

MAINE STATE LEGISLATURE

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**STATE OF MAINE
125th LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the
COMMISSION TO STUDY PRIORITIES AND
TIMING OF JUDICIAL PROCEEDINGS IN
STATE COURTS**

December 2011

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Sen. Cynthia A. Dill
Rep. G. Paul Waterhouse, Chair
Rep. Ralph W. Sarty
Rep. Maeghan Maloney
Thomas Knowlton
Judge Robert Mullen
Justice John Nivison
Richard Thompson**

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Executive Summary

The Commission to Study Priorities and Timing of Judicial Proceedings in State Courts (herein referred to as "the Commission") was established by Resolve 2011, chapter 104. In Resolve 2011, chapter 104, the Commission was directed to study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute.

Members of the Commission met three times in the fall of 2011 to conduct a review. The following recommendations were made unanimously by members of the Commission except where it is stated otherwise.

1. **Incorporate uniform language in statutory priorities.** The Commission reviewed examples of statutory language requiring the court to hold an expedited hearing. The Commission recommends that the following uniform language be applied to the priorities reviewed by the Commission, unless the priority is eliminated or there is a reason for retaining the non-uniform language: "The action may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require."
2. **Amend statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions.** The Commission reviewed 45 statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. The Commission recommendations are classified into the following categories:
 - Modify the priority with the Commission's selected uniform language;
 - Eliminate the priority; or
 - Retain the current statutory language.

The majority of recommendations were unanimous; two were divided. The two judicial branch members of the Commission abstained from voting. The Commission recommends the Joint Standing Committee on Judiciary report out a bill to implement the Commission's recommendations.

3. **Eliminate a statutory priority regarding a traffic infraction.** The Commission recommends the statutory priority in Title 29-A MRSA §2603, sub-§1, a traffic infraction, be eliminated because it is duplicative.
4. **Considerations for Joint Rule 318 reviews.** The Commission recommends the following factors be considered by the Joint Standing Committee on Judiciary in Joint Rule 318 reviews.
 1. Does a constitutional or federal law require priority?
 2. Has a full hearing already been provided?
 3. Does the proposed statute affect any of the following:
 - Mental health laws affecting personal liberty and medical emergencies?
 - Public health emergencies?

- Elections?
- Interstate uniform laws?
- Domestic violence (protection from abuse)?
- Medical necessity?
- Family matters relating to child custody?
- Evictions?
- Government functioning and enforcement of statutes?
- Actions taken on an ex parte basis?

5. Amend protection from harassment statute. The Commission recommends that the following amendments be made to the protection from harassment statutes:

- Add the Commission’s proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders in Title 5, §4654, sub-§6;
- Amend the definition of harassment in Title 5, §4651, sub-§2 by limiting damage to property to only “business” property and by repealing the version of harassment described as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privilege secured by the Constitution of Maine or the United States;
- Repeal Title 5 §4654, sub-§2, ¶B as unnecessary; and
- Amend the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

One member opposed recommending this amendment.

I. INTRODUCTION

The Commission to Study Priorities and Timing of Judicial Proceedings in State Courts was established by Resolve 2011, chapter 104. A copy of the resolve is included as Appendix A.

The Commission consists of 9 members: 2 members of the Senate, 3 members of the House of Representatives, 2 members of the Judicial Branch, one representative of the Office of the Attorney General and one representative of the Maine Trial Lawyers Association. Senator David Hastings was named Senate chair and Representative Paul Waterhouse was named House chair. The complete membership of the Commission is included as Appendix B. The Office of Policy and Legal Analysis provided staffing support to the Commission.

Pursuant to Resolve 2011, chapter 104, the Commission was directed to study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute.

This report fulfills the requirement in chapter 104 that the Commission submit a report to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 125th Legislature.

II. COMMISSION PROCESS

The Commission met three times: October 12th, November 15th and December 13th. All of the meetings were held in the State House and were open to the public. Live audio of each meeting was made available through the Legislature's webpage. The Commission also established a website which can be found at <http://www.maine.gov/legis/opla/judicialpriorities.htm>. Agendas and other meeting materials are posted on the website.

In accordance with Resolve 2011, chapter 104, the Commission asked several members of the Maine Bar to share their impressions regarding the existing judicial priorities. Summaries of the comments of the following participants can be found on the Commission's website in the October 12th meeting summary: Bill Robitzek representing the Maine State Bar Association, Evert Fowle representing the Maine Prosecutors Association, Tom Kelley representing Pine Tree Legal Assistance, John Pelletier representing the Maine Commission on Indigent Legal Services and Sarah Churchill representing the Maine Association of Criminal Defense Lawyers.

In addition, the Commission received an in-depth presentation from the Judicial Branch, which included an overview of the 111 statutory court priority references. The focus of the Commission's review was based on the outline of priorities as presented by the Judicial Branch.

A. Categories of priorities

1. Judicial Branch presentation. As noted by Justice Nivison in his presentation to the Commission, the demands upon the Judicial Branch made the need for a priority assessment very important. For purposes of Commission discussion, the Judicial Branch placed statutory judicial priorities into the following 4 major categories: Category I – No changes recommended;

Category II – Duplicative, elimination recommended; Category III – Protection from harassment; Category IV – No recommendation.

The breakdown within the Judicial Branch's four categories is as follows.

Category #	Judicial Branch Recommendation
I	<p><u>No Changes Recommended for these Priorities</u> (63 cites)</p> <p>A. Constitutional Rights of Persons Charged With Crime:</p> <ol style="list-style-type: none"> 1. Bail (3 cites) 2. Juvenile (7 cites) 3. Adult (4 cites) <p>B. Mental Health/Personal Liberty, Medical Emergency (12 cites)</p> <p>C. Federal Requirements:</p> <ol style="list-style-type: none"> 1. Child Protective (9 cites) 2. Other (2 cites) <p>D. Public Health Emergencies: (7 cites)</p> <p>E. Elections: (6 cites)</p> <p>F. Miscellaneous/Priority:</p> <ol style="list-style-type: none"> 1. Interstate Uniform Laws: (4 cites) 2. Domestic Violence, Protection from Abuse: (3 cites) 3. Medical Necessity: (2 cites) 4. Family Matters/Child Custody: (3 cites) 5. Evictions: (1 cite)
II	<p><u>Duplicative, Elimination Recommended</u> (1 cite)</p> <p>Traffic Criminal (1 cite)</p>
III	<p><u>Protection From Harassment</u> (2 cites)</p>
IV	<p><u>No Recommendation</u> (45 cites)</p> <p>A. Civil Appeal To Superior Court (8 cites)</p> <p>B. Animals (4 cites)</p> <p>C. Labor Relations Board (5 cites)</p>

	D. Administrative Licenses (3 cites) E. Miscellaneous Civil (25 cites)
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In summary, the Judicial Branch recommended to the Commission that:

- The priorities that fall into the 1st category remain unchanged as they currently are in statute, because there are compelling reasons, including constitutional and personal liberty reasons, for the expedited process in these cases;
- The priority in the 2nd category (a traffic infraction) be eliminated because it appears to be duplicative; and
- There be further discussion about the 3rd category regarding protection from harassment statutes, including the potential for carving out those cases that involve personal safety and distinguishing them from other cases with a property focus, such as boundary disputes.

The Judicial Branch did not make recommendations in regard to the 4th and final category, which includes priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. This 4th category involves priorities based on previous policy decisions, which require legislative (Commission) review. Of the 45 statutes in the 4th category, Justice Nivison could not identify one statute or group of statutes as currently bogging the courts down more than any other. He also noted that it was important to look for consistency in how priorities are described in statute, if they are maintained.

The Judicial Branch noted that the protection from harassment (PFH) priorities in the 3rd category have the biggest impact on the caseload in the District Court. The PFH docket is frustrating for everyone. Sometimes the lengthy cases are justified, and sometimes they might be handled more appropriately and effectively as a family matter or by some other type of mediation process. Mary Ann Lynch, Director of Court Information described the PFH cases as “docket busters,” which delay cases involving landlord-tenant claims, creditor claims and other small claims that are assigned no statutory priorities.

2. Commission discussion. The Commission members determined that they would not recommend changes to the priorities listed in the 1st category contained in the Judicial Branch's presentation (constitutional rights and personal liberties). After discussion among John Pelletier, Sarah Churchill and Evert Fowle, the Commission was reassured that repeal of the priority in the 2nd category contained in the Judicial Branch's presentation (traffic) is appropriate, as warrantless arrests are permissible now (see Title 17-A §15) and law enforcement officers can already take personal recognizance bail for Class D and E crimes. Regarding the 3rd category contained in the Judicial Branch's presentation (PFH), the Commission asked Judge Mullen to convene a subcommittee to review possible recommendations.

The Commission discussed the process for reviewing the priorities in the 4th category contained in the Judicial Branch's presentation. Commission members quickly rejected the suggestion to eliminate all 45 priorities in the 4th category and instead decided to look at the statutes for ways to position the courts so that they are justified in assigning cases in a reasonable manner. In reviewing the 45 statutes, it was suggested that Commission members keep in mind common

operative language; determine if there is a policy reason for keeping or not keeping a priority; and determine what impact the 45 (or a smaller group) have on the courts.

The Commission noted that recommending removal of an expedited provision does not mean that the matter is not important, but it gives courts the authority to determine where a case should be placed on the docket. The Commission determined that it would look at each of the 45 statutes, and if the language includes a specific timeframe it would not suggest changing the statute. If the statute does not have specific time language but an expedited hearing is appropriate, the Commission will recommend some general uniform language.

The Commission's recommendations regarding amendments to statutory priorities are included in Recommendations #1, #2 and #3 below.

B. Joint Rule 318

Joint Rule 318: "Review of Judicial Proceedings and Priorities" was adopted by the Legislature during the First Regular Session of the 125th Legislature. Rule 318 provides that whenever a legislative measure is proposed that contains a provision to expedite, establish or adjust the priority of judicial proceedings, the legislative committee of jurisdiction shall hold a public meeting on the proposal and determine the level of support for the proposal among members of the committee. If a majority of the committee supports the proposal, the committee shall request the Joint Standing Committee on Judiciary to review and evaluate the proposal as it pertains to the appropriate priority and timing of judicial proceedings in all state courts. The Judiciary Committee shall conduct the review and report back to the committee of jurisdiction.

This review process is similar to the Judiciary Committee's review of proposed legislation dealing with public record exceptions pursuant to Title 1, Chapter 13, Subchapter 1-A; however, Joint Rule 318 does not set criteria on which to evaluate judicial priorities as the public records exception statute does. The Commission discussed the need to develop criteria or guidelines for use by the Judiciary Committee as it reviews proposals under Joint Rule 318.

The Commission's recommendation regarding review under Joint Rule 318 is included in Recommendation #4 below.

C. Protection from harassment statute

At the request of the Commission, a subcommittee was formed to look at the issue of court resources devoted to protection from harassment cases. The subcommittee met on November 1, 2011, with commission members Deputy Chief Judge Mullen and Representative Maeghan Maloney in attendance. Also in attendance and participating were: Janet Stocco, Law Clerk, Office of the Chief Judge; Margo Batsie representing the Maine Coalition to End Domestic Violence; Elizabeth Ward Saxl representing the Maine Coalition Against Sexual Assault; Susan Bixby representing the Maine State Bar Association; Lucia Hunt representing Pine Tree Legal Assistance; and Sherry Wilkins and Mary Ann Lynch representing the Administrative Office of the Courts. Deputy Chief Judge Mullen reminded the group that the court system handles 4,000+ PFH cases a year, and that feedback from other judges supports his observations: the effectiveness of the protection from harassment statute is not certain, and the

large number of cases requires an inordinate amount of judicial resources and time. Past pilot programs have used mediation to handle some cases, but trying to expand on this would be challenging, as mediation is costly and it is difficult for mediators to attend all hearings.

Because of the challenges posed by trying to implement mediation, Chief Judge Mullen suggested repealing part of the protection from harassment statute. At the first subcommittee meeting, there was a great deal of discussion about potential amendments to the statute, but there was consensus on only a few changes, which included: repealing Title 5 §4651, sub-§2, ¶B, which is a provision in the definition of harassment that is not utilized; repealing Title 5 §4654, sub-§2, ¶B as unnecessary; and using the Commission's uniform language to replace "expeditiously" in Title 5 §4654, sub-§6 dealing with dissolution or modification of a protection order. Some members of the subcommittee also supported a proposal to amend the PFH statute to require, as a prerequisite to filing a PFH action, that a plaintiff first have law enforcement issue an order to the defendant to cease harassing the plaintiff pursuant to Title 17-A §506-A or that the plaintiff show "good cause" why such an order was not sought or obtained. Concerns about this approach involve the question of whether such a process would negatively impact access to the process for the most vulnerable victims. The subcommittee discussed whether defining "good cause" would address that access concern, and some members of the Commission and other interested parties who participated in the subcommittee meeting believed that crafting a definition might adequately address the concern. However, there was at least one member of the Commission who expressed that such a change would not alleviate his concerns about limiting the scope of accessibility for obtaining PFH orders. The Commission decided to defer further discussion of this issue until its final meeting on December 13, 2011, allowing subcommittee members and other interested parties time to again attempt to collaborate and refine a proposal for the full Commission's consideration.

A second subcommittee meeting was not held, but members and the interested parties corresponded by email about a potential compromise amendment drafted by Deputy Chief Judge Mullen. The subcommittee report to the final meeting of the Commission was not one of total agreement. Upon receiving the report, all Commission members and interested parties agreed with the subcommittee's finding that the current PFH statute results in a large number of cases that take up a great deal of court time and resources, including the time of both clerks and judges. They also agreed that although some of these cases warrant prompt attention, many of them (i.e., boundary disputes) do not deserve priority treatment over other important civil issues, such as landlord-tenant, family law and small claims cases.

Although all acknowledged that a problem exists, members supported different solutions. Rep. Waterhouse proposed repealing the entire civil protection from harassment process in Title 5, Chapter 337-A. No other members supported that proposal. A second proposal, the proposed amendment from Chief Deputy Judge Mullen, was put forward to amend the protection from harassment statute; the amendment had many of the same elements as the first amendment discussed in the subcommittee and included changing only part of the definition section for "harassment", adding uniform language to a provision requiring an "expedited" hearing and amending the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

The Commission thoroughly discussed the pros and cons of the proposed amendment, and the majority determined that one way to ensure that the issues are thoroughly discussed by stakeholders is to formalize them in writing in the form of proposed legislation. Although advocates, defense attorneys, prosecutors and judges were at the table for these discussions, those representing law enforcement were not, and the Commission noted that law enforcement input is important since the notice change would impact them directly. The Commission hopes that the public hearing held by the Judiciary Committee will provide the best forum to ensure that all interested parties have the opportunity to weigh in on this specific proposal. Some Commission members who supported including these changes in the proposed legislation expressed continued reservations, including whether the changes would take some cases out of the process altogether (i.e., by repealing Title 5, §4651, sub-§2, ¶B) and whether the changes may cause confusion and frustration for some harassment victims who may bounce back and forth between court and law enforcement to meet the notice requirement. Ultimately, all but one Commission member voted to go forward with including the proposed amendment in the Commission's suggested bill. Tom Knowlton, the representative for the Office of the Attorney General, opposed the motion. In addition to the above-mentioned concerns, he also felt that it would be more appropriate to have a full discussion with law enforcement and all the other interested parties at the table before drafting legislation for consideration. Rep. Maloney was unable to attend the last meeting to vote but previously supported the proposed changes to the protection from harassment statute, which were discussed in the subcommittee meeting and the second Commission meeting.

The Commission's recommendation regarding changes to the protection from harassment statute is included in Recommendation #5 below.

III. COMMISSION RECOMMENDATIONS

Recommendation #1: Uniform language.

The Commission reviewed examples of statutory language requiring the court to hold an expedited hearing. After thorough discussion, the Commission recommends the following uniform language be applied to the priorities reviewed by the Commission, unless the priority is eliminated or there is a reason for retaining the non-uniform language: "The action may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require."

Recommendation #2: Statutory priorities related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions (Judicial Branch's Category IV).

The Commission reviewed the 45 statutory priorities contained in the Judicial Branch's category IV related to civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. The Commission's recommendations are contained in the chart of revised recommendations dated 12/14/11 included as Appendix C and in Part A of the draft bill included as Appendix D. The Commission recommends the Joint Standing Committee on Judiciary report out a bill to implement the Commission's recommendations.

The recommendations can be classified into the following categories:

- Modify the priority with the Commission's selected uniform language;
- Eliminate the priority; or
- Retain the current statutory language.

The majority of recommendations were unanimous; two were divided. The two judicial branch members of the Commission abstained from voting. The Commission decided to note in its final report which votes were not unanimous, as well as the following issues for consideration by the Joint Standing Committee on Judiciary.

- Title 28-A, §805, sub-§3 (regarding appeal of revocation or suspension of liquor license decision, chart line 9) – The Commission's vote was divided with 4 members supporting eliminating the priority and 2 opposed. Commission member Tom Knowlton reported that attorneys in the Attorney General's Office who handle liquor license issues indicated that changing this provision may implicate public safety.
- Title 28-A, §803, sub-§2-A (regarding liquor license suspension or revocation, chart line 21) – The Commission's vote was divided with 5 members in support of eliminating the priority and 1 opposed.

In addition to the divided votes, concerns or issues were raised concerning these sections:

- Title 10, §1020-A, sub-§7, ¶D (regarding waste motor oil disposal site eligibility, chart line 5) – Although the Commission voted to eliminate the priority, Commission member Tom Knowlton reported that the Finance Authority of Maine (FAME) indicated that there are outstanding bonds related to this program, and FAME is concerned that any change to the statute may concern the underwriters.
- Title 26, §1289, sub-§7; Title 26, §979-H, sub-§7; Title 26, §1029, sub-§7, Title 26, §968, sub-§5, ¶F; and Title 26, §1329, sub-§6 (regarding the Maine Labor Relations Board, chart lines 14 through 18) – Although the Commission voted to modify these sections with uniform language, members noted that someone with more knowledge of these issues may have information as to why the language should not be changed, and if that is the case, such information would likely be provided at a public hearing.

The Commission decided not to review and consider applying the uniform language to the expedited language in the priorities for which the Judicial Branch recommended no change in Category I.

Recommendation #3: Statutory priority regarding traffic infraction (Judicial Branch's Category II).

The Judicial Branch recommended that the statutory priority in Title 29-A MRSA §2603, sub-§1, a traffic infraction, be eliminated because it is duplicative. The Commission recommends that the priority be eliminated. Statutory language eliminating this priority is in Part B of the draft bill included as Appendix D.

Recommendation #4: Joint Rule 318.

The Commission considered the need to develop criteria or guidelines for use by the Joint Standing Committee on Judiciary as that committee reviews proposals under Joint Rule 318. The Commission reviewed an outline provided by Representative Maloney which was based on the Judicial Branch's breakdown of categories and agreed that it would be a useful guide for the Joint Standing Committee on Judiciary to use in its review of proposed priorities under Joint Rule 318.

The Commission recommends that the following factors be considered by the Joint Standing Committee on Judiciary in Joint Rule 318 reviews.

1. Does a constitutional or federal law require priority?
2. Has a full hearing already been provided?
3. Does the proposed statute affect any of the following:
 - Mental health laws affecting personal liberty and medical emergencies?
 - Public health emergencies?
 - Elections?
 - Interstate uniform laws?
 - Domestic violence (protection from abuse)?
 - Medical necessity?
 - Family matters relating to child custody?
 - Evictions?
 - Government functioning and enforcement of statutes?
 - Actions taken on an ex parte basis?

Recommendation #5: Protection from harassment statute (Judicial Branch's Category III).

The Commission finds that the current PFH statute results in a large number of cases that take up a great deal of court time and resources, including the time of both clerks and judges. Commission members further find that, although some of these cases warrant prompt attention, many of them (i.e., boundary disputes) do not deserve priority treatment over other important civil issues, such as landlord-tenant, family law and small claims cases. All but one Commission member recommend that the following amendments be made to the PFH statutes:

- Add the Commission's proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders in Title 5, §4654, sub-§6;
- Amend the definition of harassment in Title 5, §4651, sub-§2 by limiting damage to property to only "business" property and by repealing the version of harassment described as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privilege secured by the Constitution of Maine or the United States;
- Repeal Title 5 §4654, sub-§2, ¶B as unnecessary; and
- Amend the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, §4651, sub-§2, ¶C, the plaintiff must seek and file a copy of a notice to stop

harassing the plaintiff issued to the defendant pursuant to Title 17-A, §506-A or a statement of good cause why such notice was not sought or obtained.

Statutory language amending the protection from harassment statute is in Part C of the draft bill included as Appendix D.

APPENDIX A

Resolve 2011, Chapter 104

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

—
S.P. 297 - L.D. 951

**Resolve, Establishing the Commission To Study Priorities and Timing of
Judicial Proceedings in State Courts**

Sec. 1. Commission To Study Priorities and Timing of Judicial Proceedings in State Courts established. Resolved: That the Commission To Study Priorities and Timing of Judicial Proceedings in State Courts, referred to in this resolve as "the commission," is established; and be it further

Sec. 2. Commission membership. Resolved: That the commission consists of 9 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including at least one member from each of the 2 parties holding the largest number of seats in the Legislature;
3. Two members appointed by the Chief Justice of the Supreme Judicial Court;
4. One member appointed by the Attorney General; and
5. One representative of the Maine Trial Lawyers Association designated by the Maine Trial Lawyers Association; and be it further

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission; and be it further

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been

made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business; and be it further

Sec. 5. Participation. Resolved: That the commission shall seek the participation of the Maine State Bar Association, the Maine Prosecutors Association, Pine Tree Legal Assistance, the Maine Commission on Indigent Legal Services and the Maine Association of Criminal Defense Lawyers and may seek the participation of any other individuals or organizations whose participation or input may be helpful; and be it further

Sec. 6. Duties. Resolved: That the commission shall study the priority and timing of judicial proceedings in state courts including, but not limited to, judicial proceedings that require priority treatment pursuant to statute; and be it further

Sec. 7. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the commission; and be it further

Sec. 8. Reimbursement. Resolved: That, notwithstanding Joint Rule 353, public members of the commission are not entitled to reimbursement for expenses; and be it further

Sec. 9. Report. Resolved: That, no later than December 7, 2011, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary is authorized to introduce a bill related to the subject matter of the report to the Second Regular Session of the 125th Legislature.

APPENDIX B

**Membership list, Commission to Study Priorities and
Timing of Judicial Proceedings in State Courts**

Commission to Study Priorities and Timing of Judicial Proceedings in State Courts

Resolve 2011, Chapter 104

Tuesday, December 27, 2011

Appointment(s) by the President

Sen. David R. Hastings III - Chair
955 Main Street
Fryeburg, ME 04037

Senate Member

Sen. Cynthia A. Dill
1227 Shore Road
Cape Elizabeth, ME 04107
207 749-7749

Senate Member

Appointment(s) by the Speaker

Rep. G. Paul Waterhouse - Chair
21 Green Street
Bridgton, ME 04009

House Member

Rep. Ralph W. Sarty
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Denmark, ME 04022

House Member

Rep. Maeghan Maloney
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Augusta, ME 04330

House Member

Attorney General

Thomas Knowlton
65 SHS
Augusta, ME 04333-0065
207 626-8800

Assistant Attorney General

Chief Justice

Judge Robert Mullen
Maine Judicial Center
65 Stone Street
Augusta, ME 04330

Chief Justice Designee

Judge John Nivison
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Portland, ME 04112

Chief Justice Designee

Other

Richard Thompson
Maine Trial Lawyers Association
P.O. Box 438
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207 622-2661

Representing Maine Trial Lawyers Association

Staff:

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Susan Johannesman 287-1670
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APPENDIX C

**Chart of Commission's Final Recommendations for
Revisions to Certain Statutory Judicial Priorities**

**Commission to Study Priorities
and Timing of Judicial Proceedings**

**Revised Recommendations from 12/13/11 Meeting
(last revised 12/14/11)**

	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
2	1	409(2)	Appeal from Actions Taken Illegally in Exec. Session	CIVIL APPEAL TO SUP.	SUP	Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.		privileged	Modify with uniform language.
3	1	409(1)	Appeal from Denial of FOAA Requests	CIVIL APPEAL TO SUP.	SUP	Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.		privileged	Modify with uniform language.
4	8	230	Fireworks	CIVIL APPEAL TO SUP.	SUP	The court shall immediately, after notice and hearing, affirm or reverse the commissioner's decision. (NOTE: Still in effect after 1/1/12; not repealed as part of "consumer firework" changes in PL 2011, c.416)		immediately, after notice and hearing	Eliminate.
5	10	1020-A(7)(D)	Waste Motor Oil Disposal Site Eligibility	CIVIL APPEAL TO SUP.	KEN SUP	A party may appeal a final agency action by the DEP regarding eligibility for waste motor oil revenue funds to the Kennebec County Superior Court. The court shall issue its decision within 45 days of the date of filing of the appeal.	45 days - must issue decision from filing appeal		Eliminate.
6	22	1559(3)	Tobacco License Suspension	CIVIL APPEAL TO SUP.	SUP	The Superior Court shall fix a time and place for an immediate hearing [of an appeal from the decision of the District Court regarding forfeiture or fine, revocation or suspension of license, or refusal to issue a license] and notify the District Court of the hearing.		immediate hearing	Eliminate.
7	38	1022	Appeal from Decision for License to Build Wharves and Fish Weirs	CIVIL APPEAL TO SUP.	SUP	Any person aggrieved by a decision by municipal officers related to a license to build a wharf or fish weir may appeal to the Superior Court, which must communicate its decision to the applicant and the municipal officers within 10 days after the date of the hearing.	decision within 10 days of hearing		Eliminate.

**Commission to Study Priorities
and Timing of Judicial Proceedings**

**Revised Recommendations from 12/13/11 Meeting
(last revised 12/14/11)**

	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
8	28-A	2221-A(4)(D)	Illegal Manufacture, Transport, Sale of Alcohol	CIVIL APPEAL TO SUP.	SUP	The court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition [to order forfeiture of liquor and property used in illegal manufacture, transportation, and sale of liquor].	not less than 2 weeks	promptly	Modify with uniform language.
9	28-A	805(3)	Appeal of Revocation or Suspension of Liquor License Decision	CIVIL APPEAL TO SUP.	SUP	The Superior Court shall fix a time and place for an immediate hearing of an appeal from the District Court regarding revocation or suspension of a liquor license.		immediate hearing	Eliminate. (Divided report)
10	7	3952(4-B)	Animals (Dangerous Dogs)	ANIMALS/CIV/CRIM	DIS/SUP	The court shall hear and determine the motion as expeditiously as possible.		as expeditiously as possible	Modify with uniform language.
11	17	1021(4)(C)	Inhumane Treatment of Animals	ANIMALS/CIV/CRIM	DIS/SUP	The court shall hear and determine the motion [for dissolution or modification of the ex parte order] as expeditiously as justice requires.		as expeditiously as justice requires	Modify with uniform language.
12	17	1021(5-A)	Possession of Animals	ANIMALS CIV/CRIM	DIS/SUP	The court shall set a hearing date within 21 days of the date that the animal was seized to determine whether the animal should be seized permanently or disposed of humanely.	within 21 days		Modify with uniform language.
13	17	1027(2)	Seizure or Impoundment of Animals	ANIMALS/CIV/CRIM	DIS/SUP	Upon petition by a person claiming interest in an animal seized or impounded related to animal cruelty or animal fighting, the court shall hold a hearing within 10 days of receipt of the petition.	within 10 days		Modify with uniform language.

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**Revised Recommendations from 12/13/11 Meeting
(last revised 12/14/11)**

	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
14	26	1289(7)	Me. Labor Relations Bd. Decision Concerning Judicial Employees	CIVIL/LABOR RELATIONS	K, SJC	Upon the filing of the 80C complaint for review of a decision of the MLRB, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. . . . A hearing must be held not less than 7 days after notice thereof. An appeal to the Law Court of a decision or order of the MLRB regarding prohibited acts of public employer or judicial employer must be expedited in the same manner as interlocutory appeals (see section 6)	not less than 7 days after notice	earliest possible time; appeal expedited as in interlocutory appeals	Modify with uniform language.
15	26	979-H(7)	Rulemaking/Decisions of the Me. Labor Relations Bd. Concerning State Employees	CIVIL/LABOR RELATIONS	KEN SUP	A party seeking review of an MLRB decision concerning a prohibited act by a public employer or a state of legislative employee may file a complaint in the Superior Court of Kennebec County, which shall set the complaint for hearing at the earliest possible time, not less than 7 days after notice thereof.	not less than 7 days after notice	earliest possible time	Modify with uniform language.
16	26	1029(7)	Me. Labor Relations Bd. Decision Concerning Univ. of Me. Employees	CIVIL/LABOR RELATIONS	KEN SUP/SUP S	Upon the filing of the 80C complaint for review of a decision of the MLRB, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. . . . After hearing, which must be held not less than 7 days after notice of the hearing, the court may enforce, modify, enforce as so modified, or set aside in whole or in part the decision of the board	not less than 7 days after notice	earliest possible time	Modify with uniform language.
17	26	968(5)(F)	Rulemaking/Decisions of the Me. Labor Relations Bd. Concerning Municipal Employees	CIVIL/LABOR RELATIONS	SUP	Upon the filing of the 80C complaint for review of a decision of the MLRB, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. . . . After hearing, which must be held not less than 7 days after notice thereof, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board	not less than 7 days after notice	earliest possible time	Modify with uniform language.

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	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
18	26	1329(6)	Me. Labor Relations Bd. Decision Concerning Agricultural Employees	CIVIL/LABOR RELATIONS	SUP	Upon the filing of the 80C complaint for review of a decision of the MLRB, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. . . . A hearing must be held not less than 7 days after notice thereof.	not less than 7 days after notice	earliest possible time	Modify with uniform language.
19	4	184(6)	Public Health License Suspension	CIVIL/ADMIN	DIST	Upon issuance of an order revoking or suspending a license under this section, the District Court shall promptly schedule an expedited hearing on the agency's complaint.		promptly schedule an expedited hearing	Modify with uniform language.
20	22	1558(3)	Retail Tobacco License Suspension or Revocation	CIVIL/ADMIN	DIST	The District Court shall issue the decision [after a hearing on a violation of state law or rule related to tobacco sales] in writing within 12 days of the hearing.	decision within 12 days		Eliminate.
21	28-A	803(2-A)	Liquor License Suspension or Revocation	CIVIL/ADMIN	DIST	The District Court judge shall issue the [liquor license suspension or revocation] decision within 12 days of the hearing.	within 12 days of hearing		Eliminate. (Divided report)
22	5	90-E(2)(D)	Review of UCC Financing Statements	CIVIL	KEN SUP	In the process to review and determine authorization of filing of financial statement records, the court's review of pleadings, depositions, admissions, and affidavits must be made on an expedited basis.		review on an expedited basis	Retain current statutory language.
23	5	4613(1)	Actions Filed by the Human Rights Commission	CIVIL	SUP	An action filed by the Human Rights Commission (pursuant to § 4612) shall be heard by the Superior Court and may be advanced on the docket and receive priority over other civil cases where the court shall determine that the interests of justice so require.		may be advanced on the docket - if the interests of justice so require	Retain current statutory language which is uniform language.
24	10	1104(2)(B)	Monopolies and Profiteering	CIVIL	DIS/SUP	Upon notice to the parties of a petition instituted by the A.G. to prevent and restrain contracts & monopolies in restraint of trade, the court shall proceed as soon as possible to the hearing and determination of the case.		as soon as possible	Modify with uniform language.

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	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
25	14	556 (1st par.)	Special Motion to Dismiss	CIVIL	DIS/SUP	The court shall advance the special motion (based on the moving party's constitutional right of petition) so that it may be heard and determined with as little delay as possible.		with as little delay as possible	Modify with uniform language.
26	15	5826(5)	Criminal Asset Forfeiture	CIVIL	DIS/SUP	Upon filing of a petition by a person (not defendant) who claims an interest in property subject to forfeiture, the court shall schedule the hearing as soon as practicable but in no event later than 6 months or after the sentencing of any defendant convicted upon the same indictment.		as soon as practicable but not later than 6 months	Modify with uniform language, but keep language re: "in no event later than 6 months" etc.
27	22	1602(4)	Mass Gatherings	CIVIL	DIST	[An applicant aggrieved by a denial of a mass outdoor gathering permit] must be granted a prompt hearing before the District Court for reconsideration of the denial.		prompt hearing	Modify with uniform language.
28	22	7933(3)(A)	Appointment of Receivers for Protection of Residents of Long- term Care & Other Facilities	CIVIL	SUP	The commissioner may bring action requesting appointment of a receiver; the court shall hold a hearing not later than 10 days after the action is filed	not later than 10 days		Retain current statutory language.
29	22	7933(3)(B)	Appointment of Receivers for Protection of Residents of Long- term Care & Other Facilities	CIVIL	SUP	The owner or licensee may move the dissolution or modification of an order appointing a temporary receiver entered without notice; the court shall hear and determine such motion as expeditiously as the ends of justice require.		as expeditiously as the ends of justice require	Modify with uniform language.
30	22	7934(3)	Payment on Preexisting Leases, Mortgages, and Contracts by Receiver Appointed to Operate Long- term Care & Other Facilities	CIVIL	SUP	Upon application by the receiver to pay reasonable rental, price or interest on preexisting leases or mortgages that are necessary to the continued operation of a long- term care facility, the court shall hold a hearing on the application within 15 days.	within 15 days		Retain current statutory language.

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(last revised 12/14/11)**

	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
31	13-C	1604(2)	Court-ordered Inspection of Corporate Records	CIVIL	S, K	If a corporation does not allow a shareholder to inspect and copy certain records as required by statute, the shareholder may apply for an order to permit inspection. The court shall dispose of the application on an expedited basis.		expedited basis	Modify with uniform language.
32	13-C	1605(2)	Court-ordered Inspection of Corporate Records	CIVIL	SUP	A director who is entitled to inspect books, records, or documents of a corporation may apply to the court to order inspection. The court shall dispose of the application on an expedited basis.		expedited basis	Modify with uniform language.
33	9-B	363-A(10)(A)	Conservation, Liquidation, and Insolvency of Financial Institutions	CIVIL	KEN SUP	A person adversely affected by an act or omission of the superintendent or conservator may bring an action to annul, alter, or modify an act conserving or liquidating a financial institution. The proceeding must be given precedence over other pending court cases and must be expedited.		must be expedited	Modify with uniform language.
34	9-B	369(2)(A)	Conservation, Liquidation, and Insolvency of Financial Institutions	CIVIL	KEN SUP	A person adversely affected by an act or omission of the superintendant of financial institutions or receiver may bring an action seeking an order to annul, alter, or modify the act or enjoin performance of the act. Any proceeding must be given precedence over other pending court cases and must be expedited.		must be expedited	Modify with uniform language.
35	9-B	367-A(4)	Conservation, Liquidation, and Insolvency of Financial Institutions	CIVIL	SUP	An action by the superintendent of financial institutions, conservator, or receiver brought under this chapter must be given precedence over other pending court cases and must be expedited.		must be expedited	Modify with uniform language.
36	17-A	960(5)	Criminal Forfeiture - Unlawful Gambling	CIVIL	S, D, K	Upon filing of a petition by a person (not defendant) who claims an interest in property subject to forfeiture, the court shall schedule the hearing as soon as practicable but in no event later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment.	no event later than 6 months	as soon as practicable	Eliminate.

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(last revised 12/14/11)**

	B	C	D	E	F	G	J	K	T
I	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
37	17-A	959(3)(D)	Forfeiture of Illegal Gambling Machines	CIVIL	SUP	The State may petition the Sup. Ct. to order forfeiture of an illegal gambling device and associated proceeds. A court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition after an answer is filed.	not less than 2 weeks	promptly	Eliminate.
38	30-A	5108(10)	Eminent Domain	CIVIL	SUP	In proceedings for assessment of compensation for property taken by eminent domain, the urban renewal authority or an owner may apply to the court for an order directing the authority or the owner to show cause why further proceedings should not be expedited. The court may order that the hearings proceed and that any other steps be taken with all possible expedition.		with all possible expedition	Retain current statutory language.
39	30-A	5204(9)(A)	Eminent Domain	CIVIL	SUP	In proceedings for assessment of compensation for property taken by eminent domain, the municipality or an owner may apply to the court for an order directing the municipality or the owner to show cause why further proceedings should not be expedited. The court may order that the hearings proceed and that any other steps be taken with all possible expedition.		with all possible expedition	Retain current statutory language.
40	34-B	13004(3)	Payment on Preexisting Leases, Mortgages, and Contracts by Receiver (DHHS/BDS)	CIVIL/MH	SUP	Upon application by the receiver to pay reasonable rental, price, or interest on preexisting leases or mortgages that are necessary to the continued operation of a provider or residential facility funded by DHHS, the court shall hold a hearing on the application within 15 days.	within 15 days		Retain current statutory language.
41	17	2911(3)	Adjudicating Obscenity	CIVIL	SUP	The hearing on [a petition to declare matter obscene] shall be held not more than 10 days from the filing of the petition.	not more than 10 days		Modify with uniform language.

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	B	C	D	E	F	G	J	K	T
1	Title	Section	Subject	CASE CATEGOR Y	Court*	Deadline	specific time	terminology	Cmsn. Revised Rcmdtns.
42	17	2913(3)	Adjudicating Obscenity (Outdoor Motion Pictures)	CIVIL	SUP	The hearing on a petition to declare a motion picture obscene shall be held not more than 10 days from the filing of the petition	not more than 10 days		Modify with uniform language.
43	34-B	13003(3)(B)	Appointment of Receivers for Protection of Individuals served by DHHS/BDS	CIVIL/MH	SUP	The owner or licensee may move the dissolution or modification of an order appointing a temporary receiver entered without notice; the court shall hear and determine such motion as expeditiously as possible		as expeditiously as possible	Modify with uniform language.
44	34-B	13003(3)(A)	Appointment of Receivers for Protection of Individuals served by DHHS/BDS	CIVIL/MH	SUP	The commissioner of DHHS may bring action requesting appointment of receiver; the court shall hold a hearing not later than 10 days after the action is filed	not later than 10 days		Retain current statutory language.
45	32	1104(2)	Appeal of an Order of the Electricians Examining Board	CIVIL APPEAL TO SUP.	SUP	A person ordered by the board to correct an electrical deficiency or to vacate a building or structure may appeal the order to the Superior Court, which shall issue its written decision within 20 days after receipt of the petition	decision within 20 days		Modify with uniform language.
46	32	14805(3) [Note: This section has been repealed and replaced with T. 32, sec. 18110(2) which does not include the 20 day requirement]	Appeal of an Order of the Propane and Natural Gas Board	CIVIL APPEAL TO SUP.	SUP	A person ordered by the board to correct a propane or natural gas deficiency or to vacate a building or structure may appeal the order to the Superior Court, which shall issue its written decision within 20 days after receipt of the petition	decision within 20 days		Section has previously been repealed.

APPENDIX D
Proposed Legislation

PROPOSED LEGISLATION

**An Act To Implement the Recommendations of the Commission To Study Priorities And
Timing Of Judicial Proceedings In State Courts**

Be it enacted by the People of the State of Maine as follows:

PART A

line 2: 1 MRSA §409, sub-§2

Sec. A-#. 1 MRSA §409, sub-§2 is amended to read:

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are ~~privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 3: 1 MRSA §409, sub-§1

Sec. A-#. 1 MRSA §409, sub-§1 is amended to read:

1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are ~~privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 4: 8 MRSA §230

Sec. A-#. 8 MRSA §230 is amended to read:

Any person aggrieved by any decision of the Commissioner of Public Safety may appeal the decision to the Superior Court within 30 days. The court shall ~~immediately~~, after notice and

hearing, affirm or reverse the commissioner's decision. The finding of the Superior Court may be reviewed by appeal to the Supreme Judicial Court sitting as the Law Court.

line 5: 10 MRSA §1020-A, sub-§7, ¶D

Sec. A-#. 10 MRSA §1020-A, sub-§7, ¶D is amended to read:

D. Any responsible party may appeal a decision by the Department of Environmental Protection to the Kennebec County Superior Court pursuant to Title 5, section 9061 within 30 days of the date of the decision. An appeal under this paragraph is nontestimonial. The record consists solely of written materials reviewed by the Department of Environmental Protection and its decision. ~~The Superior Court shall issue its decision within 45 days of the date of filing of the appeal.~~

line 6: 22 MRSA §1559, sub-§3

Sec. A-#. 22 MRSA §1559, sub-§3 is repealed.

~~**3. Superior Court hearing.** The Superior Court shall fix a time and place for an immediate hearing and notify the District Court of the hearing.~~

line 7: 38 MRSA §1022

Sec. A-#. 38 MRSA §1022, 1st ¶ is amended to read:

§1022. License to build or extend; application

Any person intending to build or extend any wharf, fish weir or trap in tidewaters, within the limits of any city or town, shall apply in writing to the municipal officers of the city or town, stating the location of the weir, the boundaries of the cove in which the weir will be constructed as identified on a map prepared by the Commissioner of Marine Resources, limits and boundaries, as nearly as may be, of the intended erection or extension, and asking license for the intended erection or extension. The applicant must notify all parties that may be directly affected by the proposed construction. Upon receiving an application, the officers shall give at least 3 days' public notice of the application in a newspaper, published in the town, or, if there is no newspaper published in the town, in a newspaper published within the county, and shall designate in the notice a day and time on which they or their designee will meet on or near the premises described, to examine the same and hear all parties interested. If, following such examination and hearing of all parties interested, the officers decide that such erection or extension would not be an obstruction to navigation or injury to the rights of others, and determine to allow the same, they shall issue a license under their hands to the applicant, authorizing the applicant to make such an erection or extension, and to maintain the same within the limits mentioned in such license. The applicant for license to build or extend a fish weir or trap shall first give bond to the town, with sureties, in the sum of \$5,000, conditioned that upon the termination of such license the applicant shall remove all stakes and brush from the location therein described. The municipal officers shall, within 10 days after the date of hearing, give

written notice by mail of their decision to all parties interested. Any person aggrieved by the decision of the municipal officers, in either granting or refusing to grant a license as provided, may appeal to the Superior Court within 10 days after the mailing of such written notice. The court shall set a time and place for hearing and give notice thereof in the same manner as provided for a hearing before the municipal officers. The decision of the court must be communicated ~~within 10 days after the date of hearing~~ to the appellant and to the municipal officers of the town in which the proposed wharf, weir or trap is to be located. This decision is binding on the municipal officers, who shall issue a license, if so directed by the decision of the court, within 3 days after the decision has been communicated to them. If the appeal is sustained by the court in whole or in part, the appellant will have costs against the appellee. If the appeal is not so sustained, the appellee will have costs against the appellant. If any owner to whom a license has been issued, or the owner's heirs or assigns, fail to remove all stakes and brush within a period of one year after the termination of the license, as provided in section 1023, any person can remove the same without charge against the owner or the owner's heirs or assigns.

In the case of islands not within the jurisdiction of any town all powers of municipal officers to issue licenses to build weirs are conferred upon the owner or owners of such islands. If said owner or owners are unable to agree as to the issuance of a license they shall submit the question of such issuance to the Commissioner of Marine Resources, who shall, after a hearing at which all parties may be represented, decide as to the issuance of such license.

In the case of waters adjacent to unorganized or deorganized territory that is not an island, the Commissioner of Marine Resources shall have the powers of municipal officers to issue licenses under this section. Notwithstanding the provisions of this section governing procedures, the Commissioner of Marine Resources shall review the application and hold a hearing as if this were a lease application under Title 12, section 6072, subsections 5 and 6.

Any licenses issued under this chapter shall constitute an approval and determination by the issuer thereof that the licensed wharf or weir constructed and operated within the limits imposed by such license does not adversely affect nor impair the interests of the issuer in such area, including navigation and the rights of private citizens in the area. Such license does not confer any right, title or interest in submerged or intertidal lands owned by the State.

line 8: 28-A MRSA §2221-A, sub-§4, ¶D

Sec. A-#. 28-A MRSA §2221-A, sub-§4, ¶D is amended to read:

D. The court shall ~~promptly, but not less than 2 weeks after notice~~, hold a hearing on the petition. The hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require. At the hearing, the court shall hear evidence and make findings of fact and enter conclusions of law.

line 9: 28-A MRSA §805, sub-§3

Sec. A-#. 28-A MRSA §805, sub-§3 is repealed:

~~3. Superior Court hearing. The Superior Court shall fix a time and place for an immediate hearing and notify the District Court Judge of the hearing.~~

line 10: 7 MRSA §3952, sub-§4-B

Sec. A-#. 7 MRSA §3952, sub-§4-B is amended to read:

4-B. Modify order. An order may be modified by the court.

A. Upon 2 days' notice or a shorter period the court may prescribe, the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.

B. The court shall hear and determine the motion ~~as expeditiously as possible~~, and the hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

C. The owner shall submit an affidavit setting forth specific facts to substantiate the modification or dissolution of the order. The applicant has the burden of presenting evidence to substantiate the original findings.

line 11: 17 MRSA §1021, sub-§4, ¶C

Sec. A-#. 17 MRSA §1021, sub-§4, ¶C is amended to read:

C. On 2 days' notice or such shorter period as the court may prescribe, the applicant who obtained the ex parte order or the owner whose animal has been possessed pursuant to an ex parte order may appear in the District Court or Superior Court and move the dissolution or modification of the ex parte order.

The court shall hear and determine the motion, and the hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of as expeditiously as justice requires so requires.

The moving party shall submit an affidavit setting forth specific facts to substantiate such findings as would serve to modify or dissolve the order. The opposing party shall have the burden of presenting evidence to substantiate the original findings.

line 12: 17 MRSA §1021, sub-§5-A

Sec. A-#. 17 MRSA §1021, sub-§5-A is amended to read:

5-A. Seizure by state humane agent or state veterinarian without court order. A state humane agent or a state veterinarian who has reasonable cause to believe that a violation of section 1031 or 1032 has taken place or is taking place may take possession of and retain the

cruelly treated animal. Upon taking possession of an animal under this section, the humane agent or the state veterinarian shall present the owner with a notice that:

- A. States the reason for seizure;
- B. Gives the name, address and phone number of the humane agent or the state veterinarian to contact for information regarding the animal; and
- C. Advises the owner of the ensuing court procedure.

If the owner can not be found, the humane agent or the state veterinarian shall send a copy of the notice to the owner at the owner's last known address by certified mail, return receipt requested. If the owner is not known or can not be located, the humane agent or the state veterinarian shall contact the animal shelter or shelters used by the municipality in which the animal was found. The humane agent or the state veterinarian shall provide the shelter with a description of the animal, the date of seizure and the name of a person to contact for more information.

Within 3 working days of possession of the animal, the humane agent or the state veterinarian shall apply to the court for a possession order. Upon good cause shown, the court shall expedite the case and schedule a prehearing conference to take place within 7 days of the seizure. The court shall set a hearing date and that hearing date ~~must be within 21 days of the date the animal was seized~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require. The humane agent or the state veterinarian shall arrange care for the animal, including medical treatment, if necessary, pending the hearing.

The humane agent or the state veterinarian shall notify the owner, if located, of the time and place of the hearing. If the owner has not been located, the court shall order a notice to be published at least once in a newspaper of general circulation in the county where the animal was found stating the case and circumstances and giving 48 hours notice of the hearing.

It is the owner's responsibility at the hearing to show cause why the animal should not be seized permanently or disposed of humanely. If it appears at the hearing that the animal has been abandoned or cruelly treated by its owner, the court shall declare the animal forfeited and order its sale, adoption or donation or order the animal to be disposed of humanely if a veterinarian determines that the animal is diseased or disabled beyond recovery. In the case of an expedited hearing, the court shall issue a writ of possession or return the animal to its owner within 30 days of the seizure.

For an expedited hearing, the State, prior to the prehearing conference, shall submit all veterinary records, reports by investigating officers and other relevant records in the State's possession to the court and shall mail or deliver copies of these same reports and records to the owner of the animal.

All veterinary records, seizure reports prepared by humane agents, police reports, witness statements or other written documents are admissible as evidence when the authors of these documents are available for cross-examination at a possession hearing. Oral statements of a

witness included in a police report are only admissible if the witness is present at the possession hearing.

line 13: 17 MRSA §1027, sub-§2

Sec. A-#. 17 MRSA §1027, sub-§2 is amended to read:

2. Show cause hearing. When an animal is lawfully seized or impounded pursuant to section 1021 or 1034, if the owner, custodian or person claiming an interest in the animal wishes to contest the order, the owner, custodian or person claiming an interest must petition the court for a show cause hearing. The petition must be filed within 10 days of the date the seizure occurred or the search warrant was executed. If the owner fails to petition the court for a hearing within 10 days, the animal is ordered forfeited to the State.

Upon petition by the owner, custodian or person claiming an interest in the animal in accordance with this subsection, the court shall hold a hearing ~~within 10 days of receipt of the petition.~~ The hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require. Upon a showing of good cause, the court may extend the time needed to hold the hearing.

line 14: 26 MRSA §1289, sub-§7

Sec. A-#. 26 MRSA §1289, sub-§7 is amended to read:

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided that the complaint must be filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing ~~at the earliest possible time~~ and shall cause all interested parties and the board to be notified. The hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health, safety or welfare or interference with the exercise of the judicial power. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, which ~~must be held not less than 7 days after notice thereof,~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be ~~expedited in the same manner~~ as an appeal from an interlocutory order under section 6.

line 15: 26 MRSA §979-H, sub-§7

Sec. A-#. 26 MRSA §979-H, sub-§7 is amended to read:

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, which must be held not less than 7 days after notice thereof may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the finding of the board on questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

line 16: 26 MRSA §1029, sub-§7

Sec. A-#. 26 MRSA §1029, sub-§7 is amended to read;

7. Court review. Either party may seek a review by the Superior Court in Kennebec County of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, provided the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision or order is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, which must be held not less than 7 days after notice thereof may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require, the court may enforce, modify, enforce as so modified, or set aside in whole or in part the decision of the board, except that the finding of the board on

questions of fact is final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

line 17: 26 MRSA §968, sub-§5, ¶F

Sec. A-#. 26 MRSA §968, sub-§5, ¶F is amended to read:

F. Either party may seek a review by the Superior Court of Kennebec County or of the county in which the prohibited practice is alleged to have occurred of a decision or order of the Maine Labor Relations Board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall set the complaint down for hearing at the earliest possible time and shall cause all interested parties and the board to be notified. Pending review and upon application of any party in interest, the court may grant such temporary relief or restraining order and may impose such terms and conditions as it determines just and proper; except that the board's decision is not stayed except when it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall forthwith file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After hearing, which ~~must be held not less than 7 days after notice thereof~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require, the court may enforce, modify, enforce as so modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of fact are final unless shown to be clearly erroneous. Any appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

line 18: 26 MRSA §1329, sub-§6

Sec. A-#. 26 MRSA §1329, sub-§6 is amended to read:

6. Review. Either party may seek a review by the Superior Court of a decision or order of the board by filing a complaint in accordance with the Maine Rules of Civil Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the decision. The complaint must be served upon the board and all parties to the board proceeding by certified mail, return receipt requested. Upon the filing of the complaint, the court shall schedule the hearing at the earliest possible time and notify all interested parties and the board. Pending review and upon application of an interested party, the court may grant temporary relief or a restraining order and impose terms and conditions that the court determines just and proper, except that the board's decision is not stayed unless it is clearly shown to the satisfaction of the court that substantial and irreparable injury will be sustained or that there is a substantial risk of danger to the public health or safety. The executive director shall immediately file in the court the record in the proceeding certified by the executive director or a member of the board. The record must include all documents filed in the proceeding and the transcript, if any. After

hearing, which ~~must be held not less than 7 days after notice thereof~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require, the court may enforce, modify, enforce as modified or set aside in whole or in part the decision of the board, except that the findings of the board on questions of fact are final unless shown to be clearly erroneous. An appeal to the Law Court must be the same as an appeal from an interlocutory order under section 6.

line 19: 4 MRSA §184, sub-§6

Sec. A-#. 4 MRSA §184, sub-§6 is amended to read:

6. Emergency proceedings. The District Court has jurisdiction to revoke temporarily or suspend a license without notice or hearing upon the verified complaint or complaint accompanied by affidavits of a licensing agency or the Attorney General. The verified complaint or complaint accompanied by affidavits must demonstrate that summary action is necessary to prevent an immediate threat to the public health, safety or welfare. Upon issuance of an order revoking or suspending a license under this section, the District Court shall promptly schedule an expedited a hearing on the agency's complaint. The hearing may be advanced on the docket and receive priority over other cases where the interests of justice so require. Any order temporarily suspending or revoking a license expires within 30 days of issuance unless renewed by the court after such hearing as it may determine necessary.

This subsection may not be considered to abridge or affect the jurisdiction of the Superior Court or District Court to issue injunctive relief or to exercise such other powers as may be authorized by law or rule of the court.

line 20: 22 MRSA §1558, sub-§3

Sec. A-#. 22 MRSA §1558, sub-§3 is repealed.

~~**3. Suspension or revocation decision.** The District Court shall issue the decision in writing within 12 days of the hearing.~~

line 21: 28-A MRSA §803, sub-§2-A

Sec. A-#. 28-A MRSA §803, sub-§2-A is repealed.

~~**2-A. Suspension or revocation decision.** The District Court Judge shall issue the decision in writing within 12 days of the hearing.~~

line 22: 5 MRSA §90-E, sub-§2, ¶D

This paragraph is unchanged per Commission recommendation

D. The court's finding may be made solely on a review of the documentation attached to the motion and the responses, if any, of the person named as a secured party in the financing statement record and without hearing any oral testimony if none is offered by the secured party. The court's review may be made only upon not less than 20 days' notice to each person named as a secured party in the financing statement record. Notice must be given to each secured party. Notice may be given to each secured party at the address given in the financing statement record as an address of that secured party by mail or personal service as provided in the Maine Rules of Civil Procedure. Each person named as a secured party in the financing statement record may respond to the motion based on pleadings, depositions, admissions and affidavits. The court's review of the pleadings, depositions, admissions and affidavits must be made on an expedited basis.

line 23: 5 MRSA §4613, sub-§1

This section is unchanged per Commission recommendation (current statute uses uniform language)

1. Actions filed by commission. Any such action filed by the commission shall be heard by the Superior Court and may be advanced on the docket and receive priority over other civil cases where the court shall determine that the interests of justice so require. Except as otherwise provided in this chapter, the court shall hear the case and grant relief as in other civil actions for injunctions. Any such action shall be brought in the name of the commission for the use of the victim of the alleged discrimination or of a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action. In no such action brought by the commission shall any injunction bond be required, nor shall damages be assessed for the wrongful issuance of an injunction.

line 24: 10 MRSA §1104, sub-§2, ¶B

Sec. A-#. 10 MRSA §1104, sub-§2, ¶B is amended to read:

~~B. When the parties complained of have been duly notified of that petition, the court shall proceed as soon as possible to the hearing and determination of the case. The action may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.~~

line 25: 14 MRSA §556, 1st ¶

Sec. A-#. 14 MRSA §556, 1st ¶ is amended to read:

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. ~~The court shall advance the special motion so that it may be heard and determined with as little delay as possible. The special motion may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.~~ The court shall grant the special motion, unless the party against whom the

special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

line 26: 15 MRSA §5826, sub-§5

Sec. A-#. 15 MRSA §5826, sub-§5 is amended to read:

5. Ancillary hearing of 3rd-party interests. A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property, within 30 days of the date of receipt of the notice, may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. Upon the filing of any petition for hearing, ~~the court shall schedule the hearing as soon as practicable~~ the hearing may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require but in no event may the hearing be scheduled later than 6 months or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

- A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than in any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; or
- B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

line 27: 22 MRSA §1602, sub-§4

Sec. A-#. 22 MRSA §1602, sub-§4 is amended to read:

4. Permit denied; appeal. An applicant who has been aggrieved by the department's decision to deny a permit under this chapter may file within 30 days of the notice of the denial a complaint with the District Court, as provided in Title 5, chapter 375. ~~Such an applicant must be granted a prompt hearing before the District Court for reconsideration of the denial.~~ A hearing before the District Court for reconsideration of the denial may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 28: 22 MRSA §7933, sub-§3, ¶A

This paragraph is unchanged per Commission recommendation

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility, for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

line 29: 22 MRSA §7933, sub-§3, ¶B

Sec. A-#. 22 MRSA §7933, sub-§3, ¶B is amended to read:

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility which must be remedied immediately to insure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing shall be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver which has been entered without notice, and in that event ~~the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require~~ the motion may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 30: 22 MRSA §7934, sub-§3

This paragraph is unchanged per Commission recommendation

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the long-term care facility, home health care provider, general hospital, specialty hospital, critical access hospital, ambulatory surgical center, hospice agency or end-stage renal disease unit, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any known owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received such notice.

line 31: 13-C MRSA §1604, sub-§2

Sec. A-#. 13-C MRSA §1604, sub-§2 is amended to read:

2. Court order. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record pursuant to this Act, the shareholder who complies with section 1602, subsections 3 and 4 may apply to the Superior Court in the county where the corporation's principal office is located or, if none in this State, in Kennebec County for an order to permit inspection and copying of the records demanded. ~~The court shall dispose of an application under this subsection on an expedited basis.~~ An application under this subsection may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 32: 13-C MRSA §1605, sub-§2

Sec. A-#. 13-C MRSA §1605, sub-§2 is amended to read:

2. Court order. The Superior Court of the county where the corporation's principal office is located or, if there is no principal office in this State, of Kennebec County may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights under subsection 1, unless the corporation establishes that the director is not entitled to such inspection rights. ~~The court shall dispose of an application under this subsection on an expedited basis.~~ An application under this subsection may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 33: 9-B MRSA §363-A, sub-§10, ¶A

Sec. A-#. 9-B MRSA §363-A, sub-§10, ¶A is amended to read:

A. The proceedings may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require ~~must be given precedence over other pending court cases and must be expedited.~~ The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary

and capricious. Only the financial institution may bring an action challenging the superintendent's order establishing the conservatorship. The court must uphold the superintendent's order establishing the conservatorship and the appointment of a conservator unless the court finds that the superintendent's action was unlawful or arbitrary and capricious.

line 34: 9-B MRSA §369, sub-§2, ¶A

Sec. A-#. 9-B MRSA §369, sub-§2, ¶A is amended to read:

A. Any proceedings under this section may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require ~~must be given precedence over other pending court cases and must be expedited~~. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious.

line 35: 9-B MRSA §367-A, sub-§4

Sec. A-#. 9-B MRSA §367-A, sub-§4 is amended to read:

4. Proceedings generally. The superintendent, conservator or receiver may bring an action described in this chapter, or any other action as determined appropriate, in the county in which the financial institution is located or has its principal place of business or in the Superior Court of Kennebec County. The proceedings ~~must be given precedence over other pending court cases and must be expedited~~ may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 36: 17-A MRSA §960, sub-§5

Sec. A-#. 17-A MRSA §960, sub-§5 is amended to read:

5. A person not charged in an indictment under this section may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property within 30 days of the date of receipt of the notice may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. ~~Upon the filing of any petition for hearing, the court shall schedule the hearing as~~

~~soon as practicable, but in no event later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:~~

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the acts that gave rise to the forfeiture of the property under this section; and

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

line 37: 17-A MRSA §959, sub-§3, ¶D

Sec. A-#. 17-A MRSA §959, sub-§3, ¶D is amended to read:

~~D. A court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition after an answer is filed by a person served with notice under paragraph C. At the hearing, the court shall hear evidence and make findings of fact and enter conclusions of law.~~

line 38: 30-A MRSA §5108, sub-§10, ¶A

This paragraph is unchanged per Commission recommendation

A. At any time during the pendency of the action or proceedings, the authority or an owner may apply to the court for an order directing an owner or the authority to show cause why further proceedings should not be expedited. Upon this application, the court may order that the hearings proceed and that any other steps be taken with all possible expedition.

line 39: 30-A MRSA §5204, sub-§9, ¶A

This paragraph is unchanged per Commission recommendation

A. At any time during the pendency of the action or proceedings, the municipality or an owner may apply to the court for an order directing the owner or the municipality, as the case may be, to show cause why further proceedings should not be expedited. Upon this application the court may make an order requiring that the hearings proceed and that any other steps be taken with all possible expedition.

line 40: 34-B MRSA §13004, sub-§3

This paragraph is unchanged per Commission recommendation

If the receiver is in possession of real estate or goods subject to a lease, mortgage or security interest that the receiver is permitted to avoid and if the real estate or goods are necessary for the continued operation of the facility or provider, the receiver may apply to the court to set a reasonable rental, price or rate of interest to be paid by the receiver during the term of the receivership. The court shall hold a hearing on the application within 15 days, and the receiver shall send notice of the application to any owners and mortgagees of the property at least 10 days before the hearing. Payment by the receiver of the amount determined by the court to be reasonable is a defense to an action against the receiver for payment or for the possession of the subject goods or real estate by a person who received that notice.

line 41: 17 MRSA §2911, sub-§3

Sec. A-#. 17 MRSA §2911, sub-§3 is amended to read:

3. Procedure for adjudicating obscenity. Whenever the Attorney General, or any district attorney, reasonably believes a person is disseminating to minors matter which is obscene, he may petition the Superior Court to declare the matter obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General or district attorney may join all persons he reasonably believes to be disseminating that matter to minors as parties to the action. The hearing on such petition may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require shall be held not more than 10 days from the filing of the petition.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others disseminating the same matter shall be freely allowed.

C. Determination by a court pursuant to this subsection that a matter is obscene shall not bar relitigation of that issue in a criminal prosecution under this section.

line 42: 17 MRSA §2913, sub-§3

Sec. A-#. 17 MRSA §2913, sub-§3 is amended to read:

3. Procedure for adjudicating obscenity. Whenever the Attorney General, or any district attorney, reasonably believes a person is exhibiting at an outdoor motion picture theater a motion picture which is obscene, he may petition the Superior Court to declare the motion picture obscene pursuant to Title 14, sections 5951 to 5963. The Attorney General, or district attorney, may join all persons he reasonably believes to be exhibiting that motion picture to minors as parties to the action. The hearing on that petition may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require shall be held not more than 10 days from the filing of the petition.

A. Trial on the issue of obscenity shall be by jury.

B. Intervention by others exhibiting the same motion picture shall be freely allowed.

C. Determination by a court, pursuant to this subsection, that a motion picture is obscene shall not bar relitigation of that issue in a criminal prosecution under this section.

line 43: 34-B MRSA §13003, sub-§3, ¶B

Sec. A-#. 34-B MRSA §13003, sub-§3, ¶B is amended to read:

B. A temporary receiver may be appointed with or without notice to the owner or licensee if it appears by verified complaint or affidavit that an emergency exists in the facility or provider that must be remedied immediately to ensure the health, safety and welfare of the clients or residents. The appointment of a temporary receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed to make service as provided in paragraph A, and a hearing must be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the receivership. On 2 days' notice to the temporary receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a temporary receiver that has been entered without notice, and in that event the motion may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require ~~court shall proceed to hear and determine the motion as expeditiously as possible.~~

line 44: 34-B MRSA §13003, sub-§3, ¶A

This paragraph is unchanged per Commission recommendation

A. The court shall hold a hearing not later than 10 days after the action is filed, unless all parties agree to a later date. Notice of the hearing must be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided. The department shall post notice, in a form approved by the court, in a conspicuous place in the facility or provider for not less than 3 days before the hearing. After the hearing, the court may appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

line 45: 32 MRSA §1104, sub-§2

Sec. A-#. 32 MRSA §1104, sub-§2 is amended to read:

2. Order to correct deficiency; appeal. Any person ordered by a state electrical inspector to correct an electrical deficiency or to vacate a building or structure may appeal the

order to the Electricians' Examining Board by filing with that board within 30 days of receipt of the order a written notice of appeal. The board shall review that appeal and issue its written decision thereof within a reasonable time after receipt of the notice of appeal. If the board upholds the inspector's order, it shall prescribe the time period for the requisite correction specified in its written decision or the time within which that person must vacate the building or structure. The decision must be complied with unless appealed as provided. Any person ordered by the board to correct an electrical deficiency or to vacate a building or structure may appeal the order to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 by filing a petition for review within 48 hours of receipt of the order. ~~The court shall issue its written decision within 20 days after receipt of the petition for review.~~ The petition for review may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.

line 46: 32 MRSA §14805, sub-§3 - *Previously repealed and replaced*

PART B

Sec. B-#. Title 29-A MRSA§2603 is repealed.

PART C

Sec. C-1. 5 MRSA §4651, sub-§2 is amended to read:

§4651. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Court. "Court" means any District Court and, with regard to section 4659, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

2. Harassment. "Harassment" means:

A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to business property and that do in fact cause fear, intimidation or damage to business property; or

~~B. Three or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution of Maine or the United States Constitution; or~~

C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, sections 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 301, 302, 303, 506-A, 511, 556, 802, 805 or 806.

This definition does not include any act protected by law.

Sec. C-2. 5 MRSA §4653, sub-§1 is amended to read:

§4653. Commencement of proceedings

1. Filing. A person who has been a victim of harassment, including a business, may seek relief by filing a ~~sworn complaint~~ in an appropriate court ~~alleging that harassment:~~

A. A sworn complaint alleging harassment; and

B. If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C, a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or a statement of good cause why such notice was not sought or obtained.

Sec. C-3. 5 MRSA §4654, sub-§2 is amended to read:

2. Temporary orders. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or the defendant's attorney if:

A. It appears clearly from a verified complaint or an affidavit accompanying the complaint that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff or the plaintiff's employees may be in immediate and present danger of physical abuse from the defendant or in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct, or the plaintiff's business property is in immediate and present danger of suffering substantial damage as a result of the defendant's actions;

~~(2) Either the plaintiff has or has not contacted any law enforcement officials concerning the alleged harassment; and~~

(2-A) If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C, the plaintiff obtained a copy of a notification issued against the other person as described in Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph(1), division(a), or the plaintiff may instead file a statement of good cause why such relief was not sought or why a notice was not issued; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment; and

~~B. When reasonable, the plaintiff or the court has made reasonable efforts to give written or oral notice to the defendant or the defendant's attorney that the plaintiff is seeking a temporary order; and~~

C. The court provides written reasons for entering a temporary order.

Sec. C-4. 5 MRSA §4654, sub-§6 is amended to read:

6. Dissolution or modification. Notwithstanding any statutory provision to the contrary, on 2 days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion expeditiously. The hearing on the motion may be advanced on the docket and receive priority over other cases where the court determines that the interest of justice so require. At that hearing, the plaintiff ~~shall have~~ has the burden of justifying any finding in the ex parte order ~~which~~ that the defendant has challenged by affidavit. Nothing in this section may be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

SUMMARY

This bill implements the recommendations of the Commission to Study Priorities and Timing of Judicial Proceedings in State Courts. Part A of the bill replaces varied statutory priority language with uniform language in statutes dealing with issues including civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and other miscellaneous civil provisions. Part B of the bill eliminates a statutory priority regarding a traffic infraction. The Commission recommends the statutory priority in Title 29-A MRSA §2603, sub-§1, a traffic infraction, be eliminated because it is duplicative. Part C amends the protection from harassment statutes. This Part adds the Commission's proposed uniform language to the provision regarding dissolution or modification of protection from harassment orders in Title 5, §4654, sub-§6. This Part amends the definition of harassment in Title 5, §4651,

sub-§2 by limiting damage to property to only “business” property and by repealing the version of harassment described as 3 or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privilege secured by the Constitution of Maine or the United States. Part C repeals Title 5 §4654, sub-§2, ¶B as unnecessary. Part C also amends the process of seeking a protection from harassment order by requiring that if the alleged harassment does not meet the definition of harassment in Title 5, section 4651, subsection 2, paragraph C, the plaintiff must seek and file a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A or a statement of good cause why such notice was not sought or obtained.

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