

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

*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

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

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

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>
----------------------------	--	---------------------------------	--	---------------------------

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
----------------------------	--	-----------------------------------	--	------------------------------------

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.

Joint Standing Committee on Judiciary

Enacted law summary

Public Law 2005, chapter 574 implements authority given to the Land for Maine's Future Board to be a party to working waterfront covenants. It provides 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. An existing interest in property is not affected by a covenant unless the owner is a party to the covenant or consents to the covenant. A municipality may bring an action or intervene in an action affecting a working waterfront covenant. A court is required, when modifying, terminating or denying equitable enforcement of a working waterfront covenant, to find that, due to a change in circumstance, the covenant no longer serves the public interest in protecting or enhancing the commercial marine fisheries or related businesses in the State. The Attorney General must be made a party to an action to modify, terminate or enforce a covenant. Written notice of an action must be provided to the Commissioner of Marine Resources. Restrictions in the working waterfront covenant apply to uses of the subject real estate and do not limit the types of persons or businesses that may own, lease or use the real estate.

LD 1932

An Act To Implement Model Time-share Foreclosure Procedures

PUBLIC 572

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HOBBS KOFFMAN	OTP-AM	S-557

LD 1932 proposed to provide for a nonjudicial process for the foreclosure of time-share estates pursuant to a power of sale granted in a mortgage instrument and for the foreclosure of a lien for assessments.

Committee Amendment “A” (S-557) proposed various changes to the bill, including covering tax liens, clarifying notice requirements, requiring sale in individual lots and forfeiture of rights to deficiencies.

Enacted law summary

Public Law 2005, chapter 572 establishes a nonjudicial process for the foreclosure of time-share estates pursuant to a power of sale granted in a mortgage instrument and for the foreclosure of a lien for assessments. Chapter 572 specifies requirements for notice of the foreclosure of a time-share estate, and sale of the foreclosed units. Mortgages on time-share estates that do not contain a power of sale also may be foreclosed by a nonjudicial process if notice is given to the time-share owner and that owner fails to object to the process in a timely manner. A holder of a mortgage who conducts a nonjudicial foreclosure forfeits any right to pursue a claim for deficiency in payment of the time-share owner's obligations resulting from the application of the proceeds of the sale to those obligations. The right to a deficiency is also extinguished when the holder of a security interest in a time-share license conducts a nonjudicial foreclosure.