

# 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**  
126<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



Summaries of bills, amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON JUDICIARY**

July 2013

**MEMBERS:**

SEN. LINDA M. VALENTINO, CHAIR  
SEN. JOHN L. TUTTLE  
SEN. DAVID C. BURNS

REP. CHARLES R. PRIEST, CHAIR  
REP. KIM J. MONAGHAN-DERRIG  
REP. JENNIFER DECHANT  
REP. MATTHEW W. MOONEN  
REP. STEPHEN W. MORIARTY  
REP. LISA RENEE VILLA  
REP. JARROD S. CROCKETT  
REP. MICHAEL G. BEAULIEU  
REP. ANITA PEAVEY HASKELL  
REP. STACEY K. GUERIN  
REP. WAYNE T. MITCHELL

**STAFF:**

MARGARET J. REINSCH, SENIOR ANALYST  
SUSAN Z. JOHANNESMAN, ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670

# STATE OF MAINE

126<sup>TH</sup> LEGISLATURE

FIRST REGULAR SESSION



## LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 126<sup>th</sup> Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

*CARRIED OVER* ..... carried over to a subsequent session of the Legislature  
*CON RES XXX*..... chapter # of constitutional resolution passed by both houses  
*CONF CMTE UNABLE TO AGREE*.....Committee of Conference unable to agree; legislation died  
*DIED BETWEEN HOUSES*.....House & Senate disagreed; legislation died  
*DIED IN CONCURRENCE*.....defeated in each house, but on different motions; legislation died  
*DIED ON ADJOURNMENT*..... action incomplete when session ended; legislation died  
*EMERGENCY*..... enacted law takes effect sooner than 90 days after session adjournment  
*FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE* ..... emergency failed to receive required 2/3 vote  
*FAILED, ENACTMENT or FINAL PASSAGE*..... failed to receive final majority vote  
*FAILED, MANDATE ENACTMENT* ..... legislation proposing local mandate failed required 2/3 vote  
*HELD BY GOVERNOR*..... Governor has not signed; final disposition to be determined at subsequent session  
*LEAVE TO WITHDRAW*..... sponsor's request to withdraw legislation granted  
*NOT PROPERLY BEFORE THE BODY* ..... ruled out of order by the presiding officer; legislation died  
*INDEF PP*..... indefinitely postponed; legislation died  
*ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X*... ought-not-to-pass report accepted; legislation died  
*P&S XXX*..... chapter # of enacted private & special law  
*PUBLIC XXX*.....chapter # of enacted public Law  
*RESOLVE XXX*..... chapter # of finally passed resolve  
*VETO SUSTAINED*..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 126<sup>th</sup> Legislature is October 9, 2013. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

## Joint Standing Committee on Judiciary

This bill seeks to address the decision in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806, by allowing the board of appeals for a municipality to review a decision of a code enforcement officer for that municipality and allowing review of a board of appeal's decision by the Superior Court unless the charter or an ordinance of the municipality expressly provides that the decision of the code enforcement officer or board of appeals is only advisory.

### Committee Amendment "A" (H-173)

The bill strikes a provision in current law that a board of appeals may not assert jurisdiction over a matter unless the municipal charter or ordinance specifies the precise subject matter that may be appealed; the amendment retains that provision.

The bill allows a board of appeals to review a decision of a code enforcement officer unless the charter or an ordinance expressly provides that the decision is only advisory; the amendment provides that the charter or an ordinance may expressly provide that the decision may not be appealed.

The bill and amendment seek to address the decisions in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 and *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385.

### Enacted Law Summary

Public Law 2013, chapter 144 provides that absent an express provision otherwise in a charter or ordinance, a decision of a code enforcement officer under a land use ordinance is reviewable on appeal by the board of appeals and in turn by the Superior Court. Chapter 144 seeks to address the decisions in *Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, 9 A.3d 806 and *Farrell v. City of Auburn*, 2010 ME 88, 3 A.3d 385.

### LD 1216 An Act To Amend the Freedom of Access Act

PUBLIC 350

#### Sponsor(s)

CAREY  
THOMAS

#### Committee Report

OTP-AM

#### Amendments Adopted

H-389

This bill amends the Freedom of Access Act to require agencies and officials to respond within five calendar days to any communication about public records. The response must include a good faith, nonbinding estimate of the cost to provide the records. When estimating the cost, the agency or official must provide details of the costs, including the statutes governing the confidentiality of any information redacted from requested records.

This bill provides that failure to provide a written denial or refusal is considered a failure to allow inspection or copying and is subject to an appeal to Superior Court.

This bill gives the court discretion to award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff without making a finding of bad faith.

### Committee Amendment "A" (H-389)

This amendment requires an agency or official to acknowledge a request to inspect or copy public records within 5 working days of receiving the request. Within a reasonable time of receiving the request, the agency or official must give a good faith, nonbinding estimate of the time to comply with the request and must also provide the cost estimate as required in current law.

This amendment deletes the proposed requirement that the agency or official responding to a request explain costs and the statutes requiring redaction. It also deletes the changes to attorney's fees.

## Joint Standing Committee on Judiciary

### Enacted Law Summary

Public Law 2013, chapter 350 requires an agency or official to acknowledge a request to inspect or copy public records within five working days of receiving the request. Within a reasonable time of receiving the request, the agency or official must give a good faith, nonbinding estimate of the time to comply with the request and must also provide the cost estimate as required in current law.

Public Law 2013, chapter 350 provides that failure to provide a written denial or refusal is considered a failure to allow inspection or copying and is subject to an appeal to Superior Court.

**LD 1249      An Act To Make Statutory Changes To Address Certain Conflicting Requirements of the Maine Rules of Professional Conduct and the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 Regarding Maine's Protection and Advocacy Agency**

**PUBLIC 310**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PRIEST VALENTINO	OTP-AM	H-332

In the 125th Legislature, the Maine Revised Statutes, Title 34-B was amended by Public Law 2011, chapter 657, Part EE to require that the Department of Health and Human Services contract with Maine's protection and advocacy agency to provide legal advocacy for all individuals with intellectual disabilities or autism receiving services from the department.

This bill conforms the laws concerning persons with intellectual disabilities or autism with the Maine Rules of Professional Conduct and the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402 by requiring that the agency maintain the confidentiality of client records and changing the role of the agency in investigating rights violations and in behavior modification and management review committees.

### **Committee Amendment "A" (H-332)**

This amendment requires Maine's protection and advocacy agency, the Disability Rights Center, to conduct its duties on a statewide basis. It clarifies that the services must be provided in geographically dispersed locations, rather than regions. It requires reporting to the Department of Health and Human Services and deletes from the complaint process complaints about practices, procedures and policies of the department and department personnel.

### Enacted Law Summary

Public Law 2013, chapter 310 conforms the laws concerning persons with intellectual disabilities or autism with the Maine Rules of Professional Conduct and the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, Public Law 106-402 by requiring that the Maine's protection and advocacy agency that provides legal advocacy for all individuals with intellectual disabilities or autism receiving services from the department maintain the confidentiality of client records and by changing the role of the agency in investigating rights violations and in behavior modification and management review committees. Maine's protection and advocacy agency, the Disability Rights Center, must conduct its duties on a statewide basis by providing services in geographically dispersed locations. Public Law 2013, chapter 310 requires reporting to the Department of Health and Human Services and deletes from the complaint process complaints about practices, procedures and policies of the department and department personnel.