

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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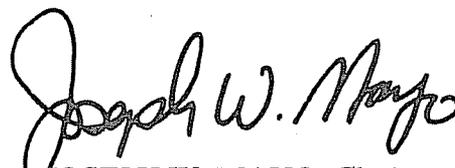
House of Representatives, May 5, 1993

**An Act to Make Statutory Changes to Implement the Recommendations  
of the Legislature's Total Quality Management Committee.**

(EMERGENCY)

---

Reference to the Joint Select Committee on Rules suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative LARRIVEE of Gorham.  
Cosponsored by Representatives: GWADOSKY of Fairfield, KONTOS of Windham, MARTIN  
of Eagle Lake, MORRISON of Bangor, Senators: CAHILL of Sagadahoc, DUTREMBLE of  
York.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the current law governing confirmation of judicial officers and other state officials subject to confirmation by the Legislature is unwieldy and leads to needless disputes that could be avoided by a better flow of information between the parties; and

Whereas, the Legislature's Total Quality Management Committee has recommended certain changes to the laws that will improve the confirmation process and the exchange of information related to it; and

Whereas, these changes need to take effect before the expiration of the 90-day period so that confirmations during this legislative session will benefit from these changes; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

#### 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 A-1. 3 MRSA §151, as amended by PL 1991, c. 842, §§1 to 3, is repealed.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 A-2. 3 MRSA §151-A, as enacted by PL 1979, c. 1, is repealed.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 A-3. 3 MRSA §152, as enacted by PL 1975, c. 771, §11, is repealed.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 is 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

The Governor shall, within 20 days of the convening of each legislative session, provide to each joint standing committee of

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

10 When nominating a person to a position for which  
12 confirmation is required, the Governor shall post the nomination  
14 and simultaneously deliver to both the President of the Senate  
16 and the Speaker of the House of Representatives notification of  
18 the name of the nominee, the office to which that person is  
20 nominated and an information packet, which must include the  
background information and questionnaire provided to the Office  
of the Governor by the nominee and may include other information  
the Governor determines appropriate. The date of the posting and  
notice is referred to in this chapter as the "posting date."

22 When the nomination is received, the President of the Senate  
24 and the Speaker of the House of Representatives shall provide  
26 notice of the nomination and copies of accompanying materials to  
28 the chairs of the appropriate joint standing committee, to the  
30 Legislative Information Office and to the partisan staff  
assistants designated by the majority and minority parties of the  
Legislature. The Legislative Information Office shall establish  
an official file for each nominee, which is subject to the  
provisions of section 160. The file must include the information  
submitted by the Governor pursuant to this section.

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

36 **§155. Preliminary procedures**

38 The chairs of the appropriate joint standing committee shall:

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

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

48 3. Inform nominee. Advise the nominee of the date of the  
50 prehearing conference and the deadline for completion of a  
questionnaire from the committee and submission of supplemental

2 materials by the nominee. The deadline is 15 days from the  
3 posting date, unless the 15th day is not a business day, in which  
4 case, the deadline is the next business day.

6 **§156. Prehearing conference**

8 The appropriate joint standing committee shall hold a  
9 prehearing conference for each nominee. The prehearing  
10 conference must be held in executive session and only the  
11 committee members and the partisan staff assistants may attend.  
12 The prehearing conference and all materials prepared for or  
13 reviewed in the conference are not subject to the provisions of  
14 Title 1, chapter 13 except as provided in section 160. The  
15 prehearing conference is governed by the Joint Rules of the  
16 Legislature and by the committee's rules of procedure, except  
17 that a quorum of 7 committee members must be present for votes in  
18 the prehearing conference.

20 The committee shall set a public hearing date.

22 The committee may ask the partisan staff assistants to  
23 prepare additional background information for a public hearing if  
24 one has been scheduled. The chairs shall notify the nominee of  
25 all actions taken and decisions made at the prehearing conference.

26 This section is repealed January 1, 1994.

28 **§156-A. Prehearing conference**

30 The appropriate joint standing committee shall hold a  
31 prehearing conference for each nominee. The prehearing  
32 conference must be held in executive session and only the  
33 committee members and the partisan staff assistants may attend.  
34 The prehearing conference and all materials prepared for or  
35 reviewed in the conference are not subject to the provisions of  
36 Title 1, chapter 13 except as provided in section 160. The  
37 prehearing conference is governed by the Joint Rules of the  
38 Legislature and by the committee's rules of procedure, except  
39 that a quorum of 7 committee members must be present for votes in  
40 the prehearing conference.

42 The committee shall set a public hearing date for all  
43 positions identified in section 159, subsection 1. For positions  
44 identified in section 159, subsection 2, the committee shall  
45 schedule a public hearing unless the committee unanimously elects  
46 to recommend confirmation or denial without a hearing. In these  
47 circumstances, the committee must take a recorded public vote  
48 after the close of the prehearing conference, after which the  
49 committee's recommendation must be sent to the President of the  
50 Senate.

52 The committee may ask the partisan staff assistants to  
53 prepare additional background information for a public hearing if

2 one has been scheduled. The chairs shall notify the nominee of  
3 all actions taken and decisions made at the prehearing conference.

4 This section takes effect January 1, 1994.

6 **§157. Public hearings**

8 The public hearing must be held within 30 days of the  
9 posting date except for nominations for judicial officers, for  
10 which the public hearing must be held within 35 days of the  
11 posting date. The Legislative Information Office shall advertise  
12 all public hearings at least 7 days before the public hearing in  
13 both the state paper and in a newspaper of general circulation in  
14 the area in which the nominee resides. The advertisement must  
15 contain the name of the nominee, the position for which the  
16 nomination has been made, a summary of the duties of the  
17 position, the time, place and date of the public hearing and a  
18 statement that written comments relevant to the qualifications of  
19 the nominee, together with supporting materials, may be filed  
20 with the Legislative Information Office by 9 a.m. on the hearing  
21 date.

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

26 For the purposes of reviewing nominations pursuant to this  
27 chapter, the appropriate joint standing committee may administer  
28 oaths and take testimony under oath. Notwithstanding the  
29 provisions of section 165, subsection 7, the Legislature or, when  
30 the Legislature is not in session, the Legislative Council may  
31 grant to the joint standing committee reviewing a nomination any  
32 of the powers under section 165, subsection 7.

34 The committee shall take testimony under oath and shall  
35 consider the materials on file with the Legislative Information  
36 Office. The committee may meet in executive session if new  
37 information is raised at the public hearing that, if known  
38 earlier, would have been subject to discussion at the prehearing  
39 conference.

42 The committee shall vote on the nomination within 35 days of  
43 the posting date. Upon a motion to confirm, properly made and  
44 seconded, the committee shall recommend confirmation or denial by  
45 a majority vote of the members present and voting at the time the  
46 vote is taken. The committee vote is by yeas and nays.  
47 Notwithstanding any other rule or provision of law, a member must  
48 be present to vote and the vote may not be modified except upon a  
49 proper motion for reconsideration.

50

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

6        **§158. Confirmation vote**

8        The Senate shall vote by yeas and nays to accept or reject  
10       the recommendation of the appropriate joint standing committee.  
12       The Senate shall vote on the committee's recommendation within 45  
14       days of the posting date except that for judicial officers the  
      vote must be held within 50 days of the posting date. The  
      committee's recommendation becomes final unless it is overridden  
      by a vote of 2/3 of the Senators present and voting.

16       **§159. Levels of review**

18       Positions subject to confirmation pursuant to this chapter  
20       are separated into 2 tiers as follows:

22                **1. Tier 1 positions:**

24                **A. All judicial officers;**

26                **B. All commissioners and other chief administrative**  
28                **officers of departments, agencies and quasi-governmental**  
30                **entities; and**

32                **C. All other positions not listed in subsection 2.**

34                **2. Tier 2 positions:**

36                **A. All members of boards and commissions listed in Title 5,**  
38                **sections 12004-I and 12004-J who are subject to confirmation**  
40                **by law.**

42        This section takes effect January 1, 1994.

44        **§160. Confidentiality of records**

46        Records filed with the Legislative Information Office  
48        pursuant to this chapter are public documents upon filing and are  
50        subject to public review pursuant to Title 1, chapter 13.

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

2 At the close of each legislative session, the Legislative  
3 Information Office shall review each official file, removing each  
4 sealed document and replacing it with an information sheet  
5 generally identifying the sealed document and noting its  
6 removal. The Legislative Information Office shall forward the  
7 file to the State Archives. The sealed documents must be  
8 destroyed.

10 **PART B**

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

14 **§5011. Department; commissioner**

16 There is created and established the Department of  
17 Conservation to preserve, protect and enhance the land resources  
18 of the State of Maine; to encourage the wise use of the scenic,  
19 mineral and forest resources of the State of Maine, and to ensure  
20 that coordinated planning for the future allocation of lands for  
21 recreational, forest production, mining and other public and  
22 private uses is effectively accomplished; and to provide for the  
23 effective management of public lands in the State of Maine. The  
24 Department of Conservation shall---~~consist~~ consists of a  
25 Commissioner of Conservation, ~~hereafter~~ referred to in this Part  
26 called as the "commissioner," appointed by the Governor and who  
27 ~~shall be~~ subject to review by the ~~Joint-Standing-Committee- on~~  
28 ~~Natural-Resources~~ joint standing committee of the Legislature  
29 having jurisdiction over energy and natural resources and to  
30 confirmation by the Legislature, to serve at the pleasure of the  
31 Governor; and the following entities as heretofore previously  
32 created and or established are incorporated into the Department  
33 of Conservation:

36 1. **Forestry.** Forestry Department;

38 2. **Parks and recreation.** Parks and Recreation Department;

40 3. **Forest authority.** Maine Forest Authority;

42 4. **Mining bureau.** Maine Mining Bureau;

44 6. **Allagash waterway.** Allagash Wilderness Waterway; and

46 7. **Land use regulation commission.** Maine Land Use Regulation  
47 Commission.

48 **Sec. B-2. 22 MRSA §1, 2nd ¶,** as amended by PL 1975, c. 771,  
49 §207, is further amended to read:

52 The department shall-be is under the control and supervision  
of the Commissioner of Human Services, ~~hereinafter~~ referred to in

2 this Title called as the "commissioner," who shall--be is  
3 appointed by the Governor, subject to review by the Joint  
4 ~~Standing Committee on Health and Institutional Services~~ joint  
5 standing committee of the Legislature having jurisdiction over  
6 human resources and to confirmation by the Legislature, and shall  
7 serve serves at the pleasure of the Governor.

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

10 **§1655. Report**

11  
12 The department shall make an annual report to the Joint  
13 ~~Standing Committee on Health and Institutional Services~~ joint  
14 standing committee of the Legislature having jurisdiction over  
15 human resources of its findings and recommendations concerning  
16 the effectiveness, impact and benefits derived from the special  
17 programs as provided for in this chapter. This report shall must  
18 be delivered on or before the ~~first day of~~ February 1st and shall  
19 must contain evaluations of these special programs and  
20 recommendations in final draft form of any legislation deemed  
21 determined necessary and proper.

22  
23  
24 **Sec. B-4. 22 MRSA §8106**, as enacted by PL 1981, c. 260, §6,  
25 is repealed.

26  
27 **Sec. B-5. 32 MRSA §1100-H**, as amended by PL 1981, c. 440,  
28 §23, is repealed.

29  
30  
31 **Sec. B-6. Review by legislative committees; report and implementing**  
32 **legislation.** Each joint standing committee and special select  
33 committee of the Legislature shall review the positions subject  
34 to confirmation in the departments and agencies of State  
35 Government within that committee's jurisdiction. Each committee  
36 shall report to the Legislative Council by November 1, 1994 and  
37 shall recommend for each position classification as a Tier 1  
38 position, classification as a Tier 2 position or removal of the  
39 statutory requirement for confirmation. The Legislative Council  
40 shall direct the Revisor of Statutes to prepare legislation for  
41 introduction in the Second Regular Session of the 116th  
42 Legislature embodying the recommendations of the committees.

43  
44 **Emergency clause.** In view of the emergency cited in the  
45 preamble, this Act takes effect when approved.

46  
47  
48 **STATEMENT OF FACT**

49  
50 This bill incorporates those recommendations of the  
51 Legislature's Total Quality Management Committee that require  
52 changes to the laws governing confirmation of judicial officers  
53 and other appointed officials.

2 Part A enacts changes to the laws governing confirmation of  
nominations. The current provisions are repealed and new  
provisions are enacted.

4  
6 A prehearing conference is established, and the background  
information prepared by the partisan staff assistants from both  
parties is shared at the conference. The conference is held in  
8 executive session and the documents reviewed by the committee are  
made public at the conclusion of the conference unless a majority  
10 of the committee votes to seal one or more documents.

12 Beginning in January 1994, a 2-tier review system is also  
established and positions subject to confirmation are separated  
14 into Tier 1 and Tier 2 positions. Public hearings are required  
for all Tier 1 positions, but the appropriate committee may, by  
16 unanimous vote, elect to recommend confirmation or denial without  
a public hearing for Tier 2 positions.

18  
20 Part B makes technical corrections in other laws that are  
made necessary by the repeal of existing statutes and establishes  
a process for review of each position subject to confirmation for  
22 classification as a Tier 1 or Tier 2 position or for removal of  
the requirement of legislative confirmation.