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H.P. 330

House of Representatives, February 9, 2023

**An Act to Protect Farm Workers by Allowing Them to Organize for
the Purposes of Collective Bargaining**

Reference to the Committee on Labor and Housing suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.
Cosponsored by Representative SHAGOURY of Hallowell.

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

2 **Sec. 1. 26 MRSA c. 51** is enacted to read:

3 **CHAPTER 51**

4 **AGRICULTURAL EMPLOYEES LABOR RELATIONS ACT**

5 **§3901. Purpose**

6 It is declared to be the public policy of this State and it is the purpose of this chapter to
7 promote the improvement of the relationship between agricultural employers and their
8 employees by providing a uniform basis for recognizing the right of agricultural employees
9 to join labor organizations of their own choosing and to be represented by those
10 organizations in collective bargaining for terms and conditions of employment. It is also
11 the public policy of this State and the purpose of this chapter, by encouraging voluntary
12 agreements between agricultural employers, employees and their organizations, to limit
13 industrial strife, promote stability in the farm labor force and improve the economic status
14 of workers and businesses.

15 **§3902. Definitions**

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

18 **1. Agricultural employee or employee.** "Agricultural employee" or "employee"
19 means a person engaged in agriculture; however, this subsection may not be construed to
20 include any person other than those employees excluded from the coverage of the federal
21 National Labor Relations Act, as amended, as agricultural employees, pursuant to 29
22 United States Code, Section 152(3) in effect on November 6, 1978. "Agricultural
23 employee" or "employee" includes any individual whose work has ceased as a consequence
24 of, or in connection with, any current labor dispute or because of any prohibited labor
25 practice. "Agricultural employee" or "employee" includes supervisors but does not include
26 any higher level managers or those employees whose duties necessarily imply a
27 confidential relationship to the employer.

28 **2. Agricultural employer or employer.** "Agricultural employer" or "employer"
29 means a person or entity that directly or indirectly engages the services or suffers or permits
30 the work of an agricultural employee, and includes any person acting on behalf of an
31 employer directly or indirectly and any person or entity exercising control over the terms
32 and conditions of employment. "Agricultural employer" or "employer" is limited to a
33 person or entity that employs more than 5 agricultural employees.

34 **3. Agriculture.** "Agriculture" means farming in all its branches and includes but is
35 not limited to the cultivation and tillage of the soil; dairying; the production, cultivation,
36 growing and harvesting of any agricultural or horticultural commodities, including
37 commodities defined as agricultural commodities in 12 United States Code, Section
38 1141j(f) in effect on May 22, 2008; the raising of livestock, bees, fur-bearing animals or
39 poultry; and any practices, including any forestry or lumbering operations, performed by a
40 farmer or on a farm incidental to or in conjunction with farming operations, including

1 preparation for market and delivery to storage, to market or to carriers for transportation to
2 market.

3 **4. Bargaining agent.** "Bargaining agent" means a lawful organization or association,
4 or an individual representative of a lawful organization or association, that has as its
5 primary purpose the representation of employees in their employment relations with
6 employers and that has been determined by the employer or the executive director to be the
7 choice of the majority of the bargaining unit as its certified representative.

8 **5. Board.** "Board" means the Maine Labor Relations Board as established in section
9 968, subsection 1.

10 **6. Executive director.** "Executive director" means the Executive Director of the
11 Maine Labor Relations Board as appointed in section 968, subsection 2.

12 **§3903. Rights of agricultural employees; organization, collective bargaining**

13 Agricultural employees have the right to self-organize; to form, join or assist labor
14 organizations; to bargain collectively through representatives of their own choosing; and
15 to engage in other concerted activities for the purposes of collective bargaining or other
16 mutual aid or protection. Agricultural employees also have the right to refrain from such
17 activities.

18 **§3904. Prohibited acts of agricultural employers, agricultural employees and**
19 **agricultural employee organizations**

20 **1. Agricultural employer prohibitions.** Agricultural employers and their
21 representatives and agents are prohibited from:

22 A. Interfering with, restraining or coercing employees in the exercise of the rights
23 guaranteed in section 3903;

24 B. Encouraging or discouraging membership in any employee organization by
25 discrimination in regard to hire or tenure of employment or any term or condition of
26 employment;

27 C. Dominating or interfering with the formation, existence or administration of any
28 employee organization;

29 D. Discharging or otherwise discriminating against an agricultural employee because
30 the employee has signed or filed any affidavit, petition or complaint or given any
31 information or testimony under this chapter;

32 E. Refusing to bargain collectively with the bargaining agent of its employees as
33 required by section 3905;

34 F. Blacklisting of any employee organization or its members for the purpose of
35 denying them employment;

36 G. Requiring an employee to join a union, employee association or bargaining agent
37 as a member; and

38 H. Terminating or disciplining an employee for not paying union dues or fees of any
39 type.

1 **2. Agricultural employee and agricultural employee organization prohibitions.**
2 Agricultural employees and agricultural employee organizations and their agents, members
3 and bargaining agents are prohibited from:

4 A. Interfering with, restraining or coercing employees in the exercise of the rights
5 guaranteed in section 3903 or an employer in the selection of the employer's
6 representative for purposes of collective bargaining or the adjustment of grievances;

7 B. Refusing to bargain collectively with an employer as required by section 3905; and

8 C. Causing or attempting to cause an agricultural employer to pay or deliver, or agree
9 to pay or deliver, any money or other thing of value for services not performed or not
10 to be performed.

11 **3. Violations.** The board shall process violations of this section in the manner
12 provided in section 3909.

13 **§3905. Obligation to bargain**

14 **1. Negotiations.** It is the obligation of the agricultural employer and the bargaining
15 agent to bargain collectively. "Collective bargaining" means, for the purposes of this
16 chapter, the mutual obligation of the agricultural employer and the bargaining agent:

17 A. To meet at reasonable times;

18 B. To meet within 10 days after receipt of written notice from the other party
19 requesting a meeting for collective bargaining purposes, as long as the parties have not
20 otherwise agreed in a prior written contract;

21 C. To confer and negotiate in good faith with respect to wages, hours and other terms
22 and conditions of employment, except that, by the mutual obligation, neither party may
23 be compelled to agree to a proposal or be required to make a concession;

24 D. To execute in writing any agreements arrived at, the terms of which are subject to
25 negotiation; and

26 E. To participate in good faith in the mediation and arbitration procedures required by
27 this section.

28 Upon the filing by any person of a petition not earlier than the 90th day nor later than the
29 60th day preceding the expiration of the 12-month period following initial certification
30 under section 3907, subsection 4, the board shall determine whether an employer has
31 bargained in good faith with the currently certified labor organization. If the board finds
32 that the employer has not bargained in good faith, it may extend the certification for up to
33 one additional year, effective immediately upon the expiration of the previous 12-month
34 period following initial certification.

35 **2. Mediation.** This subsection governs the mediation of disputes between agricultural
36 employers and agricultural employees.

37 A. It is the declared policy of the State to provide full and adequate facilities for the
38 settlement of disputes between employers and employees or their representatives and
39 other disputes subject to settlement through mediation.

40 B. Mediation procedures, as provided by section 965, subsection 2, must be followed
41 when either party to a controversy requests mediation services prior to arbitration or
42 upon motion of the board or the executive director.

1 C. The employer, labor organization or employees involved in collective bargaining
2 shall notify the executive director, in writing, at least 30 days prior to the expiration of
3 a contract, or at least 30 days prior to entering into negotiations for a first contract
4 between the employer and the employees, or when a dispute arises between the parties
5 threatening interruption of work.

6 D. Any information disclosed by either party to a dispute to the Panel of Mediators,
7 established pursuant to section 965, subsection 2, paragraph C, or any of its members
8 in the performance of this subsection is privileged.

9 **3. Arbitration.** When the parties are unable to reach an agreement on a contract,
10 within 90 days from and including the date of their first meeting, either party may petition
11 the board to initiate final and binding arbitration regarding all unresolved issues.

12 A. Upon receipt of the petition, the executive director shall issue an order requiring
13 arbitration and requesting the parties to select one or more arbitrators. If the parties
14 have not selected an arbitrator or an arbitration panel within 5 days after the issuance
15 of the order, the board shall order each party to select one arbitrator within 5 days and,
16 if the 2 arbitrators cannot select a 3rd neutral arbitrator within 5 days, the board shall
17 submit a list within 5 days from which the parties may alternately strike names until a
18 single name is left, who the board shall appoint as arbitrator. The arbitration panel
19 shall call a hearing to be held within 10 days after the date of appointment. In reaching
20 a decision under this paragraph, the arbitration panel shall consider the following
21 factors:

22 (1) A comparison between the wages, hours and working conditions of the
23 employees involved in the arbitration proceeding with those of other employees
24 who perform similar services in private employment in other jurisdictions
25 competing in the same labor market and who are covered by a collective bargaining
26 agreement with their employer;

27 (2) The overall compensation presently received by the employees, including
28 direct wage compensation, vacation, holidays and excused time, insurance and
29 pensions, medical and hospitalization benefits, the continuity and stability of
30 employment and any other benefits received;

31 (3) The overall compensation presently received by the nonbargaining unit
32 employees of the employer and the employer's overall financial condition,
33 including but not limited to sales, income and assets;

34 (4) Any other factors not included in subparagraphs (1) to (3) that are normally
35 and traditionally taken into consideration in the determination of wages, hours and
36 working conditions through voluntary collective bargaining, mediation-arbitration
37 or otherwise between the parties, or in private employment, including the average
38 Consumer Price Index; and

39 (5) The need to establish fair and reasonable conditions in relation to job
40 qualifications and responsibilities and the goal of promoting stability in the labor
41 force and farm labor relations.

42 B. The determination by the arbitration panel on all issues is final and binding on the
43 parties.

1 C. A hearing held pursuant to this subsection must be informal and the rules of
2 evidence for judicial proceedings are not binding. Any documentary evidence and
3 other information determined to be relevant by the arbitration panel may be received
4 in evidence. The arbitration panel may administer oaths and require by subpoena
5 attendance and testimony of witnesses and production of books, records and other
6 evidence relating to the issues presented. The hearing must be concluded within 20
7 days of the date of commencement.

8 D. The arbitration panel shall submit the panel's report to the parties and the board
9 within 30 days after the conclusion of the hearing, unless that time limitation is
10 extended by the executive director.

11 **4. Costs.** The costs for the services of the mediator and of the neutral arbitrator
12 including per diem expenses, actual and necessary travel and subsistence expenses and the
13 costs of hiring the premises where any mediation or arbitration proceedings are conducted
14 must be shared equally by the parties to the proceedings except that any party that
15 intentionally and unreasonably prolongs the proceedings or causes excessive costs or
16 expenses is responsible for the excessive costs or expenses. All other costs are assumed by
17 the party incurring them.

18 **5. Arbitration administration.** The cost for services rendered and expenses incurred
19 by the State Board of Arbitration and Conciliation, as described in section 931, and any
20 state cost allocation program charges are shared equally by the parties to the proceedings
21 and must be deposited into a nonlapsing special fund administered by the board.
22 Authorization for services rendered and expenditures incurred by members of the State
23 Board of Arbitration and Conciliation is the responsibility of the executive director. All
24 costs are paid from the special fund administered by the board. The executive director may
25 estimate costs upon receipt of a request for services and collect the estimated costs before
26 providing the services. The executive director shall bill or reimburse the parties for any
27 difference between the estimated costs that were collected and the actual costs of providing
28 the services. When one party has paid its share of the estimated cost of providing the
29 services, the matter is scheduled for hearing. A party that has not paid the estimated or
30 actual cost of providing services within 60 days of the date the invoice for those costs was
31 issued is, in the absence of good cause shown, liable for the amount of the invoice and a
32 penalty of 25% of the amount of the invoice. Any penalty amount collected pursuant to
33 this subsection remains in the special fund administered by the board. The executive
34 director is authorized to collect any sums due and payable pursuant to this subsection
35 through civil action. In such an action, the court shall allow litigation costs, including court
36 costs and reasonable attorney's fees, to be deposited into the General Fund if the executive
37 director is the prevailing party in the action.

38 **6. Termination and modification.** This subsection governs termination and
39 modification of collective bargaining contracts between agricultural employers and
40 agricultural employees.

41 A. When a collective bargaining contract is in effect covering agricultural employees,
42 a party to the contract may not terminate or modify the contract unless the party
43 desiring termination or modification:

44 (1) Serves written notice upon the other party to the contract of the proposed
45 termination or modification not less than 60 days before the expiration date of the

1 contract or, if the contract contains no expiration date, 60 days before the proposed
2 termination or modification time;

3 (2) Offers to meet and confer with the other party for the purpose of negotiating a
4 new contract or a contract containing the proposed modification;

5 (3) Notifies the board within 30 days after the notice under subparagraph (1) is
6 given, if no agreement has been reached by that time; and

7 (4) Continues in effect, without resorting to strike or lockout, all the terms and
8 conditions of the existing contract for a period of 60 days after the notice under
9 subparagraph (1) is given or until the expiration of the contract, whichever occurs
10 later.

11 B. The duties imposed upon agricultural employers and labor organizations by
12 paragraph A, subparagraphs (2) to (4) become inapplicable upon an intervening
13 certification of the board that the labor organization or individual that is a party to the
14 contract has been superseded as, or has ceased to be, the representative of the
15 employees, subject to sections 3906 and 3907, and the duties so imposed may not be
16 construed to require either party to discuss or agree to any modification of the terms
17 and conditions contained in a contract for a fixed period if the modification is to
18 become effective before the terms and conditions can be renegotiated under the
19 provisions of the contract. Any agricultural employee who engages in a strike within
20 the 60-day period specified in this section is deemed to no longer meet the definition
21 of an agricultural employee under section 3902, subsection 1 of the agricultural
22 employer engaged in the particular labor dispute, for the purposes of sections 3904 and
23 3906 to 3907, but the change in definition for that employee terminates if that employee
24 is reemployed by the employer.

25 **§3906. Bargaining unit; how determined**

26 **1. Unit determination.** If there is a dispute between the agricultural employer and an
27 employee or employees over the appropriateness of a bargaining unit for purposes of
28 collective bargaining or between the agricultural employer and an employee or employees
29 over whether a supervisory or other position is included in the bargaining unit, the
30 executive director or the executive director's designee shall conduct a proceeding to make
31 the determination, except that anyone excepted from the definition of "agricultural
32 employee" under section 3902, subsection 1 may not be included in a bargaining unit. The
33 executive director or the executive director's designee conducting bargaining unit
34 determination proceedings may administer oaths and require by subpoena the attendance
35 and testimony of witnesses and the production of books, records and other evidence relative
36 or pertinent to the issues represented.

37 **2. Determination of exclusion of supervisory position; criteria.** In determining,
38 pursuant to subsection 1, whether a supervisory position should be excluded from the
39 proposed bargaining unit, the executive director or the executive director's designee shall
40 consider, among other criteria, if the principal functions of the position are characterized
41 by performing management control duties such as scheduling, assigning, overseeing and
42 reviewing the work of subordinate employees; performing duties that are distinct and
43 dissimilar from those performed by the employees supervised; exercising judgment in
44 adjusting grievances, applying other established personnel policies and procedures and
45 enforcing a collective bargaining agreement; or establishing or participating in the

1 establishment of performance standards for employees and taking corrective measures to
2 implement those standards.

3 **3. Determination of bargaining unit appropriateness.** In determining the
4 bargaining unit that is appropriate for purposes of collective bargaining, the executive
5 director or the executive director's designee shall ensure that employees have the fullest
6 freedom in exercising the rights guaranteed by this chapter, ensure a clear and identifiable
7 community of interest among employees and avoid excessive fragmentation among
8 bargaining units.

9 **4. Bargaining unit clarification.** If there is a certified or currently recognized
10 bargaining agent and the circumstances surrounding the formation of an existing bargaining
11 unit are alleged to have changed sufficiently to warrant modification in the composition of
12 that bargaining unit, the agricultural employer or any certified or recognized bargaining
13 agent may file with the executive director a petition for a unit clarification when the parties
14 are unable to agree on appropriate modifications and there is no question concerning
15 representation.

16 **§3907. Determination of bargaining agent**

17 **1. Voluntary recognition.** An agricultural employee organization may file a request
18 with an agricultural employer alleging that a majority of the agricultural employees in an
19 appropriate bargaining unit wish to be represented for the purposes of collective bargaining
20 between the agricultural employer and the employees' organization. The request must
21 describe the grouping of jobs or positions that constitute the unit considered appropriate
22 and include a demonstration of majority support. The request for recognition must be
23 granted by the agricultural employer.

24 **2. Majority sign-up.** If a request by an agricultural employee organization for
25 recognition pursuant to subsection 1 is not granted by the agricultural employer, the
26 executive director or the executive director's designee shall examine the demonstration of
27 support. If the executive director or the executive director's designee finds that a majority
28 of the employees in a unit appropriate for bargaining have signed valid authorizations
29 designating the employees' organization specified in the petition as their bargaining
30 representative and that no other individual or labor organization is currently certified or
31 recognized as the exclusive representative of any of the employees in the unit, the board
32 may not direct an election but shall certify the employees' organization as the
33 representative. However, if the majority status of the employees in the appropriate unit is
34 in question, the executive director or the executive director's designee shall call an election
35 to determine whether the organization represents a majority of the members in the
36 bargaining unit.

37 **3. Elections.** The executive director, or the executive director's designee, pursuant to
38 subsection 2 or upon receiving a signed petition of at least 30% of a bargaining unit of
39 agricultural employees stating that they desire to be represented by an agricultural
40 employee organization, shall conduct a secret ballot election to determine whether the
41 organization represents a majority of the members in the bargaining unit.

42 A. The election may be conducted at suitable work locations or through the United
43 States mail and the procedures adopted and employed must ensure that neither the
44 employee organizations nor the management representatives involved in the election
45 have access to information that identifies a voter.

1 B. The ballot must contain the name of the employee organization and that of any
2 other employee organization showing written proof of at least 10% representation of
3 the agricultural employees within the unit, together with a choice for an agricultural
4 employee to designate that the employee does not desire to be represented by a
5 bargaining agent.

6 If more than one organization is on the ballot and none of the 3 or more choices receives
7 a majority vote of the agricultural employees voting, a run-off election must be held.
8 The run-off ballot must contain the 2 choices that received the largest and next largest
9 number of votes.

10 **4. Bargaining agent certified.** When an organization receives the majority of votes
11 of those voting, the executive director shall certify that organization as the bargaining
12 agent. The agricultural employer shall recognize the bargaining agent certified as
13 representing a bargaining unit as the exclusive bargaining agent for all of the employees in
14 the bargaining unit unless a decertification election by secret ballot is held and the
15 bargaining agent is declared by the executive director as not representing a majority of the
16 unit.

17 **5. Decertification.** When 30% of the employees in a certified bargaining unit petition
18 for a bargaining agent to be decertified, the procedures for conducting an election on the
19 question are the same as for representation as a bargaining agent set forth in this section.

20 **6. Questions concerning representation.** A question concerning representation may
21 not be raised within one year of a certification or attempted certification. When a valid
22 collective bargaining agreement is in effect, a question concerning unit or representation
23 may not be raised except during the period neither more than 90 days nor less than 60 days
24 prior to either the expiration date of the agreement or its anniversary date if the agreement
25 contains no expiration date. Matters of unit clarification may be raised at any time.

26 **7. Representation of employees within unit regardless of membership.** The
27 bargaining agent certified by the executive director as the exclusive bargaining agent is
28 required to represent all the agricultural employees within the unit without regard to
29 membership in the organization certified as bargaining agent. An agricultural employee at
30 any time may present the employee's grievance to the agricultural employer and have the
31 grievance adjusted without the intervention of the bargaining agent if the adjustment is not
32 inconsistent with the terms of a collective bargaining agreement then in effect and if the
33 bargaining agent's representative has been given reasonable opportunity to be present at
34 any meeting of the parties called for the resolution of the grievance.

35 **§3908. Maine Labor Relations Board; procedure and review**

36 **1. Proceedings subject to rules.** Proceedings conducted under this chapter are subject
37 to the rules and procedures of the board adopted under section 968, subsection 3.

38 **2. Review of representation proceedings.** Any person aggrieved by any ruling or
39 determination of the executive director under section 3906 or 3907 may appeal to the board
40 within 15 days of the announcement of the ruling or determination, except that in the
41 instance of objections to the conduct of an election or challenged ballots the time period is
42 5 working days. Upon receipt of an appeal, the board shall within a reasonable time give
43 notice in writing 7 days in advance of the time and place of a hearing to the aggrieved party,
44 the labor organizations or the bargaining agent and the agricultural employer and the board

1 shall hold the hearing. The hearing must be in accordance with section 968. Decisions of
2 the board made pursuant to this subsection are subject to review by the Superior Court
3 under the Maine Rules of Civil Procedure, Rule 80C, in accordance with the standards
4 specified in section 1292, if the complaint is filed within 15 days of the date of issuance of
5 the decision. The complaint must be served upon the board and all parties to the board
6 proceedings by certified mail, return receipt requested.

7 **§3909. Prevention of prohibited acts**

8 **1. Prevention of prohibited acts; board powers.** The board may prevent a person,
9 an agricultural employer, an agricultural employee, an agricultural employee organization
10 or a bargaining agent from engaging in a prohibited act under section 3904. This subsection
11 is not affected by any other means of adjustment or prevention that has been or may be
12 established by agreement, law or otherwise.

13 **2. Complaints.** An agricultural employer, an agricultural employee, an agricultural
14 employee organization or a bargaining agent that believes that a person, an agricultural
15 employer, an agricultural employee, an agricultural employee organization or a bargaining
16 agent has engaged in or is engaging in a prohibited practice may file a complaint with the
17 executive director stating the charges. The complaint may not be filed with the executive
18 director until the complaining party has served a copy of it upon the party named in the
19 complaint. Upon receipt of a complaint, the executive director or the executive director's
20 designee shall review the charge to determine whether the facts as alleged constitute a
21 prohibited act. If it is determined that the facts do not, as a matter of law, constitute a
22 violation, the charge must be dismissed by the executive director, subject to review by the
23 board. If the executive director or the board determines that a formal hearing is necessary,
24 the executive director must serve upon the parties to the complaint a notice of the
25 prehearing conference and of the hearing before the board. The notice must include the
26 time and place of hearing for the prehearing conference or the hearing, as appropriate. A
27 hearing may not be held based upon an alleged prohibited practice occurring more than 6
28 months before the filing of the complaint with the executive director. The party named in
29 the complaint has the right to file a written answer to the complaint and to appear in person
30 or otherwise and give testimony at the place and time fixed for the hearing. Through the
31 discretion of the board, any other person or organization may be allowed to intervene in
32 the proceeding and to present testimony. This subsection does not restrict the right of the
33 board to require the executive director or the executive director's designee to hold a
34 prehearing conference on any prohibited practice complaint prior to the hearing before the
35 board and to take an action, including dismissal, to attempt to resolve disagreements
36 between the parties or to recommend an order to the board, when the executive director
37 determines appropriate, subject to review by the board.

38 **3. Cease and desist order.** If after hearing and argument, upon a preponderance of
39 the evidence received, the board is of the opinion that a party named in the complaint has
40 engaged in or is engaging in a prohibited practice, the board shall state in writing its
41 findings of fact and the reasons for its conclusions and issue and cause to be served upon
42 that party an order requiring the party to cease and desist from the prohibited practice and
43 to take affirmative action, including reinstatement of employees with or without back pay
44 and making employees whole, when the board considers relief appropriate, for the loss of
45 pay resulting from the employer's refusal to bargain, and to provide other relief, including
46 payment of attorney's fees and costs. An order of the board may not require the

1 reinstatement of an individual as an employee who has been suspended or discharged or
2 the payment to the employee of any back pay if the individual was suspended or discharged
3 for cause.

4 **4. Dismissal of complaint.** If after hearing and argument, upon a preponderance of
5 the evidence received, the board is not of the opinion that the party named in the complaint
6 has engaged in or is engaging in any prohibited practice, the board shall state in writing its
7 findings of fact and the reasons for its conclusions and issue an order dismissing the
8 complaint.

9 **5. Enforcement action; scope of review; consolidation of actions.** If after the
10 issuance of an order by the board requiring a party to cease and desist or to take any other
11 affirmative action the party fails to comply with the order of the board, the party in whose
12 favor the order operates or the board may file a civil action in Superior Court to compel
13 compliance with the order of the board. Upon application of a party in interest or the board,
14 the court may grant temporary relief or a restraining order and may impose terms and
15 conditions as determined just and proper. The board's decision may not be stayed except
16 when it is clearly shown to the satisfaction of the court that substantial and irreparable
17 injury will be sustained or that there is a substantial risk of danger to the public health or
18 safety. In an action to compel compliance, the Superior Court may not review the action
19 of the board other than to determine whether the board has acted in excess of its jurisdiction.
20 If an action to review the decision of the board is pending at the time of the commencement
21 of an action for enforcement pursuant to this subsection or is filed later, the 2 actions must
22 be consolidated.

23 **6. Review.** Either party may seek a review by the Superior Court of a decision or
24 order of the board by filing a complaint in accordance with the Maine Rules of Civil
25 Procedure, Rule 80C, if the complaint is filed within 15 days of the date of issuance of the
26 decision. The complaint must be served upon the board and all parties to the board
27 proceeding by certified mail, return receipt requested. Upon the filing of the complaint,
28 the court shall schedule the hearing at the earliest possible time and notify all interested
29 parties and the board. Pending review and upon application of an interested party, the court
30 may grant temporary relief or a restraining order and impose terms and conditions that the
31 court determines just and proper, except that the board's decision or order is not stayed
32 unless it is clearly shown to the satisfaction of the court that substantial and irreparable
33 injury will be sustained or that there is a substantial risk of danger to the public health or
34 safety. The executive director shall immediately file in the court the record in the
35 proceeding certified by the executive director or a member of the board. The record must
36 include all documents filed in the proceeding and the transcript, if any. A hearing must be
37 held not less than 7 days after notice, and after the hearing the court may enforce, modify,
38 enforce as modified or set aside in whole or in part the decision or order of the board, except
39 that the findings of the board on questions of fact are final unless shown to be clearly
40 erroneous. An appeal to the Law Court must be the same as an appeal from an interlocutory
41 order under section 6.

42 **7. Privileges seeking injunctive relief.** In a judicial proceeding authorized by this
43 section in which injunctive relief is sought, sections 5 and 6 apply, except that neither an
44 allegation nor proof of unavoidable substantial and irreparable injury to the complainant's
45 property is required to obtain a temporary restraining order or injunction.

46 **§3910. Hearings**

