

# MAINE STATE LEGISLATURE

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**STATE OF MAINE**  
128<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON JUDICIARY**

August 2017

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JANET STOCCO, LEGISLATIVE ANALYST  
OFFICE OF POLICY AND LEGAL ANALYSIS  
13 STATE HOUSE STATION  
AUGUSTA, ME 04333  
(207) 287-1670  
<http://legislature.maine.gov/legis/opla/>

# STATE OF MAINE

128<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 128<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. An appendix provides a summary of relevant session statistics.

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 128<sup>th</sup> Legislature is Wednesday, November 1, 2017. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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"transit districts," defined in Title 30-A, section 3501, subsection 1, within the definition of "political subdivision" and thus covered by the immunity and limited liability of the Act. This amendment amends the public transportation statutes to expressly treat the tax-exempt nonprofit agencies selected by the Department of Transportation as regional public transportation agencies as transit districts, but for the purposes of the Maine Tort Claims Act only.

This amendment was not adopted.

**LD 281      An Act To Amend the Percentage of Votes Needed for Condominium Governance      Veto Sustained**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
HYMANSON P HILL D	OTP-AM	H-430

This bill amends the Maine Condominium Act to change the number of votes, depending on the number of units in the association, needed by owners of units in the association in order to convey or use as collateral common elements of the condominium or to amend the declaration of the condominium. Under this bill, if an association consists of nine or fewer units, agreement by all of the owners is necessary; if an association consists of 10 or more units, agreement by the owners of at least 80% of the votes allocated to units, rounded up to the next whole number, in the association is necessary.

**Committee Amendment "A" (H-430)**

This amendment replaces the bill but addresses the same issue, which is to allow a vote that is less than unanimous to make changes to a condominium declaration. The amendment, modeled on a law in Washington, requires the approval of all of the owners of the units particularly affected, as well as the approval of 90% of the owners of the total number of units, rather than 100%.

**LD 282      An Act To Support Caregivers When Children Have Been Abandoned by Their Parents      ONTP**

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

This bill addresses concerns of caretaker relatives and others who take on the care and custody of a child when the child's parents have essentially abandoned the child to the caregiver's care and custody. When the arrangement is without a formal guardianship appointment and without a power of attorney executed by the parent, the caregiver may be considered a de facto guardian after sufficient time has elapsed with a demonstrated lack of consistent participation by the parent. A de facto guardian may petition the court to be appointed as a guardian when the parent does not consent to the appointment if the court finds a demonstrated lack of consistent participation by the parent. Current law provides that the duties of a parent include, but are not limited to, providing the child with necessary food, clothing, shelter, health care and education and a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

The bill amends the list of factors the court must consider to determine the best interest of the child when deciding whether to appoint a guardian for the child to add, if there has been a demonstrated lack of consistent participation by a parent, the current capacity and disposition of the parent to comply with the duties imposed upon a parent by the parent-child relationship.

The bill provides that, if the parent or legal custodian objects to the appointment of the de facto guardian as the

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guardian for the child, the court may appoint the de facto guardian as the guardian if the court finds that the parent or legal custodian is currently unwilling or unable to comply with the duties imposed upon a parent by the parent-child relationship.

The bill provides that, after the de facto guardian is appointed the guardian and the parent petitions the court to terminate the guardianship, a party opposing the termination has the burden of proving by a preponderance of the evidence that the parent seeking to terminate the guardianship is currently unfit to regain custody of the child. In determining whether a parent is unfit to regain custody, if the guardian was appointed because of a demonstrated lack of consistent participation by the parent, the court shall require the parent to show by a preponderance of the evidence that the parent is willing and able to comply with the duties imposed upon a parent by the parent-child relationship.

**LD 283      An Act To Increase the Jurisdictional Limits for Small Claims**

**CARRIED OVER**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SPEAR J MIRAMANT D		

This bill increases the jurisdictional limits for small claims from \$6,000 to \$15,000.

This bill was carried over to any special or regular session of the 128th Legislature by joint order, H.P. 1138.

**LD 309      Resolve, To Establish the Working Group To Restore Judicial Discretion**

**Died On  
Adjournment**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
VOLK A RECKITT L	OTP-AM ONTP	S-191 H-449    MOONEN M

This bill is a concept draft pursuant to Joint Rule 208.

This bill proposes to establish a working group that will include representatives of the judicial branch to review mandatory minimum sentences that are currently required under state law and to assess whether any of those mandatory minimum sentence requirements should be amended or repealed.

**Committee Amendment "A" (S-191)**

This amendment establishes the Working Group To Restore Judicial Discretion to review and assess mandatory minimum sentences in state law. The working group consists of two members of the Senate and three members of the House of Representatives and must invite comments and recommendations from interested parties, including but not limited to prosecutors; criminal defense attorneys; the courts; providers of pretrial services; mental health organizations; providers of services, religious or otherwise, in correctional facilities; law enforcement; administrators of jails and other correctional facilities or programs; the Maine Commission on Indigent Legal Services; and the Criminal Law Advisory Commission. The working group is required to submit a report to the Second Regular Session of the 128th Legislature that includes recommendations to repeal or amend specific mandatory minimum sentence requirements.

**House Amendment "A" To Committee Amendment "A" (H-449)**

This amendment removes the emergency preamble and emergency clause from committee amendment "A."