

MAINE STATE LEGISLATURE

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*State Of Maine
122nd Legislature*

*First Regular Session and
First Special Session*

Bill Summaries

*Joint Standing Committee
on
Judiciary*

August 2005

Members:

Sen. Barry J. Hobbins, Chair

Sen. Lynn Bromley

Sen. David R. Hastings III

*Rep. Deborah L. Pelletier-Simpson,
Chair*

Rep. Sean Faircloth

Rep. Stan Gerzofsky

Rep. Marilyn E. Canavan

Rep. Mark E. Bryant

Rep. Michael Edward Dunn

Rep. Roger L. Sherman

Rep. Roderick W. Carr

Rep. Joan Bryant-Deschenes

Rep. Joan M. Nass

Rep. Donna M. Loring

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Maine State Legislature

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122nd Legislature
First Regular Session and First Special Session

Summary of Legislation Considered by the Joint Standing Committees
August 2005

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 organized 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. A subject index for each committee is included immediately before the bill summaries for that committee, and a numerical index by LD number is included 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:

- CARRIED OVER Bill Carried Over to Second Regular 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 IN CONCURRENCE..... One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT..... Action incomplete when session ended; bill died
EMERGENCY..... Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE..... Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE..... Bill failed to get majority vote
FAILED MANDATE ENACTMENT..... Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY..... Ruled out of order by the presiding officers; bill died
INDEF PP..... Bill Indefinitely Postponed
ONTP..... Ought Not To Pass report accepted
OTP ND..... Committee report Ought To Pass In New Draft
OTP ND/NT..... Committee report Ought To Pass In New Draft/New Title
P&S XXX..... Chapter # of enacted Private & Special Law
PUBLIC XXX..... Chapter # of enacted Public Law
RESOLVE XXX..... Chapter # of finally passed Resolve
UNSIGNED..... Bill held by Governor
VETO SUSTAINED..... Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is June 29, 2005; and for non-emergency legislation enacted in the First Special Session is September 17, 2005.

Joint Standing Committee on Judiciary

counted as the first bad check to a payee unless it remained unpaid for at least 45 days. Any subsequent check intentionally issued or negotiated knowing it will not be honored, written to the same payee, will subject the issuer to the additional liquidated damages if the face amount is not paid within 30 days of the demand of the payee.

LD 1551

An Act To Make Technical Amendments to the Maine Uniform Trust Code

**PUBLIC 184
EMERGENCY**

Sponsor(s)
MILLS P

Committee Report
OTP

Amendments Adopted

LD 1551 proposed several changes to the Maine Uniform Trust Code, which was enacted by the 121st Legislature and which takes effect July 1, 2005.

Enacted law summary

Public Law 2005, chapter 184 makes several changes to the new Maine Uniform Trust Code which takes effect July 1, 2005. It preserves the effectiveness of powers of durable powers of attorney executed prior to July 1, 2005. It clarifies several definitions. It allows the settlor of a trust to keep the trust private by limiting the persons to whom notice and reports must be given. To keep the trustee accountable to someone, a trust that takes advantage of the option to restrict notice must designate a representative, sometimes called a "trust protector," to receive the same information that would otherwise be provided to qualified beneficiaries.

Chapter 184 clarifies when a charitable organization, a person other than a beneficiary appointed to enforce a trust and the Attorney General are entitled to the notice and reports that are required to be provided to a qualified beneficiary. It also adds language that is designed to prevent an adverse federal estate and gift tax result that some commentators have identified as a possibility when the settlor of an irrevocable trust can give consent on behalf of a beneficiary to a modification or termination of the trust. If a beneficiary's interest is not protected by a spendthrift provision, a creditor can attach only distributions to the beneficiary and not payments made by the trustee to 3rd parties that in some way help the beneficiary.

Chapter 184 clarifies the beneficiary's right to take legal action against a trustee for failure to act in accordance with the terms and purposes of the trust. Beneficiaries who are also trustees are protected from creditors to the extent that distributions are subject to an ascertainable standard.

The settlors of Maine trusts are protected by making it clear that the remainder beneficiaries have no rights as long as the settlor of a revocable trust is alive, even if incapacitated. Chapter 184 deletes the requirement that the Attorney General must approve the charity's appointment of the successor trustee of a charitable trust. Innocent 3rd parties who purchase from a trustee are protected from a forfeiture of the property if the trustee acted wrongfully. This protects the integrity of real estate titles and is identical to the provisions of Maine law with respect to fraudulent transfers.

Chapter 184 provides that the requirement of giving notice to beneficiaries does not require trustees to send additional notices to beneficiaries of trusts already in existence on July 1, 2005. Existing Maine law applicable to a trustee's exercise of discretionary power is not changed; no new or additional standards are imposed upon trustees exercising discretion.

Joint Standing Committee on Judiciary

Public Law 2005, Chapter 184 was enacted as an emergency measure effective July 1, 2005.

LD 1559

An Act To Adopt the Uniform Environmental Covenants Act

PUBLIC 370

<u>Sponsor(s)</u> HOBBINS SHERMAN	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> S-328
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LD 1559 proposed to adopt the Uniform Environmental Covenants Act as prepared by the National Conference of Commissioners of Uniform State Laws to provide a systematic approach to adoption and recording of environmental covenants, such as deed restrictions, and to protect the legal integrity of covenants once recorded.

Committee Amendment "A" (S-328) proposed to make the following changes:

1. Refine the definition of "environmental covenant;"
2. Revise the definition of "environmental response project;"
3. Clarify that the Department of Environmental Protection may be a holder of an environmental covenant without approval of the Board of Environmental Protection;
4. Amend the language stating that the priority of recorded interests is determined by other law;
5. Eliminate a reference to the Maine Administrative Procedure Act's review process concerning an agency determination of whether the benefits under the covenant can no longer be realized;
6. Prohibit the agency from waiving the requirement of the signature on the covenant by an owner of the fee simple if the owner is the current occupant of the real estate that is the subject of the covenant;
7. Allow amendment of the environmental covenant without the holder's consent if the holder has, in a signed record, already waived the right to consent to an amendment; and
8. Delete the requirement to maintain a list of environmental covenants and a specified process for ensuring recording and record keeping.

Enacted law summary

Public Law 2005, chapter 370 adopts the Uniform Environmental Covenants Act to provide a systematic approach to adoption and recording of environmental covenants, such as deed restrictions, and to protect the legal integrity of covenants once recorded. "Environmental covenant" includes the element that it is documented in a recordable instrument; "environmental covenant" does not include a municipal ordinance, a voluntary or other remedial action plan or an administrative or judicial order that may impose activity or use limitations. "Environmental response project" includes remediations under the State's voluntary response action program. The Department of Environmental Protection may be a holder of an environmental covenant without approval of the Board of Environmental Protection. Chapter 370 prohibits the agency from waiving the requirement of the signature on the covenant by an owner of the fee simple if the owner is the current occupant of the real estate that