



FINAL ISSUE
2011 Summary Report of New Laws and Carry Over Legislation
State of Maine 125th Legislature, 1st Regular Session
January – June 2011

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Overview

Introduction

Pierce Atwood is pleased to provide you this Summary Report of New Laws and Carry Over Legislation that emerged from the 125th Maine Legislature's 1st Regular Session that we identified as relevant to our firm clients.

This summary includes legislation that was either:

- Enacted as emergency legislation which became effective when the Governor signed it,
- Enacted as regular legislation to be effective 90 days after the Legislature adjourns the session (we will notify you of that date once they do adjourn);
- Defeated but noteworthy;
- Designated to be studied between now and next legislative session; or
- Carried over to be considered in the 2nd Regular Session to convene in January of 2012.

Notably, a large number of complex pieces of legislation have been carried over for consideration in 2012, and a few bills will be put into studies between sessions. These bills have been included to provide a preview of next year's legislative activity.

User Guide

The summary is organized by subject matter and subcategories.

- You may link from the Table of Contents directly to your area of interest.
- The Legislature assigns an "LD number" to each piece of legislation for reference through the legislative process. Once signed into law by the Governor, the legislation becomes a new law and is assigned a Public Law 2011 Chapter Number for reference. In this Summary Report, the Chapter Number links you to the new law.
- The effective date of non-emergency legislation will be 90 days after the Legislature adjourns the session. We will alert you of that date when it occurs. The effective date of legislation enacted as emergency legislation is noted in red following the Chapter Number.
- If the legislation was defeated, or is to be a study bill or a carry over, the given link will take you to the website with the original text and any amendments presented.
- When the Legislature completes its business, we will send you an email Alert and update the Summary Report which will be marked "FINAL ISSUE".
- For your convenience in identifying legislation of interest to you, we have bolded key words of each bill's title.
- At any time, you may access the most current version of the 2011 Summary Report directly on the Pierce Atwood website at www.pierceatwood.com under the Publications menu.

For More Information

If you have a question about any of the bills summarized in the this report, what the statutory changes mean, or how to prepare for the next legislative session, please contact one of the attorneys in the relevant practice group (link provided at the top of each Section) or the [Government Relations](#) practice group.

You may access this 2011 Summary Report directly on the Pierce Atwood website at www.pierceatwood.com.

Disclaimer

This summary is not intended to provide a detailed legal brief of all aspects of the legislation summarized. Please contact an attorney at Pierce Atwood for legal advice and counsel.

Banking and Financial Services begins on the next page.

Banking and Financial Services

If you have a question about any of the bills summarized in the Banking and Financial Services section of this report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Foreclosure Proceedings

Contact

[Ryan S. Stinneford](#) – 207.791.1154

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LD 145, *An Act To Protect Homeowners Subject to **Foreclosure** by Requiring the Foreclosing Entity To Provide the Court with Original Documents* – [Carry Over](#).

This bill would require a mortgagee bringing a civil foreclosure action on real property to produce the original mortgage note, signed by the mortgagor, as part of the complaint.

LD 1360, *An Act To Provide Prevailing **Mortgagors Attorney's Fees** in the Foreclosure Process* – Public Law 2011, [Chapter 269](#).

This new law allows a mortgagor to recover court costs and attorney's fees if the mortgagor prevails in a foreclosure action. The court may award reasonable costs and attorney's fees to the mortgagor in a foreclosure action if the mortgagee does not prevail or if the court finds evidence that the mortgagee did not bring the action in good faith. This new law provides that the term "does not prevail" does not include a stipulation of dismissal entered into by the parties, an agreed upon motion to dismiss the action without prejudice to facilitate settlement or successful mediation of the foreclosure action.

Credit Reports

Contact

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LD 1243, *Resolve, To Direct the Bureau of Consumer Credit Protection To Recommend Changes to **Credit Reporting Laws** Concerning Paid Debts* – Resolve 2011, [Chapter 34](#).

This Resolve directs the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection to review the credit reporting debt collection laws specifically concerning debtors whose credit reports do not correctly reflect the payment of debt. The Bureau is directed to submit its findings, recommendations and suggested legislation to the Joint

Substantive Rulemaking

Contact

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LD 14, Resolve, Regarding Legislative Review of the Final Repeal of Chapter 270: Adjustment of Volume Fees, a Major Substantive Rule of the Department of Professional and Financial Regulation – Resolve 2011, [Chapter 5](#). **This Resolve was effective on March 24, 2011.**

This Resolve provides for legislative review of the repeal of Chapter 270, “Adjustment of Volume Fees,” a major substantive rule of the Department of Professional and Financial Regulation. In order for a substantive rule to be repealed, legislative review is required. This is emergency legislation that takes effect upon the signature of the Governor.

LD 15, Resolve, Regarding Legislative Review of Chapter 285: Adjustment of Non-bank Mortgage Lending Fees, a Major Substantive Rule of the Department of Professional and Financial Regulation – Resolve 2011, [Chapter 4](#). **This Resolve was effective on March 21, 2011.**

This Resolve provides for legislative review of Chapter 285, “Adjustment of Non-bank Mortgage Lending Fees,” a major substantive rule of the Department of Professional and Financial Regulation. In order for a substantive rule to be adopted, legislative review is required. This is emergency legislation that takes effect upon the signature of the Governor.

Miscellaneous Amendments to Existing Law

Contact

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LD 532, An Act To Update the Maine Uniform Trust Code – Public Law 2011, [Chapter 42](#).

The new law amends the Maine Uniform Trust Code, which is based on the Uniform Trust Code approved by the National Conference of Commissioners on Uniform State Laws, and includes Maine Comments to explain the amendments. More specifically, among other changes, the new law: (1) adds a definition of “current beneficiary” to distinguish between the rights of current beneficiaries and qualified beneficiaries in general with regard to their right to receive information about trusts; and (2) clarifies that a creditor may reach or compel distribution of the interest of a beneficiary who also serves as trustee when the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard, but only to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

LD 891, An Act To Amend the Maine Consumer Credit Code Regarding Interest Charged on Deferred Payments – Public Law 2011, [Chapter 87](#).

Under the Maine Consumer Credit Code, interest and costs are allowed to accrue in connection with a deferred first periodic payment only if the payment is deferred for no more than 90 days. This new law extends the limitation from 90 days to 120 days.

LD 1088, An Act Regarding the Writing of Bad Checks – [Carry Over](#).

This bill proposes to create a rebuttable presumption of prima facie evidence under Maine Rules of Evidence Rule 303 that a drawer of a dishonored check knew it would be dishonored if the drawer does not pay the amount of the dishonored check and associated fees in full within 24 hours of receiving notice. The notice must be “substantially” similar to the one provided in the statute.

LD 1279, An Act Relating to Qualified Financial Contracts by Domestic Insurers – Public Law 2011, [Chapter 107](#).

This new “netting agreement” law conforms provisions of the Maine Insurance Code regarding delinquent insurers to Section 711 of the National Association of Insurance Commissioners Insurer Receivership Model Act regarding netting of qualified financial contracts by insurers who have been placed in rehabilitation or liquidation.

LD 1332, An Act To Amend the Maine Condominium Act – Public Law 2011, [Chapter 368](#).

This new law amends the Maine Condominium Act by, among other things:

- Allowing the condominium owners' association to assign its right to future income, including the right to receive assessments, but only if a majority of the unit owners have approved;
- Revising the law governing the record requirements of condominium owners' associations to list specific records that must be retained;
- Gives an association the power to suspend any right or privilege of a unit owner that fails to pay an assessment, with certain limitations; and
- Amends the law concerning the executive board to require the board to provide notice of meetings.

Business Section begins on the next page

Business

If you have a question about any of the bills summarized in the Business section of this report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Entity Formation & Governance

Contact

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LD 983, An Act to Amend the *Maine Limited Liability Company Act* – Public Law 2011, [Chapter 113](#). **This emergency law is effective July 1, 2011.**

This new law makes technical and substantive amendments to Maine’s New Limited Liability Company Act, 31 MRSA § 1501 *et seq.* (the “new law”) which will replace the current Maine Limited Liability Act, 31 MRSA § 601 *et seq.* (the “Current Act”) in its entirety when it goes into effect on July 1, 2011. The new law, as amended by LD 983, generally reflects the development in the law regarding the limited liability company (“LLC”) form since the Current Act was enacted in 1993, and differs in several notable respects from the Current Act. The new law, unlike the Current Act, requires the existence of a limited liability company agreement (an “LLC Agreement”), commonly referred to as an operating agreement, and at least one identified member to form an LLC in Maine after July 1, 2011. This new law gives members of an LLC increased flexibility in tailoring the provisions of an LLC Agreement by authorizing them to modify the applicability of most of the default provisions of the new law through relevant provisions in the LLC Agreement. However, the new law clarifies that certain of its provisions, including the imposition of the implied covenant of good faith and fair dealing, the ability of the LLC to sue and be sued, the applicability of Maine law, the liability for money damages of a member acting in bad faith, the requirement that a contribution obligation be in writing, and the obligation of an LLC to wind up its affairs upon the filing of articles of dissolution, cannot be modified or eliminated by an LLC Agreement.

LD 983 continued on next page

In addition, the new law eliminates the requirement that LLC formation documents filed with the Maine Secretary of State specify whether an LLC is managed by its members or by managers. In order to enable third parties to determine who has authority to act on behalf of an LLC, the new law authorizes (but does not require) the filing a statement of authority with the Maine Secretary of State specifically identifying individuals or officers with such authority. This statement of authority can be amended, cancelled, or denied by a person named therein through an appropriate subsequent filing. Absent the filing of a statement of authority, any member, manager, president, or treasurer is deemed to have the authority to act on behalf of an LLC under the new law. For LLC's formed prior to July 1, 2011, the new law clarifies that a designation of an LLC's management structure (i.e., whether the LLC is manager-managed or member-managed) in formation documents filed with the Maine Secretary of State will be treated as a statement of authority, and no new filings will be required unless the LLC desires to alter that designation.

LD 1502, *An Act to Amend the **Maine Business Corporation Act*** - Public Law 2011, [Chapter 274](#) LD 1502 updates the Maine Business Corporation Act (the "Maine Act") to incorporate recent changes to the American Bar Association's Model Business Corporation Act (the "Model Act"), upon which the Maine Act is based. The updates contained in LD 1502 generally increase flexibility and predictability in corporate governance for Maine corporations. Among other things, amendments implemented by LD 1502 permit remote participation in shareholder meetings, which was previously authorized only for director meetings; permit Maine corporations to establish separate record dates for the determination of shareholders entitled to notice of a meeting and those entitled to vote their shares at that meeting; clarify that a corporation can enter into an agreement requiring that a merger or similar proposal be submitted to a shareholder vote, even if the board of directors no longer recommends the proposal, a so-called "force the vote" provision; provide for the delegation by the board of directors to an officer of the exercise of board functions regarding the award of various forms of equity compensation, such as stock options; permit a corporation's bylaws to contain provisions regarding shareholder nominations of director candidates and reimbursement of expenses incurred by shareholders in soliciting proxies or consents in connection with such nominations, so-called "proxy access" provisions; and prohibit the elimination or impairment of a right to indemnification or advances for expenses *after* an act or omission implicating such right occurs, unless the provision creating such rights explicitly authorizes such an "after the fact" amendment.

In addition to these changes, LD 1502 adds to the Maine Act updated provisions on electronic transmissions of corporate notices of meetings and other corporate communications. The new provisions incorporate the substance of the electronic transmission provisions that currently appear in the federal Electronic Signatures in Global and National Commerce Act ("E-Sign") and the Uniform Electronic Transactions Act ("UETA"), which has been adopted in Maine and many other states. Specifically, the bill updates and clarifies provisions of the Maine Act regarding (i) electronic signatures and (ii) the receipt and delivery of meeting notices and other corporate communications in electronic form.

Economic Development

Contact

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LD 109, Resolve, To Establish the Commission to Study the Promotion and Expansion of the Maine *Maple Sugar Industry* – Resolve 2011, [Chapter 48](#). **This emergency Resolve was effective on May 25, 2011.**

This Resolve directs the Commissioner of Agriculture, Food and Rural Resources to convene a task force to study the promotion and expansion of the Maine maple sugar industry. The task force is to be comprised of representatives from state and regional associations of producers of maple sugar products as well as certain designated producers of maple sugar products, small woodlot owners, the forest products industry, the University of Maine Cooperative Extension and farmers actively involved with maple sugar production.

The task force is directed to examine the potential for and obstacles to the expansion of the harvesting and processing of maple sap for sugar, opportunities for enhancing a Maine maple brand, the potential for expanding value-added processing and export marketing, methods for increasing sustainable production, potential competitive or collaborative opportunities with North America's largest producer, Quebec, Canada and investments or actions that could be taken by the State that would produce a tangible economic return. The Commissioner is directed to submit the findings and recommendations of the task force no later than December 7, 2011.

LD 323, An Act To Implement a Coordinated Strategy To *Attract New Businesses*, Expand Existing Businesses and Develop a Consistent and Recognizable *Maine Brand* – [Carry Over](#).

Next Session the Legislature will consider LD 323, a concept draft bill proposing to establish a “Maine brand” through a public-private partnership at the state level with responsibility for the development and delivery of a comprehensive, coordinated and coherent strategy for economic development in Maine.

LD 384, An Act To Provide *Incentives To Foster Economic Growth* and Build Infrastructure in the State – [Carry Over](#).

Next Session the Legislature will consider LD 384. As proposed the draft law would amend Title 5, by enacting a Tourism and Industry Film Production Cash Rebate Program, to be administered by the Department of Economic and Community Development, Office of Tourism. A qualifying film company may be entitled to obtain rebates ranging from 27% of the expenses related to infrastructure to 51% of the costs related to training and employment of Maine residents.

Business Section continues on next page

LD 575, An Act To Extend a Deadline under the *Regional Economic Development Revolving Loan Program* – Public Law 2011, [Chapter 11](#). This emergency law was effective on March 31, 2011.

This new law amends 10 MRSA §1026-M, sub-§7, and extends to June 30, 2012 the date until which entities eligible for loan insurance may be eligible for financial assistance under the Finance Authority of Maine's Regional Economic Development Revolving Loan Program.

LD 579, Resolve, To Study the Creation of a *School of Hospitality and Hotel Management* within the University of Maine System – Resolve 2011, [Chapter 53](#). This emergency Resolve was effective on May 30, 2011.

This Resolve directs the Board of Trustees of the University of Maine System to convene a stakeholder group to explore the creation of a hospitality and hotel management baccalaureate degree program within the system and make findings and recommendations on the necessity, feasibility and financial implications of creating such a program. The stakeholder group is to include, at a minimum, representatives of the University of Maine System, the Maine Community College System, the Department of Economic and Community Development, Office of Tourism, the Maine Tourism Association, the Maine Innkeepers Association, the Maine Restaurant Association and the Maine State Chamber of Commerce.

The stakeholder group is directed to submit a report to the Board of Trustees no later than November 1, 2011. The Board of Trustees is directed to submit a report with its conclusions and recommendations arising from the work of the stakeholder group to the Joint Standing Committee on Education and Cultural Affairs by January 31, 2012.

LD 584, An Act to Appropriate Funds for the *Maine Downtown Center* – Public Law 2011, [Chapter 459](#).

This new law provides \$25,000 in state funding in fiscal year 2012-13 to support the Maine Development Foundation's Maine Downtown Center programs. These programs encourage commercial district revitalization through economic development in the context of historic preservation.

LD 679, Resolve, To *Leverage Federal Opportunities* for Job Creation in Maine – Resolve 2011, [Chapter 29](#).

This Resolve directs the Department of Economic and Community Development to review federal initiatives and pending federal legislation that promote the development of new employment, particularly employment in the manufacturing sector. The Department is directed to identify initiatives to be undertaken on a state and local level that have the potential to leverage federal funding including, but not limited to, enhanced tax increment financing, enhanced and expedited job training resources and other incentives designed specifically to work to augment federal initiatives and leverage federal funding. The Department is directed to submit a report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by December 1, 2011.

LD 1069, *An Act to Promote Visual and Digital Media Productions, Tourism and Job Creation in the State* – Public Law, [Chapter 372](#).

This new law creates the Visual and Digital Media Loan Program, administered by the Commissioner of Economic and Community Development, to promote visual and digital media production in the State. The Commissioner may use the fund to provide loans of up to the lesser of \$500,000 or 20% of the proposed project budget. Borrowers under the Program may apply for loan forgiveness upon completion of the project if certain criteria are satisfied, including a requirement that 75% of the project was filmed in the State.

LD 1109, *Resolve, To Target Job Creation in the Agricultural Sector To Improve the Stability and Economic Strength of Rural Maine* – [Carry Over](#).

Next Session the Legislature will consider LD 1109. This Resolves proposes to require the Department of Agriculture, Food and Rural Resources and the Department of Labor to invite the participation of a task force to develop strategies to identify barriers to and create job growth in the agricultural sector.

LD 1451, *An Act To Create Transparency and Accountability in Economic Development Subsidies* – [Carry Over](#).

Next Session the Legislature will consider LD 1451. This proposed bill, as presently drafted, would enact certain safeguards for state and local government expenditures for economic development and job creation by creating a procedure to collect, analyze and make publicly available information regarding those expenditures. It allows the governmental entity making a subsidy to recapture the subsidy if the recipient defaults on the employment, wages, health care or other benefits promised by the recipient in its application for the subsidy.

Business Section continues on next page

Commerce and Trade

Contact

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LD 83, *An Act to Legalize the Sale, Possession and Use of Fireworks* – Public Law 2011, [Chapter 416](#). Effective January 1, 2012.

This new law removes the prohibition on the sale and use of consumer fireworks in Maine. This law establishes a state licensing protocol for sellers of consumer fireworks and subjects the sale and use of fireworks to municipal control. This detailed law prescribes what type of fireworks may be sold, the types of buildings in which fireworks must be stored, specific times when fireworks may be used, safety warnings that must be given to consumers and insurance requirements and liability protections that are available to those who sell fireworks.

LD 187, *An Act To Amend the Laws Regulating Dealers of Agricultural, Industrial, Construction and Forestry Equipment* – Public Law 2011, [Chapter 236](#).

This new law amends Title 10, Chapter 208-B “Farm Machinery Dealerships” and expands certain dealer protections with respect to termination of agreements with suppliers. The new law expands the definition of dealer to include retail sellers of forestry equipment, industrial equipment, and construction equipment, but excludes “single-line” dealers (dealers purchasing more than 75% of their new product inventory from a single supplier and who exceed a threshold territory-based sales volume). The new law requires suppliers to give dealers a mandatory 120 days notice of termination of a dealer agreement (up from 90 days) and eliminates a supplier’s ability to avoid the notice period (i.e. terminate the dealer agreement immediately) upon dealer discontinuance of more than half of its business related to the supplier’s goods. Dealers are also now required to give suppliers 120 days notice of termination; however, this provision is a default that may be varied by the terms of the dealer agreement.

The new law also imposes a mandatory supplier repurchase requirement upon termination of a dealer agreement that required the dealer to maintain inventory. Upon termination of the dealer agreement, the supplier is now required to repurchase, at statutorily prescribed rates, all inventory (irrespective of any contrary provision in the dealer agreement) as well as other required signs, repair tools, books, supplies, data processing equipment and software previously purchased by the dealer and in the dealer’s possession on the date of termination. Payment is now due within 45 days (formerly 60) of the date the supplier receives the dealer’s inventory and there is a penalty on past due payments. Finally, the law prohibits certain coercive supplier acts that attempt to require the dealer to accept deliveries of equipment or repair parts, interfere with the dealer’s business, or prevent the dealer from selling competing products.

LD 273, *An Act Regarding Penalties for Opting Out of Paperless Billing* – Public Law, [Chapter 226](#).

This new law amends Maine’s Uniform Electronic Transactions Act, 10 MRSA 9401 et seq. The new law provides that a person or entity (excluding depository institutions and their affiliates and subsidiaries) may offer an incentive for customers to accept electronic delivery of billing statements but may not penalize any customer for opting to receive paper billing statements instead.

LD 247, *An Act to Amend the Gift Card Laws* – Public Law 2011, [Chapter 433](#).

This new law exempts gift cards issued by those who sell less than \$250,000 in gift cards annually from the presumption that the gift cards are abandoned property after two years of inactivity. This affects those issuing gift cards, who now have to send 60 percent of the value of unredeemed cards that are presumed to be abandoned to the State pursuant to the unclaimed property statute. Under this new law, gift cards issued by franchisees of the same franchisor and gift cards issued by separate businesses under common ownership or control are aggregated to determine if the \$250,000 threshold is met.

LD 727, *An Act Relating to Indemnity Agreements in Motor Carrier Transportation Contracts* – Public Law 2011, [Chapter 85](#).

This new law enacts Title 10, Chapter 215-A, limiting the types of indemnity provisions that may be included in motor carrier transportation contracts entered into or renewed after the effective date of the law. A motor carrier is defined in Title 29-A as a contract carrier, common carrier or private carrier of property or passengers by motor vehicle. A motor carrier transportation contract includes contracts or understandings covering transportation as well as loading and unloading and incidental services such as storage of property. The new law prohibits indemnifications where the motor carrier is required to indemnify the other party (*i.e.* the motor carrier’s customer) from liability arising such party’s own negligence or bad acts.

LD 1073, *Resolve, Encourage Use of Defibrillators in Health Clubs and Gyms* – Resolve 2011, [Chapter 50](#).

This Resolve directs the Departments of Public Safety and Health and Human Services to work with the Maine Center for Disease Control and Prevention, Maine Cardiovascular Health Program and the Maine affiliate of the American Heart Association (as well as any emergency medical providers that agree to assist) to encourage health clubs and gyms to obtain and train staff in the use of automated external defibrillators. Health clubs and gyms will be informed regarding the extension to them of the government discounted price for such defibrillators. A report on progress under the Resolve will be made to the Joint Standing Committee on Health and Human Services by January 1, 2012.

LD 1324, An Act To Create Consistency and Fairness in *Maine's Bottle Bill* – Public Law 2011, [Chapter 429](#). **Varying effective dates, comingling reforms not effective until July 1, 2012.**

This new law makes a number of changes to Maine's bottle bill. Specifically, it:

- Clarifies that major substantive rulemaking regarding the bottle bill will be reviewed by the Environment and Natural Resources Committee and not the Labor, Commerce and Economic Development Committee;
- Allows those who sell limited quantities of wine each calendar year to enjoy the benefits of comingling agreements;
- Provides initiators of deposit with a private right of action, including costs and fees, to sue those who attempt to redeem out-of-state containers in Maine and those who possess more than 48 out-of-state containers;
- Clarifies that the penalty for possession of out-of-state containers in excess of 48 containers may be as high as \$100 per container to make this penalty consistent with the penalty for tendering out-of-state containers for deposit;
- Clarifies that unclaimed deposits are not deposited in the Maine Solid Waste Management Fund; and
- Directs the Department of Agriculture to undertake rulemaking regarding comingling agreements, the size and gauge of plastic bags used by redemption centers and the location of redemption centers based in population requirements.

LD 1536, Resolve, Directing the Commissioner of *Professional and Financial Regulation* To Conduct Meetings To Review the Issue of Compliance with the Laws Governing Guaranteed Price Home Heating Oil, Kerosene and Liquefied Petroleum Gas Contracts – Resolve 2011, [Chapter 79](#).

This resolve directs the Commissioner of Professional and Financial Regulation to convene a working group to determine what content should be part of reports required from home heating oil, kerosene and liquefied petroleum gas dealers to secure their prepaid guaranteed price fuel contracts, and to report to the Legislature by January 15, 2012.

Business Section continues on next page

Motor Vehicle

Contact

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LD 265, Resolve, To Study Licensing Requirements for New and Used *Motor Vehicle Dealers* – Resolve 2011, [Chapter 11](#).

This Resolve directs the Bureau of Motor Vehicles to convene a working group to study the licensing requirements currently imposed on new and used motor vehicle dealers, including Title 29-A, Chapter 9 (with special direction to review section 952, “Licensing Requirements” for dealers) and Department of the Secretary of State, Rules, Chapter 103 (“Rules for Vehicle Dealers”). The Maine Automobile Dealers Association and the Maine Auto Recyclers Association and new and used motor vehicle dealers shall be invited to participate. A report is due to the Joint Standing Committee on Transportation no later than January 15, 2012.

Gambling

Contact

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LD 227, An Act Relating to the Establishment of *Casinos* – [Carry Over](#).

Next Session the Legislature will consider LD 227. As presently drafted the proposed law would change the composition of the Gambling Control Board and enact a new subchapter, permitting the establishment of casinos.

LD 561, An Act to Clarify Certain Provisions in the *Harness Racing Laws* – Public Law 2011, [Chapter 142](#). **This emergency law was effective on May 25, 2011.**

This new law amends 8 MRSA §§275-B and 275-C to clarify that a person otherwise authorized to sell common pari-mutuel pools for simulcast races may do so within the licensee’s slot machine facilities.

LD 677, An Act Regarding the Determination of *Distance for the Purposes of the Gambling Control Board Laws* – Public Law 2011, [Chapter 56](#).

This new law enacts 8 MRSA § 1065, providing that for the purposes of the Gambling Control Board Laws, distance is determined by measuring along the “most commonly” used roadway as the same is determined by the Department of Transportation.

LD 1155, An Act to Allow *Harness Racing Betting* To Be Conducted at Class A Lounges – Public Law 2011, [Chapter 99](#).

This new law amends 8 MRSA §275-D to provide that a person may conduct off-track pari-mutuel wagering at a licensed off-track betting facility, if that person is licensed to operate a Class A lounge as defined in Title 28A (*i.e.*, “a reputable place operated by responsible persons of good reputation, where food and liquor are sold at tables, booths and counters”).

LD 1418, An Act to Allow *Table Games at a Facility Licensed to Operate Slot Machines on January 1, 2011* – Public Law 2011, [Chapter 417](#).

Subject to a county-wide vote in Penobscot County in November of 2011, this new law would allow Hollywood Slots in Bangor to offer table games such as poker and blackjack. If adopted in Penobscot County, this law would also establish licensing fees for individual tables and dictate the distribution of revenues received by the state from table game operations.

LD 1469, An Act To Permit *Video Gaming for Money Conducted by Nonprofit Organizations* – [Carry Over](#).

Next Session the Legislature will consider LD 227. As presently drafted, the proposed law would enact a new chapter in Title 8, permitting nonprofit organizations to obtain licenses to operate a video gaming terminal.

Food and Alcohol

Contact

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LD 343, An Act To Facilitate a Change of Location for *Agency Liquor Stores* – Public Law 2011, [Chapter 135](#).

This new law enacts 28-A MRSA §453-D which provides that the bureau may permit an agency liquor store that has been in its current location for at least one year (or a shorter period if the move is required by retroactive zoning or destruction of the property) to relocate within the same municipality, subject to a \$2,000 relocation fee, municipal approval and a public hearing on the proposed relocation. The proposed location must meet all applicable criteria for licensure of an agency liquor store.

LD 864, An Act Regarding the Minimum Stock Required by *Agency Liquor Stores* – Public Law 2011, [Chapter 140](#).

This new law enacts 28-A MRSA §461, providing that an agency liquor store must maintain at least 100 product codes in municipalities of with a population of 1,000 or more and at least 50 different product codes in smaller municipalities.

LD 905, An Act to Improve Maine's *Liquor Distribution System* – [Carry Over](#).

Next Session the Legislature will consider LD 905, a concept draft bill aimed at adopting certain of the recommendations contained in the report entitled "State of Maine Liquor Business Analysis and Valuation - Final Report," prepared by DeLoitte & Touche for the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations and dated March 11, 2009.

LD 936, An Act to Conform Maine *Menu Labeling Laws* to Federal Standards – [Carry Over](#).

Next Session the Legislature will consider LD 936. As presently draft, the proposed law would repeal most of Maine's menu labeling laws in light of the federal Patient Protection and Affordable Care Act, which establishes a federal standard for nutrition labeling. The LD would preserve Maine's statutory definition of "chain restaurant" and direct the Department of Health and Human Services to draft rules to enforce the federal statute.

Business Section continues on next page

Municipal/State Related

Contact

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LD 778, An Act to Amend the Process of *Federal Aviation Administration* Program Grants – Public Law 2011, [Chapter 351](#).

This new law amends various provisions of the Maine Aeronautics Act, 6 MRSA § 1 *et seq.* dealing with the role of the Department of Transportation (“DOT”) in the development, maintenance, and operation of state or municipal airports. Specifically, the new law provides that the DOT is not responsible for aiding and assisting municipalities and other political subdivisions in the maintenance and operation of their public airports and repeals the current requirement that the DOT aid and assist in the repair and maintenance of, and removal of snow from, municipal, state and county airports. In addition, the new law establishes the Primary Airport Capital Improvement Grant Program (the “Grant Program”) as a discretionary grant program administered by the DOT, with funds available for eligible capital improvement projects at airports having at least 10,000 passenger boardings per year as well as projects eligible under the Federal Aviation Administration’s airport improvement program. Furthermore, the new law clarifies that the DOT is not responsible for oversight or eligibility of airport improvement projects receiving Grant Program funds. Finally, LD 778 provides that federal aid requests made by municipalities or other political subdivisions for airport improvement projects at airports having at least 10,000 passenger boardings per year are not subject to approval by the Commissioner of Transportation.

LD 807, An Act To Repeal the *Bonding Authority* of the *Maine Governmental Facilities Authority* – [Carry Over](#).

This proposed law proposes to repeal the Maine Governmental Facilities Authority’s ability to issue bonds or negotiable instruments. This bill has been carried over to the next legislative session.

LD 812, An Act to Allow Municipalities the Option to Subsidize Publicly Owned *Bus Stops* Through Advertising – Public Law 2011, [Chapter 114](#).

This new law enacts 23 MRSA § 1908-A, which permits municipalities to erect and maintain advertising signs at publicly-owned bus stops for the purpose of generating revenue used for transportation purposes, including but not limited to the maintenance of publicly-owned bus stops.

LD 869, An Act to Clarify the State’s Authority under Public Health Laws for *Municipal Inspections of Establishments* – Public Law 2011, [Chapter 295](#).

This new law clarifies through an amendment to 22 MRSA § 2499 that only municipalities that have been delegated authority by DHHS to inspect and license eating establishments may exercise that authority.

LD 1127, An Act to Amend the Authority of the Washington County Development Authority – Public Law 2011, [Chapter 136](#). This emergency law was effective on May 25, 2011.

Enacted as emergency legislation immediately effective on May 25, 2011, this new law grants to the Washington County Development Authority the same authority given to the Midcoast Regional Redevelopment Authority to borrow money and issue bonds.

LD 1177, An Act to Make Minor Changes to Municipal Health Inspection Activities – Public Law 2011, [Chapter 193](#).

This new law amends the laws regarding the licensing and inspection of campgrounds, recreational camps, youth camps and eating establishments contained in Title 22, Chapter 562 of the Maine Revised Statutes. Among other things, the new law makes several definitional amendments to include recreational vehicle parks, certain areas where rental cabins and cottages are permitted, and take-out restaurants as establishments subject to licensure by the Department of Health and Human Services (“DHHS”). This new law also adds public pools, public spas, and sporting camps, each as separately defined within the new law, as categories of establishments subject to licensure when such facilities are operated for compensation, directly or indirectly. This new law excludes from licensure parking lots or other areas where camping is not authorized, as well as establishments where bottled soft drinks or ice cream is sold for consumption in original containers only, and where no tables chairs, glasses, or other utensils are provided in connection with such sale.

LD 1342, An Act to Amend the Washington County Development Authority – Public Law 2011, [Chapter 148](#).

This new law amends 5 MRSA § 13083-C(1) to authorize the Washington County Development Authority (the “Authority”) to enter into a memorandum of understanding with a municipality to perform the function of a local development corporation, and amends 5 MRSA § 13120-B(9) to include the Authority within the definition of “local development corporation” authorized to seek financial assistance from the Maine Rural Development Authority (“MRDA”) pursuant to a memorandum of understanding with a municipality and otherwise carry out the authorized activities of a local development corporation in connection with programs administered by the MRDA.

Business Section continues on next page

Business-related Bond Issues: All Carried Over

This section describes bills proposing to authorize **business-related bond issues**, all of which were carried over to the next legislative session.

Contact

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LD 63, An Act To Authorize a General Fund Bond Issue to Repair the *Mountain Division Rail Line* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$21M to provide funds to repair the Mountain Division rail line between Portland and Fryeburg.

LD 225, An Act To Authorize a General Fund Bond Issue in the Amount of \$50,000,000 to Fund *Research and Development* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$50M to provide funds for Maine-based public and private institutions, awarded through a competitive process, to support research and development related to environmental and renewable energy technology, biomedical technology and biotechnology, aquaculture and marine technology, composite materials technology, advanced technologies for forestry and agriculture, information technology, and precision manufacturing technology.

LD 263, An Act To Authorize a General Fund Bond Issue to Fund Construction of a *Marine Technology Incubator Facility* at the Gulf of Maine Research Institute – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$10M to provide funds for the construction of a marine technology incubator facility at the Gulf of Maine Research Institute.

LD 409, An Act To Authorize a General Fund Bond Issue for *Research and Development for Technology Advancement* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$100M to provide funds for research, development, and commercialization funds for targeted technology sectors, awarded through a competitive process administered by the Department of Economic and Community Development, Maine Technology Institute, and will leverage at least \$100M in other funds.

LD 417, An Act To Authorize a General Fund Bond Issue to Improve *Rail Lines in Western Maine* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$20M to provide funds to repair the rail lines in western Maine.

LD 420, An Act To Authorize a General Fund Bond Issue to Fund Building a *Container Port on Sears Island* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$200M to provide funds to build a privately-operated container port on Sears Island.

LD 852, An Act To Authorize a General Fund Bond Issue to Support *Maine’s Natural Resource-based Economy* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$36M to provide funds to continue Maine’s land conservation efforts, and would leverage a minimum of \$36M in required matching funds. Specifically, the bond issue would provide funds for natural resource industry-based infrastructure improvements, land acquisition related to conservation efforts, working waterfront preservation, enhancements related to the natural resource industry, and state park maintenance and improvements. The bill gives preference to land conservation projects that protect and enhance deer wintering habitat and directs the Department of Inland Fisheries and Wildlife and the Department of Conservation to pursue projects that protect and conserve deer wintering habitat.

LD 1240, An Act To Authorize a General Fund Bond Issue *To Reduce the Cost of Government through Energy Efficiency* – [Carry Over](#).

This bill proposes a \$90 million bond issue, with proceeds going to the Efficiency Maine Trust. This funding would be divided to provide \$45 million for energy efficiency improvements to buildings owned or leased by the state and \$45 million for energy efficiency improvements to buildings owned or leased by county and local governmental entities.

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Employment

That the 125th Legislature was not going to process the usual spate of anti-business Labor and Employment bills was apparent when the Legislature eliminated the Joint Standing Committee on Labor and merged it with the Business, Research and Economic Development Committee to create the Labor, Commerce, Research and Economic Development Committee.

The Committee consisted by and large of Democrats who had previously served on the Labor Committee and Republicans who had previously served on the Business, Research and Economic Development Committee. With the Republicans in the majority, this meant there was little or no institutional memory about some of the usual Labor and Employment chestnuts and little incentive to study those issues. Thus, bills to increase the minimum wage were defeated in Committee and LD 893, which would have required employers to notify employees about personal leave policy, was likewise defeated.

In the area of Workers' Compensation, perhaps the biggest development was the Governor's appointment of Paul Sighinolfi, Esq. to serve as Executive Director. Mr. Sighinolfi is a workers' compensation lawyer who brings years of experience and an apolitical and no-nonsense perspective to his job. Although the Legislature did enact several meaningful workers' compensation bills, most of the action in that area including developments regarding the ever-controversial provisions controlling incapacity benefits at 39-A M.R.S.A. Section 213 will be considered by the Workers' Compensation Board over the summer. One bill that would have revamped a number of controversial provisions in a way that would favor business development, LD 1571, was carried over to next session.

There was also a good deal of attention paid to the question of misclassification and the status of workers as employees or independent contractors. Several bills were passed, but one that would have standardized the definition of independent contractors was carried over. That bill, LD 1314, will return next session. Meanwhile, the Department of Labor is charged with convening a study group to study this issue and to make recommendations to the Legislature.

If you have a question about any of the bills summarized in the Employment section of this report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Employment Law Section continues on next page

Workers' Compensation

Contact

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LD 731, An Act to Terminate the Authorization of the *Maine Self-Insurance Guarantee Association* to Serve as a Statistical Advisory Organization for Self-insurers – Public Law 2011, [Chapter 83](#).

This new law repeals the authorization of the Maine Self-Insurance Guarantee Association to serve as the statistical advisory organization for self-insurers.

LD 768, An Act to Amend the Laws Relating to Group Trusts Established by *Group Self-insurers of Workers' Compensation Benefits* – Public Law 2011, [Chapter 98](#).

This new law provides that if a member of a group self-insurer for workers' compensation benefits terminates membership in the group, that member is entitled to share in the release of surplus funds from the group's trust if funding by that member to the 95% confidence level occurs within one year. It clarifies that, while a trust is responsible for payment of a departing member's liabilities, the trust is not required to set aside additional trust assets for that exposure. Also, it requires that, if the Superintendent of Insurance finds there is a material risk to the trust's ability to satisfy its liabilities and obligations due to the failure of one or more departing members to fund their proportionate share of exposure or to the failure of the group trust to enforce the funding requirement, the Superintendent shall consider any unfunded amount when approving a determination of a group trust's surplus or deficit.

LD 1056, An Act to Increase the Availability of *Independent Medical Examiners* under the *Workers' Compensation Act of 1992* – Public Law 2011, [Chapter 215](#). **This emergency law was effective on June 3, 2011.**

In *Lydon v. Sprinkle Water Systems*, 2004 ME 16, the Maine Supreme Judicial Court construed §312 of the Workers' Compensation Act to disqualify as a §312 Independent Medical Examiner any medical provider who had performed an examination on any employee under §207 of the Act during the previous year. As a result, the Board's panel of qualified medical examiners was significantly diminished and the decision negatively impacted the Board's ability to recruit additional medical examiners, up to the 50 contemplated by the Act.

This new law removes that restriction. Going forward, the only doctors who are disqualified from the §312 system are those who have examined the employee at the request of the insurer or employer under §207 during the previous year or an examiner who is "closely affiliated" with the insurance company, or an examiner who has performed more than 12 second opinion examinations under §207 during the previous year. In addition, the new law enables the Board to appoint any examiner provided "no other physician is reasonably available." The new law was signed into law as an emergency and so it took effect on June 3, 2011.

LD 1099, An Act Concerning *Independent Contractors in the Trucking and Messenger Courier Industries* – Public Law 2011, [Chapter 176](#).

For years the Workers' Compensation Act has contained a general definition of employment status (as distinguished from independent contractor status). Effective January 1, 2010 the Legislature added a more specific and narrow definition of independent contractor status for construction employers. This new law adds a third definition that applies only to persons engaged in freight transportation or courier and messenger services. It allows that such persons will be considered independent contractors either by meeting all of the eight factors listed in the law or by providing proof of coverage under a workers' compensation policy. One of the factors is that there be a statement signed by both the person providing the services and the hiring entity that the person meets all of the requirements for being an independent contractor and is considered an independent contractor. The new definition, however, is to be repealed on October 1, 2013.

LD 1244, An Act Regarding *Payment of Medical Fees in the Workers' Compensation System* – Public Law 2011, [Chapter 338](#).

Since 1993 the Maine Workers' Compensation Act has required that the Workers' Compensation Board adopt a fee schedule, but to date the Board has failed to do so with respect to hospitals. The Board has been sued over this failure and disputes have arisen over the Legislative mandate that healthcare facilities and providers be paid their "usual and customary charge" or the maximum established under the fee schedule and that such providers may not charge more than is charged to private third-party payors. This new law is intended to resolve these disputes. It directs the Board to adopt a fee schedule based on Medicare payment methodologies. It removes all references to "usual and customary charges." It requires an annual update of the medical billing and coding systems underlying the fee schedule and requires a more comprehensive review of the schedule every three years beginning in 2014. It directs the Board to obtain annually from the Maine Health Data Organization the private third-party average payment rates across all private payors and all providers in the Maine Health Data Organization database for the most common medical services rendered under the Act during the previous year. It requires the Board to complete its medical fee rulemaking by December 31, 2011 and to report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development not later than February 15, 2012. It allows that, if the Board fails to adopt a fee schedule, reimbursement will be set at 105% of the private third-party payor average payment rate.

Employment Law Section continues on next page

LD 1268, An Act to Allow the Repayment of Improperly Awarded Workers' Compensation Benefits – Public Law 2011, [Chapter 361](#).

Under current law an employer or insurer may recover from an employee overpayments made pending an appeal to the Law Court, but according to a Court decision it may not recover such payments made after a Decree issues and while there is pending a motion for findings of fact and conclusions of law. This meant that much if not most of an award of back benefits would be paid out during this time and could not be recovered in the event of reversal because, strictly speaking, the case was not on appeal to the Law Court. This new law closes this hole by allowing an insurer or employer to recover overpayments made to an employee pending a motion for findings of fact and conclusions of law.

LD 1301, An Act to Amend the Laws Governing Security Deposits of Workers' Compensation Self-insurers – Public Law 2011, [Chapter 180](#).

This new law specifies that an employer that self-insures for workers' compensation may deposit cash, satisfying securities, irrevocable standby letters of credit issued by qualified financial institutions or a surety bond with the Superintendent of Insurance, rather than the Workers' Compensation Board as in current law, in partial fulfillment of the requirements for self-insurers. It also allows the Superintendent to maintain possession of irrevocable standby letters of credit issued by qualified financial institutions and surety bonds.

LD 1515, An Act to Clarify the Workers' Compensation Insurance Notification Process for Public Construction Projects – Public Law 2011, [Chapter 403](#).

This new law clarifies and simplifies the reporting requirement for general contractors for public construction projects by moving the requirement from the various state agencies to a central reporting site at the Workers' Compensation Board. It moves the requirement from the Maine Revised Statutes, Title 26 to Title 39-A and complements the current reporting requirement to the Workers' Compensation Board. These reporting requirements were initially enacted by the 124th Legislature as part of reforms that targeted the use of uninsured subcontractors in the construction industry.

Employment Law Section continues on next page

General

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LD 35, An Act Relating to *Concealed Firearms Locked in Vehicles* – Public Law 2011, [Chapter 393](#).

Many employers have policies that prohibit the possession of firearms on company premises, including parking lots. This new law restricts an employer's right to maintain such a policy. It holds that an employer may not prohibit an employee who has a valid permit to carry a concealed firearm from keeping a firearm in his vehicle as long as the vehicle is locked and the firearm is not visible. It adds that an employer may not be held liable in any civil action for damages, injury or death resulting from the employee's use of the firearm, but it also makes clear that the law does not affect Workers' Compensation, meaning an employee who uses the firearm kept in his vehicle could create workers' compensation liability if he uses the firearm against another employee.

LD 207, An Act to Amend the Laws Regarding *Tips Used in Payment of Service Employees* – Public Law 2011, [Chapter 118](#).

This new law affects the tip credit for employers. It defines "tip" and clarifies that a sum presented by a customer in recognition of service performed is considered a tip for the service employee even if it is automatically included in the customer's bill or charged to a credit card. It clarifies that a service charge included in a bill in a banquet or private club setting is not a tip and that the customer must be notified of this, that all employees in the banquet or private club setting must be compensated in accordance with the State's minimum wage and overtime laws, and that the service charge can be used to meet these obligations. Finally, it clarifies that tip pooling is a valid practice as described by federal laws and regulations.

LD 269, An Act to Implement a Maine *Unemployment Insurance Work-sharing Program* – Public Law 2011, [Chapter 91](#).

This new law creates a work-sharing program that provides an alternative to layoffs during a temporary slowdown in business. Under a work-sharing plan, an employer elects to avoid layoffs by reducing the number of regularly scheduled hours of work for all workers in a specific unit or department or the business as a whole. Unemployment insurance benefits for the reduced hours of work are then payable as a proportion of the benefit amount for a full week of unemployment.

A work-sharing plan is voluntary on the part of the employer. A plan must be approved by the Commissioner of Labor or the commissioner's designee and, if the employees are unionized, by their collective bargaining agent.

LD 315, An Act Relating to the Status of a *Private Investigator as an Independent Contractor* – Public Law 2011, [Chapter 66](#).

As part of endless efforts to codify who is an employee and who is an independent contractor for purposes of one law or another, this new law makes clear that a private investigator is excluded from the definition of “employment” in the Employment Security Law if there is a written contract between the parties, the investigator operates independently, compensation is negotiated, and the party requesting services furnishes neither equipment nor the place of employment to the investigator.

LD 516, An Act to Amend Maine Law Regarding *Employment Practices for Certain Minors* – Public Law 2011, [Chapter 174](#).

There was a good deal of discussion this session about making it easier for employers to hire minors during the school year and making it easier for minors to obtain work experience and pay. A bill that would have permitted a minor to be paid a training wage of less than the minimum wage, L.D. 1346, failed. However, this new law passed. It extends the hours a student may work when school is in session from 20 to 24 per week and it extends the hours of work permitted per day from 4 to 6. It removes language pertaining to authorized school closures and hours of employment. It also changes the hour to which a student may work on a day preceding a scheduled school day from 10 p.m. to 10:15 p.m.

LD 613, An Act to Clarify the Definition of “*Employment*” in the *Employment Security Law* – Public Law 2011, [Chapter 70](#).

In another effort to except a single occupation from the definition of employment for purposes of unemployment compensation, this new law puts licensed tattoo artists on similar footing as hairdressers. A tattoo artist is excluded from the definition of employment if he or she operates under a rental booth agreement or other rental agreement provided he or she is not subject to coverage under the federal unemployment tax act.

LD 654, An Act to Amend the *Occupational Disease Reporting Laws* – Public Law 2011, [Chapter 337](#).

This new law makes clear that the duty to report occupational diseases to the Department of Health and Human Resources extends to health care providers, health care facilities and medical laboratories, rather than just physicians and hospitals. It also revises the confidentiality provision to allow the identification of the site of employment where an occupational disease has occurred to the Department of Labor, Bureau of Labor Standards.

Employment Law Section continues on next page

LD 1057, An Act to Increase the Transparency of the *Unemployment Compensation Fund* – Public Law 2011, [Chapter 212](#).

In another effort to shed light on the unemployment tax assessment process, this new law directs the Commissioner of Labor to annually publish data on the content and usage of the Unemployment Compensation Fund. The Commissioner must separately disclose, for not less than 5 years after enactment, legislative changes affecting the content or usage of the Unemployment Compensation Fund and the impact of those changes. It also requires the Department of Labor, Bureau of Labor Standards to project the impact of proposed benefit changes on employer's experience classifications.

LD 1117, Resolve, to Require the Commissioner of Labor to Convene a Stakeholder Group to Determine the Most Appropriate Amount of Time an Employer May Employ an Employee without Being Subject to *Unemployment Compensation Requirements* – Resolve, [Chapter 85](#). The original bill that resulted in this Resolve changed from 5 weeks to 8 weeks the amount of time an employer may employ an employee without being charged for unemployment benefits. In the end, the bill became a Resolve that directs the Commissioner of Labor to establish a stakeholder group to determine the most appropriate amount of time an employer may employ an employee without the employer being subject to unemployment compensation requirements.

LD 1207, An Act To Amend the Labor Laws Relating to Certain *Agricultural Employees* – [Carry Over](#).

As introduced, this bill would repeal requirements that employees of egg processing facilities with over 300,000 laying birds be paid over time and repeal laws regarding labor relations between agricultural workers and agricultural employers operating egg processing facilities with over 500,000 laying birds and 100 employees. As amended in Committee, this bill would only affect labor relations and would not address over time. This bill has been carried over to the next legislative session.

LD 1241, An Act to Exempt Employers Subject to Federally Mandated Drug and Alcohol Programs from Maine *Substance Abuse Program Laws* – Public Law 2011, [Chapter 196](#). This new law streamlines the drug testing laws to which some employers are subject. It provides that if an employer is subject to a federally mandated substance abuse testing program (e.g. DOT testing) with regard to any part of its work force, the employer is not subject to Maine drug testing laws with regard to the rest of its work force and may extend its federal program to its entire work force including independent contractors. The new law requires that the Department of Labor, Bureau of Labor Standards, submit a report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012 with recommendations on simplifying and streamlining the labor laws dealing with substance abuse testing and the committee is authorized to introduce a bill related to the report to the Second Regular Session of the 125th Legislature.

LD 1420, An Act to Modify the Laws Regarding Status as an *Independent Contractor* – Public Law 2011, [Chapter 292](#). **This emergency law was effective June 10, 2011.**

In recent years there has been a spate of bills attempting to both loosen the ABC test that defines employment for purposes of unemployment and to create a single standard applicable to unemployment and workers' compensation. This new law takes a step in that direction. It changes the ABC test by defining an independent contractor as one who is free from control or direction in performing services and either (1) the service is outside the usual course of business or is performed outside of the place of business, or (2) the individual is engaged in an independently established trade or occupation. Under the existing ABC test, the "or" above is an "and" and so it will be less difficult under this new law to prove independent contractor status. However, the new standard will be repealed effective December 31, 2012. In the meantime, the Commissioner of Labor is to convene a stakeholder group that is to develop an employment test to be used in the administration of, without limitation, unemployment compensation law, workers' compensation law and programs of the Department of Labor, Bureau of Labor Standards to determine whether a person is an employee or independent contractor. The Commissioner or his designee shall submit a report with recommendations to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012 and the Committee is authorized to introduce a bill related to the report to the Second Regular Session of the 125th Legislature. The new law was enacted as an emergency measure so it became effective on June 10, 2011 when the Governor signed it.

Employment Law Section continues on next page

Healthcare

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LD 472, *An Act to Enhance the Security of Hospital Patients, Visitors and Employees* – Public Law 2011, [Chapter 254](#).

This new law followed efforts by the Maine State Nurses Union to negotiate language in various hospital labor contracts setting forth plans governing employee safety and security. The new law, as enacted, requires all licensed hospitals, on an annual basis, to adopt a safety and security plan that protects patients, visitors and employees from aggressive and violent behavior. It prohibits interference with a person making a report as provided in the plan. It applies to critical access hospitals beginning July 1, 2012 and to all other hospitals beginning January 1, 2012.

LD 1212, *An Act to Improve Hospital Reporting of MRSA and Clostridium difficile Data* – Public Law 2011, [Chapter 316](#).

This new law replaces the existing methicillin-resistant Staphylococcus aureus, or MRSA, screening protocol adopted in 2009, which focuses on the presence of MRSA in patients as they are admitted to a hospital, with a protocol that focuses on MRSA infections that occur in the patient population while at hospitals. It adds clostridium difficile to the data collection and public reporting system. Finally, it provides the Maine Center for Disease Control and Prevention time to validate the data reported by hospitals and requires the public reporting of that data following validation.

Energy and Telecommunications Section begins on the next page

Energy and Telecommunications

If you have a question about any of the bills summarized in the Energy section of this report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below or a member of our [Government Relations](#) practice group.

Electric

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LD 13, Regarding Legislative Review of Portions of *Chapter 316: Long-Term Contracting and Resource Adequacy*, a Major Substantive Rule of the Public Utilities Commission - Resolve 2011, [Chapter 10](#). This emergency Resolve was effective on March 31, 2011.

As part of its statutory obligation to review and approve major substantive rules of the Public Utilities Commission, the Legislature approved this new rule but in doing so directed the PUC to amend it in 2 respects: if the PUC orders a T&D utility to enter into long-term capacity resources, such contracts may include renewable energy credits and that payments will be made only after contracted amounts of capacity, related energy or renewable energy credits have been provided; and the timing of payments under such contracts will be made in accordance with existing laws and exceptions in Title 35-A.

LD 529, An Act to Enhance Transparency in the Regulation of Large, *Investor-Owned Transmission and Distribution Utilities* – Public Law 2011, [Chapter 71](#).

This new law amends the utility accounting provisions in Title 35-A to require that financial reports of a large, investor-owned transmission and distribution utility include information on the utility's rate of regulated return on common equity, including for each of the previous three years.

LD 729, An Act To Ensure Ratepayer Benefits from Long-term *Contracts for Renewable Energy Credits* – Public Law 2011, [Chapter 273](#).

Under this new law, the statute giving the PUC authority to direct transmission and distribution utilities to enter into certain long-term capacity and energy contracts is amended to clarify that the price paid by the T&D utility for associated renewable energy credits must be lower than the price received for those renewable energy credits at the time they are sold by the T&D utility. The law also repeals the condition in 35-A § 3210-C(10) that the Public Utilities Commission cannot direct an investor-owned transmission and distribution utility to enter into a long-term contract until after major substantive rules are finally adopted

LD 756, Resolve, To Examine *Cyber Security and Privacy Issues Relating to Smart Meters* - Resolve 2011, [Chapter 82](#).

This resolve directs the PUC to study current federal and state cyber security and privacy requirements with regard to smart meters and the electric grid, to identify regulatory gaps, to monitor the Department of Energy’s cybersecurity initiative, and to report to the Legislature by January 15, 2012.

LD 761, An Act To Provide *Rebates for Renewable Energy Technologies* – Public Law 2011, [Chapter 314](#). **This emergency law was effective on June 13, 2011.**

This new law allows for rebates for renewable energy technologies to be eligible for funding from the Renewable Resource Fund rather than reinstating an assessment on electricity for the purpose of providing rebates for certain solar and wind technology (as proposed in the original bill).

LD 795, An Act To Expand *Net Energy Billing* – Public Law 2011, [Chapter 262](#).

This new law delegates rulemaking authority over net energy billing to the Public Utilities Commission, but also specifically directs the Commission in doing so to “develop term lengths for contracts for net energy billing and interconnection agreements for a length of time not to exceed 10 years that will not prevent owners or operators of eligible facilities with an installed capacity of at least 100 kilowatts but no greater than 660 kilowatts from securing reasonable financing, as determined by the commission, for the construction, renovation or upgrade of the eligible facility.” “Eligible facility” is not defined in the law but the original draft bill (which may provide guidance to the PUC) included definitions of “eligible customer” that required ownership of an “eligible generator,” which is one that meets the PUC’s size, fuel use, and efficiency requirements.

LD 802, An Act To Amend the Requirements for *Electric Transmission Lines* – Public Law 2011, [Chapter 281](#).

This new law replaces 35-A M.R.S. § 3132(6) regarding the necessary PUC findings for issuance of a certificate of public convenience and necessity for construction of a transmission line to correct a conflict that was created by 2 previously enacted laws by incorporating the changes made by both chaptered laws. Significantly, the law as enacted did not include a provision in the initial bill that would have prevented the PUC from issuing a certificate absent a finding that the line would reduce costs to consumers or was necessary to meet federal reliability requirements.

LD 915, An Act To Clarify the *Exemption of Lineworkers* from Maine Electrician Licensing Laws – Public Law 2011, [Chapter 290](#). **This emergency law was effective on June 10, 2011.**

This new law clarifies that lineworkers of public utilities, including contractors working on their behalf, are exempt from the electrician licensing laws.

LD 1275, Resolve, To Promote Greater Transparency and Accountability through *Regional Transmission Organization Reform* – Resolve 2011, [Chapter 68](#).

This resolve directs the PUC, the Public Advocate, and the Governor’s Office of Energy Independence and Security to advocate in appropriate forums for transparency, openness and accountability in RTOs (i.e., ISO New England), to confer with sister agencies in other New England states, to develop a plan to promote such transparency, to develop model governance requirements for and propose them to the RTO, and for the PUC to report the results of these efforts in its annual reports through 2013. The resolve notes that the Energy, Utilities, and Technology committee may submit legislation to the next session of the Legislature based on the report submitted by the PUC.

LD 1366, Resolve, To Clarify the Expectation for the 2012 Assessment of Progress on Meeting *Wind Energy Development Goals*, Resolve 2011, [Chapter 93](#).

This resolve provides specific directives to the Governor’s Office of Energy Independence and Security in preparing its 2011 assessment of Maine’s progress toward meeting its wind energy development goals, due February 12, 2012. These include a detailed evaluation of the current permitting process that will consider whether statewide permitting standards for noise, decommissioning plans, and visual and setback requirements should be developed, the efficacy of current requirements, and whether areas within the State’s unorganized territories should be removed from the expedited permitting areas established pursuant to 35-A M.R.S. Chapter 34-A. The Office is directed to scrutinize the greenhouse gas emissions estimates used to evaluate emissions reductions attributable to wind energy development, and consider whether, in light of relevant factors, these wind goals should be amended. To the extent resources are available, the resolve also directs the Office to consider the cumulative impact on the natural resources of the state, the economic effects on the tourism industry, the costs associated with transmission upgrades for wind energy, and the implications of wind intermittency on regional markets and the electricity grid. Finally, the resolve also directs the Department of Health and Human Services and the Maine Center for Disease Control and Prevention to conduct an analysis of the research on the health effect of wind turbines by February 1, 2012, to the extent such resources are available.

LD 1510, An Act Regarding *Information Provided to Consumers by Competitive Electricity Providers* – Public Law 2011, [Chapter 284](#).

This new law eliminates the requirement that competitive electricity providers provide annual updates to consumers of information disclosures required by the Public Utilities Commission, and replaces the Commission’s authority to require competitive electricity providers to publish and disseminate certain information with the authority to require that they make such information available.

LD 1570, An Act To Reduce Energy Prices for Maine Consumers – Public Law 2011, [Chapter 413](#).

This new law amends the long-term contract statutes under which the PUC may authorize transmission and distribution utilities to purchase long-term energy and capacity in certain circumstances. The law requires the PUC to conduct a rulemaking to ensure that consumers will benefit from such long-term contracts and requires legislative approval for energy efficiency capacity contracts that result in a fee or an assessment on ratepayers.

Gas

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LD 197, An Act To Improve Response to Gas Safety Emergencies – Public Law 2011, [Chapter 27](#).

This new law requires the State Fire Marshal to investigate explosions involving natural gas or liquefied petroleum and amends Title 35-A to require the PUC to contact the State Fire Marshal to confirm its investigation or that an investigation is not warranted. Persons injured by a gas explosion event or who suffered property damage must have an opportunity to address the commission in a proceeding concerning the gas explosion event. The Commission is authorized, on specific findings, to award administrative penalties that include compensation for injury or losses not otherwise fully compensated.

LD 908, An Act Regarding Gas Utilities under the Safety Jurisdiction of the Public Utilities Commission – Public Law 2011, [Chapter 197](#). **This emergency law was effective on June 2, 2011.**

This new law provides specific parameters for the PUC's regulation of liquefied petroleum gas systems, authorizing regulation only to the extent the system is subject to the jurisdiction of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration and also clarifying that motel and hotel rooms and rented cottages do not fall within the definition of "public place" for purposes of regulation. The law prevents the PUC from enforcing its current liquefied petroleum gas safety rules and directs it to work with operators of liquefied petroleum gas systems of what rules, beyond the federal minimum standards, are necessary, to provisionally adopt rules, and to submit the rules to the Legislature on January 15, 2012.

LD 1091, An Act To Expand the Availability of Natural Gas to the Citizens of Maine – Public Law 2011, [Chapter 261](#).

This new law amends the definition of "energy distribution system project" eligible for tax-exempt financing through the Finance Authority of Maine (FAME) to include systems that distribute or transmit natural gas, and makes other statutory changes necessary to permit such financing. The law also establishes detailed conditions that must be met prior to issuance of a certificate of approval by FAME for any such project.

LD 1545, An Act To Authorize the Public Utilities Commission To Exercise Jurisdiction over Private Natural Gas Pipelines To Ensure Safe Operation – Public Law 2011, [Chapter 110](#). This emergency law was effective on May 19, 2011.

This new law facilitates the construction of private pipelines by placing safety (and construction approval) authority with the PUC as opposed to the DOT. The law is designed to expedite the approval process for lines such as that planned to serve the Woodland Pulp mill in Washington County.

Telecommunications

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LD 554, An Act to Amend the Telecommunications Education Access Fund – Public Law 2011, [Chapter 54](#).

Under 35-A M.R.S. § 7104-B, the Public Utilities Commission manages a fund available to qualified libraries and educational institutions for telecommunications and internet services. This new law removes one of the guidelines that 25% of the program budget had to be used for “innovative and technologically advanced” projects.

LD 1466, Resolve, To Direct the Public Utilities Commission To Develop a Plan to Reform Telecommunications Regulation – Resolve 2011, [Chapter 69](#). This emergency Resolve was effective on June 9, 2011.

This resolve directs the Public Utilities Commission to develop a plan to reform telecommunications regulations to be considered by the Legislature in the second regular session. The resolve also makes a number of specific modifications to orders and requirements of the Commission affecting the rates and practices of incumbent local exchange carriers, including minimum price requirements, outage reporting, service quality penalties, customer premises wiring and merger approvals. Finally, the Resolve directs the Commission not to regulate voice over internet protocol (VOIP) as a telephone service.

Energy and Telecommunications Section continues on next page

Utilities

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LD 84, *An Act To Improve the Sewer District Rate Collection Procedures* – Public Law 2011, [Chapter 26](#). This emergency law was effective on April 11, 2011.

This new law creates a lien on property to secure the rates of “qualified sewer districts” (those that have held a referendum in their district for lien authorization under this law), and provides steps for enforcement of the lien after three months and within one year of the commitment of the rates to the sewer district treasurer for collection.

LD 331, *Resolve, Regarding Legislative Review of Portions of Chapter 895: Underground Facility Damage Prevention Requirements, a Major Substantive Rule of the Public Utilities Commission* – Resolve 2011, [Chapter 31](#). This emergency Resolve was effective on May 9, 2011.

The Legislature approved this PUC amendment to its Dig Safe rule on conditions that certain changes be made, most notably to extend the renewal period and number of permissible Dig Safe ticket renewals (from 30 to 60 days and from 1 to 2) and to revise certain definitions and requirements for consistency with those in Title 23 related to highway excavations. These conditions also comport with some of the statutory changes made by PL Ch. 72, discussed below.

LD 407, *An Act to Clarify the Dig Safe Standards* – Public Law 2011, [Chapter 72](#). This emergency law was effective May 9, 2011.

In addition to extending the Dig Safe excavation notice of renewal from 30 to 60 days, this new law requires an excavator to commence an emergency excavation within 12 hours of providing notice to Dig Safe and also provides that road grading activity can occur during a 12-month period after notice has been provided to underground facility owners, as long as the activity occurs in a manner that does not disturb those underground facilities. A “Dig Safe Work Group” is created to examine ways to clarify and simplify the Dig Safe laws and rules to facilitate compliance and to eliminate regulatory uncertainty. Finally, the new law provides for payment schedules to be developed for persons fined for Dig Safe violations, if the fine would impose an undue hardship.

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LD 424, An Act To Revise the Laws Governing the *Licensure of Public Water System Operators* – Public Law 2011, [Chapter 45](#).

This new law adds distribution facilities to the list of public water systems that the Board of Licensure of Water System Operators shall classify and requires a person who fails to renew their license within 2 years following the expiration of the license to take an examination as a condition of licensure. The fee limit for the various water system operator fees is increased from \$60 to \$95 (with a separate fee for the examination and licensure of public water system operators).

LD 429, An Act to Clarify the Role of the *Public Advocate* – Public Law 2011, [Chapter 79](#).

This new law repeals the statute creating the Railroad Crossing Information Council (on which the Public Advocate serves). The new law also specifically authorizes the Public Advocate to represent consumer interests before ISO-NE and FERC (although the existing statute already permitted the Public Advocate to intervene in or initiate proceedings before “federal agencies” and to serve as a voting member for consumer interests at ISO-NE) and in appropriate legislative proceedings. The Public Advocate must exercise “independent judgment” to ensure that its positions in any forum are consistent with its statutory priorities and stabilizing and lowering retail rates. The enactment of this new law raises a possible internal inconsistency in 35-A M.R.S.A. § 1702, as the current subsection 5 states that the Public Advocate may not intervene in any proceeding in which the PUC staff is taking a position similar to that of the Public Advocate.

LD 463, An Act Concerning *Policy Objectives of the Public Utilities Commission* – Public Law 2011, [Chapter 109](#).

This new law amends Title 35-A to add the following specific language to the section governing the PUC’s authority with regard to electric industry restructuring: “When intervening or participating in proceedings under this paragraph [i.e., before FERC, NRC or other federal agencies], the Commission shall promote system reliability, the reduction of the cost of electricity to ratepayers in the State and long-term sustainable resource planning.”

LD 553, An Act to Improve Maine’s *Energy Security*, Public Law 2011, [Chapter 400](#).

This law requires the Governor’s Office of Energy Independence and Security to develop a plan to reduce oil use in all sectors of the Maine economy by at least 30% from 2007 levels by 2030, and 50% by 2050. The plan, which must be submitted to the Legislature by December 1, 2012, is to focus on near-term policies and infrastructure changes, and prioritize energy efficiency improvements and use of alternative energy sources for heating and transportation. The law also requires the Office to include an additional section in the biennial comprehensive state energy plan that will describe the State’s progress in meeting these goals.

LD 710, An Act To Amend the Laws Governing the *Duties of the Director of the Governor's Office of Energy Independence and Security* – Public Law 2011, [Chapter 55](#).

One of the statutory duties of the Director of the Office of Energy Independence and Security, is to prepare a comprehensive state energy plan every other year. Under this new law, the plan must specifically address “opportunities to lower the total cost of energy to consumers.”

LD 732, Resolve Directing the Public Utilities Commission To Adopt *Rules Affecting Utility Deposits* – Resolve 2011, [Chapter 32](#).

As originally drafted, the bill would have prohibited utilities from requiring an escrow or other start-up payment from a business customer if that customer has “an acceptable credit history” with a previous public utility in this State. Enacted as a Resolve, the Legislature directs the PUC to adopt rules to consider a business owner’s prior credit history with another transmission and distribution utility when determining whether to require a deposit for service to a new business.

LD 772, An Act To Modify the Auditing Requirements for Certain *Small Water Utilities* – Public Law 2011, [Chapter 77](#).

This new law exempts certain small water utilities (with gross annual revenues of less than \$250,000) from the PUC’s annual account auditing requirements.

LD 793, An Act To Protect Ratepayers While *Enhancing Energy Independence and Security* – Public Law 2011, [Chapter 277](#).

This new law requires the State to withdraw from the regional greenhouse gas initiative if other states that participate in the regional greenhouse gas initiative and in the same wholesale electricity market administered and overseen by the regional transmission organization as Maine have a total carbon dioxide emissions budget for the calendar year 2009 that totals less than 35,000,000 tons.

LD 909, An Act To Provide Additional Flexibility for the *Funding of Infrastructure Improvements by Consumer-owned Water Utilities* – Public Law 2011, [Chapter 106](#).

This new law extensively modifies the stream-lined ratemaking process available to consumer-owned water utilities in Title 35-A by repealing a number of requirements, including the requirements that a consumer-owned water utility must: have negative net income in the 2 consecutive fiscal years immediately preceding the year in which the rate increase is proposed; file with the PUC balance sheets or financial statements for the 3 most recent years; and inform customers of the 10-person complaint process. The law also increases the amount of rate increases that can use the streamlined ratemaking process and directs the PUC to convene a work group to examine ways of ensuring that the capital requirements of these water utilities are provided for in an adequate and appropriate manner (to report by January 15, 2012).

LD 999, An Act Regarding the *Public Utilities Commission's Ability To Use Certain Funds* – Public Law 2011, [Chapter 283](#).

This new law eliminated the PUC's authority to use up to \$100,000 per year from the conservation program fund to provide information to consumers regarding renewable energy, but permits the commission to use a total of \$100,000 of such funds for that purpose during the calendar years 2011 and 2012.

LD 1191, Resolve, *To Encourage Business Development by Creating Limits on Time Certain Utilities May Hold a Business Customer's Deposit* – Resolve 2011, [Chapter 38](#).

This resolve directs the PUC shall to amend its consumer protection rules to require that deposits paid by small businesses with impeccable bill-paying histories be returned to those businesses after a reasonable time period (e.g. 5 years). The PUC may consider establishing different rules for different-sized utilities to account for differences in the risk to other ratepayers associated with defaults by businesses.

LD 1516, An Act To Protect Consumer Information at the *Efficiency Maine Trust* – Public Law 2011, [Chapter 343](#).

The Efficiency Maine Trust is subject to the state's freedom of access laws; this new law excepts certain records pertaining to utility customer usage and other confidential information from the application of the access laws.

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Environmental / Renewables

With the change in control of both the House and the Senate and the Governor's focus on regulatory reform, there was as much anticipation for this legislative session as any session in recent years. After holding a series of "red tape audit" meetings across the State, the Governor released a list of regulatory reform proposals that attracted considerable attention. Many of the items on the list were included in various pieces of legislation, most notably LD 1. While a number of the reform proposals would have significantly reshaped the regulatory landscape, the laws ultimately passed during the session are modest by comparison. Notable changes include new limits on the ability of municipalities to retroactively revoke land use permits through ordinance amendments, enactment of a 6-year statute of limitations for environmental violations, and clarification concerning the scope of DEP's authority to regulate vernal pools. A hot topic that will continue to receive attention both over the summer and during the second regular session is the future of the Land Use Regulation Commission and the scope of the Commission's authority.

If you have a question about any of the bills summarized below, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Environmental / Renewables Section continues on next page

Administrative Process

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LD 1, *An Act to Ensure Regulatory Fairness and Reform* – Public Law 2011, [Chapter 304](#). **This emergency law is effective June 13, 2011, except that those sections of this Act that amend the Maine Revised Statutes, Title 38, section 341-C are effective on September 16, 2011.**

The original bill was intended to address the bulk of issues raised during a series of public meetings that were identified by the LePage Administration as areas needing attention to reform the regulatory process. Many of the issues originally to be considered as part of LD 1 were sent to various committees of jurisdiction to deal with separately. Other contentious issues were either dropped or put off to be addressed in the future. The resulting new law was significantly watered down and was passed unanimously in committee as emergency legislation such that it became effective on June 13, 2011, when it was signed by the Governor. Chapter 304 enacts an environmental audit program at DEP based on the federal EPA audit policy; authorizes an agency (within existing budgeted resources) to conduct an analysis of the benefits and costs of a proposed rule; re-names an existing State program as the Business Ombudsman Program and requires it to help resolve problems between businesses and state agencies; creates the Bureau of Special Advocate within the Secretary of State's office to advocate for small business interests in the State regulatory process; requires agencies to cite up to 3 primary sources of information relied upon by the agency in developing a proposed rule; clarifies that agency rules are not judicially enforceable unless adopted in a manner consistent with the Administrative Procedure Act; reduces the membership of the Board of Environmental Protection from 10 members to 7 and limits the Board's rulemaking authority; and authorizes a legislative committee of jurisdiction to direct an agency in writing to review one or more rules under the jurisdiction of the committee.

LD 86, *An Act to Provide Certainty to Businesses and Development* – Public Law 2011, [Chapter 63](#).

This new law prohibits municipalities from retroactively nullifying local land use permits by the subsequent amendment or repeal of a local ordinance once 45 days have passed since final approval. This substantially restricts the prior law, backed by numerous court decisions, which allowed municipalities to block projects even after a permit was issued by subsequently amending an ordinance and making that amendment apply retroactively to the project in question right up until the developer had begun substantial construction on the project. This is a similar bill to one that passed the Legislature during the prior Administration, but that was pocket vetoed by Governor Baldacci.

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LD 862, Resolve, Directing the Department of Environmental Protection to Amend its Rules Governing the *Length of Time Certain Permits are Valid* – Resolve 2011, [Chapter 46](#).

This Resolve directs DEP to amend its rules to extend the period for which permits issued under the Natural Resources Protection Act, Site Location of Development Act, and Stormwater Management Law are valid. Currently, activities issued an individual permitted under these statutes must be commenced with 2 years of the date of the permit and completed with 5 years. The Resolve requires DEP to change these time limits to 4 years and 7 years, respectively.

LD 1546, An Act to Amend the Laws Governing the *Deference Afforded to Agency Decisions* – [Carry Over](#).

This bill requires a court to conduct a de novo review of an agency's interpretation of statutes in the course of making or administering rules under the Administrative Procedure Act. The bill also clarifies that the court is required to defer to the agency on questions of fact unless the court finds that the agency's findings of fact are unsupported by substantial evidence. This bill has been carried over to the next legislative session.

LD 1575, An Act to *Conform the Authority of the Department of Environmental Protection to Federal Law* – Public Law 2011, [Chapter 357](#). **This emergency law was effective on June 15, 2011.**

This new law, as introduced, was intended to address conflict of interest issues raised by the nomination and appointment of Darryl Brown as Commissioner of the Department of Environmental Protection. Because the law then in effect prohibited someone from becoming Commissioner if the person received a certain amount of income directly or indirectly from Clean Water Act licensees, many people who might otherwise be eligible to serve as commissioner were eliminated from consideration. Because the State law was more restrictive than federal law, which simply allowed delegation of decision-making whenever the Clean Water Act provision was triggered, Chapter 357 was enacted to conform Maine's statutory language with federal law. Similar changes were made with regard to members of the Board of Environmental Protection. Given the uncertainty in the ability of the Board of Environmental Protection to carry out its duties, Chapter 357 was enacted as emergency legislation and became effective when signed by the Governor on June 15, 2011.

Environmental / Renewables Section continues on next page

Agriculture

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LD 228, An Act to Revise Notification Requirements for *Pesticide Application* – Public Law 2011, [Chapter 332](#).

This new law directs the Board of Pesticides Control to amend its rules to allow an owner, lessees, or other legal occupant of a sensitive area to make a request for notification and receive notification of aerial applications of pesticides with 1,000 feet of the sensitive area. The term sensitive area currently is defined in Chapter 10 of the Board's rules.

LD 975, An Act to Require Certification of *Private Applicators of General Use Pesticides* – Public Law 2011, [Chapter 169](#).

This new law requires a person who uses or supervises the use of general use pesticides on produce sold for human consumption to be certified. The Board of Pesticides Control is tasked with establishing certification requirements by January 1, 2012.

Air Quality and Boilers

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LD 375, Resolve, Directing the Commissioner of Professional and Financial Regulation to Convene a Working Group to Review the Laws and Rules *Governing Boilers* – Resolve 2011, [Chapter 45](#). **This emergency Resolve was effective on May 23, 2011.**

As originally introduced, LD 375 would have exempted boilers in schools and municipal buildings from annual inspection requirements. The Legislature replaced the bill with an emergency resolve directing the Commissioner of Professional and Financial Regulation to convene a working group with the Board of Boilers and Pressure Vessels, as well as other interested parties, to review the current lack of uniformity in the laws and rules governing boilers and to consider options for expanding inspections of boilers located in public places. The amendment requires the Commissioner to submit a report no later than January 15, 2012.

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LD 1398, An Act to Amend the Laws Administered by the Department of Environmental Protection – Public Law 2011, [Chapter 206](#). This emergency law was effective on June 3, 2011. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

This new law, introduced as “DEP’s Omnibus Bill,” contains a number of corrections and clarifications to Maine’s environmental statutes. The more significant provisions relating to non-air issues are summarized elsewhere in this document. As originally introduced, the new law included a provision that would align Maine’s ambient air quality standards with federal ambient air standards. This provision of the new law was amended to further provide that the DEP must implement ambient standards as required by the Clean Air Act and EPA implementing regulations.

[Building Codes](#)

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LD 1253, An Act To Amend the Laws Governing the Enforcement of Statewide Uniform Building Codes – Public Law 2011, [Chapter 365](#). This emergency law was effective on June 16, 2011.

This emergency legislation makes several changes to the Maine Uniform Building and Energy Code, the most significant of which is that certificates of occupancy demonstrating compliance with the code will be required only for buildings located in municipalities with more than 2,000 residents.

LD 1416, An Act To Provide Options to Municipalities Concerning the Maine Uniform Building and Energy Code – Public Law 2011, [Chapter 408](#).

This legislation revises the threshold for municipalities that must adopt the Maine Uniform Building and Energy Code (MUBEC) from municipalities with more than 2,000 residents to municipalities with more than 4,000 residents. If a municipality with up to 4,000 residents chooses to adopt a building code or an energy code it must adopt the statewide version adopted by the Technical Building Codes and Standards Board, or it may adopt the entire MUBEC. A municipality with up to 4,000 residents may choose to have no code.

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Chemical Control and Products

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LD 412, Resolve, Regarding Legislative Review of Portion of Chapter 882: Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children’s Products, a Major Substantive Rule of the Department of Environmental Protection – Resolve 2011, [Chapter 25](#).

This emergency Resolve was effective on April 25, 2011.

Portions of the Department’s 2010 BPA rule, including a ban on use of BPA in certain products, were adopted as a major substantive rule, which calls for legislative action. Despite initial controversy, the Legislature approved the 2010 BPA major substantive rule provisions as emergency legislation in this Resolve.

LD 781, An Act to Establish Flushability Standards for Consumer Products Advertised as Flushable – [Carry Over](#).

This legislation would prohibit the identification of a product as flushable or safe for sewer and septic systems on the product’s packaging or labeling unless the product meets specific standards.

LD 930, An Act to Clarify Maine’s Phaseout of “Deca” Mixture of Polybrominated Diphenyl Ethers – Public Law 2011, [Chapter 160](#). **This emergency law was enacted on May 26, 2011.**

The prior law limited the ability to substitute the “deca” mixture of polybrominated diphenyl ethers as a flame retardant. This new law removes one of the limitations so as to allow other brominated or chlorinated flame retardants to be substitutes under certain circumstances.

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LD 1129, *An Act To Provide the Department of Environmental Protection with Regulatory Flexibility Regarding the **Listing of Priority Chemicals*** – Public Law 2011, [Chapter 319](#).

This new law makes extensive revisions to Maine law regulating the use of chemicals in consumer products. Specifically, this new law:

- Prohibits regulation of a chemical unless that chemical is designated for regulation as part of the Department of Environmental Protection’s annual regulatory agenda;
- Creates a three tiered process for elevating chemicals to a status where their use in consumer products can be banned. Under this process, only 70 chemicals may be considered for the most restrictive regulatory action, as opposed to the current list of 1750 chemicals that may be considered for the most restrictive regulatory action;
- Provides a process by which chemicals can be removed from various lists created under this Act;
- Requires that the Maine CDC be involved in the decision to elevate a chemical to the status of being considered for a ban;
- Recognizes that chemicals may be safely contained in products below “de minimis levels;”
- Provides for a periodic review of those chemicals considered for the most regulatory scrutiny to ensure that the correct chemicals are being evaluated;
- Redefines “children’s product” to limit the scope of consumer products covered under this Act;
- Redefines “consumer product” to limit the scope of consumer products covered under this Act;
- Adds definitions to the Act regarding “credible scientific evidence” and “practical quantification limit;”
- Modifies the process of elevating a chemical to the status of receiving the most regulatory scrutiny;
- Modifies the assumptions the Department of Environmental Protection can make regarding the availability of safer alternative chemicals;
- Authorizes the Department of Environmental Protection to consider the degree to which a chemical is regulated by other authorities when deciding whether to regulate a chemical;
- Provides exemptions from reporting requirements and sales bans for products with inaccessible components and products where a chemical is not intentionally added;
- Extends response deadlines for manufacturers when information is requested by the Department of Environmental Protection; and
- Clarifies that any outstanding reporting requirements under this Act are delayed until the effective date of this legislation.

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LD 1398, An Act to Amend the Laws Administered by the Department of Environmental Protection – Public Law 2011, [Chapter 206](#). This emergency law was effective on June 3, 2011. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

DEP's Omnibus Bill:

- Extends the effective date on the prohibition of the sale of mercury-added button cell batteries by six months.

Environmental Enforcement & Liability

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LD 281, An Act to Create a 6-year Statute of Limitations for Environmental Violations – Public Law 2011, [Chapter 350](#).

This new law repeals the current statutory provision that prohibits DEP from initiating an enforcement action for an air or wastewater violation more than 10 years after the violation was self-reported by the licensee. A new statutory provision is enacted in its place, establishing a 6-year statute of limitations for the violation of environmental laws and rules (*i.e.*, the laws contained in Title 38 and the accompanying rules). The six year period within which enforcement must be commenced by DEP or AG begins after the last of the following to occur: (1) discovery by DEP or the Attorney General of the act or omission giving rise to the violation, (2) identification by DEP or the AG of the person responsible for the violation, or (3) the last day of an ongoing violation.

LD 1398, An Act to Amend the Laws Administered by the Department of Environmental Protection – Public Law 2011, [Chapter 206](#). This emergency law was effective on June 3, 2011. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

DEP's Omnibus Bill establishes that fiduciaries and lenders are not liable if they cause or exacerbate a release while following a VRAP plan approved by DEP.

Environmental / Renewables Section continues on next page

Environmental Permitting and Land Use

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Informed Growth Act

LD 322, An Act to Amend the *Informed Growth Act* – Public Law 2011, [Chapter 89](#).

This new law provides that the Informed Growth Act (IGA), which requires that so-called “big box” stores undergo a separate, expensive, and ill-defined local review process, is no longer mandatory. Rather, under the new law, municipalities will be able to decide whether to “opt-in” to the IGA or, if they do nothing, decline to apply it at all. In addition, for those towns that do opt-in, the amendments: (1) eliminate the most problematic portion of the approval standard in the IGA, (2) cut the State Planning Office out of the process, (3) eliminate the automatic, up-front payment of \$40,000 for the study, and (4) delete the exemption provisions that only allowed towns to opt-out of the IGA if they adopted standards that were at least as strict as the IGA.

Municipal Land Use Regulation/Shoreland Zoning

LD 219, An Act to Amend the Laws *Governing Shoreland Zoning* – [Defeated](#).

This bill would have substantially reduced the scope of the mandatory shoreland zoning laws by changing the size of the shoreland zone from 250 feet to 75 feet from the normal high-water line or upland edge of any body of water, river, or wetland. The bill was voted down 11-2 in the Environment and Natural Resources Committee.

LD 262, An Act to Expand Eligibility of Certain *Municipal Landfills* to Participate in the State’s Remediation and Closure Program – Public Law 2011, [Chapter 435](#).

This Act allows municipal landfills permitted before September 1, 1989 and ordered to be shut down by December 31, 2015 because they do not meet environmental protection standards to receive funding from the State’s remediation and closure program.

LD 552, An Act to Exclude Cupolas from the Measurement of *Height for Structures in the Shoreland Zone* – Public Law 2011, [Chapter 231](#).

This new law adds a definition for the term “height of a structure” to be used in municipal shoreland zoning ordinances. This is a term that currently creates confusion in some ordinances. The new law also authorizes municipalities to exempt certain cupolas from the calculation of the height of a structure.

LD 1534, Resolve, To Reform the *Land Use and Planning Authority* in the Unorganized Territory – Resolve 2011, [Chapter 113](#).

A number of different bills this session proposed changes to the Land Use Regulation Commission. One such bill, LD 1534, originally was structured as act and proposed transferring LURC’s regulatory authority to county commissioners. Subsequently, LD 1534 has been amended to serve as the vehicle for further consideration of LURC’s role and authority. This Resolve, which has been approved by the House and is expected to be approved by the Senate on June 28, 2011, provides for the creation of a commission to consider reforming the governance of land use planning in the unorganized territory. This is the role presently filled by LURC. The Committee will meet over the summer, hold a minimum of two “public listening” sessions, convene with the Committee on Agriculture, Conservation and Forestry by October 28, 2011 to provide the Committee with a progress report, and provide recommendations and a final report the Committee by January 4, 2012. The Committee will then submit legislation for consideration during the Second Regular Session of the 125th Legislature.

LD 1108, An Act to Modify the Requirement To *Replace Trees Cut Down* in Violation of Local Laws – Public Law 2011, [Chapter 228](#).

This new law provides greater flexibility to a court in enforcing shoreland zoning tree clearing violations. Rather than requiring in every case that violators must replace cut trees with trees of substantially similar size and species, the amendment requires the replacement of each tree cut with a tree or trees of varying size and species such that the visual impact from the cutting will be remediated, the tree canopy that was cut will be restored within a reasonable time period, and a total basal area equal to at least 50% of the basal area cut will be replanted. The amendment also requires submission of a 5-year management plan, which must address how the replacement trees will be maintained to enable them to grow to a healthy, mature height.

Natural Resources Protection Act

LD 49, An Act to Allow *Storage of Lobster Traps* on Docks – Public Law 2011, [Chapter 12](#).

This new law exempts the storage of lobster traps and related trap lines, buoys, and bait bags on docks from permitting under the Natural Resources Protection Act.

LD 311, An Act to Improve Harbor Safety by Clarifying Requirements for *Maintenance Dredging Permits* – Public Law 2011, [Chapter 65](#).

This new law amends current law by removing the requirement that an individual permit or consistency determination issued by DEP is required for maintenance dredging if the amount of material to be dredged exceeds 50,000 cubic yards. The new law also clarifies that a permit by rule for maintenance dredging may be allowed only by renewing an individual permit for maintenance dredging. Under the amendment, an individual permit for maintenance dredging may be renewed with a permit by rule only if the area to be dredged is located in an area that was dredged within the last 10 years and the amount of material to be dredged does not exceed the amount approved by the individual permit.

LD 387, An Act to Amend the Natural Resources Protection Act Regarding Coastal Sand Dune Systems – Public Law 2011, [Chapter 64](#).

This new law creates an exemption for minor expansions to buildings in coastal sand dune systems if the footprint is contained within an existing impervious area, is no further seaward than the existing building, and the height of the expansion meets applicable restrictions. “Impervious area” is defined to mean a building, parking lot, roadway, or similar constructed area. “Impervious area” does not mean a deck or patio. This exemption will allow new construction in frontal dune systems that previously were not allowed.

LD 411, Resolve, Regarding Legislative Review of Portions of Chapter 305: Permit by Rule Standards, Section 16, Activities in Coastal Dunes, a Major Substantive Rule of the Department of Environmental Protection – Resolve 2011, [Chapter 27](#). This emergency Resolve was effective on April 26, 2011.

This Resolve amends a provisionally adopted major substantive rule to allow cobble-trapping fences to be in place year-round within coastal sand dune systems. The cobble-trapping fence must be placed landward of an existing seawall in a developed area. The Resolve defines cobble-trapping fence as an open fence designed to prevent cobbles from passing through it.

LD 1031, An Act to Amend the Laws Governing Significant Wildlife Habitat – Public Law 2011, [Chapter 362](#).

This new law combines aspects of multiple bills proposed this session, most of which were aimed primarily at vernal pools. It also attracted a good deal of attention when Governor LePage said that he was considering a veto of any vernal pool bill that did not reduce the buffer size on significant vernal pool habitats. In the end, the new law did not reduce the buffer size, but did make incremental improvements, including:

- Clarifying how DEP will regulate vernal pools that are bisected by a property boundary, by providing that, if a landowner does not have permission to enter his neighbor’s property, only that portion of the vernal pool depression located on his property may be considered in determining whether the vernal pool is significant. This reverses a DEP policy that assumed pools in these situations were significant until proven otherwise;
- Explicitly providing that artificial vernal pools are exempt from regulation, unless created as part of a compensation project; and
- Clarifying the provisions allowing DEP and IF&W to exempt certain vernal pools from regulation based on their dry-out dates (known as the “hydroperiod”).

LD 1387, An Act to Restore Exemptions in the Natural Resources Protection Act – Public Law 2011, [Chapter 205](#).

This new law clarifies that the application of the maintenance and repair exemption in the Natural Resources Protection Act applies to all types of crossings, and not just to road crossings. It also eliminates a requirement that maintenance or repair of any structure, other than a crossing, cannot block passage for fish or other aquatic organisms.

Site Location of Development Law (Site Law) and Stormwater

LD 159, An Act to Foster Economic Development by Improving Administration of the Laws Governing *Site Location of Development and Storm Water Management* – Public Law 2011, [Chapter 359](#).

This new law requires DEP to apply the same standards under the Site Law to significant vernal pool habitat as under rules adopted under the Natural Resources Protection Act (NRPA). As a result, DEP will be prohibited from applying its recent policy of a 500-foot buffer around vernal pools subject to regulation under the Site Law. Unfortunately, the Legislature amended the original bill, which would have extended this requirement to all protected natural resources under NRPA, including wading bird and waterfowl habitat. The new law also provides that rulemaking under the Site Law and Stormwater Management Law shall be considered “major substantive.” This means that any rule will require review and approval by both the Board of Environmental Protection and the Legislature before it can take effect. The only exception to this is for “minor clerical corrections and technical clarifications” to the Stormwater Management Law.

Oil, Oil Storage, and Underground/Aboveground Storage Tanks

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LD 253, Resolve, To Establish a *Single Construction Permit* for Certain Aboveground Oil Storage Tanks in Gravel Pits and Quarries – Resolve 2011, [Chapter 26](#).

This Resolve directs DEP, in consultation with the Office of the State Fire Marshal, to establish a permit-by-rule process for aboveground oil storage tanks used for diesel fuel in gravel pits and quarries.

LD 721, An Act to Extend the *Use of Underground Storage Tanks* – Public Law 2011, [Chapter 276](#).

Critics of DEP’s underground tank rules have complained that the rules unnecessarily required tanks to be removed simply because a manufacturer’s warranty had expired. This new law allows tanks to remain in the ground if the tanks are properly tested.

LD 1250, An Act to Improve *Oil Storage Facility Operator Training* – Public Law 2011, [Chapter 317](#).

To allow more flexibility in meeting oil storage facility training requirements, this new law allows training by third parties approved by DEP, and training every three years.

LD 1398, An Act to Amend the Laws Administered by the Department of Environmental Protection – Public Law 2011, [Chapter 206](#). This emergency law was effective on June 3, 2011. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

DEP's Omnibus Bill:

- Explicitly excludes liquid natural gas from the definition of “oil” for purposes of addressing oil discharges and oil underground tanks.
- Amends the oil spill remediation laws to make clear that the costs of cleaning up discharges from aboveground home heating oil tanks are eligible for coverage by the Ground Water Oil Clean-up Fund whether or not the tank is constructed of fiberglass, catholically protected steel or other noncorrosive material.
- Establishes that the State and municipalities that acquire oil storage facilities through tax delinquency or abandonment have limited liability for cleanup expenses under certain circumstances.
- Provides that certain existing facilities, including above and underground oil storage, auto body repair and maintenance and dry cleaning, located in a wellhead protection zone may be replaced under certain circumstances.

Waste and Recycling

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LD 1, An Act to Ensure Regulatory Fairness and Reform – Public Law 2011, [Chapter 304](#). This emergency law was effective June 13, 2011, except that those sections of this Act that amend the Maine Revised Statutes, Title 38, section 341-C take effect on September 16, 2011.

Part F of this new law requires DEP to engage in two rulemaking initiatives. As routine technical rules, the DEP is to adopt a rule to conform to federal rules which define isopropyl alcohol and wood ash as a non-waste if used, reused or recycled as effective substitutes for commercial chemical products. In the second, broader rule, DEP is to adopt provisions to more broadly implement changes to conform to federal rules to promote beneficial use, reuse, recycling, and reclamation; these rules are major substantive rules.

Environmental / Renewables Section continues on next page

LD 180, Resolve, To Change Rules Concerning *Landfill Gas and Odor Management* from Routine Technical Rules to Major substantive Rules – Resolve 2011, [Chapter 43](#). **This emergency Resolve was effective on May 23, 2011.**

This Resolve amends Resolve 2007, c. 170, establishing that rules concerning landfill gas and odor management that DEP previously was required to adopt (but has not yet adopted) will be major substantive rules. DEP is required to submit a report on the status of the rulemaking to the Environment and Natural Resources Committee by March 15, 2012.

LD 693, An Act Concerning *Solid Waste Facility Citizen Advisory Committees* – [Carry Over](#).

This bill would amend existing law and an existing Resolve relating to the creation and function of citizen advisory committees made up of individuals from municipalities containing, or adjacent to a municipality containing, a landfill. Most notably, the bill would provide the Juniper Ridge Landfill advisory committee with authorization to appeal DEP licensing decisions that could impair the ability of the committee to carry out its responsibilities.

LD 769, An Act to Review the Functions of the *State Planning Office* – [Carry Over](#).

This legislation, which is in concept form only, proposes to restructure, but not eliminate, the State Planning Office. The concept draft provides no specifics about the type of restructuring contemplated. Currently, SPO is tasked, among other things, with solid waste management planning.

LD 879, An Act to Ensure Adequate *Landfill Capacity* in the State for Solid Waste – [Carry Over](#).

This legislation, intended to facilitate expansion of the Crossroads Landfill in Norridgewock, would allow the expansion of a commercial solid waste disposal facility onto adjacent property owned by the landfill under limited circumstances. The Environment and Natural Resources Committee expressed an interest in evaluating this piece of legislation in the broader context of the State's overall solid waste management policy and requested that the bill be carried over.

LD 981, An Act to Increase Recycling Jobs in Maine and Lower Costs for Maine Businesses Concerning *Recycled Electronics* – Public Law 2011, [Chapter 250](#). **This emergency law was effective on June 8, 2011.**

This new law has two unrelated provisions. The law authorizes Electronic Demanufacturing Facilities to break cathode ray tubes (e.g., monitors and TVs) under specific controlled conditions, and requires rulemaking to implement these provisions. The new law also promotes recycling and management of electronic wastes through several specific changes, including focusing on "covered entities," which include not only households, but also small and mid-size non-profit corporations and schools, and by streamlining allowable activities at consolidation facilities. The new law specifies tiered registration fees for manufacturers of computer monitors and desktop printers and identifies information that must be reported annually.

LD 1278, An Act to Stabilize *Solid Waste Management Funding* – [Carry Over](#).

Presently, the Maine Solid Waste Management Fund is segregated into two subsidiary accounts. This bill would create a third account. The funds from this new account could be used only for acquiring additional landfill disposal capacity with legislative approval. The bill also would generate new revenue for the fund through new fees for the disposal of certain wastes, most notably construction and demolition debris, at commercial solid waste disposal facilities.

LD 1412, An Act to Promote the *Proper Disposal of Used Medical Sharps* – [Carry Over](#).

This act would require all manufactures of medical sharps (*e.g.*, needles) to participate in a stewardship program responsible for the collection, handling, transportation, treatment, and disposal of unwanted medical sharps. This act also would eliminate the requirement that medical sharps be shredded as part of the treatment and disposal process.

LD 1434, An Act to Streamline the *Waste Motor Oil Disposal Site Remediation Program* –

Public Law 2011, [Chapter 211](#). This emergency law was effective on June 3, 2011. Those sections of this Act that amend the Maine Revised Statutes, Title 10, section 1020, subsection 1 and repeal and replace Title 10, section 1020, subsection 6-A take effect July 1, 2011. Those sections of this Act that amend Title 10, section 1020-A, subsection 2 and Title 38, section 568-B, subsection 2, paragraph E and repeal Title 10, section 963-A, subsection 47-B, paragraph C and sections 1023-L and 1023-M take effect December 31, 2012.

This new law amends the Waste Motor Oil Disposal Site Remediation Program at 10 M.R.S. § 1020-A. This program was established in 2007 and was intended to fund \$30,000,000 in clean-up costs associated with the former Portland-Bangor Waste Oil sites in Casco, Ellsworth, Plymouth, and Presque Isle. The source of the funding is a premium on the sale of certain lubricating oils in Maine. Due to a substantial funding shortfall and other concerns with the program, the 124th Maine Legislature Resolved that DEP convene a stakeholder group to review the program, issue a report of its findings and suggest legislation. This new law implements the recommendations of the stakeholder group. Major features of this new law include a premium rebate for oil distributed in Maine but retailed out-of-state, full and stable funding for bonds already issued and for costs to be reimbursed, and a full liability release for over 300 businesses, municipalities, schools, state agencies and individuals. All of this was accomplished through cost reductions, use of installment payments instead of costly bonding, and enhanced program compliance.

Environmental / Renewables Section continues on next page

LD 1458, An Act to Transfer Recycling Technical Assistance and Solid Waste Policy Responsibilities from the State Planning Office to the Department of Environmental Protection – [Carry Over](#).

This bill would transfer much of the State Planning Office’s responsibility for providing solid waste management oversight to DEP. Among other things, the bill also would require DEP to develop a solid waste management and recycling plan, as SPO currently is required to do; however, this plan would play a more prominent role in evaluating recycling and source reduction under 38 M.R.S. § 1310-N(5-A) and in the public benefit determination process required for a new or expanded solid waste disposal facility. The bill also would authorize DEP, upon finding the additional disposal capacity is projected to be needed for certain wastes, to recommend the construction and operation of a new State-owned landfill.

LD 1567, Resolve, To Authorize the State to Purchase a *Landfill in the Town of East Millinocket* – Resolve 2011, [Chapter 90](#). **This emergency Resolve was effective on June 17, 2011.**

This Resolve authorizes the State, through the State Planning Office, to assume ownership of the Dolby Landfill in East Millinocket. Historically, the landfill received waste, such as paper-related sludge, from the pulp and paper mills in Millinocket and East Millinocket. The intent of the Resolve, by providing for State-ownership of the landfill, is to help facilitate sale and future operation of the mills currently owned by Katahdin Paper LLC. The Resolve became effective June 17, 2011.

Water

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LD 333, Resolve, Directing the Department of Environmental Protection to Evaluate and Amend its Rules Regarding *Snow Dumps* – Resolve 2011, [Chapter 44](#).

As the title suggests, this Resolve directs DEP to evaluate provisions in its rules that require certain municipalities to obtain a waste discharge license for off-site storage or disposal of snow. More notable, however, is that the Resolve also directs DEP to evaluate the State’s obligations under the federal Clean Water Act and the State’s interest in retaining its delegated authority under the CWA, for example, to issue Maine Pollution Discharge Elimination System (MEPDES) permits.

Environmental / Renewables Section continues on next page

LD 515, *An Act to Review State Water Quality Standards* – Public Law 2011, [Chapter 194](#).

This new law amends the risk level for inorganic arsenic from the current 1 in 1 million risk level to 1 in 10,000. The change will benefit dozens of direct and indirect dischargers throughout the State who currently cannot meet the ambient water quality criteria for inorganic arsenic due to the presence of naturally occurring arsenic in groundwater and other materials (e.g., shellfish, wood, seaweed). The Legislature specified that DEP implement the 1 in 10,000 risk level through routine technical rule making, which will now be conducted by DEP. The new law also clarifies that metals be expressed as mass-based limits unless there is an applicable effluent limitation guideline to the contrary. The new law further provides DEP with additional discretion to reduce mercury testing and to utilize the set-aside allocation for future growth when developing certain permit limits.

LD 1398, *An Act to Amend the Laws Administered by the Department of Environmental Protection* – Public Law 2011, [Chapter 206](#). This emergency law was effective on June 3, 2011. That section of this Act that amends the Maine Revised Statutes, Title 38, section 343-D, as amended by Public Law 2009, chapter 579, Pt. B, sections 6 and 7 and affected by section 13, takes effect July 1, 2012.

DEP's Omnibus Bill:

- Clarifies the water quality classification of the lower Kennebec River in Phippsburg. This addresses a question raised during DEP's permitting of the Army Corps of Engineers' emergency maintenance dredging project. The dredging of the federal navigation channel is necessary to allow the Navy to sail its ship from Bath Iron Works this summer.
- Adds the category of "degraded" regions or watersheds to the list of regions or watersheds that DEP is required to establish in rule.

[Wildlife and Fisheries Management](#)

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LD 134, *An Act to Protect Native Landlocked Salmon Fisheries from Invasive Fish Species* – Public Law 2011, [Chapter 24](#).

This new law prohibits the construction of fish passage at a dam on the outlet of Sebec Lake in Sebec or on a dam on the Sebec River in Milo that would allow invasive fish species to pass.

LD 271, Resolve, To Direct the Department of Inland Fisheries and Wildlife to Prepare a *Deer Winter Feeding Strategy* – Resolve 2011, [Chapter 20](#).

This Resolve directs DIF&W to prepare a comprehensive deer winter feeding strategy, including but not limited to a public outreach program, and report back to the Joint Standing Committee on Inland Fisheries and Wildlife by January 5, 2012.

LD 1242, An Act to Restore the *Deer Herd* in Certain Wildlife Management Districts in Maine – [Carry Over](#).

This legislation directs the Commissioner of DIF&W to establish a deer management advisory committee to inform the Commissioner how to “aggressively” manage the deer resource to enhance the deer population in the State. The legislation also would create the Deer Management Fund. Money from the Fund could be used, among other things, to protect and increase deer wintering areas and to support efforts to remove the Canadian lynx from the federal list of threatened or endangered species.

LD 1327, Resolve, To Study the Organization of the *Fisheries Management Activities* of the Department of Inland Fisheries and Wildlife and Make Recommendations to Improve Efficiency and Effectiveness – [Carry Over](#).

No Resolve language has yet been prepared. The concept draft summary, as the title suggests, calls for a review of DIF&W followed by recommendations for how to change the department.

Government and Public Affairs Section begins on the next page

Government and Public Affairs

The Legislature regularly refines Maine election laws. Being elected officials, legislators are more interested than most in all the facets of election law. This legislative session slight reforms were made to laws governing the financing of political campaigns and the disclosure of this financing, voting procedures, and recount procedures.

Another area of law that is constantly revisited by the Legislature is the ability of citizens to access public records. The Legislature and the Right-to-Know Advisory Committee continually evaluate the balance between the need to safeguard certain information and the need for disclosure of public records. The various bills regarding this issue made incremental reforms and a consensus appears to have emerged that social security numbers should be confidential information.

There were also a number of proposals considered this session regarding how state Government operates. Legislation that addressed legislative and executive procedures largely focused on the budget process and how tax and spending legislation is considered. These reforms of the budget process are dry matters that can have huge implications on how the State spends money and taxes businesses and individuals.

Finally, this section of the report includes a list of bond proposals that are unrelated to business in the traditional sense. This group of bond proposals combined with the bond proposals summarized in the Business section of this report represent all outstanding bond bills, each of which have been carried over to the next legislative session.

If you have a question about any of the bills summarized in the Government and Public Affairs Section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Campaign Financing and Election Procedures

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LD 120, An Act To End *Taxpayer-funded Campaigns for Gubernatorial Candidates* – [Carry Over](#).

This legislation proposes eliminating Maine Clean Election Act funding for gubernatorial candidates but would retain public financing of state House and Senate candidates. The Committee on Veterans and Legal Affairs has held a public hearing on this bill but did not complete its work on this legislation. Consequently, this bill will be carried over to the next Legislative session.

LD 142, An Act To Improve *Party Status Requirements* – Public Law 2011, [Chapter 227](#).

Introduced by a member of the Green Party, this new law eases the requirements placed upon political parties in order that they qualify to participate in a primary election. Specifically, this new law changes the requirement that the party in question hold at least one municipal caucus in each of Maine’s 16 counties so that now the party may qualify to participate in a primary election by holding at least one municipal caucus in 14 of Maine’s 16 counties.

LD 179, An Act To Prohibit the Issuance of a *2nd Absentee Ballot* under Certain Circumstances – Public Law 2011, [Chapter 40](#).

This new law is a response to a tactic employed in the 2010 gubernatorial race by the Eliot Cutler Campaign. The Campaign asked those who voted before election day by absentee ballot to request a second absentee ballot, if these early voters had changed their minds before election day. While few took the Campaign up on this proposal, this new law clarifies election law to prohibit this practice in the future. Specifically, this new law prohibits the issuance of a duplicate absentee ballot if the original ballot has been marked and returned to the town clerk. This new law also clarifies that a voter’s decision to change their vote does not constitute “good cause” when a clerk determines if a duplicate absentee ballot may be issued.

LD 199, An Act To Strengthen Maine’s Election Laws by Requiring *Photograph Identification for the Purpose of Voting* – [Carry Over](#).

This bill would require that voters provide proof of identity in order to vote. The specific type of photographic identification that would be acceptable would be prescribed by the Secretary of State by rule. This bill has been carried over to the next legislative session.

Government and Public Affairs Section continues on next page

LD 277, An Act to Make *Disputed Ballots* in State Elections Public – Public Law 2011, [Chapter 258](#).

This new law provides that copies of disputed ballots from State House and State Senate recounts be made available for public inspection. Copies of disputed ballots made available for public inspection must be retained by the Secretary of State for two years.

LD 285, An Act To Require That the Secretary of State Certify the *Qualifications of Candidates for Legislative Office* – Public Law 2011, [Chapter 239](#).

Under Maine election law, the Secretary of State provides a consent form to candidates on which candidates promise that they will accept a nomination and declare their residence, party status and that they meet the qualifications of the office that they seek. This new law requires that this form now list the statutory and constitutional requirements of the office sought. This qualification information must also be provided to party committees selecting replacement candidates in the event of a vacancy.

LD 494, Resolution, Proposing an Amendment to the *Constitution of Maine* to Change the Schedule for Redistricting – Constitutional Resolution requiring ratification by the voters. Constitutional Resolution, [Chapter 1](#).

This proposed amendment to the Maine Constitution would reform the timing of redistricting the Maine Legislature, Congressional districts and county commissioner districts. Currently, redistricting takes place every year ending with a 3 (e.g., 1993, 2003, 2013, etc.). This resolution would change that so that redistricting would take place in 2021 and every ten years thereafter. This would bring Maine in line with redistricting timelines in other states and allow redistricting to take place as U.S. Census data becomes available. This resolution would also insert language regarding the process for Congressional and county commissioner district redistricting into the state Constitution. Two-thirds of the Legislature have approved sending this constitutional resolution out to the voters for their approval and this issue will appear on the November 2011 state-wide ballot.

LD 726, Resolve, To Reduce Funding to *Maine Clean Election Act Candidates* – Resolve 2011, [Chapter 89](#).

This Resolve directs the Commission on Governmental Ethics and Election Practices to reduce disbursements to certified candidates in the 2012 election cycle by 5 percent from the amount of disbursements to certified candidates during the 2010 election cycle.

LD 848, Resolve, Directing the Commission on Governmental Ethics and Election Practices To Study Modifying the Maine Clean Election Act – Resolve 2011, [Chapter 103](#).

This Resolve directs the Commission on Governmental Ethics and Elections Practices to study the effect of the recent Supreme Court decision in *McComish v. Bennett* that struck down the matching funds provision of Arizona’s public campaign financing law. Maine’s Clean Elections law contains a similar matching funds provision, which may now be vulnerable to a First Amendment challenge. Ultimately, this Resolve directs the Commission on Governmental Ethics and Elections Practice to report its findings and any recommended changes to the Clean Elections law to the Veterans and Legal Affairs Committee by December 1, 2011.

LD 856, An Act To Change the Campaign Contribution Limits – Public Law 2011, [Chapter 382](#).

This new law increases contribution limits for certain elected officials. Under this new law, individuals, committees, corporations and associations can contribute \$1,500 per election to gubernatorial candidates (the previous limit was \$750) and beginning January 1, 2012, can contribute \$750 per election to candidates for municipal offices (the previous limit was \$350). Contributions to legislative candidates remain capped at \$350. The increase in contribution limits for gubernatorial candidates was controversial and was added to the bill through the adoption of a floor amendment in the Senate.

LD 896, An Act To Adopt the Uniform Military and Overseas Voters Act – [Carry Over](#).

At this point, this bill is simply a concept draft proposing to adopt the National Conference of Commissioners on Uniform State Laws’ Uniform Military and Overseas Voters Act. Actual legislative language has not been adopted by the Veterans and Legal Affairs Committee and this bill will be carried over to the next legislative session.

LD 989, An Act To Improve Transparency in Political Campaigns by Providing Quicker Access to Reports – Public Law 2011, [Chapter 367](#).

This new law requires that political action committees and party committees submit their last quarterly report of contributions and expenditures before a November election by October 5th, as opposed to the current deadline of October 10th. This will provide for earlier disclosure of quarterly reports by five days.

LD 1000, An Act To Require the Secretary of State To Verify Voter Signatures – Resolve 2011, [Chapter 75](#).

As introduced, this bill would have required the Secretary of State to verify signatures on primary petitions, nomination petitions, citizen initiatives and people’s veto referenda. Currently, signature verification is performed by municipal registrars. This bill was converted into a Resolve in Committee. The Resolve directs the Secretary of State to examine the issue of centralized, as opposed to municipal, verification of signatures. The Secretary of State must also submit a report to the Veterans and Legal Affairs Committee regarding his findings by February 1, 2012.

LD 1134, *An Act To Make **Municipal Recounts Consistent with State Recounts*** – Public Law 2011, [Chapter 255](#).

This new law reforms the process under which municipal recounts are performed to make municipal recounts mirror state recounts. Specifically, this new law applies a deposit structure to cover municipal recount costs that is similar to deposit requirements in state elections. Appropriate deviations from the state recount process are included in this new law, such as allowing election officials to take part in municipal recounts. This new law also provides for a preliminary inspection of ballots and the incoming voting list to assist in determining if a recount should be requested.

LD 1376, *An Act to Preserve the Integrity of the **Voter Registration and Election Process*** – Public Law 2011, [Chapter 399](#).

This new law establishes a provisional voting procedure, as required under the federal Help America Vote Act. This new law also limits the issuance of absentee ballots after the third business day before Election Day. Finally, this new law repeals Maine law authorizing same-day voter registration and requires registration at least two business days before Election Day. On the day that this bill was signed into law by Governor LePage, paperwork was filed with the Secretary of State to initiate a people's veto to repeal the portion of this new law that eliminates same-day voter registration. Supporters of the people's veto effort will have 90 days after the legislature adjourns to gather 57,000 valid signatures from registered Maine voters. If they are successful in gathering enough signatures, the same-day voter registration portion of this law will not go into effect until the matter can be decided by the people on the next state-wide ballot.

LD 1478, *An Act To Fully **Enfranchise Voters*** – Public Law 2011, [Chapter 409](#).

This new law modifies deadlines as they relate to filling vacancies in the Maine House. This law allows town party committees that did not hold a biennial caucus to nominate candidates to fill vacancies and provides that party committee will have at least 15 days following a declaration of a vacancy by the Governor to nominate candidates to fill the vacancy.

LD 1533, *An Act To Provide for a Method To Remove an **Elected Municipal Official*** – Public Law 2011, [Chapter 324](#). **This emergency law was effective on June 13, 2011.**

This new law creates a process by which elected municipal officials can be removed from office, provided a process does not already exist in a municipality's ordinances or charter. The law creates a procedure where ten percent of a town's voters must petition for a recall election. Provided enough voters petition for a recall election, a recall must be held. Grounds for removal are limited to an elected municipal official's conviction of a crime, the conduct of which occurred during the official's term in office and the victim of which is the municipality.

LD 1588, An Act To Provide Funding for the *Reapportionment Commission* – Public Law 2011, [Chapter 418](#). This emergency law was effective on July 1, 2011.

This new law shifts \$60,000 to the current fiscal year from a future fiscal year to pay for the legislative costs associated with reapportioning Maine’s congressional districts. Congressional redistricting was scheduled for 2013, pursuant to the Maine Constitution. The results of a recent federal lawsuit have accelerated the schedule of congressional redistricting so that redistricting must take place in the fall of 2011. Consequently, funding is needed this fiscal year to pay for these redistricting efforts.

Freedom of Access/Vital Records

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LD 258, An Act Relating to Access to *Vital Records* – Public Law 2011, [Chapter 58](#).

This new law is in response to a 2009 law that limited access to vital records (i.e., birth, death, marriage and domestic partnership certificates). This new law clarifies the distinction between certified and noncertified copies of vital records. Further, this new law expands upon the list of relatives who must be provided with certified or noncertified copies of vital records. This new law also shortens the time period after which vital records become public records. Current law makes vital records public records 100 years after the documented event. This new law shortens that period to 75 years for birth certificates, 50 years for fetal death, marriage and domestic partnership certificates and 25 years for death certificates. Under this new law, all vital records created prior to 1892 will be open to the public without restriction. Finally, vital records must be made available to credentialed researchers engaged in genealogical research.

LD 1008, An Act To Limit the Use of *Social Security Numbers* by State Agencies – Resolve 2011, [Chapter 56](#).

As introduced, this bill would have prohibited all state agencies from including an individual’s social security number in written correspondence. This bill was converted into a Resolve in Committee that directs the Department of Administrative and Financial Affairs to develop guidance for state agencies regarding limiting the use of social security numbers on correspondence.

LD 1082, An Act Concerning the *Protection of Personal Information in Communications with Elected Officials* – Public Law 2011, [Chapter 264](#).

This new law amends the definition of “public record” under the Freedom of Access Act to exempt certain personal information communicated to elected officials from disclosure. Specifically, exempting from disclosure the following: (1) medical information; (2) credit or financial information; (3) personal history information; (4) information pertaining to disciplinary actions; (5) social security numbers; and (6) any information that would be confidential if in the possession of a public agency. This new law also directs the Right to Know Advisory Committee to examine the benefit of disclosure of elected officials’ e-mails and other records and to provide a report on its findings.

LD 1154, An Act To Implement the Recommendations of the *Right To Know Advisory Committee* – Public Law 2011, [Chapter 320](#).

This new law makes a number of changes to existing law as it affects the public’s ability to gain access to information held by governmental entities. Specific changes include:

- Clarifying that specific modified property and casualty policy form and rate filings are confidential until approved, as opposed to the current confidentiality that applies until filings are effective;
- Allowing communications outside of public proceedings between members of a public body if those communications are not used to defeat the purposes of the freedom of access laws;
- Requiring non-advisory public bodies to keep records of their meetings, if they are required to notice their meetings. Failure to make or maintain a record does not affect the validity of any action taken at a public proceeding; and
- Exempting social security numbers from the definition of “public records” under the freedom of access laws.

LD 1167, An Act to Protect the Privacy of Persons Involved in *Reportable Motor Vehicle Accidents* – Public Law 2011, [Chapter 390](#).

This new law restricts public access to personally identifying accident report data that is found in accident report databases and records maintained by the State Police by specifying that these data are not public records. Personally identifying accident report data includes name, address, social security, birth, driver’s license, registration and insurance information.

LD 1465, *An Act To Amend the Laws Governing Freedom of Access* – [Carry Over](#).

This bill proposes a number of changes to the Freedom of Access Act to enhance accessibility of public records. Specifically, this bill would:

- Clarify public notice requirements regarding meetings of public bodies so that at least 3-days notice is provided;
- Allow requesters of public records to specify the medium in which this data is provided;
- Require that public bodies perform certain actions within specified timeframes;
- Clarify timeframes allowed for documents to be inspected;
- Authorize the Superior Court to issue injunctions to enforce the Freedom of Access Act; and
- Require that each agency designate a public access officer to oversee responses to requests for public records.

This bill has been carried over to the next legislative session.

Legislative/Executive Process

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LD 381, *An Act To Establish a New Method of Determining the State Budget* – [Carry Over](#).

This bill proposes shifting the start of the fiscal biennium for the state budget from the first to the second regular session of the Legislature, beginning fiscal year 2014-15, which begins on July 1, 2014. The bill's sponsor has explained that this shift would allow incoming Governors and incoming legislators one year to become acquainted with the legislative process before they have to prepare a biennial budget. This bill has been carried over to the next legislative session.

LD 543, *An Act To Protect Legislative Intent in Rulemaking* – [Carry Over](#).

This bill is a concept draft proposing to clarify the distinctions between major substantive rules and routine technical rules in order to clarify legislative intent and to ensure that agencies do not interpret a grant of rulemaking authority in an overly broad manner. This concept bill has been carried over to the next legislative session.

LD 766, An Act To Make *Allocations* from Maine Turnpike Authority Funds *for the Maine Turnpike Authority* for the Calendar Year Ending December 31, 2012 – Private and Special Law, [Chapter 16](#).

This private and special law makes allocations from the Maine Turnpike Authority's revenues in order to pay the Authority's operating expenses for calendar year 2012.

LD 972, An Act To Provide Administrative Support to the *Citizen Trade Policy Commission* – Legislation "[held](#)" by the Governor.

This bill proposes providing \$12,000 annually for administrative support for the Citizen Trade Policy Commission beginning July 1, 2012. This is a legislative commission devoted to the study of U.S. trade policy and its affect on Maine. This legislation was "held" by the Governor, meaning this bill must be acted upon once the Legislature returns for three consecutive days, which will likely be in January of 2012. At that point, the Governor can sign or veto this bill. Until acted upon further, this proposal remains a bill and does not have the force of law.

LD 1144, An Act To Repeal *Inactive Boards and Commissions* – Public Law 2011, [Chapter 344](#).

This new law repeals state boards and commissions that have failed to file annual reports or have reported inactivity for 2009 and 2010. Additionally, this new law directs the Secretary of State to suggest boards and commissions to repeal during the next legislative session based upon failure to file an annual report in 2011. Repealed boards and commissions are:

- Aquaculture Advisory Council;
- Commission to Protect the Lives and Health of Members of the Maine National Guard;
- Education Commission of the States;
- Interdepartmental Committee on Transition;
- Maine Council of Poverty and Economic Security;
- Maine Food Policy Council;
- Notary Public Review Board;
- Policy Review Council;
- Publicly Supported Private Secondary School Advisory Council;
- Submerged Lands Advisory Board;
- Travel Information Advisory Council; and
- We Support Our Troops Advisory Board.

LD 1150, An Act To Improve the Administration of the *Legislative Ethics* Laws – [Carry Over](#).

This bill would authorize the Commission on Governmental Ethics and Election Practices to commence an investigation on information it receives other than through a formal complaint and allows the Commission to investigate a possible violation of legislative ethics on its own motion. This bill would also allow Legislators to answer ethics complaints before the Commission could decide whether it will initiate an investigation into a complaint. This bill has been carried over to the next legislative session.

LD 1335, An Act Relating to the Authority of the Legislative Council over the *Fiscal Note Process* – [Carry Over](#).

This bill proposes that legislators be provided with specific information regarding fiscal notes that are placed on bills that affect revenues and state spending. Under this proposal, legislators would be able to question fiscal notes and those who contributed to the creation of fiscal notes. A sponsor of a bill would also be allowed to note their objection to a fiscal note. This proposed reform of this legislative procedure has been carried over to the next legislative session.

LD 1348, An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, *Highway Fund* and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013 – Public Law 2011, [Chapter 392](#). This emergency law was effective June 21, 2011.

This new law is the biennial Highway Fund budget, which is separate from the State’s larger General Fund budget. In addition to funding transportation efforts in general, this new law repeals annual indexing of the fuel tax beginning January 1, 2012, eliminates 76 Highway Fund positions and funds 600 miles of highway maintenance efforts for each of the two years.

LD 1437, An Act To Implement *Recommendations on Reinventing Government* – [Carry Over](#).

This bill, which remains in concept draft form only, proposes “the appointment of a high profile Commission on Reinventing Maine Government.” The Commission would review prior comprehensive studies on various ways to help the State improve and would “produce practical and specific legislation that would accomplish large scale reform in governance and government and structure.”

LD 1535, An Act Relating to *Fiscal Notes* on Proposed Legislation - [Carry Over](#).

This bill proposes that Maine Revenue Services and legislative staff be required to prepare “dynamic fiscal notes” for legislation regarding tax expenditures and increases or decreases to State revenues over \$1 million. “Dynamic fiscal notes” would take into account anticipated changes in taxpayer behavior to account for indirect effects that proposed legislation would have on the state revenue. “Dynamic fiscal notes” would be used for informational purposes only. This legislation has been carried over to the next legislative session.

Government and Public Affairs Section continues on the next page

Non-Business Related Bond Issues: All Carried Over

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LD 111, An Act to Authorize a General Fund Bond Issue to Fund Large-scale *Marketing and Research and Development for Bulk Sales of Maine Seafood Worldwide* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$3M to provide funding for the marketing of Maine seafood and for research and development for seafood processing. This funding would be under the supervision of the Department of Marine Resources.

LD 359, An Act to Authorize a General Fund Bond Issue for *Wastewater and Drinking Water Revolving Loan Funds* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$15.5M to provide funding for water-related revolving loan funds. \$7.4M of this funding would be distributed to the revolving loan fund for drinking water systems over three years. \$8.1M would be distributed to the revolving loan fund for wastewater treatment facilities over three years.

LD 399, An Act to Authorize a General Fund Bond Issue to Fund *LifeFlight* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$640,000 to provide funding for the LifeFlight Foundation to complete a network of automated weather observing stations and for building helipads in rural communities and remote locations.

LD 470, An Act to Authorize a General Fund Bond Issue to Complete *Renovation of a Bulkhead at the Gulf of Maine Research Institute* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$1M to provide funding to complete renovation of a bulkhead at the Gulf of Maine Research Institute.

LD 741, An Act to Authorize a General Fund Bond Issue to *Invest in Water and Sewer Infrastructure* to Protect Public Health and to Facilitate the Expansion and Growth of Business – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$30M to provide funding the repair and reconstruction of water and sewer systems that the Department of Environmental Protection considers in greatest need of attention and the greatest threat to the public health and the expansion of business.

Government and Public Affairs Section continues on next page

LD 777, An Act to Authorize a General Fund Bond Issue to *Expand Necessary Capital Improvements at the University of Maine System* that Support the Critical Disciplines of Science, Technology, Engineering and Math to Enhance Economic Development and Employment Opportunities for Maine Citizens – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$40M to provide funding for capital infrastructure at all University of Maine System campuses that support the disciplines of science, technology, engineering and mathematics.

LD 829, An Act to Authorize a General Fund Bond Issue to *Invest in Transportation, Broadband Infrastructure, Downtown Revitalization, Land for Maine’s Future and Training Facilitates in Labor Market Areas With Higher Than Average Unemployment for Tourism-related Training – [Carry Over](#).*

This bill would authorize a bond issue in the amount of \$100M to provide funding for a number of initiatives over five years. \$20M of these funds would be distributed to the State’s transportation capital work plan, \$20M of these funds would be distributed to the ConnectME Authority, \$20M would be distributed to the Communities for Maine’s Future Program, \$20M would be distributed to the Lands for Maine’s Future Board, \$10M would be distributed to the University of Maine System and \$10M would be distributed to the Maine Community College System.

LD 842, An Act to Authorize a General Fund Bond Issue to Support *Research and Sustainable Development of Maine’s Natural Resources – [Carry Over](#).*

This bill would authorize a bond issue in the amount of \$50M to provide funding for research and development to be competitively awarded by the Maine Technology Institute. \$45M would fund research, development and commercialization of technology related to Maine’s forestry, agricultural, tidal and wind industries. \$5M would fund local food processing, distribution and storage infrastructure and the reuse or recycling of consumer products.

LD 851, An Act to Authorize a General Fund Bond Issue to *Invest in Railroads* to Reduce the Cost of Shipping to Maine Businesses, Attract Tourists to Maine and Facilitate the Development of Commuter Rail Transportation to Reduce the use of Oil in Maine – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$25M to provide funds for railroad reconstruction and expansion vital to business. The Department of Transportation would be required to consult with various constituencies to develop a proposal that supports business, tourism and increased commuter and passenger rail use.

LD 874, An Act to Authorize a General Fund Bond Issue for *Educational Opportunities for Underserved Regions* of the State – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$27.1M to provide funding to improve equipment and facilities at seven University of Maine campuses and seven Maine Community College campuses.

LD 894, An Act to Authorize a General Fund Bond Issue to *Invest in Highway and Bridget Infrastructure* to Meet the Needs of the Business Sector and to Create Jobs – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$62M to provide funding for the repair and reconstruction of highways and bridges considered vital to the expansion of business and essential to public safety. This bill would require the Department of Transportation to consult with business and economic development interests as well as municipal officials, highway safety officials and members of the general public in determining which projects to undertake.

LD 919, An Act to Authorize a General Fund Bond Issue to *Weatherize and Upgrade the Energy Efficiency of Maine Homes and Businesses* and to Provide for a *Trained Workforce* for Maine’s Energy Future – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$55M to provide funding for weatherization and energy efficiency improvements for homes, businesses and public buildings as well as funding to train workers in “green industries.”

LD 948, An Act to Authorize a General Fund Bond Issue to *Create Jobs through Energy Efficiency* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$25M to provide funding for grants to make buildings more energy efficient. Grant recipients must commit to investing money saved through increased efficiency in workforce development.

LD 979, An Act to Authorize a General Fund Bond Issue to *Create an Animal and Plant Diagnostic Facility* at the University of Maine– [Carry Over](#).

This bill would authorize a bond issue in the amount of \$7.2M to provide funding to build an animal and plant diagnostic laboratory at the University of Maine.

LD 990, An Act to Authorize a General Fund Bond Issue in the Amount of \$1,000,000 for *Road and Bridge Construction* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$1M to provide funding to repair the road and bridge within the town of Woodstock.

LD 1187, An Act to Authorize a General Fund Bond Issue to *Revitalize Maine’s Downtowns* through Innovative Business Development and the Creative Economy – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$5M to provide funding to seed the Downtown Revitalization Fund, a revolving loan and grant fund to encourage business development in downtown areas. This bill would also establish the Downtown Revitalization Fund.

LD 1386, An Act to Authorize a General Fund Bond Issue to Fund the *Challenger Learning Center of Maine* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$500,000 to provide funding for the Challenger Learning Center to improve achievement in mathematics and to enhance interest in science and technology careers.

LD 1395, An Act to Authorize a Highway Fund Bond Issue to *Improve Maine's Roads and Bridges* – [Carry Over](#).

This bill would authorize a bond issue in the amount of \$50M to provide funding to match federal funds for highway and bridge capital projects.

Healthcare Section begins on the next page

Healthcare

The flurry of legislative activity in the healthcare arena appropriately reflected the growing political focus on the desire and need to improve health outcomes, both to improve the health of Maine communities and to reduce costs of healthcare. Numerous bills enacted or carried over seek to address prevention and management of specific diseases. We also passed a couple of bills to provide clearer guidance on engaging the statewide health information exchange, HealthInfoNet, to improve quality and protect privacy. The newly enacted legislation regarding pharmacies indicates some shifts in the roles and rules regarding pharmacies. These new laws include an exemption for pharmacies from reporting to the Maine Health Data Organization and a written comment period when MaineCare pharmaceutical rates are changing. In addition, a bill being carried over proposes to reimburse pharmacists for medication management therapy services.

If you have a question about any of the bills summarized in the Healthcare section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Healthcare Section continues on next page

Healthcare Delivery/Disease Management

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LD 216, Resolve, Regarding *MaineCare Tobacco Treatment and Smoking Cessation Benefits* – Resolve 2011, [Chapter 24](#).

Originally drafted to prohibit smokers from accessing the MaineCare program, this Resolve was amended in Committee. As amended, this Resolve directs the Department of Health and Human Services to work to reduce tobacco use by MaineCare members. This Resolve also requires that the Department report to the Legislature on tobacco use by MaineCare members each November from 2011 through 2014.

LD 360, An Act to Amend the Maine *Certificate of Need Act of 2002* – Public Law 2011, [Chapter 424](#). Most of the provisions are effective on February 15, 2012, other provisions have other specific effective dates.

This new law increases the thresholds for certificates of need for major medical equipment from \$1,600,000 to \$3,200,000, for new and existing health care facilities for a new service from \$110,000 to \$3,000,000, for new or existing health care facility for a new service that will entail incremental annual operating costs (excluding practitioner compensation) from \$400,000 to \$1,000,000, and for new technology in a private office from \$1,600,000 to \$3,200,000. Additionally, the threshold for capital expenditures, except for expenditures to invest in energy cost reductions or to develop a nursing facility, by new or existing health care facilities is increased from \$3,100,000 to \$10,000,000. These threshold amounts are to be reviewed annually beginning January 1, 2013. The threshold for a certificate of need for a new nursing facility is \$5,000,000 for capital expenditures, or it must meet other requirements if it proposes to add new nursing facility beds to the inventory of nursing facility beds in Maine. Energy projects by health care facilities that are certified by the Efficiency Maine Trust as likely to be cost-effective are waived from the certificate of need process.

It also clarifies the Department of Health and Human Services authority to approve the conversion of nursing facility beds to residential care beds, along with the de-licensing, selling and transferring of nursing facility beds. The department must also offset any increase in residential care costs for MaineCare with reductions in nursing facility costs. The Department of Health and Human Services will amend its certificate of need rules by January 1, 2012. Further, it will convene a stakeholder group no later than October 15, 2011 to review ways to improve the certificate of need process, and make any recommendations for changes in law or rule by January 15, 2012. Finally, various time frames for processing a certificate of need application have been shortened.

LD 443, An Act To Require Prompt *MaineCare* Decisions on Care for *Children with Life-threatening Conditions* – Public Law 2011, [Chapter 35](#).

This new law requires the Department of Health and Human Services approve or disapprove of care or services for children with life-threatening conditions who are on MaineCare within one working day of receiving the request for care from a health care provider.

LD 702, An Act to Prevent *HIV Transmission from a Pregnant Mother to a Child* – Public Law 2011, [Chapter 229](#).

Health care providers caring for pregnant women are required to conduct an HIV test on the women, subject to consent and procedure requirements. Also, health care providers caring for newborn infants who do not know the HIV status of the mother or believes the HIV testing is medically necessary, are required to test the infant for HIV, unless a parent objects to the test based on religious grounds. Test results on newborns are to be available within 12 hours after birth.

LD 724, Resolve, To Create an Evidence-based Study and Comprehensive Plan for *HIV and AIDS Services in Maine* – Resolve, [Chapter 55](#).

The Maine HIV Advisory Committee will be conducting an evidence-based study and develop a comprehensive plan for HIV and AIDS prevention and care services in Maine. The Committee is to report its findings and recommendations to the Legislature by January 15, 2013.

LD 759, An act to Increase Efficiency and Effectiveness in the *Licensing of Certain Health and Human Services Providers* –Public Law 2011, [Chapter 145](#).

This new law requires the Department of Health and Human Services to deem that certain entities meets the state licensing rules if they have received and maintain national accreditation. The entities to which this streamlined process applies are drug treatment facilities, programs or centers, residential care or assisted living facilities or drug treatment facilities and agencies and facilities that provide mental health services.

LD 859, Resolve, to Convene a Task Force to Study Cost-effective ways of Dealing with an Increased Population of Those Affected by *Alzheimer's Disease* – Resolve 2011, [Chapter 58](#).

The Commissioner of Health and Human Services will convene a broad-based stakeholder task force to review Alzheimer's disease-related issues in health care. The Commissioner will report the findings and recommendations to the Legislature by December 7, 2011.

LD 897, An Act To Amend the Application Process for the *Progressive Treatment Program* – [Carry Over](#).

This bill would allow any person to obtain an order from the District Court to admit a patient to a progressive treatment program. It also would require that examiners form their opinions based on history and not just personal observation.

LD 1159, An Act To Amend the Identification Requirements under the *Maine Medical Use of Marijuana Act* – Public Law 2011, [Chapter 383](#).

This new law provides that a cardholder on the medical marijuana registry who possesses excess marijuana is subject to forfeiting the marijuana, and upon a repeat offense, will be removed from the registry and have the card revoked. It also sets out the status that constitutes admissibility of records in a court proceeding. It also requires the Department of Health and Human Services to adopt rules governing the process of primary caregivers replacing patients who have rescinded their designation of the primary caregiver with new patients.

LD 1212, An Act to Improve *Hospital Reporting of MRSA and Clostridium difficile Data* – Public Law 2011, [Chapter 316](#).

This new law replaces the existing methicillin-resistant Staphylococcus aureus, or MRSA, screening protocol adopted in 2009, which focuses on the presence of MRSA in patients as they are admitted to a hospital, with a protocol that focuses on MRSA infections that occur in the patient population while at hospitals. It adds clostridium difficile to the data collection and public reporting system. Finally, it provides the Maine Center for Disease Control and Prevention time to validate the data reported by hospitals and requires the public reporting of that data following validation.

LD 1296, An Act To Amend the Maine Medical Use of *Marijuana Act* To Protect Patient Privacy – Public Law 2011, [Chapter 407](#).

This law makes numerous amendments to the Medical Use of Marijuana Act including a definition and legal scope of activities of a primary caregiver, requiring treating physicians to consult with other physicians before providing written certification for the medical use of marijuana for minors and requiring the Department of Health and Human Services to expunge from the records of the medical marijuana registry information on a registered patient's diagnosis and other information on qualifying patients who request to be removed from the registry.

Healthcare Section continues on next page

LD 1501, *An Act to Reduce Opioid Overprescription, Overuse and Abuse* – Public Law 2011, [Chapter 81](#).

The Substance Abuse Services Commission will convene a work group of public and private stakeholders to review and make recommendations for improvements in how physicians and other prescribers treat patients in chronic, non-cancer related pain without causing addiction or diversion. The work group will report its findings and recommendations to the Legislative Committee on Health and Human Services in December, 2011.

LD 1505, *An Act To Clarify the Scope of Practice of Licensed Alcohol and Drug Counselors Regarding Tobacco Use* – Public Law 2011, [Chapter 222](#). This emergency law was effective on June 3, 2011.

This new law clarifies that while providing nicotine addiction counseling and treatment services is included in the definition of alcohol and drug counseling services, a person engaged in providing nicotine addiction counseling or treatment services need not be licensed as an alcohol and drug counselor.

LD 1537, *An Act To Amend Licensing and Certification Laws Administered by the Department of Health and Human Services* – Public Law 2011, [Chapter 257](#).

This new law requires the Department of Health and Human Services to classify findings of abuse, neglect or misappropriation of property of a client, patient or resident against unlicensed assistive persons or direct care workers. Substantiated findings are listed as notations on the registry of these workers. The new law clarifies the calculation of annual licensing renewal fees paid by hospitals, convalescent homes and nursing homes. Finally, it updates end-stage renal disease facilities licensing laws, and requires end-stage renal disease facility surveys from every year to every 3 years.

Health Information Technology

LD 1331, *An Act to Increase Health care Quality through the Promotion of Health Information Exchange and the Protection of Patient Privacy* – Public Law 2011, [Chapter 347](#).

This new law specifies the terms by which certain health-related information may be shared through a health information exchange. It states that providers and insurers may not refuse care or coverage to an individual for the individual's decision to opt out of participation in the exchange. Also, the participation or lack of participation of a health care provider or facility in a health information exchange may not be used as evidence in a civil action.

Healthcare Section continues on next page

LD 1337, An Act to Ensure Patient Privacy and Control with Regard to *Health Information Exchanges* – Public Law 2011, [Chapter 373](#).

This new law requires health care providers participating in a state-designated statewide health information exchange to give patients a separate form describing the exchange, including risks and benefits and how to opt out. In addition, the exchange must allow patients to opt out of the exchange online and offline; allow patients to request online and offline a report of who has accessed their data and when; and in the event a patient opts out, remove the patient's medical information from the exchange.

Pharmacy

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LD 346, An Act To Reimburse *Pharmacies* under the MaineCare Program Based on *Wholesale Acquisition Costs* – Public Law 2011, [Chapter 458](#). **The copayment changes of this law will be effective upon federal approval of an amended Medicaid state plan, but no earlier than October 1, 2011.**

This new law both authorizes pharmacies to charge MaineCare members copayments for prescription drugs dispensed and adopts federal procedures by reference that allows pharmacies to refuse to dispense if copayments are not paid. Members must be notified of the copayment requirements. The Department of Health and Human Services is directed to review the costs of dispensing drugs and pharmacy reimbursement of the MaineCare program, and report to the Legislature by January 15, 2012 with recommendations regarding the dispensing fee.

LD 572, An Act to Amend the Laws Governing the *Maine Health Data Organization* Relating to *Retail Pharmacies* – Public Law 2011, [Chapter 233](#).

This new law removes retail pharmacies from the requirements to fund and to report data to the Maine Health Data Organization.

LD 612, An Act to Provide Reimbursement for *Medication Therapy Management Services* – [Carry Over](#).

This bill proposes to establish a system for reimbursing pharmacists for medication management therapy services, above and beyond the price of the prescription.

LD 719, An Act to Make Certain *Prescription Drug Disclosure* Laws Consistent with Federal Law – Public Law 2011, [Chapter 461](#).

This law repeals the laws requiring manufacturers and labelers of prescription drugs dispensed in Maine to report marketing costs, price reporting and the disclosure of clinical trials. Beginning April 1, 2012, each manufacturer of prescription drugs that are provided for MaineCare members or the elderly low-cost drug program shall pay a fee of \$500 per year to provide funding for the academic detailing program.

LD 1116, An Act to Restore Market-Based Competition for *Pharmacy Benefits Management Services* – Public Law 2011, [Chapter 443](#).

This new law makes extensive reforms to Maine statutes applying to pharmacy benefit managers. Specifically, this new law repeals existing regulations that require disclosure of financial relationships between pharmacy benefit managers and drug manufacturers and labelers. While seen as a law providing regulatory relief, this law expands upon the registration process that applies to pharmacy benefit managers and it also limits the ability of pharmacy benefit managers to enter into certain contracts. Specifically, it prevents pharmacy benefit managers from insisting on contractual terms such as requiring a pharmacist or pharmacy act as an insurer and prevents pharmacy benefit managers from acting in a retaliatory manner against pharmacists and pharmacies.

LD 1364, An Act To *Improve the Quality and Reduce the Cost of Health Care* – [Carry Over](#).

This bill proposes to reduce costs of prescriptions for MaineCare members by requiring the Maine Department of Health and Human Services to negotiate pharmaceutical prices and avoiding retail markups for patients in a “340B covered entity”. These entities include federally qualified health centers, critical access hospitals and hospitals eligible as disproportionate share hospitals.

LD 1435, An Act To Adopt the *Interstate Prescription Monitoring Program Compact* – Public Law 2011, [Chapter 217](#).

This new law adopts the interstate prescription monitoring program compact, which is model legislation developed through the Council of State Governments to provide a secure system for sharing prescription data among the states. The Maine legislature made some technical changes to the model legislation to conform this new law to Maine statutes.

LD 1485, An Act to Promote Transparency in the *Medicaid Reimbursement Process* – Public Law 2011, [Chapter 323](#).

The Department of Health and Human Services will provide a 17-day written comment period on any proposed change to the state maximum allowable cost list if the change will reduce payments to pharmacies. The Department will also annually report the changes to the Legislature, and amend its rules to implement this new law.

Insurance Section begins on the next page

Insurance

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While the Legislature made some fairly discrete and technical changes to some of Maine’s insurance laws, they engaged in a flurry of activity around health insurance reforms. Most significantly, LD 1333, now PL 2011, Chapter 90 was enacted to broaden Maine’s health insurance community rating bands and to repeal Rule Chapter 850 governing access to care requirements in the individual and small group health insurance laws. The new law also opens our individual insurance market to qualified health insurers from nearby states. In addition, the new law will establish a high risk pool funded by an assessment on all health insurance policies. The changes stemming from LD 1333 represent significant change and all will be watching to see if they create the desired effect of decreasing health insurance costs in Maine’s individual and small group markets. In addition to LD 1333, a number of bills proposed state conformity with the federal Patient Protection and Affordable Care Act (PPACA). This session, the Legislature made some changes to the insurance reforms called for by PPACA. Meanwhile, two competing bills proposing to establish a health benefit exchange are being carried over to next session. One of those bills is modeled after the Utah “open market” health benefits exchange, and the other after the Massachusetts “consumer choice and protection” oriented exchange.

The Republican dominated legislature has enacted laws that essentially dismantle Governor Baldacci’s healthcare structures. They propose to phase out Dirigo Health in a carry over bill and they have already closed the Governor’s Office of Health Policy and Finance and abolished the Advisory Council on Health Systems Development, all established under Governor Baldacci.

The inventory of carry over legislation related to health insurance promises a very active health insurance session next year, particularly around the establishment of Maine’s health benefit exchange.

Insurance Section continues on the next page

Health Insurance

LD 70, An Act to Include Independent Practice *Dental Hygienists in MaineCare* – Public Law 2011, [Chapter 457](#).

Beginning October 1, 2012, MaineCare will reimburse independent practice dental hygienists either directly or to federally qualified health centers when the hygienist is employed as a core provider. Rules will be promulgated to implement this law.

LD 540, An Act to Implement the *Insurance Payment Reform Recommendations of the Advisory Council on Health Systems Development* – Public Law 2011, [Chapter 270](#).

Beginning on March 1, 2012, this new law will allow health insurance carriers to implement payment reform strategies with providers in Accountable Care Organizations with goals to reduce costs and improve the quality of patient care. The pilot is to be approved by the Superintendent of Insurance, who is to establish rules to implement this law. The Superintendent is also directed to report back to the Legislature on the affect of any pilots on health care costs and quality.

LD 806, An Act to Provide Public Access to *Price Lists of Hospitals and Ambulatory Surgical Facilities* – [Carry Over](#).

This bill proposes to require hospitals and ambulatory surgical facilities to publicly post on their premises their average prices charged for their 100 most commonly performed procedures, and to post on their websites their average prices charged for their 100 most commonly performed procedures and their pricing policies. The bill also proposes to require a review and report on hospital efforts to control costs by the Office of Program Evaluation and Government Accountability.

LD 882, An Act To Limit *Health Care Mandates* – [Carry Over](#).

This bill proposes to prohibit carriers from offering health plans on or after January 1, 2014 that exceeds the minimum essential benefits package to be determined by the Secretary of the US Department of Health and Human Services. It also requires the Maine Bureau of Insurance to determine which of Maine’s mandated health insurance benefits exceed the federally defined essential benefits package.

LD 933, Resolve, Requiring the Department of Health and Human Services To Conduct a Review of *Medicaid "Any Willing Provider" Requirements* – Resolve 2011, [Chapter 61](#).

This bi-partisan sponsored Resolve is seeking to understand the parameters within which the State of Maine and the Maine Department of Health and Human Services may regulate health care delivery to MaineCare members for positive health outcomes, quality of care, meeting geographic needs and controlling costs. The report is due January 1, 2012.

LD 950, An Act To Exempt *Health Care Sharing Ministries* from Insurance Requirements – Public Law 2011, [Chapter 192](#).

This new law exempts from health insurance regulation health care sharing ministries who have, since 1999, facilitated the sharing of medical expenses for participants who have a religious affiliation and who have the financial and medical needs. Some auditing, reporting and disclaimers are also required.

LD 1030, An Act to Reduce *Costs for Small Businesses* – [Carry Over](#).

This is a concept bill that proposes to establish subsidies, tax credits and other initiatives to reduce costs of health insurance provided by small business owners. It suggests assessing a fee on health insurers for funding the initiatives. The concept draft provides no details on how to structure or implement this program.

LD 1179, An Act To Require Advance Review and Approval of *Certain Small Group Health Insurance Rate Increases* and To Implement the Requirements of the *Federal Patient Protection and Affordable Care Act* – [Carry Over](#).

This comprehensive legislation proposes a number of significant changes. It proposes that Maine's rate review process for small group health insurance rates mirrors that process for rates in individual health insurance, places the burden of proving that the proposed rates are not excessive, inadequate or unfairly discriminatory on the insurer, and repeals the optional rate review for small group health insurers that meet a minimum 78% medical loss ratio. The second part of the bill amends the Maine Insurance Code and regulations to conform to the federal health care reform law, the Patient Protection and Affordable Care Act.

LD 1281, Resolve, to Ensure Cost-effective Services for Persons Needing *Neuropsychological Testing* – Resolve 2011, [Chapter 110](#).

The MaineCare Benefits Manual will be amended by rule to permit neuropsychological testing assistants to administer and score neuropsychological and psychological tests of MaineCare patients.

Insurance Section continues on the next page

LD 1333, An Act to *Modify Rating Practices* for Individual and Small Group Health Plans and To *Encourage Value-based Purchasing* of Health Care Services – Public Law 2011, [Chapter 90](#).

This comprehensive and lengthy new law creates numerous and significant changes to Maine’s health insurance laws.

The new law broadens the community rating bans based on age, occupation, tobacco use and geographic area.

It establishes a high-risk insurance pool in a newly created Maine Guaranteed Access Reinsurance Association. The Association will be funded by a monthly \$4 assessment on all members of health insurance plans; with a potential additional monthly assessment of up to \$2 per member should it be needed to cover losses of the Association.

It allows for the sale of individual health insurance plans by qualified insurers and Health Maintenance Organizations located in Connecticut, Massachusetts, New Hampshire and Rhode Island. It provides a minimum Medical Loss Ratio of 85 % in the large group market and 80% in the individual and small group market. This “MLR” requirement provides that if an insurer in the large group market spends less than 85% of its premium dollars on medical costs, it must rebate the difference to the policy holder. Likewise, if an insurer in the individual or small group market spends less than 80% of its premium dollars on medical expenses, it must rebate the difference to its policy holders.

The State Health Plan, Advisory Council on Health Systems Development and the Governor’s Office of Health Policy and Finance are all repealed by this law.

This new law repeals the Maine Bureau of Insurance rule Chapter 850, governing access to providers in health plan provider networks, and places the responsibility for reasonable access directly on insurers. It also allows insurers to use incentives to members to use designate providers based on cost or quality.

It permits electronic notification of rate increases to policyholders in group health insurance.

It provides employers of 20 or fewer employees a tax credit for wellness programs. The allowable credit is up to \$100 per employee, or \$2,000, whichever is less, beginning January 1, 2014.

It clarifies that captive insurance companies must comply with the same requirements as group health insurers with respect to community rating, guaranteed issuance and renewal and mandated benefits.

LD 1467, *An Act to Improve Timely Access to Health Care Data* – Resolve 2011, [Chapter 109](#). The Department of Health and Human Services will convene a 17 member working group to evaluate options and actions available to improve the availability of and access to health care data and to examine Maine’s all-payor claims database system. By January 31, 2012, the Department shall report any recommendations to the legislature.

LD 1497, *An Act To Comply with the Health Insurance Exchange Provision of the Patient Protection and Affordable Care Act* – [Carry Over](#).

This 15 page bill, sponsored by a slate of Republicans, proposes a health benefit exchange structure that is based on an open market, all insurers welcome philosophy, similar to the health exchange established in Oregon. The bill would assess a fee on health insurance carriers to support the operations of the exchange.

LD 1498, *An Act To Phase Out Dirigo Health and Establish the Maine Health Benefit Exchange for Small Businesses and Individuals* – [Carry Over](#).

This 30 page bill, sponsored by a slate of Democrats, proposes a health benefit exchange structure that is based on a consumer access philosophy, modeled after the Massachusetts health exchange. It also proposes to transition responsibilities and staff from Dirigo Health to the new health benefit exchange. The bill proposes to retain the Maine Quality Forum, transferring its oversight to the exchange. It would require health insurance carriers and 3rd party administrators to pay an access payment on paid claims to support the operations of the exchange.

LD 1551, *An Act To Clarify and Update the Laws Related to Health Insurance, Insurance Producer Licensing and Surplus Lines Insurance* – Public Law 2011, [Chapter 238](#).

This new law makes several changes to the health insurance laws. It protects enrollees from additional billing in managed care plans when the insurer fails to pay its responsible share. It clarifies that a blanket policy is a group policy, and that rates for blanket policies must be filed for informational purposes. It clarifies that short-term health insurance policies are not subject to guaranteed issue, guarantee renewal or community rating. It clarifies that upon ceasing to offer an individual or small group product, carriers must offer policyholders the opportunity to purchase any of their other products in that market.

LD 1554, *An Act to Implement the Requirements of the Federal Patient Protection and Affordable Care Act* – Public Law 2011, [Chapter 364](#).

This comprehensive new law enacts changes in Maine’s insurance laws to implement requirements of the Federal Patient Protection and Affordable Care Act, and to incorporate changes enacted in Maine Public Law 2011, Chapter 90 (LD 1333). These changes affect numerous provisions including community rating bands, pre-existing conditions, dependent coverage to age 26 years, annual and lifetime limits, coverage of preventive health services, coverage for emergency services, external review processes, and premium rebates for medical loss ratios. It also requires the Maine Bureau of Insurance to submit a transitional reinsurance program and risk adjustment program to the Legislature for review by January 1, 2013.

LD 1582, Resolve, Creating the Advisory Committee on Maine’s Health Insurance Exchange – Resolve 2011, [Chapter 105](#). **This emergency Resolve is effective July 6, 2011.**

The Governor will establish a 9 member Advisory Committee to develop recommendations regarding the Maine health benefit exchange. Topics to be explored include background research, stakeholder consultation, legislative and regulatory action, governance, program integration, exchange information technology systems, financial management, oversight and program integrity, health insurance market reforms, assistance to individuals and small businesses, coverage appeals and complaints and business operation. The Committee will report to the Governor and Legislature’s Insurance and Financial Services Committee by September 1, 2011 to meet the federal funding application deadlines of September 30 and December 31, 2011.

LD 1583, An Act to Provide Oversight in Certain Negotiations – Public Law 2011, [Chapter 451](#).

The bill prohibits the use of “most favored nations” clauses in provider participating agreements with carriers, unless the Superintendent of Insurance determines that the clause is not anticompetitive. These clauses seek to prevent providers from arranging to accept lower prices from other carriers, or from disclosing their reimbursement rates to others.

Long-Term Care Insurance

LD 642, An Act to Require Insurance Companies to Reissue Qualifying Long-term Care Partnership Policies – Public Law 2011, [Chapter 198](#).

Insurers of long-term care insurance policies that are issued prior to July 1, 2009 and whose policyholders qualify for the long-term Care Partnership Program funded by the federal Deficit Reduction Act of 2005 must, if requested by a qualifying insured, exchange the a long-term care insurance policy for one that qualifies for the Long-term Care Partnership. Insurers may not impose additional underwriting requirements or place the insured in a less favorable rating plan or classification upon such an exchange.

Insurance Section continues on the next page

LD 683, An Act to Enhance *Long-term Care Services* for Maine Citizens – Public Law 2011, [Chapter 422](#).

By July 1, 2012, this new law will result in the consolidation into one program of all long-term care services provided directly or indirectly under the MaineCare program or other state-funded programs by the Department of Health and Human Services. The consolidated program will operate with a single set of rules, coordinated criteria for assessment and qualifications and a single budget. The law requires a single system for intake and eligibility determination for all consumers, and a standardized application and forms. For in-home and community support services and nursing facility services, needs assessments must include a medical evaluation conducted by the consumer’s primary care provider or health care specialist. Unless self direction is deemed inappropriate for the consumer, the consumer may choose the delivery model for purchasing services, including self-directed, agency model, residential care model or nursing facility care model. Other provisions address the plan of care, transitional facilities and services, nursing facility diversion and reimbursement. Consolidation implementation guidelines are also provided. For fiscal years 2011-12 and 2012-13, the Department is to combine long-term care accounts to implement the consolidation, including accounts of the Office of Elder Services – Central Office account, the Long-term Care- Human Services account, the Nursing Facilities account and the Independent Housing with Services account. The Department is to report to the legislature by January 5, 2012 and November 1, 2012 regarding progress in the consolidation, and by January 5, 2012 regarding the inclusion of services for persons with mental health needs and intellectual disabilities needs in the consolidation of long-term care services in fiscal years 2013-14 and 2014-15.

LD 739, Resolve, To Amend the Rules Concerning *Long-term Care Services* To Better Support Family Caregivers – Resolve 2011, [Chapter 95](#).

This Resolve asks the Department of Health and Human Services to develop a standard-form written contract for long-term care personal support services delivered by a relative in a home setting that satisfies the MaineCare requirements for such a contract. The Department will post the contract on its website and adopt rules to implement it. This contract will not preclude the use of other forms.

LD 1461, Resolve, To Implement the Recommendations of the Report on Services for *Elders and Other Adults Who Need Long-term Home-based and Community-based Care* – Resolve 2011, [Chapter 71](#).

This Resolve directs the Maine Department of Health and Human Services to adopt the Lean Implementation Plan, which was part of the report by that agency entitled, “Services for Elders and Other Adults Who Need Long-term Home- and Community-Based Care” dated January 20, 2010. The elements include certain consolidation of waivers, programs and service models, maximizing opportunities and plans of care adjustments, and improving strategies around care worker morale and reimbursement rate calibrations and around quality improvements.

Miscellaneous

LD 313, *An Act to Permit **Senior Citizens** to Designate a 3rd Party to Receive **Notification of Cancellation** of Insurance Policies* – Public Law 2011, [Chapter 123](#).

This new law extends the right of an insured person to designate a third party to receive notice of cancellation of certain insurance policies. It also provides for the ability to reinstate life, health and Medicare supplement insurance policies within 90 days after cancellation, termination or lapse of coverage due to non-payment of premium by a policy holder who suffers from cognitive impairment or functional incapacity and has lost coverage for non-payment of premium due to that cognitive impairment or functional incapacity. The provisions of this new law apply to all life, health and Medicare supplement insurance policies, contracts and certificates issued or renewed on or after January 1, 2012.

LD 881, *An Act to Amend Certain Insurance Provisions Relating to **Variable Annuity Death Benefits and Multiple Employer Trusts*** – Public Law 2011, [Chapter 163](#).

This law clarifies that variable annuity death benefit equals either the value of the contract at the time of death or the sum of premiums less adjusted withdrawals from the policy, whichever is greater.

LD 1279, *An Act Relating to Qualified Financial Contracts by **Domestic Insurers*** – Public Law 2011, [Chapter 107](#).

This new “netting agreement” law conforms provisions of the Maine Insurance Code regarding delinquent insurers to Section 711 of the National Association of Insurance Commissioners Insurer Receivership Model Act regarding netting of qualified financial contracts by insurers who have been placed in rehabilitation or liquidation.

Intellectual Property Section begins on the next page

Intellectual Property

If you have a question about any of the bills summarized in the Intellectual Property section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

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LD 675, An Act to Establish Multidistrict *Online Classes in Maine* – [Carry Over](#).

This bill seeks to expand the eligibility provisions to allow nonresident students to enroll in online learning programs or courses outside of their school administrative unit, while requiring the school administrative unit of residence for that student to pay the enrolling school administrative unit the student's tuition for the program or course. It also requires the establishment, through the Department of Education, of a stakeholder group to study the pros and cons of creating a unified online learning program for the State and to report to the Joint Standing Committee on Education and Cultural Affairs by January 4, 2012. This bill has been carried over to any special or regular session of the 125th Legislature.

LD 1308, An Act to Strengthen *Computer Privacy* – Public Law 2011, [Chapter 377](#).

Under existing Maine law, it is a crime to intentionally access any computer without authorization, to make an unauthorized copy of any computer program, software, or confidential or propriety information stored on a computer, and to intentionally or knowingly damage another’s computer, including by introduction of a computer virus. A new section has been added to this chapter of Maine’s Criminal Code to expand the State’s jurisdiction over out-of-state persons who commit criminal invasion of computer privacy or aggravated criminal invasion of computer privacy in cases in which the victim of the crime was a resident of Maine at the time of the offense.

LD 1068, An Act to Protect the *Privacy of Maine Residents under the Driver’s License Laws* – Public Law 2011, [Chapter 149](#).

With tri-partisan support, the Legislature has partially repealed the federal REAL ID Act of 2005; in particular, LD 1068 (1) prohibits the Maine Secretary of State's Office from using retinal scans, facial recognition or fingerprint technology to issue driver's licenses; (2) prohibits the Secretary of State from disseminating social security numbers without legislative authorization or unless otherwise permitted under the federal Driver’s Privacy Protection Act of 1994; and (3) ensures the confidentiality of digital images and digitized signatures used in the creation of driver’s licenses and non-driver identification card and prohibits their release except to law enforcement agencies.

Judicial Process Section begins on the next page

Judicial Process

A number of proposals to reform how Maine’s judicial process operates were introduced this session but relatively few were adopted. Those that were adopted made incremental changes to the law. For example, judicial process reforms that were adopted included allowing the service and execution of civil process on Sundays and a clarification of the Uniform Arbitration Act.

Traffic infraction legislation is regularly debated at the Legislature and this year was no exception. Driving under the influence laws were modified and the State’s standard of proof regarding traffic infractions was clarified. Reacting to Maine’s fairly forgiving distracted driving statute; the Legislature adopted a ban on text messaging while driving, which will take effect this fall.

Elder protections were also enacted this year, as there is a fairly active collection of elder interests working in Augusta. New protections for senior investors were adopted as well as an elder victims’ restitution fund. Mandatory elder abuse reporting requirements were also enhanced this year.

This section of the report also contains some “general” reforms that were adopted this year. They range from Maine Commission on Indigent Legal Services’ reforms to changes regarding jurisdiction and venue as they relate to prosecutions for the criminal invasion of computer privacy.

If you have a question about any of the bills summarized in the Litigation section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

Judicial Process Section continues on next page

Judicial Process Reforms

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LD 89, An Act Regarding Repeated *Animal Trespass* – Public Law 2011, [Chapter 18](#). **This emergency law was effective April 1, 2011.**

This new law expands upon existing animal trespass statutes by authorizing employees of the Department of Agriculture to respond to complaints of animal trespass. Further, it requires that animals be removed if property is threatened, as opposed to the current requirement that public safety be threatened before animals can be removed. Finally, this new law clarifies that animal trespass constitutes a civil violation if an animal has been found trespassing on 5 or more days within a 30-day period or 3 or more days within a 7-day period.

LD 95, An Act to Repeal Restrictions on Serving or Executing *Civil Process on Sunday* – Public Law 2011, [Chapter 32](#).

Current law prohibits the service or execution of any civil process on Sundays by making that service void and subjecting the person executing that civil process to liability. See 14 M.R.S.A. § 705. Public Law 2011, Chapter 32 repeals these restrictions.

LD 486, An Act To Clarify the *Uniform Arbitration Act* – Public Law 2011, [Chapter 80](#).

This new law clarifies that the Uniform Arbitration Act confers jurisdiction in either the District Court or the Superior Court. Before this clarifying law, the Uniform Arbitration Act only conferred jurisdiction in the Superior Court.

LD 648, An Act To Prohibit *Organized Retail Theft* – [Carry Over](#).

This bill would establish a new crime of organized retail theft, which involves theft in the context of a retail business. Types of activities that would constitute organized retail theft would include working in concert with store employees, disabling anti-shoplifting devices and altering product codes. This legislation has been carried over to the next legislative session.

LD 880, An Act To Protect Minors from *Questioning by Private Investigators* – Public Law 2011, [Chapter 161](#).

This new law adds new grounds for the refusal to issue or renew, suspend and revoke a private investigator's license. These new grounds are communicating with someone under the age of 14 if that communication involves conduct with the intent to harass, torment, intimidate or threaten.

Judicial Process Section continues on next page

LD 951, Resolve, Establishing the Commission to Study the *Priorities and Timing of Judicial Proceedings in State Courts* – Resolve 2011, [Chapter 104](#).

This Resolve establishes a legislative study committee to examine the priority and timing of judicial proceedings in state court. The committee will examine statutes as well as Constitutional precedents that require that certain court actions take precedence over other court actions in an attempt to rationalize this priority system. This committee is directed to submit a report of its findings and suggested legislation to the Judiciary Committee on December 7, 2011.

LD 1043, An Act Making Unified *Appropriations and Allocations* for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013 – Public Law 2011, Chapter 380. [Budget Summary](#). This law was effective June 20, 2011.

This new law is the State’s biennial budget plan. In addition to funding various state agencies, this document also contains some substantive changes in policy. The biennial budget both funds the Judicial Branch and contains some interesting policy initiatives. Those parts of the budget that affect the Judicial Branch include:

- The Maine Commission on Indigent Legal Services is funded at close to \$22 million over the next two years. This is not as much funding as requested by the Commission but is an increase over previous funding levels.
- The budget includes funding for the consolidated Kennebec County courthouse in Augusta, as well as funding for the Machias courthouse project.
- The budget fully funds all Judicial Branch positions. Hiring to fill the current 29 marshal and clerk vacancies, however, must be staggered over two years. This was the compromise reached so that some budget savings could be achieved while still providing for funding for all Judicial Branch positions.
- Roughly \$230,000 over the next two years that goes to the Judicial Branch for coordination of drug court efforts was cut out of the Fund for a Healthy Maine. The Judicial Branch will have to now meet these costs through its General Fund resources.
- Language regarding the Judicial Branch’s ability to access up to \$300,000 annually from fee revenue for capital expenses is clarified in the budget.
- Language regarding the Judicial Branch’s ability to use municipal law enforcement officers to provide court security is clarified in the budget.
- The Judicial Branch is directed to develop a plan to implement electronic filing for civil cases. The Judicial Branch must submit that plan and an estimate of costs to implement the plan to the Appropriations Committee by February 1, 2012.
- The Judicial Branch is directed to develop a plan to provide for audio broadcasts of Law Court oral arguments. The Judicial Branch must submit that plan and an estimate of costs to implement the plan to the Appropriations Committee by February 1, 2012.

LD 1104, An Act To Direct the Judicial Branch To Take Requisite *Measures To Collect Fines and Penalties* – Public Law 2011, [Chapter 131](#).

This new law authorizes the Judicial Branch to contract with state agencies and private debt collection services to collect fines and fees.

LD 1198, An Act To Reduce Regulations for *Residential Rental Property Owners* – Public Law 2011, [Chapter 405](#).

This new law makes a number of changes to a package of landlord-tenant reforms that were enacted last year. This new law modifies the landlord-tenant code as it applies to:

- the statutory presumption of retaliation in certain circumstances;
- the affirmative defenses that can be raised by a tenant in a Forcible Entry and Detainer action;
- the disposition of tenants' property left in a unit at the expiration of a lease;
- assistance required by landlords when treating rental units for bedbugs; and
- energy efficiency disclosure statements.

LD 1227, An Act Concerning the *Disposal of Unclaimed, Lost or Stolen Personal Property* by Law Enforcement Agencies – Public Law 2011, [Chapter 267](#).

This new law allows law enforcement agencies disposing of unclaimed, abandoned, lost and stolen property to donate this property or to dispose of this property as waste. Previously, law enforcement was limited to disposing of property through auction, sale or return to finder. This new law also changes notice requirements placed on state law enforcement agencies who notice their custody of abandoned, lost or stolen property. Notice is sufficient if it appears in a newspaper of general circulation in the county in which the property was taken into custody, as opposed to a newspaper having state-wide circulation.

Traffic/Driver's Licenses

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LD 736, An Act To *Prohibit Texting while Driving* – Public Law 2011, [Chapter 207](#).

This new law prohibits “text messaging” while driving. “Text messaging” is defined as composing and sending electronic communications. Violations of this prohibition constitute a traffic infraction, subject to a fine of at least \$100.

Judicial Process Section continues on next page

LD 1005, An Act To Modify the Standard of Proof for *Traffic Infractions* – Public Law 2011, [Chapter 156](#).

This new law clarifies in statute that the State’s standard of proof that a traffic infraction has occurred is a preponderance of the evidence. Currently, this standard is set forth in the Maine Rules of Civil Procedure, but the statute is silent regarding the standard.

LD 1090, An Act To Allow a Stay of an Administrative License Suspension for *Refusal To Submit to a Test* – Public Law 2011, [Chapter 143](#).

Currently, when a motorist loses their driver’s license for refusing to submit to a sobriety test, they are not entitled to a stay in the suspension of their driver’s license pending a hearing on that suspension. This new law allows a motorist who refused to submit to a sobriety test to be granted a stay in the suspension of their driver’s license if the pending hearing on that suspension is postponed or delayed by someone other than the motorist.

LD 1124, An Act To Authorize the Use of *Traffic Surveillance Cameras* To Prove and Enforce Violations of Overtaking and Passing School Buses – [Carry Over](#).

This bill proposes to allow the use of traffic surveillance cameras and automated license plate recognition systems located on school buses to enforce violations of the prohibition on passing a school bus. This bill would also clarify that fines imposed for passing a school bus would accrue to the municipality in which the violation took place. This bill has been carried over to the next legislative session.

LD 1491, An Act To Strengthen the Laws against *Driving under the Influence of Drugs* – Public Law 2011, [Chapter 335](#).

This new law requires the Secretary of State to administratively suspend driver’s licenses for those operating a vehicle under the influence of drugs in the same manner and for the same time periods as those found to have operated a vehicle under the influence of alcohol.

LD 1557, An Act To *Raise the Speed Limit on Interstate 95* between the City of Old Town and the Town of Houlton – Public Law 2011, [Chapter 415](#).

This new law raises the speed limit on Interstate 95 from the City of Old Town to the Town of Houlton from 65 miles per hour to 75 miles per hour.

Judicial Process Section continues on next page

Elder Protections

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LD 401, An Act To Enhance Penalties To *Protect Senior Investors* – Public Law 2011, [Chapter 37](#).

This new law allows the Securities Administrator to impose enhanced disciplinary penalties, administrative penalties and to seek enhanced civil fines for violations of the Maine Uniform Security Act that affect investors who are 65 years of age or older.

LD 787, An Act To Establish an *Elder Victims Restitution Fund* – Public Law 2011, [Chapter 241](#).

This new law creates the Elder Victims Restitution Fund to compensate elder victims of financial crimes who are entitled to receive but are not receiving restitution. Resources for this Fund will come from any restitution included in the assets of an estate that passes to the State because there is no taker.

LD 939, An Act To Enhance *Mandated Reporting and Prosecution of Elder Abuse, Neglect and Exploitation* – Public Law 2011, [Chapter 291](#).

This new law modifies several provisions of the Adult Protective Services Act, which mandates reporting of suspected instances of abuse, neglect or exploitation of incapacitated or dependant adults to the Department of Health and Human Services. Specifically, this new law:

- Expands upon the definition of “dependant adult;”
- Expands upon the list of those required to report to the Department;
- Requires that law enforcement and hospital staff attempt to capture photographic evidence of visible trauma;
- Requires the Department and state licensing boards to disseminate information regarding the duty to report to licenses required to report under the Adult Protective Services Act;
- Requires the Department to immediately report suspected abuse, neglect or exploitation to the District Attorney upon receipt of a report of abuse, neglect or exploitation; and
- Requires the Department to report evidence of serious harm that is uncovered during any Department investigations into reports of abuse, neglect or exploitation to the District Attorney and to law enforcement.

Judicial Process Section continues on next page

General

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LD 279, An Act To Amend *Indemnification Notification Laws* – Public Law 2011, [Chapter 38](#). This new law repeals the requirement in the Maine Insurance Code that an insurer notify indemnitors annually of the existence of an indemnity agreement.

LD 446, An Act To Allow Law Enforcement Officers from Out of State To Carry Concealed Firearms – Public Law 2011, [Chapter 396](#). This new law allows out-of-state law enforcement officers and retired out-of-state law enforcement officers to carry concealed firearms without a Maine permit to carry a concealed firearm, subject to certain restrictions.

LD 593, Resolve, Regarding Legislative Review of *Chapter 3: Eligibility Requirements for Specialized Case Types*, a Major Substantive Rule of the Maine Commission on Indigent Legal Services – [Resolve 22](#). This emergency Resolve was effective April 20, 2011. This Resolve provides for legislative review of major substantive rules promulgated by the Maine Commission on Indigent Legal Services. The rule establishes minimum eligibility requirements that must be met before attorneys can be appointed to specific indigent defense cases, such as homicide and juvenile defense cases.

LD 602, An Act To Clarify the Method of Appealing Decisions of the Executive Director of the *Maine Commission on Indigent Legal Services* – Public Law 2011, [Chapter 141](#). This new law directs the Maine Commission on Indigent Legal Services to develop an administrative appeal process for attorneys aggrieved by particular decisions of the Commission's Executive Director. This law also clarifies that decisions by the Executive Director or the Commission, in the event of an appeal, are final agency actions for purposes of review under the Maine Administrative Procedure Act.

LD 1095, An Act To Facilitate the Construction and Operation of *Private Prisons* by Authorizing the Transport of Prisoners out of State – [Carry Over](#). This bill proposes allowing the Commissioner of Corrections to transport prisoners to out-of-state public and private correctional facilities. The sponsor of this bill has indicated that giving this authority to the Commissioner will make it more likely that a private prison will be built in Maine. This legislation has been carried over until next year and the debate regarding private prisons will continue.

LD 1165, *An Act To Enable Prosecutions for Criminal Invasion of Computer Privacy* – Public Law 2011, [Chapter 133](#).

This new law specifies where the crimes of criminal invasion of computer privacy and aggravated criminal invasion of computer privacy may be prosecuted and punished.

LD 1271, *An Act to Require Use of the Electronic Death Registration System* – Public Law, [Chapter 371](#).

This new law authorizes, but does not require, the filing of death certificates through an electronic death registration system maintained by the State Registrar of Vital Statistics. Filing through this system will commence on July 1, 2012. That section of this Act that amends the Maine Revised Statutes, Title 22, section 2845 takes effect July 1, 2012.

LD 1347, *An Act Relating to Locations where Concealed Weapons May Be Carried* – Public Law 2011, [Chapter 394](#).

This new law allows those authorized to carry concealed firearms to carry concealed firearms in state parks and historic sites. When this bill was first introduced, it proposed allowing concealed carry in a number of places including the State House and bars. This bill was scaled back during legislative deliberations and, as enacted, allows for concealed carry at state parks and historical sites.

Real Estate Section begins on next page

Real Estate

If you have a question about any of the bills summarized in the Real Estate section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below.

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LD 3, *An Act to Clarify Joint Tenancy Reinstatement* – Public Law 2011, [Chapter 41](#) and **LD 10, *An Act to Clarify the Method of Creating or Severing Joint Tenancy*** – Public Law 2011, [Chapter 4](#).

LD 3 and LD 10 amend the joint tenancy statute, 33 MRSA §159, in an effort to provide more certainty regarding the creation and severance of joint tenancies. LD 3 clarifies that if, after January 1, 2012, a taxing authority conveys property acquired from joint tenants by foreclosure of a tax lien back to the owners, such conveyance recreates the joint tenancy unless otherwise indicated in the conveyance. LD 10 clarifies that an owner may convey property to the owner and another person to create a joint tenancy, and provides several examples of language that will create a joint tenancy if contained anywhere in the deed. LD 10 also clarifies that joint tenants can convey property to themselves to create a tenancy in common or to sever a joint tenancy, if the intent to sever the joint tenancy or create a tenancy in common is indicated anywhere in the conveyance by appropriate language, or if the conveyance is silent as to the tenancy created.

LD 290, *An Act to Amend the Maine Secure and Fair Enforcement for Mortgage Licensing Act of 2009* – Public Law 2011, [Chapter 289](#).

This new law amends Maine’s SAFE Act (9-A MRSA §§ 13-102 et seq.) to exempt seller financed residential sales from the definition of “residential mortgage loan” except where those sales would qualify as residential mortgage loans under the federal SAFE Act. The new law also enacts a de minimis exception for any individual who qualifies for the de minimis exception under the federal SAFE Act. Finally, the new law enacts a provision to clarify that a mortgage loan originator’s good faith failure to comply with the Act does not affect the validity or enforceability of the mortgage. These amendments apply retroactively to January 1, 2011.

LD 297, *An Act To Allow Treasurers To Process Tax Lien Discharge and Sanitary District Sewer Lien Documents Using Facsimile Signatures* – Public Law 2011, [Chapter 104](#).

This new law amends 36 MRSA §§943, 3rd, 944, sub- §2 and 38 MRSA §1208, 2nd –3rd, to permit municipal treasurers to use facsimile signatures in connection with the discharge of tax liens and in connection with the filing and discharge of sanitary district sewer line documents.

LD 305, Resolution, *Land and Building Assessments* – [Carry Over](#).

LD 305 proposes to amend Article IX, Section 8 of the Constitution to allow land to be assessed at a different rate than the buildings on that land. If passed, a referendum to ratify this amendment would be added to the following November's ballot in the form of the question "Do you favor amending the Constitution of Maine to allow municipalities to assess land at a rate different from the rate at which they assess buildings on the land?" If a majority of votes are in favor of the amendment, the amendment will pass.

LD 482, *An Act To Amend the Laws Dealing with Limitation of Actions* – Public Law 2011, [Chapter 124](#).

This new law enacts 14 MRSA § 817, which provides that any action on a breach of covenants in any deed or other instrument effectuating the conveyance of real estate in Maine executed on or after October 7, 1967 must be commenced with twenty (20) years after the cause of action accrues. Prior to enactment of this new law, the twenty (20) year statute of limitations only applied if such deed or other instrument was executed under seal and, in the absence of a seal, any such action for a breach of covenant was subject to the six (6) year statute of limitation applicable to most civil actions in Maine. The new law also provides a mechanism for a person who is a party to such a deed or instrument that was not executed under seal to attempt to preserve the right to assert the six (6) year statute of limitation by filing notices in accordance with the provisions set forth in subsection 2(A) of this law.

LD 514, *An Act Regarding Conveyance of Easements across Railroad Rights-of-way* – Public Law 2011, [Chapter 278](#).

This new law amends 5 MRSA § 6209(6) and enacts 5 MRSA § 6209(7) to allow the Director of Bureau of Parks and Lands, with the Governor's and the Commissioner of Conservation's consent, but without the consent of the Legislature, to sell access rights by easement across a rail trail acquired under the Land for Maine's Future Fund. The Director must provide 30 days notice of the conveyance to interested parties, including abutters, local trail clubs, statewide trail associations, the municipality, the Land for Maine's Future Board, and each Legislator. A Legislator may request review of the proposed easement by the relevant joint standing committee of the Legislature and, if so, the Director may not finalize the transfer until the committee has met and reviewed the transaction. The access easement must include terms to ensure the transaction does not unreasonably interfere with the safety, maintenance and continuity of the rail trail.

LD 520, *An Act To Allow a Waiver for On-premises Signs* – Public Law 2011, [Chapter 115](#).

This new law amends 23 MRSA §1903, sub§8 and §1914, sub-§4 and enacts 23 MRSA §1914, sub- §4-A to afford the Commissioner of the Department of Transportation the authority to grant waivers under certain circumstances with respect to the general prohibition of on-premises signs (which includes signs with a maximum height of 25 feet), within twenty (20) feet from the outside edge of the paved portion of any state or state aid highway with more than two travel lanes and a total paved portion in excess of 24 feet.

LD 657, An Act to Permit Disposal of *Abandoned Manufactured Housing* – Public Law 2011, [Chapter 127](#). This emergency law was effective on May 23, 2011.

This new law enacts 10 MRSA § 9097(1-B) providing a statutory process which the owner or operator of a mobile home park must follow in order to dispose of abandoned or unclaimed manufactured housing. As part of the process, the owner/operator must, among other things, obtain a judgment for forcible entry and detainer and send written notice of the intent to dispose of the manufactured housing to the tenant and, if known, the lien holder. LD 657 was enacted to remedy the inadvertent repeal of the statutory process for disposal of manufactured housing that occurred last year’s legislative session.

LD 841, Resolve, To Establish the Blue Ribbon Commission on *Affordable Housing* – Public Resolve 2011, [Chapter 108](#).

This Resolve establishes the “Blue Ribbon Commission on Affordable Housing.” This 17-member commission is charged with studying affordable housing policy and making recommendations to maximize resources to best meet Maine’s housing needs. This commission must provide a report to the Labor, Commerce, Research and Economic Development Committee by February 15, 2012.

LD 1012, An Act to Require a Mortgagee to Provide the *Original Release of Mortgage* to the Mortgagor after the Release is Recorded – Public Law 2011, [Chapter 146](#).

This new law amends 33 MRSA § 551 to require the lender or servicer of a mortgage to send the original recorded release of mortgage to the mortgagor within 30 days of receiving the recorded release of mortgage from the registry of deeds, or be liable to an aggrieved party for \$500.00 in damages.

LD 1048, An Act to Delay the Implementation of the *Rental Housing Radon Testing Requirement* – Public Law 2011, [Chapter 157](#).

This new law amends 14 MRSA §6030-D(1) to extend the deadline for landlords to implement once per decade radon testing in residential rental buildings until March 1, 2014.

LD 1067, An Act to Improve Awareness of *Smoking Policies in Maine Rental Housing* – Public Law 2011, [Chapter 199](#).

This new law requires residential landlords to provide tenants and potential tenants with notification of that landlord’s policy regarding smoking on the rented premises. The policy must state where on the premises smoking is allowed, if at all. Notification must be included in the lease, or by separate written notice for tenants at will, and the landlord must obtain written acknowledgement from the tenant of receipt of the smoking policy before entering into a contract or accepting a deposit from that tenant. A tenant may not bring a private cause of action against a landlord based upon the landlord’s failure to provide a smoking policy or based upon another tenant’s violation of a smoking policy.

LD 1138, An Act To Prevent Unnecessary Expulsion of Landowners from the *Maine Tree Growth Tax Law Program* – [Carry Over](#).

LD 1138 resolves to amend 36 MRSA §581, sub-§1-A so as require assessors to impose a \$100 administrative penalty on landowners enrolled in the Maine Tree Growth Tax Law program for failure to comply with certain deadlines set forth in §574B, including failures to update existing forestry management plans and failures to comply with required filings upon the transfer of property subject to the program. However, landowners are to be notified by the assessor in writing of the imposition of such penalty and shall now be afforded 1 year from the deadline of compliance specified in §574B to provide the assessor with the documentation necessary to achieve compliance with the filings requirements under §574B. If a landowner still fails to achieve compliance within such year, the assessor must withdraw the parcel from taxation under this subchapter and impose the required withdrawal penalty. LD 1138 also serves to repeal 36 MRSA §1114 which provided a 15,000 acre cap on land that could be enrolled in the Maine Farm and Open Space Tax Law program. The repeal of this cap is intended to allow for easier transfer of property from the Farm and Open Space program to the Tree Growth program.

LD 1332, An Act To Amend the *Maine Condominium Act* – Public Law 2011, [Chapter 368](#).

This new law serves primarily to amend certain provisions of the Maine Condominium Act governing the operation and responsibilities of condominium associations. A few amendments of interest are as follows:

- Unless a condominium declaration provides otherwise, the right of an association to assign rights to future income, including the right to receive assessments, shall only be permitted upon the association obtaining the approval of majority of unit owners.
- An association shall now be permitted to suspend any right or privilege of a unit owner that fails to pay an assessment, although it may not deny a unit owner or other occupant access to such owner’s unit or otherwise withhold services if the effect would be to endanger health, safety or the property of any person.
- The executive board of an association is now required to provide more detailed notice to unit owners of the time, place and topics proposed to be discussed at meetings of the executive board and unit owners shall be afforded the opportunity to attend, subject to reasonable rules proposed by the board.
- More detailed Association record keeping requirements have been enacted.
- The time frame for extinguishment of liens for unpaid assessments has been extended from 3 to 5 years.

LD 1460, An Act Concerning the *Recording of Plans for Subdivisions* – Public Law 2011, [Chapter 245](#).

LD 245 adds an additional provision to the subdivision statute, requiring a municipality to allow at least 90 days for recordation of subdivision plan, plat or document, once the municipality has approved such plan, plat or document.

LD 1473, An Act To Clarify *Rights-of-Way Laws* – Public Law 2011, [Chapter 312](#).

Prior to the enactment of LD 1473, a person who acquired a lot in an approved subdivision pursuant to a conveyance made before September 29, 1987, which lot abutted a proposed, unaccepted way within such subdivision, was deemed to have ownership to the center line of such proposed, unaccepted way, unless title to such way was previously reserved by another. This new law serves to both amend 33 MRSA §469-A, sub- §6 and to enact 33 MRSA §469-A, sub- §6 –A to provide that a person owning land in a subdivision abutting a proposed, unaccepted way situated in such subdivision shall own the entire width of such way if the land on the opposite side of such way is not part of the approved subdivision, provided no previous reservation of title to such way exists.

LD 1499, An Act Concerning Fees for Users of *County Registries of Deeds* – Public Law 2011, [Chapter 378](#). **This emergency law was effective on June 16, 2011.**

This new law enacts the following fee schedule for abstracts and copies at county registries of deeds: \$5.00 per page for paper copies of plans, \$1.00 per page for other paper copies, and 50¢ for digital copies. For copies of more than 1,000 digital abstracts and for copies of consecutive records, the fee is 5¢ per page. This fee schedule is in effect retroactively from September 1, 2009 through July 31, 2012. On August 1, 2012, the previous fee schedule, which allowed county commissioners to set reasonable fees for copies, is reinstated. The new law expressly authorizes as reasonable fees of up to \$1.50 per page for paper and digital copies from September 1, 2009 through the effective date of the legislation.

LD 1550, An Act To Change Document Filing Fees for *County Registries of Deeds* – [Carry Over](#).

This new law amends 33 MRSA §751, sub-§1 and sub-§9, respectively, to increase registry recording fees as follows: From \$13 to \$25 for the first record page of all general instruments and from \$15 to \$27 for the recording, indexing and preserving of a plan.

State and Local Tax / Federal Tax Section begins on next page

State and Local Tax / Federal Tax

If you have a question about any of the bills summarized in the Tax section of the report, what the statutory changes mean for you and your business, or how to prepare for the next legislative session, please contact one of the attorneys listed below or a member of our [Government Relations](#) practice group.

Contact

[Jonathan A. Block](#) – 207.791.1173

[Robert A. Creamer](#) – 207.791.1322

LD 22, *An Act to Improve the **Maine Seed Capital Tax Credit*** – Public Law 2011, [Chapter 454](#). This new law amends the Seed Capital Tax Credit program for tax years beginning on or after January 1, 2012 by increasing the amount of the available tax credit from 40% of the amount invested in an eligible Maine business to 60% of that amount. It also authorizes a refundable tax credit for private venture capital funds for 50% of the amount invested in an eligible Maine business. To the extent that this credit is included in a private venture capital fund’s federal adjusted gross income, it is subtracted for Maine income tax purposes.

LD 59, *An Act to Provide **Sales Tax Exemption** or Refund on Parts and Supplies Purchased to Operate Windjammers* – Public Law 2011, [Chapter 425](#).

This new law creates a sales tax refund for parts and supplies for windjammers, defined as “a United States Coast Guard certified vessel based in the State of traditional construction and designed to a historic standard that is used primarily for providing overnight passenger cruises along the Maine coast for a fee.” The law also allows taxpayers to obtain a certificate from Maine Revenue Services that will enable them to purchase windjammer parts and supplies tax free.

LD 100, *An Act To Make Supplemental Appropriations and Allocations for the **Expenditures of State Government** and To Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2011* – Public Law 2011, [Chapter 1](#). **This emergency law was effective on February 8, 2011.**

This new law establishes that Maine conforms to the Internal Revenue Code, as amended, through December 31, 2010. The new law also makes a number of tax-related administrative changes, including: (1) increasing the time that a taxpayer has for filing an amended Maine return after a federal change affecting the taxpayer’s Maine tax liability; (2) extending from 60 to 90 days the time period for responding to requests for information from Maine Revenue Services, after which an estimated assessment will be issued; (3) allowing taxpayers to apply for a refund within three years of when they had incorrectly paid or overpaid a tax, instead of the current two years; and (4) reducing the 90 day period during which the State may hold an overpayment without paying interest to 60 days.

LD 441, *An Act to Reform Telecommunications Taxation* – Public Law 2011, [Chapter 430](#).

This new law sets the rate of the State Telecommunications Excise Tax at 19.2 mills for assessments made in 2012. Beginning with assessments made in 2013, and for later years, the tax will be calculated using the same mill rate as the municipality or unorganized territory in which the subject telecommunications equipment is located. Additionally, beginning July 1, 2012, each telecommunications business owning equipment subject to the tax shall, on or before December 31, 2012, and every year thereafter, return to the State Tax Assessor a list of such equipment and each municipality or unorganized territory where any such equipment is located on the first day of April.

LD 533, *An Act to Clarify the Use of Tax Increment Development Financing Funds for Recreational Development* – Public Law 2011, [Chapter 102](#).

This new law adds recreational trails to the list of projects for which tax increment financing (“TIF”) funds may be used. It also specifies that TIF funds may be used to cover costs for multiple projects and project phases that may include planning, design, construction, grooming and improvements related to new or existing recreational trails.

LD 611, *An Act Relating to Sales Tax on Certain Rental Vehicles* – Public Law 2011, [Chapter 209](#).

This new law clarifies that the short-term rental of an “automobile,” for purposes of the sales and use tax, includes the rental of pickup trucks and vans with a gross vehicle weight of less than 26,000 pounds. It also creates an expanded sales and use tax exemption for the rental of automobiles, for periods of less than one year, to service customers of new car dealers.

LD 713, *An Act to Amend the Definition of “Automobile” for Purposes of the Sales and Use Tax Law* – Public Law 2011, [Chapter 296](#).

This new law amends the definition of an “automobile” under the sales and use tax law to include a pickup truck or van with a registered gross vehicle weight of up to 10,000 pounds.

LD 718, *An Act Regarding the Milk Handling Fee* – Public Law 2011, [Chapter 125](#).

This new law clarifies who is considered a “handler” when there is more than one wholesaler that handles a particular container of milk in Maine and how a container of milk may not be subject to more than one handling fee. The new law also adds a credit or refund provision for milk on which a fee has been paid that is subsequently exported outside of Maine.

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LD 742, An Act to Amend the Maine *Historic Preservation Tax Credit* – Public Law 2011, [Chapter 453](#).

With the Historic Preservation Tax Credit scheduled to sunset in 2013, there were two bills introduced this session regarding this credit and its sunset date. The vehicle to change this credit turned out to be LD 742. As enacted, this new law makes a number of changes to this credit program, with specific changes being:

- extending the sunset date on this credit by ten years so that it is scheduled to expire on December 31, 2023;
- allowing insurance companies to benefit from this credit by allowing it to be credited against insurance premium taxes;
- specifying the source of funding for this credit in the near-term; and
- requiring the Maine Historic Preservation Commission to make regular reports to the Legislature regarding use of this credit and regarding recommended funding of this credit.

LD 823, An Act to Amend the Law Governing *Tax Increment Financing Districts* – Public Law 2011, [Chapter 287](#).

This new law places a cap on the aggregate value of municipal general obligation indebtedness that may be financed by the proceeds from tax increment financing districts within any one county.

LD 855, An Act to Treat Plantations in the Same Manner as Towns for Purposes of *Tax Increment Financing* – Public Law 2011, [Chapter 101](#).

This new law changes each mention of a municipality in the tax increment financing statutes listed in Title 30-A to read “municipality or plantation.”

LD 921, An Act to Clarify the Collection Process for the *Commercial Forestry Excise Tax* – Public Law 2011, [Chapter 462](#).

This new law benefits landowners who fail to file Forestry Excise Tax returns. If the landowner signs and files with the assessor an affidavit stating that the landowner did not know of the requirement to file a return, assessments may only be issued against the landowner for the preceding three years.

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LD 1043, An Act Making *Unified Appropriations and Allocations* for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2012 and June 30, 2013 – Public Law 2011, [Chapter 380](#). [Budge Summary](#).

Unlike earlier versions of LD 1043, the enacted law has restored full funding of the Business Equipment Tax Reimbursement (“BETR”). This new law also makes several changes to Maine’s tax statutes, including:

- Lowering the top income tax rate from 8.5% to 7.95% (effective January 1, 2013);
- Conforming the amount of Maine’s standard deduction and personal exemption to their federal equivalents;
- Eliminating the Maine alternative minimum tax on individuals, trusts and estates (effective January 1, 2012);
- Conforming to the expanded Internal Revenue Code § 179 business expense thresholds and creating a credit equal to 10% of the federal bonus depreciation on property placed in service in Maine for tax years beginning in 2011 and 2012;
- Creating a Maine New Markets Tax Credit based on the federal tax credit, with the credit equal to 39% of qualified investments and to be taken over a period of seven years;
- Exempting from sales tax meals served at retirement facilities;
- Exempting from sales and use tax aircraft and aircraft parts;
- Creating an income tax credit for up to 50% of investments in fishery infrastructure projects identified by the Department of Inland Fisheries and Wildlife;
- Increasing to twelve the number of days that nonresident individuals may work in Maine without incurring an income tax liability and allowing for certain activities to be conducted in Maine for up to 24 days without counting against the 12 day threshold;
- Providing for a refund of sales tax paid on fuel purchased for use in a commercial fishing vessel;
- Extending the deadline for filing an appeal of a tax assessment from 30 days to 60 days; and
- Reducing certain tax-related penalties related to the failure to file a tax return.

In addition, LD 1043 makes significant, taxpayer friendly changes to the Maine estate tax. Most notably, effective for deaths on or after January 1, 2013, it doubles the Maine estate tax exemption from \$1 million to \$2 million per decedent. The Act also expands the amount of a decedent’s estate for which a Maine-only qualified terminable interest property election can be made and modifies the estate tax rate structure.

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LD 1130, An Act to Amend the Laws Regarding the Determination of Domicile Based on the Geographic Location of an Individual's Bank – Public Law 2011, [Chapter 132](#). This emergency law was effective May 23, 2011.

This new law states that the geographic location of a financial institution where an individual has either loans or active accounts may not be used in determining whether that individual is domiciled in Maine.

LD 1142, Resolve, Directing the Department of Administrative and Financial Services, Bureau of Revenue Services to Review Farm and Open Space Tax Law – Resolve [Chapter 86](#).

This Resolve directs Maine Revenue Services to work with guidance from the Department of Food, Agriculture and Rural Resources to review land used for or in support of agricultural activities associated with parcels enrolled under the farm and open space tax law, including land within the footprint of buildings used for those activities. This review, which shall allow representatives of a statewide farming association to participate, must consider the method of valuation for such land under a current use valuation methodology.

LD 1325, An Act to Amend the Tax Law – Public Law 2011, [Chapter 285](#). This Act would make several changes to Maine's tax statutes, including: (1) clarifying how sales tax must be stated on a receipt; (2) expanding the sales tax exemption for watercraft purchased outside of Maine to cover watercraft purchased by residents as well as nonresidents; (3) exempting the transmission and distribution of electricity to a Pine Tree Zone business from sales tax; and (4) clarifying how Maine Revenue Services must post information concerning products used in agricultural and silvicultural production that are exempt from sales tax.

State and Local Tax/Federal Tax Section continues on next page

LD 1352, An Act to Implement the Requirements of the Federal Nonadmitted and Reinsurance Reform Act of 2010 – Public Law 2011, [Chapter 331](#). This emergency law takes effect July 21, 2011, except that that section of this Act that enacts the Maine Revised Statutes, Title 36, section 2532 takes effect when approved (June 14, 2011).

As required by the federal Nonadmitted and Reinsurance Reform Act of 2010 (“NRRA,” found at Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act), this Act amends Maine's insurance surplus lines law to clarify: (1) that Maine law pertains to those transactions when Maine is the home state of the applicant or the insured; (2) that diligent search requirements in the nonadmitted market do not apply to commercial purchasers as defined under federal law; and (3) how United States insurers and non-United States insurers may become eligible surplus lines insurers.

The Act also imposes a tax on premiums paid to a nonadmitted insurer under a new provision of Title 36, and would repeal the self-procured tax now under Title 24-A M.R.S.A. § 2113. The NRRA provides that “No state other than the home state of an insured may require any premium tax payment for nonadmitted insurance.” NRRA § 521(a). It permits states, however, to allocate premiums collected by the home state between states where the insured risk is located, if states enter into a multistate agreement meeting certain criteria. LD 1352 imposes tax on premiums for insurance procured from a nonadmitted insurer paid by an insured with a Maine “home state”. The tax is imposed on the surplus lines broker, or if directly procured, on the insured. LD 1352 adopts the federal definition of “home state.” LD 1352 also authorizes the State Tax Assessor to enter into a multistate agreement for allocation of premiums if [he has concluded that it is in the state’s financial best interest to do so.

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LD 1371, *An Act To Promote Fair and Efficient Resolutions in Tax Disputes* – Public Law 2011, [Chapter 439](#).

This new law, which takes effect July 1, 2012, makes several significant reforms in the way Maine Revenue Services deals with Taxpayers.

Most importantly, the new law eliminates Maine Revenue Services' ("MRS") existing appeals office which reports to the State Tax Assessor and replaces it with an Independent Appeals Office, led by a Chief Appeals Officer who will be hired by the Commissioner of Administrative and Financial Services. The Chief Appeals Officer will be required to exercise independent judgment when ruling on an appeal. To help maintain this independence, the Chief Appeals Officer and any subordinate appeals officers will not be permitted to have any ex parte communications with either MRS or the taxpayer. Appellate decisions will no longer require approvals of the division that issued the assessment and other Maine Revenue officials before being issued. Another change is the creation of a 90 day period beginning when a taxpayer files a request for reconsideration (the appeal) before the Independent Appeals Office will consider the request. During this time, the MRS division that issued the assessment and the taxpayer are encouraged to resolve issues the taxpayer has raised through informal discussion and settlement negotiations.

The new law also creates the office of the Maine Taxpayer Advocate, who will be selected by the Commissioner of Administrative and Financial Services and who will have the authority to help taxpayers with problems they may have with MRS. The Advocate is empowered to investigate taxpayer complaints and make recommendations to the State Tax Assessor with respect to those complaints. The Advocate is also required to submit an annual report to the Governor and Legislature concerning any systemic problems MRS may have in dealing with taxpayers.

Trusts and Estates Section begins on the next page

Trusts and Estates

If you have a question about any of the bills summarized in the Trusts and Estates section of the report, what the statutory changes mean for you or how to prepare for the next legislative session, please contact one of the attorneys from the list below.

Contact

[Marianna W. Putnam Liddell](#) – 207.791.1153

LD 170, An Act To Extend the Maximum Time Period for Powers of Attorney for Minors and Incapacitated Persons – Public Law 2011, [Chapter 43](#).

Under current law, a parent or guardian of a minor or incapacitated person may delegate their powers regarding care, custody or property through a power of attorney that lasts up to 6 months. This new law extends the time that the power of attorney is valid up to a total of 12 months. This law also authorizes a court to enter an order providing for transitional arrangements for a minor when issuing, modifying or terminating an order of guardianship, provided the transitional arrangement will assist the minor with a transition of custody and is in the best interest of the minor.

LD 419, An Act To Ensure the Payment of Survivor Benefits to Certain Children – [Carry Over](#).

This legislation proposes to clarify the ability of a child conceived using the gametes of a person after that person has died to inherit from the person through intestate succession. It provides that the child has the same inheritance rights as if he or she had been born prior to the decedent's death, *only when* the child is born to the decedent's surviving spouse *and* the deceased person had consented in writing to being a parent to such a child.

LD 532, An Act To Update the Maine Uniform Trust Code – Public Law 2011, [Chapter 42](#).

The new law amends the Maine Uniform Trust Code, which is based on the Uniform Trust Code approved by the National Conference of Commissioners on Uniform State Laws, and includes Maine Comments to explain the amendments. More specifically, among other changes, the new law: (1) adds a definition of "current beneficiary" to distinguish between the rights of current beneficiaries and qualified beneficiaries in general with regard to their right to receive information about trusts; and (2) clarifies that a creditor may reach or compel distribution of the interest of a beneficiary who also serves as trustee when the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard, but only to the extent the interest would be subject to the creditor's claim were the beneficiary not acting as trustee or cotrustee.

Trusts and Estates Section continues on the next page

LD 1377, An Act To Adopt the *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* – [Carry Over](#).

This bill proposes the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act developed by the National Conference of Commissioners on Uniform State Laws. This model act addresses jurisdiction over adult guardianships, conservatorships and other protective proceedings in an attempt to limit jurisdiction to only one state at any one time. This bill has been carried over to the next legislative session.

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About Pierce Atwood

For 120 years, Pierce Atwood's success has been grounded in three fundamental strengths: attracting and retaining superb talent, achieving superior client results and satisfaction and delivering exceptional value. Our culture, reward systems, professional development programs, approach to business efficiency through the use of knowledge management tools and our uncompromising dedication to client service all support these three core strengths.

We are down-to-earth lawyers with sophisticated clients and practices, happily engaged in the practice of law. At the same time, we are creative, nimble and focused on thinking about our work from our clients' point of view. Our goal is to provide great service, quality and expertise at a fair price.

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End of 2011 Summary Report