

MAINE STATE LEGISLATURE

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*State Of Maine
122nd Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Judiciary*

July 2006

Members:

Sen. Barry J. Hobbins, Chair

Sen. Lynn Bromley

Sen. David R. Hastings III

Rep. Deborah L. Simpson, Chair

Rep. Sean Faircloth

Rep. Stan Gerzofsky

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Rep. Joan Bryant-Deschenes

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Staff:

Margaret J. Reinsch, Senior Analyst

Office of Policy and Legal Analysis

13 State House Station

Augusta, ME 04333

(207) 287-1670

Maine State Legislature



Office of Policy and Legal Analysis Office of Fiscal and Program Review

122nd Maine Legislature Second Regular Session

Summary of Legislation Before The Joint Standing Committees

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing 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/billsumm.htm).

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:

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
P&S XXX.....	Chapter # of enacted Private & Special Law
PASSED.....	Joint Order passed in both bodies
PUBLIC XXX.....	Chapter # of enacted Public Law
RESOLVE XXX.....	Chapter # of finally passed Resolve
UNSIGNED (Pocket Veto).....	Bill held by Governor
VETO SUSTAINED.....	Legislature failed to override Governor's Veto

Please note that the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is August 23, 2006.

Joint Standing Committee on Judiciary

except that private remedies are not available. Profiteering in necessities means selling or offering to sell necessities at an unconscionable price.

LD 1904

An Act To Protect Businesses from Unnecessary Eminent Domain Takings

ONTP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MERRILL	ONTP MAJ OTP-AM MIN	

LD 1904 proposed to apply to all takings under the eminent domain authority of the State, any political subdivision or any other entity that has eminent domain power. It proposed to require that the taking be an absolute necessity to carry out the public purpose that is the basis of the taking. It also proposed to require the taking of property on which a business is located to be limited to the minimum amount necessary to carry out the public purpose, thus allowing the business to continue. The bill proposed to apply to takings that had not been completed as of its effective date. The bill proposed to take effect when approved.

Committee Amendment “A” (H-1046), the minority report of the Joint Standing Committee on Judiciary, proposed to replace the bill and remove the emergency preamble and emergency clause.

The amendment proposed to provide that eminent domain authority may not be exercised to take property on which a business is located unless the taking is necessary to carry out the purposes for which the property is being taken and unless the amount taken is limited to the minimum amount necessary to carry out the public purpose and is limited so as to maximize the ability of the business to continue.

The amendment proposed to provide for an expedited de novo review of the necessity of the taking for the stated public purpose, of the determination that the amount of property taken is the minimum amount necessary and of the determination whether the property taken is incidental to the business. The Superior Court would balance the need to accomplish the stated public purpose with the preservation of jobs and businesses in this State.

The amendment proposed to provide that the changes apply to pending eminent domain takings, notwithstanding the Maine Revised Statutes, Title 1, section 302.

The amendment proposed to include an appropriation and allocation section.

(Not adopted)

See also LD 1203, LD 1297 and LD 1870.

LD 1907

An Act To Amend the Law Governing DNA Testing

PUBLIC 659

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PARADIS MARTIN	OTP-AM	H-994

Joint Standing Committee on Judiciary

LD 1907 was modeled on the Innocence Project's model statute for obtaining postconviction DNA testing. It proposed to amend the laws regarding postjudgment conviction motions for DNA analysis in the following ways:

1. It proposed to allow a motion to be brought at any time by any convicted person, regardless of whether the person is incarcerated and the length of the sentence of incarceration;
2. It proposed to allow the motion to be brought before any judge or justice, not just the judge or justice who imposed the sentence;
3. It proposed to provide a time limit for the State to respond to the motion and for the court to hear the motion;
4. It proposed to require the State or law enforcement agency to preserve all evidence in the State's or law enforcement agency's possession or control for the period of time that a person remains incarcerated, on probation, civilly committed or subject to registration as a sex offender;
5. It proposed to allow the court, if the petitioner has retained private counsel, including a nonprofit organization that represents indigent persons, to award reasonable attorney's fees and costs to that private counsel;
6. It proposed to allow a petition to be brought if the petitioner is able to show that the person would not have been convicted or would have received a lesser sentence if favorable results had been obtained through DNA analysis at the time of the original prosecution;
7. It proposed to require the petitioner and the State to agree on a laboratory to perform the DNA analysis or, if agreement is not possible, require the court to choose the laboratory with input from the petitioner and the State;
8. It proposed to require the State to bear the costs of DNA analysis if it is performed by the Maine State Police Crime Laboratory located in Augusta;
9. It proposed to allow the court, if it orders DNA analysis, to make other orders including specifying the type of DNA analysis and testing procedures to be used and requiring the collection and analysis of biological samples from persons other than the petitioner;
10. It proposed to require the court to notify the petitioner's probation officer if the results of the DNA analysis are inconclusive or show that the petitioner is the source of the DNA;
11. It proposed to require the court to hold a hearing on the results if the results of the DNA analysis are favorable to the petitioner. Based on the DNA analysis and any other evidence or matter raised at the hearing, it proposed to require the court to issue an order:
 - A. Setting aside or vacating the petitioner's judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication;
 - B. Granting the petitioner a new trial or fact-finding hearing;
 - C. Granting the petitioner a new sentencing hearing, commitment hearing or dispositional hearing;
 - D. Discharging the petitioner from custody;
 - E. Specifying the disposition of any evidence that remains after the completion of the DNA analysis;

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- F. Granting the petitioner additional discovery on matters related to the DNA analysis or the underlying conviction or sentence, including, but not limited to, documents pertaining to the criminal investigation or the identities of other suspects; or
 - G. Directing the State to place any unidentified DNA profile obtained from postjudgment of conviction DNA analysis into the state DNA database and state DNA data bank;
12. It proposed to eliminate the requirement that the petitioner prove that only the perpetrator of the crime or crimes for which the petitioner was convicted could be the source of the DNA evidence;
 13. It proposed to allow the petitioner to appeal, as a matter of right, the court's denial of the motion for DNA analysis;
 14. It proposed to allow the petitioner or the State, as a matter of right, to appeal an order of the court made after the hearing conducted due to DNA analysis results favorable to the petitioner;
 15. It proposed to allow successive motions for DNA analysis to be brought if the petitioner asserts new or different grounds for relief, including, but not limited to, factual, scientific or legal arguments not previously presented or the availability of more advanced DNA analysis technology; and
 16. It proposed to allow a convicted person and the State to consent to and conduct postjudgment of conviction DNA analysis without filing a motion before the court. The process following the completion of DNA analysis would be the same as if the DNA analysis had been ordered by the court.

Committee Amendment “A” (H-994) proposed to replace the bill. It proposed to amend the postjudgment of conviction motion for DNA analysis procedures in the Maine Revised Statutes, Title 15, chapter 305-B to expand who may file a motion for postjudgment of conviction relief, establish a two-year statute of limitations and revise the criteria for the granting of a new trial based on DNA evidence. It also proposed an effective date of September 1, 2006.

Enacted law summary

Public Law 2005, chapter 659 amends the postjudgment of conviction motion for DNA analysis procedures in the Maine Revised Statutes, Title 15, chapter 305-B. It expands the universe of convicted persons authorized to seek relief under Title 15, chapter 305-B to those persons who have been convicted of any Maine felony crime and whose actual sentence includes straight imprisonment or imprisonment accompanied by parole, probation, supervised release or administrative release that has not yet been fully served. It provides that a qualifying person who may have previously sought relief under Title 15, chapter 305-B and obtained DNA test results that showed that the person was not the source of the evidence may again seek relief based upon the new standards. It establishes a two-year period of limitation for filing a motion seeking relief under Title 15, chapter 305-B.

Chapter 659 amends the law governing the five things to be demonstrated by the convicted person for a new trial. It includes consideration of what information DNA analysis technology that was not available when the person was convicted is capable of providing with respect to the evidence sought to be analyzed in the event the evidence has been previously analyzed.

Chapter 659 provides three alternative standards for granting a new trial in the event the results of the DNA analysis show the convicted person is not the source of the evidence. The third and final standard, new paragraph

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C, differs from the first two in that a convicted person need not establish by clear and convincing evidence that only the perpetrator of the crime or crimes for which the person was convicted can be the source of the evidence. Because the convicted person is not required to make such a showing, the standard required under new paragraph C is made up of the five prerequisites for obtaining a new trial based on newly discovered evidence set forth in Maine case law and consistently applied by the Law Court. The convicted person must show all five prerequisites by clear and convincing evidence. In the first and second standards listed as paragraphs A and B, because the convicted person is required to make such a showing, the five prerequisites for obtaining a new trial based on newly discovered evidence are truncated. Under the first standard, new paragraph A, the person must also establish by clear and convincing evidence that the DNA test results, when considered with all the other admitted evidence, old and new, show that the person is actually innocent of the crime or crimes for which the person was convicted. Under the second standard, new paragraph B, the person need not show actual innocence, but instead must establish by clear and convincing evidence that the DNA test results, when considered with all the other admitted evidence, old and new, would make it probable that a different verdict would result upon a new trial. This second standard is like that currently found in Title 15, section 2138, subsection 8, paragraph B.

Chapter 659 adds a definition for “all the other evidence in the case, old and new,” as used in new paragraphs A and B and new paragraph C, subparagraph (1). Further, although not expressly stated in paragraphs A and B and paragraph C, subparagraph (1), it is intended that the court, as in any hearing for a new trial based on newly discovered evidence, must determine both weight and credibility to be attached to the newly discovered evidence. It is intended that the Maine Rules of Evidence apply at any hearing conducted under the subsection.

Chapter 659 takes effect September 1, 2006.

LD 1920 **An Act To Enhance the Laws Prohibiting Profiteering on Fuel** **ONTP**

<u>Sponsor(s)</u> HOGAN		<u>Committee Report</u> ONTP		<u>Amendments Adopted</u>
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LD 1920 is a concept draft pursuant to Joint Rule 208. The bill proposed to enhance the penalties for profiteering on fuel, including, but not limited to, increasing the fine from \$1,000 to \$2,500 and revoking a person's license.

See LD 1892.

LD 1930 **An Act Regarding Working Waterfront Covenants** **PUBLIC 574**

<u>Sponsor(s)</u> DAMON		<u>Committee Report</u> OTP-AM		<u>Amendments Adopted</u> S-556
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LD 1930 proposed to implement authority given to the Land for Maine's Future Board to be a party to working waterfront covenants. The bill proposed to provide the necessary definitions and provisions for creation, conveyance, acceptance and duration of working waterfront covenants, along with provisions for the scope and validity of such covenants, as well as applicability provisions.

Committee Amendment “A” (S-556) proposed to clarify many provisions in the bill for the creation, enforcement, modification and termination of working waterfront covenants.