</i>
<i>PASSED</i>	<i>Joint Order passed in both bodies</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>Bill held by Governor</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 25, 2002.

Patrick T. Norton, Interim Director
Offices located in Room 215 of the Cross Office Building

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Committee Amendment "A" (S-447) proposed to replace the bill to provide procedures for the safe abandonment of an infant without criminal liability for abandonment.

Enacted law summary

Public Law 2001, chapter 543 provides simple procedures for a person who wants to abandon a baby in a safe manner. It provides an affirmative defense to the prosecution for the crime of abandonment of a child. The affirmative defense is available for a person who delivers a child less than 31 days old to: a law enforcement officer; staff at a medical emergency room, not limited to a hospital emergency room; a medical services provider; or a hospital staff member. The safe haven provider may request information that would be helpful to the child's welfare, but may not detain anyone who is delivering the child in order to collect the information. Any information that is supplied must be provided to the Department of Human Services. The Department of Human Services is directed to establish guidelines to assist a safe haven provider concerning procedures to follow when a child is delivered to the safe haven provider. The person or entity who accepts a child under this Act or provides temporary custody of a child accepted under this Act is immune from civil, criminal and administrative liability for acting under this section if the person or entity acts in good faith, believing the action is required or authorized.

LD 1734

An Act to Promote Safe Schools

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DUDLEY	ONTP	

LD 1734 proposed to allow a student who is harassed or assaulted on school grounds or during a school supervised activity for reasons of the race, color, religion, sex, ancestry, national origin, physical or mental disability or sexual orientation of the student to sue the school administrative unit for failing to prevent the abuse.

LD 1770

An Act Regarding Public Charities, Nonprofit Corporations and Conversions of Nonprofit Entities to For-profit Entities

PUBLIC 550

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SAXL RAND	OTP-AM MAJ ONTP MIN	H-869

LD 1770 proposed to amend several laws relating to nonprofit corporations and public charities. It proposed to give the Attorney General civil investigatory powers to enforce proper application of charitable funds. It proposed to require the Attorney General to review all conversion transactions involving public charities, and to require court approval for all such transactions, unless the Attorney General decides to waive court approval. The bill proposed to require the Attorney General to hold a public hearing on the transaction if 150 people sign a petition requesting such a hearing. The bill also proposed criteria for the court to consider in determining whether to approve the transaction. Finally, the bill proposed to amend the Maine Nonprofit Corporation Act to divide all such corporations into one of 2 categories: public benefit corporations and mutual benefit corporations. The bill also proposed to restrict the membership of financially interested persons on the board of public benefit corporations, to require that such corporations notify the Attorney General of significant changes in the

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corporation and to provide additional authority for the Attorney General to oversee the activities of such corporations.

Committee Amendment "A" (H-869) proposed to replace the bill.

It proposed to change the provisions relating to the Attorney General's authority over public charities by specifying the instances in which the Attorney General may use civil investigation powers under that law, requiring court approval for such investigations and clarifying the relationship between that law and the conversion law and requiring notice to the Superintendent of Insurance when entities regulated by the superintendent are under investigation.

The amendment proposed to change key definitions in the conversion sections of the bill, including the definition of "nonprofit conversion transaction" and "fair market value." It proposed to provide different processes for reviews of nonprofit conversion transactions, depending on the value of assets involved. Only transactions involving assets worth \$500,000 or more would require court approval. The Attorney General would approve transactions involving assets worth \$50,000 to \$499,999, using the same standards as for court approval. Transactions with a value of less than \$50,000 would not need approval, although notice to the Attorney General of those smaller transactions would be required. The amendment proposed to change the standards for approval of a conversion transaction, provide specific language regarding valuations and distributions of proceeds and change the penalty provisions. The amendment also proposed to add a provision relating to intervention in court proceedings for approval of conversion transactions. The intervention section proposed to allow any person interested in the outcome of the proceeding to intervene in the action.

With regard to the Maine Revised Statutes, Title 13-B, the amendment proposed to change the standard by which conflict-of-interest transactions are judged by removing the business judgment rule for most transactions. With one exception, such a transaction would be protected only if it is objectively fair to the corporation. The amendment proposed to clarify who is considered a "financially interested person" in the section of law prohibiting public benefit corporation boards of directors from having more than 49% of the membership consist of financially interested persons. The amendment proposed to add a section of law describing and prohibiting misapplication of funds or assets of a public benefit corporation. The amendment also proposed to clarify the relationship between the new conversion law and Title 13-B, clarify the Attorney General's authority to bring an action to void conflict of interest transactions involving public benefit corporations and change the law regarding inspection of books and records of the corporation.

The amendment also proposed to change the existing law regarding conversions of nonprofit hospital and medical services organizations to ensure that conversions of all such nonprofit entities are covered by that law and not the new conversion law. It also proposed to require the Superintendent of Insurance to review the existing conversion law and report back to the Legislature in 2003 on whether changes are needed to update the nonprofit hospital and medical services conversion law for any future conversions. The superintendent would be specifically directed to submit legislation to clarify that 100% of the net proceeds of a charitable organization subject to the nonprofit hospital and medical services conversion law are public assets and to make any other necessary changes.

Enacted law summary

Public Law 2001, chapter 550 amends the law relating to the Attorney General's power to oversee charitable entities, enacts new law relating to conversion of charitable assets to for-profit purposes, and amends the general law governing all non-profit corporations.

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Attorney General Authority over Public Charities. Part A of Chapter 550 provides civil investigative authority to enable the Attorney General to ensure that public charities make proper use of their charitable assets, and defines public charities to include non-profit corporations formed for charitable purposes as well as charitable trusts. The civil investigative authority provided in the new law may be used only for specified purposes, and must be approved in advance by a Justice of the Superior Court.

Conversion of Charitable Assets to For-Profit Uses. Chapter 550 provides 3 different processes for overseeing conversion of non-profit assets to for-profit use, depending on the fair market value of the assets to be converted. For small transactions (those with a value of less than \$50,000), a converting entity is only required to notify the Attorney General at least 20 days before the transaction is to occur. Larger transactions (those between \$50,000 and \$499,999) must be approved by the Attorney General, and the largest transactions (those valued at \$500,000 or more) must be approved by the Superior Court. The law defines the type of transactions that are subject to the new law and clarifies that many ordinary transactions are not included in the definition of “conversion transaction.”

The law provides for public participation in conversion reviews by requiring public notice, providing for public access to records, inviting public comment to the Attorney General when the Attorney General has approval authority and providing a liberal standard for intervention in court approval processes. The law sets standards for approval of conversions, including a requirement that the proceeds from such a conversion must be distributed to a charitable foundation or corporation that meets certain standards.

Chapter 550 also changes existing law regarding conversions of nonprofit hospital and medical services organizations to ensure that conversions of all such nonprofit entities are covered by that law and not the new conversion law. It also requires the Superintendent of Insurance to review the existing conversion law and report back to the Legislature in 2003 on whether changes are needed to update the nonprofit hospital and medical services conversion law for any future conversions.

Changes to the general non-profit corporations law. Part C of chapter 550 amends Title 13-B of the Maine Revised Statutes, the general nonprofit corporation law. It divides non-profit corporations into 2 categories: public benefit corporations and mutual benefit corporations. The definition of “public benefit corporation” includes a corporation recognized by the IRS as a 501(c)(3) organization, certain other corporations organized for public or charitable purposes, those designated as public benefit corporations by statute and those that elect to be a public benefit corporation. Non-profits that do not fall into the definition of “public benefit corporation” are mutual benefit corporations.

Chapter 550 applies several additional laws to public benefit corporations, including provisions that: (1) allow the Attorney General to ask a court to remove a director, void a conflict of interest transaction or dissolve the corporation under certain circumstances; (2) prohibit more than 49% of the directors of the corporation from being persons who are “financially interested” in the corporation; (3) require notice to the Attorney General of certain major corporate changes; and (4) prohibit and penalize misapplications of funds or assets of the public benefit corporation.

The law also changes the standard by which conflict-of-interest transactions in any non-profit corporation are judged by removing the business judgment rule for most transactions. With one exception, such a transaction is protected only if it is objectively fair to the corporation.