

# MAINE STATE LEGISLATURE

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DATE: 3/25/94

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**RULES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
116TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1083, L.D. 1449, Bill, "An Act to Make Statutory Changes to Implement the Recommendations of the Legislature's Total Quality Management Committee"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

**PART A**

Sec. A-1. 3 MRSA §151, as amended by PL 1991, c. 842, §§1 to 3, is repealed.

Sec. A-2. 3 MRSA §151-A, as enacted by PL 1979, c. 1, is repealed.

Sec. A-3. 3 MRSA §152, as enacted by PL 1975, c. 771, §11, is repealed.

Sec. A-4. 3 MRSA §§153 to 159 are enacted to read:

**§153. Scope**

The nomination and confirmation of all judicial officers whose confirmation by the Legislature is required by the Constitution of Maine and the nomination and confirmation of all other officers whose confirmation by the Legislature is required by law are governed by the provisions of this chapter.

**§154. Nominations**

2  
4 The Governor shall, within 20 days after the convening of  
6 each legislative session, provide to each joint standing  
8 committee of the Legislature a list of all positions for which  
10 legislative confirmation is required that are within each  
12 committee's jurisdiction and that are vacant or have terms  
14 expiring before the convening of the next regular session of the  
16 Legislature. The chairs of each joint standing committee and the  
18 Governor, or their designees, shall negotiate in good faith to  
20 establish a schedule for nominations and consideration of  
22 nominations during the session.

24  
26 When nominating a person to a position for which  
28 confirmation is required, the Governor shall post the nomination  
30 and simultaneously deliver to both the President of the Senate  
32 and the Speaker of the House of Representatives notification of  
34 the name of the nominee, the office to which that person is  
36 nominated and an information packet, which must include the  
38 background information and questionnaire provided to the Office  
40 of the Governor by the nominee and may include other information  
42 the Governor determines appropriate. The date of the posting and  
44 notice is referred to in this chapter as the "posting date."

46  
48 When the nomination is received, the President of the Senate  
50 and the Speaker of the House of Representatives shall provide  
52 notice of the nomination and copies of accompanying materials to  
54 the chairs of the appropriate joint standing committee, to the  
56 Legislative Information Office and to the partisan staff  
58 assistants designated by the majority and minority parties of the  
60 Legislature. The Legislative Information Office shall establish  
62 an official file for each nominee, which is subject to the  
64 provisions of section 159. The file must include the information  
66 submitted by the Governor pursuant to this section.

68  
70 The Governor may withdraw a nomination at any time before  
72 the Senate votes pursuant to section 158 by sending a written  
74 notice of withdrawal to the President of the Senate.

76  
78 Notwithstanding the other provisions of this chapter, if the  
80 Governor posts a nomination within the 30 days preceding the  
82 statutory date of adjournment, the time periods for legislative  
84 action under this chapter begin on the date the Legislature  
86 adjourns.

88 **§155. Preliminary procedures**

90 The chairs of the appropriate joint standing committee shall:

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1 1. Schedule prehearing conference. Schedule a prehearing  
2 conference in cooperation with the Legislative Information  
3 Office. The prehearing conference must be held within 21 days of  
4 the posting date;

6 2. Request reports. Request background reports from the  
7 partisan staff assistants; and

8  
9 3. Inform nominee. Advise the nominee of the date of the  
10 prehearing conference and the deadline for completion of a  
11 questionnaire from the committee and submission of supplemental  
12 materials by the nominee. The deadline is 15 days from the  
13 posting date unless the 15th day is not a business day, in which  
14 case the deadline is the next business day.

16 **§156. Prehearing conference**

18 The appropriate joint standing committee shall hold a  
19 prehearing conference for each nominee, unless the committee  
20 decides otherwise. If the committee determines that it is  
21 necessary to avoid damage to the reputation of the nominee or  
22 that there are issues that should be discussed privately, the  
23 prehearing conference may go into executive session using the  
24 procedures specified in Title 1, section 405, and only the  
25 committee members and the partisan staff assistants may attend.  
26 All materials prepared for or reviewed in the conference are not  
27 subject to the provisions of Title 1, chapter 13 except as  
28 provided in section 159. The prehearing conference is governed  
29 by the Joint Rules of the Legislature and by the committee's  
30 rules of procedure, except that a quorum of 7 committee members  
31 must be present for votes in the prehearing conference. Votes  
32 may not be taken in executive session.

34 The committee shall set a public hearing date.

36 The committee may ask the partisan staff assistants to  
37 prepare additional background information for a public hearing.  
38 The chairs shall notify the nominee of all actions taken and  
39 decisions made at the prehearing conference.

40 **§157. Public hearings**

42 The public hearing must be held within 40 days of the  
43 posting date except for nominations for judicial officers, for  
44 which the public hearing must be held within 45 days of the  
45 posting date. The Legislative Information Office shall advertise  
46 all public hearings at least 7 days before the public hearing in  
47 both the state paper and in a newspaper of general circulation in  
48 the area in which the nominee resides. The advertisement must  
49 contain the name of the nominee, the position for which the  
50 nominee is being considered.

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2 nomination has been made, a summary of the duties of the  
3 position, the time, place and date of the public hearing and a  
4 statement that written comments relevant to the qualifications of  
5 the nominee, together with supporting materials, may be filed  
6 with the Legislative Information Office by 9 a.m. on the hearing  
7 date.

8 Additional background information developed by the partisan  
9 assistants must be filed with the Legislative Information Office  
10 by 9 a.m. on the hearing date.

12 For the purposes of reviewing nominations pursuant to this  
13 chapter, the appropriate joint standing committee may administer  
14 oaths and take testimony under oath. Notwithstanding the  
15 provisions of section 165, subsection 7, the Legislature or, when  
16 the Legislature is not in session, the Legislative Council may  
17 grant to the joint standing committee reviewing a nomination any  
18 of the powers under section 165, subsection 7.

20 The committee may take testimony under oath and shall  
21 consider the materials on file with the Legislative Information  
22 Office. The committee may meet in executive session if new  
23 information is raised at the public hearing that, if known  
24 earlier, would have been subject to discussion at the prehearing  
25 conference.

26 The committee shall vote on the nomination within 45 days of  
27 the posting date, except that for nominations for judicial  
28 officers the committee shall vote within 50 days. A vote may not  
29 be taken sooner than 15 minutes after the close of the public  
30 hearing unless all members of the committee who are present  
31 agree. Upon a motion to confirm, properly made and seconded, the  
32 committee shall recommend confirmation or denial by a majority  
33 vote of the members present and voting at the time the vote is  
34 taken. The committee vote is by yeas and nays. Notwithstanding  
35 any other rule or provision of law, a member must be present to  
36 vote and the vote may not be modified except upon a proper motion  
37 for reconsideration.

38 A tie vote of the committee is deemed a recommendation for  
39 denial. The committee chairs shall promptly notify the President  
40 of the Senate of the committee's recommendation and the results  
41 of the vote, listing the yeas and nays.

42 **§158. Confirmation vote**

43 The Senate shall vote by yeas and nays to accept or reject  
44 the recommendation of the appropriate joint standing committee.  
45 The Senate shall vote on the committee's recommendation within 55  
46 days of the posting date, except that for judicial officers the  
47 Senate shall vote within 50 days of the posting date.

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2 vote must be held within 60 days of the posting date. The  
3 committee's recommendation becomes final unless it is overridden  
4 by a vote of 2/3 of the Senators present and voting.

6 **§159. Confidentiality of records**

8 Records filed with the Legislative Information Office  
9 pursuant to this chapter are public records upon filing and are  
10 subject to public review pursuant to Title 1, chapter 13.

12 All documents prepared for or reviewed in the prehearing  
13 conference become public records pursuant to Title 1, chapter 13  
14 at the conclusion of the conference unless 2/3 of the committee  
15 votes to seal one or more documents. If a document is sealed, it  
16 is exempt from public disclosure.

18 At the close of each legislative session, the Legislative  
19 Information Office shall review each official file, removing each  
20 sealed document and replacing it with an information sheet  
21 generally identifying the sealed document and noting its  
22 removal. The Legislative Information Office shall forward the  
23 file to the State Archives. The sealed documents must be  
24 destroyed.

26 **PART B**

28 **Sec. B-1. 12 MRSA §5011**, as amended by PL 1989, c. 878, Pt.  
29 B, §11, is further amended to read:

30 **§5011. Department; commissioner**

32 There is created and established the Department of  
34 Conservation to preserve, protect and enhance the land resources  
35 of the State of Maine; to encourage the wise use of the scenic,  
36 mineral and forest resources of the State of Maine, and to ensure  
37 that coordinated planning for the future allocation of lands for  
38 recreational, forest production, mining and other public and  
39 private uses is effectively accomplished; and to provide for the  
40 effective management of public lands in the State of Maine. The  
41 Department of Conservation shall ~~consist~~ consists of a  
42 Commissioner of Conservation, hereafter referred to in this Part  
43 called as the "commissioner," appointed by the Governor and who  
44 shall ~~be~~ subject to review by the ~~Joint-Standing-Committee- on~~  
45 Natural-Resources joint standing committee of the Legislature  
46 having jurisdiction over energy and natural resources matters and  
47 to confirmation by the Legislature, to serve at the pleasure of  
48 the Governor; and the following entities as heretofore previously  
49 created and or established are incorporated into the Department  
50 of Conservation:

**COMMITTEE AMENDMENT**

- 2           1. Forestry. Forestry Department;
- 4           2. Parks and recreation. Parks and Recreation Department;
- 6           3. Forest authority. Maine Forest Authority;
- 8           4. Mining bureau. Maine Mining Bureau;
- 10          6. Allagash waterway. Allagash Wilderness Waterway; and
- 12          7. Land use regulation commission. Maine Land Use  
14 Regulation Commission.

16           **Sec. B-2. 22 MRSA §1, 2nd ¶**, as amended by PL 1975, c. 771,  
§207, is further amended to read:

18           The department shall ~~be~~ is under the control and supervision  
20 of the Commissioner of Human Services, hereinafter referred to in  
22 this Title called as the "commissioner," who shall ~~be~~ is  
24 appointed by the Governor, subject to review by the ~~Joint~~  
~~Standing-Committee-on-Health-and-Institutional-Services~~ joint  
standing committee of the Legislature having jurisdiction over  
human resources matters and to confirmation by the Legislature,  
and shall ~~serve~~ serves at the pleasure of the Governor.

26           **Sec. B-3. 22 MRSA §1655**, as enacted by PL 1979, c. 415, §1,  
28 is amended to read:

30           **§1655. Report**

32           The department shall make an annual report to the ~~Joint~~  
~~Standing-Committee-on-Health-and-Institutional-Services~~ joint  
34 standing committee of the Legislature having jurisdiction over  
human resources matters of its findings and recommendations  
36 concerning the effectiveness, impact and benefits derived from  
38 the special programs as provided for in this chapter. This report  
shall must be delivered on or before ~~the first day of~~ February  
1st and shall must contain evaluations of these special programs  
40 and recommendations in final draft form of any legislation deemed  
determined necessary and proper.

42           **Sec. B-4. 22 MRSA §8106**, as enacted by PL 1981, c. 260, §6,  
44 is repealed.

46           **Sec. B-5. 32 MRSA §1100-H**, as amended by PL 1981, c. 440,  
48 §23, is repealed.

50           **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved and applies to  
nominations posted after the effective date of this Act.'

2 Further amend the bill by inserting at the end before the  
4 statement of fact the following:

6 **FISCAL NOTE**

8 The establishment of a prehearing conference process within  
10 the existing legislative confirmation process may require  
12 additional General Fund appropriations to the Legislature for the  
14 per diem and expense costs of legislators and for additional  
16 staff. The exact amount of any appropriation can not be  
18 determined as the number of prehearing conferences and their  
20 frequency are not known.

22 The Executive Department, Office of the Governor will incur  
24 some minor additional costs to implement the Total Quality  
26 Management Committee's recommendations concerning the nomination  
28 and confirmation process. These costs can be absorbed within the  
30 office's existing budgeted resources.'

32 **STATEMENT OF FACT**

34 This amendment makes the following changes from the original  
36 bill.

38 The amendment eliminates the provisions of the original bill  
40 that establish 2 tiers of nominations and provide that some  
42 confirmations do not receive a public hearing.

44 The amendment provides that prehearing conferences may be  
46 dispensed with if the committee chooses and must be public unless  
48 the committee determines that an executive session is necessary  
to avoid damage to the reputation of a nominee or that there are  
issues that should be discussed privately. Procedures for an  
executive session must be those provided under the freedom of  
access laws.

The amendment extends the time for public hearings and votes  
on nominations because of the additional time necessary for a  
prehearing conference and provides that a vote may not be taken  
sooner than 15 minutes after the close of the public hearing  
unless all members agree. The amendment provides that, if the  
Governor posts a nomination within 30 days before statutory  
adjournment, the time periods for legislative action begin on the  
date of adjournment.



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2 The amendment provides that if a committee chooses to keep  
confidential information received in a prehearing conference, it  
must do so by a 2/3 vote.

4  
6 The bill also makes technical changes to clarify the intent  
of the original bill, adds a fiscal note and conforms existing  
law to current drafting standards.  
8