

**Right to Know Advisory Committee
Membership List
September 5, 2017**

Appointments by the Governor

Christopher Parr

Department of Public Safety
104 State House Station
Augusta, ME 04333

Representing state government interests

Mary-Anne LaMarre

406 East Side Trail
Oakland, ME 04963

Representing school interests

Paul Nicklas

67 Pine Street, Apt. 2
Bangor, ME 04401

Representing municipal interests

Eric Stout

State of Maine OIT
145 State House Station
Augusta, ME 04333

A member with broad experience in
information technology

Appointments by the President of the Senate

Senator Lisa Keim

1505 Main Street
Dixfield, ME 04224

Senate member of the Judiciary Committee

Richard LaHaye

Chief, Searsport Police Department
3 Union Street
Searsport, ME 04974

Representing law enforcement interests

Luke Rossignol

Bemis & Rossignol
1019 State Road
Mapleton, ME 04757

Representing the public

William D. Shorey

Board of Waldo County Commissioners
39-B Spring Street
Belfast, ME 04915

Representing county or regional interests

A. J. Higgins

State House Bureau Chief
Maine Public Broadcasting
18 West Street
Manchester, ME 04351

Representing broadcasting interests

**Right to Know Advisory Committee
Membership List
September 5, 2017**

Stephanie Grinnell
The Republican Journal
156 High Street
Belfast, ME 04915

Representing newspaper and other press interests

Appointments by the Speaker of the House

Representative Christopher W. Babbidge
84 Stratford Place
Kennebunk, ME 04043

House member of the Judiciary Committee

Suzanne Goucher
Maine Association of Broadcasters
69 Sewall Street, Suite 2
Augusta, ME 04330

Representing broadcasting interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400

Representing newspaper publishers

James Campbell
Maine Freedom of Information Coalition
48 Monroe Road
Searsport, ME 04974

Representing a statewide coalition of advocates of
freedom of access

Attorney General's Designee

Linda Pistner
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333-0006

Designee of the Attorney General

Chief Justice of the Supreme Judicial Court's Designee

Mary Ann Lynch
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112-4820

Member of the Judicial Branch

Staff:

Craig Nale
Colleen McCarthy Reid

RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, September 6, 2017

9:00 am

State House Room 438

Meeting Agenda

1. Introductions
2. Election of Chair
3. Review and discussion of the Eleventh Annual Report of the Right to Know Advisory Committee (Jan. 2017) and actions related to those recommendations
4. Review and discussion of bills affecting freedom of access carried over in the Judiciary Committee
 - a. LD 1267, An Act To Protect Licensing Information of Medical Professionals
 - b. LD 1541, An Act To Protect Certain Administrative Licensing Files
5. Review and discussion of bill affecting freedom of access to local government information
 - a. LD 146, An Act To Protect the Confidentiality of Local Government Employees' Private Information (veto sustained)
6. Introduction of Brenda Kielty, Public Access Ombudsman
7. Presentation from Adam Fisher, Maine State Library, on collection and digitization of public records
8. Discussion of formation of subcommittees
 - a. Technology subcommittee
 - b. Subcommittee to review existing public records exceptions
9. Establish future meeting dates

CHAPTER 13

PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER 1

FREEDOM OF ACCESS

§400. Short title

This subchapter may be known and cited as "the Freedom of Access Act." [PL 2011, c. 662, §1 (NEW).]

Section History:

[PL 2011, c. 662, §1 (NEW).]

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter. [PL 1975, c. 758 (RPR).]

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter. [PL 2011, c. 320, Pt. B, §1 (NEW).]

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent. [PL 1975, c. 758 (RPR).]

Section History:

[PL 1975, c. 483, §1 (AMD).]; [PL 1975, c. 758 (RPR).]; [PL 2011, c. 320, Pt. B, §1 (AMD).]

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

[PL 1975, c. 758 (NEW).]

1-A. Legislative subcommittee. "Legislative subcommittee" means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.

[PL 1991, c. 773, §1 (NEW).]

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees; [PL 1975, c. 758 (NEW).]

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees; [PL 1989, c. 878, Pt. A, §1 (RPR).]; [PL 2003, c. 20, Pt. OO, §2 (AMD).]; [PL 2003, c. 20, Pt. OO, §4 (AFF).]

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; [PL 1991, c. 848, §1 (AMD).]

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [PL 1995, c. 608, §1 (AMD).]

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; [PL 2009, c. 334, §1 (AMD).]

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and [PL 2009, c. 334, §2 (AMD).]

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach. [PL 2009, c. 334, §3 (NEW).]

[PL 2009, c. 334, §§1-3 (AMD).]

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after

translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

- A. Records that have been designated confidential by statute; [PL 1975, c. 758 (NEW).]
- B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [PL 1975, c. 758 (NEW).]
- C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [PL 1991, c. 773, §2 (AMD).]
- C-1. Information contained in a communication between a constituent and an elected official if the information:
 - (1) Is of a personal nature, consisting of:
 - (a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
 - (b) Credit or financial information;
 - (c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;
 - (d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or
 - (e) An individual's social security number; or
 - (2) Would be confidential if it were in the possession of another public agency or official; [PL 2011, c. 264, §1 (NEW).]
- D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives; [PL 1989, c. 358, §4 (AMD).]
- E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B; [PL 1989, c. 878, Pt. A, §2 (RPR).]; [PL 2003, c. 20, Pt. OO, §2 (AMD).]; [PL 2003, c. 20, Pt. OO, §4 (AFF).]
- F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed

exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [PL 1991, c. 448, §1 (AMD).]

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; [PL 1991, c. 448, §1 (AMD).]

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct; [PL 1995, c. 608, §4 (AMD).]

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter; [PL 1999, c. 96, §1 (AMD).]

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization; [PL 2001, c. 675, §1 (AMD).]

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A; [PL 2003, c. 392, §1 (AMD).]

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure; [PL 2003, c. 614, §1 (AMD).]

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure, systems and software. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure; [PL 2011, c. 662, §2 (AMD).]

N. Social security numbers; [PL 2011, c. 320, Pt. E, §1 (AMD).]

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials; [RR 2009, c. 1, §1 (COR).]

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;

(Paragraph P as enacted by PL 2009, c. 339, §3 is REALLOCATED TO TITLE 1, SECTION 402, SUBSECTION 3, PARAGRAPH Q) [PL 2011, c. 149, §1 (AMD).]

Q. (REALLOCATED FROM T. 1, §402, sub-§3, ¶P) Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials or the Department of Corrections under conditions that protect the information from further disclosure; [PL 2015, c. 335, §1 (AMD).]

R. [PL 2017, c. 163, §1 (RP).]

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; [PL 2015, c. 161, §1 (AMD).]

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; [PL 2017, c. 118, §1 (AMD).]

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5; and [PL 2017, c. 118, §2 (AMD).]

V. Participant application materials and other personal information obtained or maintained by a municipality or other public entity in administering a community well-being check program, except that a participant's personal information, including health information, may be made available to first responders only as necessary to implement the program. For the purposes of this paragraph, "community well-being check program" means a voluntary program that involves daily, or regular, contact with a participant and, when contact cannot be established, sends first responders to the participant's residence to check on the participant's well-being. [PL 2017, c. 118, §3 (NEW).]

[PL 2017, c. 118, §§1-3 (AMD).]; [PL 2017, c. 163, §1 (AMD).]

3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:

A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of furlough and dates of furlough; [PL 2013, c. 267, Pt. B, §1 (AMD).]

B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, address of residence and dates of supervision; and [PL 2013, c. 267, Pt. B, §1 (AMD).]

C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, public criminal history record information, as defined in Title 16, section 703, subsection 8, and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information. [PL 2013, c. 267, Pt. B, §1 (AMD).]

[PL 2013, c. 267, Pt. B, §1 (AMD).]

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

[PL 2009, c. 334, §4 (NEW).]

5. Public access officer. "Public access officer" means the person designated pursuant to section 413, subsection 1.

[PL 2011, c. 662, §3 (NEW).]

6. Reasonable office hours. "Reasonable office hours" includes all regular office hours of an agency or official.

[PL 2011, c. 662, §3 (NEW).]

Section History:

[PL 1973, c. 433, §1 (AMD).]; [PL 1975, c. 243 (RPR).]; [PL 1975, c. 483, §2 (AMD).]; [PL 1975, c. 758 (RPR).]; [PL 1977, c. 164, §§1,2 (AMD).]; [PL 1977, c. 696, §9 (AMD).]; [PL 1985, c. 695, §§1,2 (AMD).]; [PL 1985, c. 779, §§1,2 (AMD).]; [PL 1987, c. 20, §1 (AMD).]; [PL 1987, c. 402, §A1 (AMD).]; [PL 1987, c. 477, §1 (AMD).]; [PL 1989, c. 358, §§1-4 (AMD).]; [PL 1989, c. 443, §§1,2 (AMD).]; [PL 1989, c. 878, §§A1,2 (AMD).]; [PL 1991, c. 448, §§1,2 (AMD).]; [PL 1991, c. 773, §§1,2 (AMD).]; [PL 1991, c. 848, §1 (AMD).]; [PL 1995, c. 608, §§1-5 (AMD).]; [PL 1997, c. 714, §1 (AMD).]; [PL 1999, c. 96, §§1-3 (AMD).]; [PL 2001, c. 477, §1 (AMD).]; [PL 2001, c. 675, §§1-3 (AMD).]; [PL 2003, c. 20, §OO2 (AMD).]; [PL 2003, c. 20, §OO4 (AFF).]; [PL 2003, c. 392, §§1-3 (AMD).]; [PL 2003, c. 614, §§1-3 (AMD).]; [PL 2005, c. 381, §§1-3 (AMD).]; [PL 2007, c. 597, §1 (AMD).]; [RR 2009, c. 1, §§1-3 (COR).]; [PL 2009, c. 176, §§1-3 (AMD).]; [PL 2009, c. 334, §§1-4 (AMD).]; [PL 2009, c. 339, §§1-3 (AMD).]; [PL 2011, c. 149, §§1-3 (AMD).]; [PL 2011, c. 264, §1 (AMD).]; [PL 2011, c. 320, Pt. E, §1 (AMD).]; [PL 2011, c. 662, §§2, 3 (AMD).]; [PL 2013, c. 267, Pt. B, §1 (AMD).]; [PL 2013, c. 339, §§1-3 (AMD).]; [PL 2013, c. 518, §§1-3 (AMD).]; [PL 2015, c. 161, §§1-3 (AMD).]; [PL 2015, c. 335, §1 (AMD).]; [PL 2017, c. 118, §§1-3 (AMD).]; [PL 2017, c. 163, §1 (AMD).]

§402-A. Public records defined

(REPEALED)

Section History:

[PL 1975, c. 483, §3 (NEW).]; [PL 1975, c. 623, §1 (RPR).]; [PL 1975, c. 758 (RP).]

§403. Meetings to be open to public; record of meetings

1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:

A. The date, time and place of the public proceeding; [PL 2011, c. 320, Pt. C, §1 (NEW).]

B. The members of the body holding the public proceeding recorded as either present or absent; and [PL 2011, c. 320, Pt. C, §1 (NEW).]

C. All motions and votes taken, by individual member, if there is a roll call. [PL 2011, c. 320, Pt. C, §1 (NEW).]

[PL 2011, c. 320, Pt. C, §1 (NEW).]

3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.

[PL 2011, c. 320, Pt. C, §1 (NEW).]

Section History:

[PL 1969, c. 293 (AMD).]; [PL 1975, c. 422, §1 (AMD).]; [PL 1975, c. 758 (RPR).]; [PL 2009, c. 240, §1 (AMD).]; [PL 2011, c. 320, Pt. C, §1 (RPR).]

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations

governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter. [PL 1975, c. 758 (RPR).]

Section History:

[PL 1975, c. 422, §2 (RPR).]; [PL 1975, c. 483, §4 (AMD).]; [PL 1975, c. 758 (RPR).]

§404-A. Decisions

(REPEALED)

Section History:

[PL 1973, c. 433, §2 (NEW).]; [PL 1973, c. 704, §§1,2 (AMD).]; [PL 1975, c. 758 (RP).]

§405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions. [PL 1975, c. 758 (NEW).]

1. Not to defeat purposes of subchapter. An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

[PL 2009, c. 240, §2 (AMD).]

2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at an executive session.

[PL 2009, c. 240, §2 (AMD).]

3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

[PL 2009, c. 240, §2 (AMD).]

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

[PL 2003, c. 709, §1 (AMD).]

5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

[PL 2009, c. 240, §2 (AMD).]

6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

- (1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;
- (2) Any person charged or investigated must be permitted to be present at an executive session if that person so desires;
- (3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and
- (4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal; [PL 2009, c. 240, §2 (AMD).]

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:

- (1) The student and legal counsel and, if the student is a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire; [PL 2009, c. 240, §2 (AMD).]

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency; [PL 1987, c. 477, §3 (AMD).]

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions; [PL 1999, c. 144, §1 (RPR).]

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage; [PL 2009, c. 240, §2 (AMD).]

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute; [PL 1999, c. 180, §1 (AMD).]

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and [PL 1999, c. 180, §2 (AMD).]

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter. [PL 1999, c. 180, §3 (NEW).]

[PL 2009, c. 240, §2 (AMD).]

Section History:

[PL 1975, c. 758 (RPR).]; [PL 1979, c. 541, §A3 (AMD).]; [PL 1987, c. 477, §§2,3 (AMD).]; [PL 1987, c. 769, §A1 (AMD).]; [PL 1999, c. 40, §§1,2 (AMD).]; [PL 1999, c. 144, §1 (AMD).]; [PL 1999, c. 180, §§1-3 (AMD).]; [PL 2003, c. 709, §1 (AMD).]; [PL 2009, c. 240, §2 (AMD).]

§405-A. Recorded or live broadcasts authorized

(REPEALED)

Section History:

[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RP).]

§405-B. Appeals

(REPEALED)

Section History:

[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RP).]

§405-C. Appeals from actions

(REPEALED)

Section History:

[PL 1975, c. 483, §5 (NEW).]; [PL 1975, c. 758 (RP).]

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding. [PL 1987, c. 477, §4 (AMD).]

Section History:

[PL 1975, c. 483, §6 (AMD).]; [PL 1975, c. 758 (RPR).]; [PL 1987, c. 477, §4 (AMD).]

§407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

[PL 1975, c. 758 (NEW).]

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof must be kept by the agency and made available to any interested member of the public who may wish to review it.

[PL 2009, c. 240, §3 (AMD).]

Section History:

[PL 1975, c. 758 (NEW).]; [PL 2009, c. 240, §3 (AMD).]

§408. Public records available for public inspection and copying

(REPEALED)

Section History:

[PL 1975, c. 758 (NEW).]; [PL 2003, c. 709, §2 (RPR).]; [PL 2007, c. 501, §1 (AMD).]; [PL 2009, c. 240, §4 (AMD).]; [PL 2011, c. 662, §4 (RP).]

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record. [PL 2011, c. 662, §5 (NEW).]

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[PL 2011, c. 662, §5 (NEW).]

2. Copy. A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy. The agency or official may charge a fee for copies as provided in subsection 8.

A. A request need not be made in person or in writing. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official shall mail the copy upon request. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

3. Acknowledgment; clarification; time estimate; cost estimate. The agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request and may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the agency or official shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the agency or official at the office responsible for maintaining the public record. An agency or official that receives a request for a public record that is maintained by that agency but is not maintained by the office that received the request shall forward the request to the office of the agency or official that maintains the record, without willful delay, and shall notify the requester that the request has been forwarded and that the office to which the request has been forwarded will acknowledge receipt within 5 working days of receiving the request.

[PL 2015, c. 317, §1 (AMD).]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

[PL 2015, c. 494, Pt. A, §1 (RPR).]

4-A. Action for protection. A body, an agency or an official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

- (1) The terms of the request and any modifications agreed to by the requesting party;
- (2) A statement of the facts that demonstrate the burdensome or oppressive nature of the request, with a good faith estimate of the time required to search for, retrieve, redact if necessary and compile the records responsive to the request and the resulting costs calculated in accordance with subsection 8;
- (3) A description of the efforts made by the body, agency or official to inform the requesting party of the good faith estimate of costs and to discuss possible modifications of the request that would reduce the burden of production; and
- (4) Proof that the body, agency or official has submitted a notice of intent to file an action under this subsection to the party requesting the records, dated at least 10 days prior to filing the complaint for an order of protection under this subsection. [PL 2015, c. 248, §2 (NEW).]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection. [PL 2015, c. 248, §2 (NEW).]

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party. [PL 2015, c. 248, §2 (NEW).]

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party. [PL 2015, c. 248, §2 (NEW).]

[PL 2017, c. 288, Pt. A, §1 (AMD).]

5. Schedule. Inspection, conversion pursuant to subsection 7 and copying of a public record subject to a request under this section may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody or control of the public record requested. If the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

[PL 2011, c. 662, §5 (NEW).]

6. No requirement to create new record. An agency or official is not required to create a record that does not exist.

[PL 2011, c. 662, §5 (NEW).]

7. Electronically stored public records. An agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the agency or official may charge a fee to cover the cost of conversion as provided in subsection 8. [PL 2011, c. 662, §5 (NEW).]

B. This subsection does not require an agency or official to provide a requester with access to a computer terminal. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

8. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying. [PL 2011, c. 662, §5 (NEW).]

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information. [PL 2011, c. 662, §5 (NEW).]

C. The agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format. [PL 2011, c. 662, §5 (NEW).]

D. An agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies. [PL 2011, c. 662, §5 (NEW).]

E. The agency or official may charge for the actual mailing costs to mail a copy of a record. [PL 2011, c. 662, §5 (NEW).]

F. An agency or official may require payment of all costs before the public record is provided to the requester. [PL 2017, c. 158, §1 (NEW).]

[PL 2017, c. 158, §1 (AMD).]

9. Estimate. The agency or official having custody or control of a public record subject to a request under this section shall provide to the requester an estimate of the time necessary to complete the request and of the total cost as provided by subsection 8. If the estimate of the total cost is greater than \$30, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 10 applies.

[PL 2011, c. 662, §5 (NEW).]

10. Payment in advance. The agency or official having custody or control of a public record subject to a request under this section may require a requester to pay all or a portion of the estimated costs to complete the request prior to the search, retrieval, compiling, conversion and copying of the public record if:

A. The estimated total cost exceeds \$100; or [PL 2011, c. 662, §5 (NEW).]

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

11. Waivers. The agency or official having custody or control of a public record subject to a request under this section may waive part or all of the total fee charged pursuant to subsection 8 if:

A. The requester is indigent; or [PL 2011, c. 662, §5 (NEW).]

B. The agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. [PL 2011, c. 662, §5 (NEW).]

[PL 2011, c. 662, §5 (NEW).]

Section History:

[PL 2011, c. 662, §5 (NEW).]; [PL 2013, c. 350, §§1, 2 (AMD).]; [PL 2015, c. 248, §§1, 2 (AMD).]; [PL 2015, c. 249, §1 (AMD).]; [PL 2015, c. 317, §1 (AMD).]; [PL 2015, c. 494, Pt. A, §1 (AMD).]; [PL 2017, c. 158, §1 (AMD).]; [PL 2017, c. 288, Pt. A, §1 (AMD).]

§409. Appeals

1. Records. Any person aggrieved by a refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record under section 408-A may appeal the refusal,

denial or failure within 30 calendar days of the receipt of the written notice of refusal, denial or failure to the Superior Court within the State for the county where the person resides or the agency has its principal office. The agency or official shall file a statement of position explaining the basis for denial within 14 calendar days of service of the appeal. If a court, after a review, with taking of testimony and other evidence as determined necessary, determines such refusal, denial or failure was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2015, c. 249, §2 (AMD).]

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 may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2011, c. 559, Pt. A, §2 (AMD).]

3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.

[PL 2009, c. 240, §6 (AMD).]

4. Attorney's fees. In an appeal under subsection 1 or 2, the court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

[PL 2009, c. 423, §1 (NEW).]

Section History:

[PL 1975, c. 758 (NEW).]; [PL 1987, c. 477, §5 (AMD).]; [PL 2007, c. 695, Pt. C, §1 (AMD).]; [PL 2009, c. 240, §§5, 6 (AMD).]; [PL 2009, c. 423, §1 (AMD).]; [PL 2011, c. 559, Pt. A, §§1, 2 (AMD).]; [PL 2011, c. 662, §6 (AMD).]; [PL 2013, c. 350, §3 (AMD).]; [PL 2015, c. 249, §2 (AMD).]

§410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged. [PL 1987, c. 477, §6 (RPR).]

Section History:

[PL 1975, c. 758 (NEW).]; [PL 1987, c. 477, §6 (RPR).]

§411. Right To Know Advisory Committee

1. Advisory committee established. The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

[PL 2005, c. 631, §1 (NEW).]

2. Membership. The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [PL 2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [PL 2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [PL 2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; and [PL 2015, c. 250, Pt. A, §1 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor. [PL 2015, c. 250, Pt. A, §2 (NEW).]

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

[PL 2015, c. 250, Pt. A, §§1, 2 (AMD).]

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [PL 2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [PL 2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [PL 2005, c. 631, §1 (NEW).]

[PL 2005, c. 631, §1 (NEW).]

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

[PL 2005, c. 631, §1 (NEW).]

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

[PL 2005, c. 631, §1 (NEW).]

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [PL 2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [RR 2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [RR 2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section

412, subsection 3 and for making that information publicly available; [PL 2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [PL 2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [PL 2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [PL 2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [PL 2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [PL 2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [PL 2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [PL 2005, c. 631, §1 (NEW).]

[PL 2007, c. 576, §1 (AMD).]

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive

reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

[PL 2005, c. 631, §1 (NEW).]

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

[PL 2005, c. 631, §1 (NEW).]

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

[PL 2005, c. 631, §1 (NEW).]

Section History:

[RR 2005, c. 2, §1 (COR).]; [PL 2005, c. 631, §1 (NEW).]; [PL 2007, c. 576, §1 (AMD).]; [PL 2015, c. 250, Pt. A, §§1, 2 (AMD).]

§412. Public records and proceedings training for certain elected officials and public access officers

1. Training required. A public access officer and an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or public access officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1.

[PL 2011, c. 662, §7 (AMD).]

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

A. The general legal requirements of this chapter regarding public records and public proceedings; [PL 2007, c. 349, §1 (NEW).]

B. Procedures and requirements regarding complying with a request for a public record under this chapter; and [PL 2007, c. 349, §1 (NEW).]

C. Penalties and other consequences for failure to comply with this chapter. [PL 2007, c. 349, §1 (NEW).]

An elected official or a public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

[PL 2011, c. 662, §7 (AMD).]

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

[PL 2011, c. 662, §7 (AMD).]

4. Application. This section applies to a public access officer and the following elected officials:

A. The Governor; [PL 2007, c. 349, §1 (NEW).]

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor; [PL 2007, c. 349, §1 (NEW).]

C. Members of the Legislature elected after November 1, 2008; [PL 2007, c. 576, §2 (AMD).]

D. [PL 2007, c. 576, §2 (RP).]

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments; [PL 2007, c. 576, §2 (NEW).]

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments; [PL 2007, c. 576, §2 (NEW).]

G. Officials of school administrative units; and [PL 2011, c. 662, §7 (AMD).]

H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2. [PL 2007, c. 576, §2 (NEW).]

[PL 2011, c. 662, §7 (AMD).]

Section History:

[PL 2007, c. 349, §1 (NEW).]; [PL 2007, c. 576, §2 (AMD).]; [PL 2011, c. 662, §7 (AMD).]

§413. Public access officer

1. Designation; responsibility. Each agency, county, municipality, school administrative unit and regional or other political subdivision shall designate an existing employee as its public access officer to serve as the contact person for that agency, county, municipality, school administrative unit or regional or other political subdivision with regard to requests for public records under this subchapter. The public access officer is responsible for ensuring that each public record request is acknowledged within 5 working days of the receipt of the request by the office responsible for maintaining the public record requested and that a good faith estimate of when the response to the request will be complete is provided according to section 408-A. The public access officer shall serve as a resource within the agency, county, municipality, school administrative unit and regional or other political subdivision concerning freedom of access questions and compliance.

[PL 2015, c. 317, §2 (AMD).]

2. Acknowledgment and response required. An agency, county, municipality, school administrative unit and regional or other political subdivision that receives a request to inspect or copy a public record shall acknowledge and respond to the request regardless of whether the request was delivered to or directed to the public access officer.

[PL 2011, c. 662, §8 (NEW).]

3. No delay based on unavailability. The unavailability of a public access officer may not delay a response to a request.

[PL 2011, c. 662, §8 (NEW).]

4. Training. A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

[PL 2011, c. 662, §8 (NEW).]

Section History:

[PL 2011, c. 662, §8 (NEW).]; [PL 2015, c. 317, §2 (AMD).]

§414. Public records; information technology

An agency shall consider, in the purchase of and contracting for computer software and other information technology resources, the extent to which the software or technology will: [PL 2011, c. 662, §8 (NEW).]

1. Maximize public access. Maximize public access to public records; and

[PL 2011, c. 662, §8 (NEW).]

2. Maximize exportability; protect confidential information. Maximize the exportability of public records while protecting confidential information that may be part of public records.

[PL 2011, c. 662, §8 (NEW).]

Section History:

[PL 2011, c. 662, §8 (NEW).]

SUBCHAPTER 1-A

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2003, c. 709, §3 (NEW).]

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

[PL 2003, c. 709, §3 (NEW).]

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

[PL 2003, c. 709, §3 (NEW).]

3. Advisory committee. "Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

[PL 2005, c. 631, §2 (NEW).]

Section History:

[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §2 (AMD).]

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

[PL 2011, c. 320, Pt. D, §1 (AMD).]

2. Process of evaluation. According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained; [PL 2003, c. 709, §3 (NEW).]

B. The value to the agency or official or to the public in maintaining a record protected by the exception; [PL 2003, c. 709, §3 (NEW).]

C. Whether federal law requires a record to be confidential; [PL 2003, c. 709, §3 (NEW).]

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

H. Whether the exception is as narrowly tailored as possible; and [PL 2003, c. 709, §3 (NEW).]

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception. [PL 2003, c. 709, §3 (NEW).]

[PL 2005, c. 631, §3 (AMD).]

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

[PL 2005, c. 631, §3 (NEW).]

2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

[PL 2005, c. 631, §3 (NEW).]

2-C. Accessibility of public records. The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[PL 2011, c. 320, Pt. D, §2 (NEW).]

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

[PL 2005, c. 631, §3 (AMD).]

Section History:

[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §3 (AMD).]; [PL 2011, c. 320, Pt. D, §§1, 2 (AMD).]

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines.

[PL 2005, c. 631, §4 (RP).]

2. Scheduling guidelines.

[PL 2015, c. 250, Pt. D, §1 (RP).]

2-A. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions and reporting its recommendations to the review committee:

A. Exceptions enacted after 2004 and before 2013 are scheduled to be reviewed by the review committee no later than 2017; [PL 2015, c. 250, Pt. D, §2 (NEW).]

B. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2019:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7; and
- (8) Title 7-A; [PL 2015, c. 250, Pt. D, §2 (NEW).]

C. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2021:

- (1) Title 8;
- (2) Title 9-A;
- (3) Title 9-B;
- (4) Title 10;
- (5) Title 11; and
- (6) Title 12; [PL 2015, c. 250, Pt. D, §2 (NEW).]

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

- (1) Title 13;
- (2) Title 13-B;
- (3) Title 13-C;
- (4) Title 14;
- (5) Title 15;
- (6) Title 16;
- (7) Title 17;
- (8) Title 17-A;
- (9) Title 18-A;
- (10) Title 18-B;
- (11) Title 19-A;
- (12) Title 20-A; and
- (13) Title 21-A; [PL 2015, c. 250, Pt. D, §2 (NEW).]

E. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2025:

- (1) Title 22;
- (2) Title 22-A;
- (3) Title 23;
- (4) Title 24; and
- (5) Title 24-A; [PL 2015, c. 250, Pt. D, §2 (NEW).]

F. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2027:

- (1) Title 25;
- (2) Title 26;
- (3) Title 27;
- (4) Title 28-A;
- (5) Title 29-A;
- (6) Title 30;
- (7) Title 30-A;
- (8) Title 31; and
- (9) Title 32; and [PL 2015, c. 250, Pt. D, §2 (NEW).]

G. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2029:

- (1) Title 33;
- (2) Title 34-A;
- (3) Title 34-B;
- (4) Title 35-A;
- (5) Title 36;
- (6) Title 37-B;
- (7) Title 38; and
- (8) Title 39-A. [PL 2015, c. 250, Pt. D, §2 (NEW).]

[PL 2015, c. 250, Pt. D, §2 (NEW).]

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2-A as it determines appropriate and shall notify the review committee of such adjustments.

[PL 2015, c. 250, Pt. D, §3 (AMD).]

Section History:

[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §§4,5 (AMD).]; [PL 2015, c. 250, Pt. D, §§1-3 (AMD).]

§434. Review of proposed exceptions to public records; accessibility of public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

[PL 2011, c. 320, Pt. D, §3 (AMD).]

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained; [PL 2003, c. 709, §3 (NEW).]

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception; [PL 2003, c. 709, §3 (NEW).]

C. Whether federal law requires a record covered by the proposed exception to be confidential; [PL 2003, c. 709, §3 (NEW).]

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; [PL 2003, c. 709, §3 (NEW).]

H. Whether the proposed exception is as narrowly tailored as possible; and [PL 2003, c. 709, §3 (NEW).]

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception. [PL 2003, c. 709, §3 (NEW).]

[PL 2003, c. 709, §3 (NEW).]

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that

collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

[PL 2005, c. 631, §6 (NEW).]

2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[PL 2011, c. 320, Pt. D, §3 (NEW).]

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

[PL 2011, c. 320, Pt. D, §3 (AMD).]

Section History:

[PL 2003, c. 709, §3 (NEW).]; [PL 2005, c. 631, §6 (AMD).]; [PL 2011, c. 320, Pt. D, §3 (AMD).]

SUBCHAPTER 2

DESTRUCTION OR MISUSE OF RECORDS

§451. Lawful destruction of records

(REPEALED)

Section History:

[PL 1965, c. 441, §2 (RP).]

§452. Removal, secretion, mutilation or refusal to return state documents

Whoever intentionally removes any book, record, document or instrument belonging to or kept in any state office, except books and documents kept and deposited in the State Library, or intentionally secretes, alters, mutilates, defaces or destroys any such book, record, document or instrument, or, having any such book, record, document or instrument in his possession, or under his control, intentionally fails or refuses to return the same to that state office, or to deliver the same to the person in lawful charge of the office where the same was kept or deposited, shall be guilty of a Class D crime. [PL 1977, c. 696, §10 (RPR).]

Section History:

[PL 1969, c. 318, §1 (RPR).]; [PL 1977, c. 696, §10 (RPR).]

SUBCHAPTER 3

PRINTING AND PURCHASE OF DOCUMENTS AND LAWS

§501. State agency defined

As used in this subchapter, the word "agency" shall mean a state department, agency, office, board, commission; or quasi-independent agency, board, commission, authority or institution. [PL 1975, c. 436, §1 (RPR).]

Section History:

[PL 1975, c. 436, §1 (RPR).]

§501-A. Publications of state agencies

1. Definitions. As used in this section, the term "publications" includes periodicals; newsletters; bulletins; pamphlets; leaflets; directories; bibliographies; statistical reports; brochures; plan drafts; planning documents; reports; special reports; committee and commission minutes; informational handouts; and rules and compilations of rules, regardless of number of pages, number of copies ordered, physical size, publication medium or intended audience inside or outside the agency.

[PL 1997, c. 299, §1 (NEW).]

2. Production and distribution. The publications of all agencies, the University of Maine System and the Maine Maritime Academy may be printed, bound and distributed, subject to Title 5, sections 43 to 46. The State Purchasing Agent may determine the style in which publications may be printed and bound, with the approval of the Governor.

[PL 1997, c. 299, §1 (NEW).]

3. Annual or biennial reports. Immediately upon receipt of any annual or biennial report that is not included in the Maine State Government Annual Report provided for in Title 5, sections 43 to 46, the State Purchasing Agent shall deliver at least 55 copies of that annual or biennial report to the State Librarian for exchange and library use. The State Purchasing Agent shall deliver the balance of the number of each such report to the agency that prepared the report.

[PL 1997, c. 299, §1 (NEW).]

4. State agency and legislative committee publications. Except as provided in subsection 5, any agency or legislative committee issuing publications, including publications in an electronic format, shall deliver 18 copies of the publications in the published format to the State Librarian. These copies must be furnished at the expense of the issuing agency. Publications not furnished upon request will be reproduced at the expense of the issuing agency. The agency or committee preparing a publication may determine the date on which a publication may be released, except as otherwise provided by law.

[PL 1997, c. 299, §1 (NEW).]

5. Electronic publishing. An agency or committee that electronically publishes information to the public is only required to provide the State Librarian with one printed copy of an electronically published publication. An electronically published publication is not required to be provided to the State Librarian if the publication is also published in print or in an electronic format and is provided to the State Librarian in compliance with subsection 4 or the publication is:

A. Designed to provide the public with current information and is subject to frequent additions and deletions, such as current lists of certified professionals, daily updates of weather conditions or fire hazards; or [PL 1997, c. 299, §1 (NEW).]

B. Designed to promote the agency's services or assist citizens in use of the agency's services, such as job advertisements, application forms, advertising brochures, letters and memos. [PL 1997, c. 299, §1 (NEW).]

[PL 1997, c. 299, §1 (NEW).]

6. Forwarding of requisitions. The State Purchasing Agent, Central Printing and all other printing operations within State Government shall forward to the State Librarian upon receipt one copy of all requisitions for publications to be printed.

[PL 1997, c. 299, §1 (NEW).]

Section History:

[PL 1975, c. 436, §2 (NEW).]; [PL 1975, c. 746, §1 (AMD).]; [PL 1985, c. 584 (AMD).]; [PL 1985, c. 779, §3 (AMD).]; [PL 1987, c. 402, §A2 (RPR).]; [PL 1997, c. 299, §1 (RPR).]

§502. Property of State

All Maine reports, digests, statutes, codes and laws, printed or purchased by the State and previously distributed by law to the several towns and plantations within the State, shall be and remain the property of the State and shall be held in trust by such towns or plantations for the sole use of the inhabitants thereof.

§503. Delivery to successor in office

All revisions of the statutes, and supplements thereto, the session laws and the Maine Reports sold or furnished to any state, county or municipal officer, shall be held in trust by said officer for the sole use of his office; and at the expiration of his term of office or on his removal therefrom by death, resignation or other cause, such officer, or if he is dead, his legal representatives, shall turn them over to his successor in office. If there is no successor to his office, such officer, or his legal representatives, shall turn over all of said publications to the State, county or municipal unit which purchased the same. [PL 1981, c. 48, §1 (AMD).]

Section History:

[PL 1965, c. 425, §2 (RPR).]; [PL 1981, c. 48, §1 (AMD).]

§504. Source of authority to be shown

All publications printed or published by the State as a requirement of law shall set forth the authority for the same at an appropriate place on each copy printed or published. Publications printed or published by the State which are not required by law shall set forth the source of funds by which the publication is printed or published at an appropriate place on each copy. This section shall not apply to publications paid for out of the legislative appropriation.

§505. Mailing lists

All addressees on mailing lists used for the distribution of all matters printed or distributed at state expense by dedicated or undedicated revenues shall at least once in every 12-month period be

contacted in writing to inquire if continuance of delivery to said addressees is desired. Failure of the addressee to affirmatively reply within 30 days of the written inquiry shall cause such addressees to be removed from said mailing list. However, nothing in this section shall prevent any printed matter being distributed where otherwise required by law. [PL 1973, c. 331 (NEW).]

Section History:
[PL 1973, c. 331 (NEW).]

SUBCHAPTER 4

EXECUTIVE ORDERS

§521. Executive orders

1. Available to public. The Governor shall maintain in his office a file containing a copy of every executive order issued by him or by previous governors, which is currently in effect. This file shall be open to public inspection at reasonable hours.

[PL 1975, c. 360 (NEW).]

2. Dissemination. A copy of every executive order must be filed with the Legislative Council and the Law and Legislative Reference Library, and the executive order must be posted in a conspicuous location on the State's publicly accessible website, within one week after the Governor has issued that order.

[PL 2011, c. 380, Pt. III, §1 (AMD).]

Section History:
[PL 1975, c. 360 (NEW).]; [PL 1977, c. 696, §11 (AMD).]; [PL 2011, c. 380, Pt. III, §1 (AMD).]



STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

TO: Members, Right to Know Advisory Committee

FROM: Craig Nale and Colleen McCarthy Reid, Staff, Right to Know Advisory Committee

DATE: Wednesday, September 6, 2017

RE: I. Recommendations contained in the January 2017 Right to Know Advisory Committee Report; and
II. Requests of the Judiciary Committee of the 128th Legislature

I. Recommendations contained in the January 2017 Right to Know Advisory Committee Report

The Eleventh Annual Report of the Right to Know Advisory Committee was issued in January, 2017. The Report included the following recommendations; below each recommendation is the result of that recommendation.

1. Communicate the Advisory Committee's interpretation of 1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3.

Result:

The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's belief that the exception "is not intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State . . . or to prohibit disclosure of information about spills or discharges of hazardous materials." The Advisory Committee also recommended that the Judiciary Committee consider submitting a committee bill to allow additional

input from stakeholders and further expressed concerns about the scope of the exception.

The Judiciary Committee considered the Advisory Committee's recommendation and felt a bill would be a good vehicle for raising potential issues with the law, but, after seeking input through its committee analyst, ultimately did not feel stakeholders could express concerns that would be helpful in drafting proposed legislation.

2. Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants.

Result:

The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's determination that a uniform policy on the confidentiality of licensed professionals' contact information must balance the professionals' privacy and safety interests with the public's interest in determining a professional's training and competency. The Advisory Committee recommended focusing on keeping categories of information confidential, such as a personal contact information, unless personal contact information is the other way to identify the professional or when the professional affirmatively opts to allow the information to be disclosed.

In response, the Judiciary Committee considered two bills (LD 1267 and LD 1541) related to the confidentiality of professional licensing information. The Judiciary Committee has carried those bills over to any special or regular session of the 128th Legislature and has asked that the Advisory Committee provide input on resolution of the issues presented in those bills.

3. Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases.

Result:

The Advisory Committee sent a letter to the Health and Human Services Committee about the Department of Health and Human Services proposed Data Release Rule, 10-144 CMR, ch. 175, which would have affected the release of certain data held by the Maine Center for Disease Control and Prevention. The Advisory Committee expressed concerns about the proposed rule's limitation on the release of records.

The Department of Health and Human Services rescinded the proposed rule.

4. Enact legislation to clarify that government entities may require advance payment before providing a public record to a requestor.

Result:

The Legislature accepted the recommendation of the Advisory Committee and passed Public Law 2017, chapter 158, which enacted Title 1, section 408-A, subsection 8, paragraph F, and allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.

5. Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013.

Result:

The Legislature accepted most of the recommendation of the Advisory Committee and passed Public Law 2017, chapter 163, which amended Title 35-A, section 10106, subsection 1 to change the criteria for designation of records of the Efficiency Maine Trust as confidential, except that the Legislature did not accept the recommendation that the director of the Efficiency Maine Trust be allowed to determine which records contain information that would give a user a competitive advantage and instead kept that authority in the Efficiency Maine Trust Board.

The Legislature accepted the recommendation of the Advisory Committee that a redundant public records exception for social security numbers be repealed.

6. Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board.

Result:

The Advisory Committee sent a letter to the Health and Human Services Committee notifying it of the apparent dormancy of the Mental Health Homicide, Suicide and Aggravated Assault Review Board, but asked the Committee to consider whether the Board should be revived or if the provision of law establishing the Board should be repealed.

The Health and Human Services Committee drafted a bill to repeal this board and, after holding a public hearing on the bill, voted to repeal the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The Legislature repealed the board and its associated public records exceptions in Public Law 2017, chapter 93.

7. Establish a Technology Subcommittee of the Right to Know Advisory Committee.
8. Continue discussion of proposals related to the confidentiality of personally-identifiable information under FOAA.

Result:

The Advisory Committee included in its 2017 report that it “plans to discuss proposals related to enacting a universal definition and public records exception in FOAA for personally identifiable information, and also consider creating a general disclaimer to put the public on notice that its communications with elected and other public officials may become public records under FOAA.”

II. Requests of the Judiciary Committee of the 128th Legislature

During the First Regular Session of the 128th Legislature, a majority of the members of the Judiciary Committee voted to carry over two bills to a special or regular session of the 128th Legislature in order to solicit feedback from the Right to Know Advisory Committee during the interim.

1. LD 1267, An Act To Protect Licensing Information of Medical Professionals. This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information (the applicant’s name, business contact information, educational and occupational background, orders and findings that result from formal disciplinary actions, evidence provided to meet financial responsibility requirements for licensure, for example).
2. LD 1541, An Act To Protect Certain Administrative Licensing Files. This bill makes polygraph examiner and professional investigator administrative licensing files confidential by law, except the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible and records may be disclosed for criminal justice purposes or to a government licensing agency of this State or another state. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The Private Security Guards Act also is amended to ensure consistency with the changes made to the Polygraph Examiners Act and Professional Investigators Act.

I. Bills Carried Over by Judiciary Committee Relating to Freedom of Access Issues

- ❖ LD 1267, An Act To Protect Licensing Information of Medical Professionals (p. 1)
- ❖ LD 1541, An Act To Protect Certain Administrative Licensing Files (p. 19)

II. Bill Proposed for Introduction by Judiciary Committee but Indefinitely Postponed

- ❖ LD 1633, An Act Concerning Private Personal Information of Public Employees and Licensed Individuals (p. 29)

III. RTKAC Letter to Judiciary Committee relating to treatment of personal contact information for professions and occupations regulated by the State, Sept. 15, 2016 (p. 31)

I



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1267

S.P. 430

In Senate, March 30, 2017

An Act To Protect Licensing Information of Medical Professionals

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative TUELL of East Machias and
Senators: MAKER of Washington, ROSEN of Hancock.

1

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

2 **Sec. 1. 32 MRSA §2109**, as enacted by PL 2003, c. 64, §1, is repealed.

3 **Sec. 2. 32 MRSA §2109-A** is enacted to read:

4 **§2109-A. Confidential licensing information**

5 **1. Confidential information.** Information concerning the application for and
6 granting of a license issued by the board under this chapter is confidential and may not be
7 disclosed except as provided in this section.

8 **2. Required disclosures.** The board shall allow inspection of the following
9 information concerning the application for and granting of a license issued by the board:

10 A. The name of the applicant or licensee;

11 B. The business address of the applicant or licensee or, if the business address is not
12 available, the home address of the applicant or licensee after the board redacts any
13 information that identifies the location as the home address of an individual with a
14 disability;

15 C. The business telephone number of the applicant or licensee;

16 D. The educational and occupational background of the applicant or licensee;

17 E. The professional qualifications of the applicant or licensee;

18 F. Any orders and findings that result from formal disciplinary actions against the
19 licensee; and

20 G. Any evidence that has been provided to the board to meet the requirements of any
21 financial responsibility requirement for licensure.

22 **3. Authorized disclosures.** The board may allow inspection of information not
23 designated in subsection 2 if the board finds a compelling public purpose and the rules of
24 the board allow the inspection.

25 **4. Disclosure to applicant or licensee.** Unless otherwise provided by law, the board
26 shall allow inspection of the information in subsection 1 by the applicant or licensee.

27 **5. Sale of licensee names.** If the board sells lists of licensees, the board shall omit
28 from the lists the name of a licensee on written request of that licensee.

29 **Sec. 3. 32 MRSA §2600-A**, as enacted by PL 2001, c. 214, §1, is repealed.

30 **Sec. 4. 32 MRSA §2600-D** is enacted to read:

31 **§2600-D. Confidential licensing information**

32 **1. Confidential information.** Information concerning the application for and
33 granting of a license issued by the board under this chapter is confidential and may not be
34 disclosed except as provided in this section.

2

1 **2. Required disclosures.** The board shall allow inspection of the following
2 information concerning the application for and granting of a license issued by the board:

3 A. The name of the applicant or licensee;

4 B. The business address of the applicant or licensee or, if the business address is not
5 available, the home address of the applicant or licensee after the board redacts any
6 information that identifies the location as the home address of an individual with a
7 disability;

8 C. The business telephone number of the applicant or licensee;

9 D. The educational and occupational background of the applicant or licensee;

10 E. The professional qualifications of the applicant or licensee;

11 F. Any orders and findings that result from formal disciplinary actions against the
12 licensee; and

13 G. Any evidence that has been provided to the board to meet the requirements of any
14 financial responsibility requirement for licensure.

15 **3. Authorized disclosures.** The board may allow inspection of information not
16 designated in subsection 2 if the board finds a compelling public purpose and the rules of
17 the board allow the inspection.

18 **4. Disclosure to applicant or licensee.** Unless otherwise provided by law, the board
19 shall allow inspection of the information in subsection 1 by the applicant or licensee.

20 **5. Sale of licensee names.** If the board sells lists of licensees, the board shall omit
21 from the lists the name of a licensee on written request of that licensee.

22 **Sec. 5. 32 MRSA §3300-A**, as enacted by PL 2001, c. 214, §2, is repealed.

23 **Sec. 6. 32 MRSA §3300-G** is enacted to read:

24 **§3300-G. Confidential licensing information**

25 **1. Confidential information.** Information concerning the application for and
26 granting of a license issued by the board under this chapter is confidential and may not be
27 disclosed except as provided in this section.

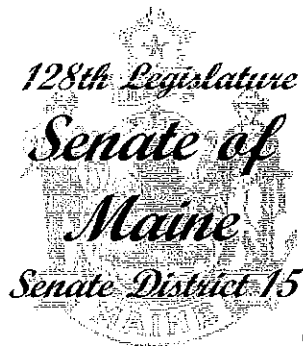
28 **2. Required disclosures.** The board shall allow inspection of the following
29 information concerning the application for and granting of a license issued by the board:

30 A. The name of the applicant or licensee;

31 B. The business address of the applicant or licensee or, if the business address is not
32 available, the home address of the applicant or licensee after the board redacts any
33 information that identifies the location as the home address of an individual with a
34 disability;

35 C. The business telephone number of the applicant or licensee;

36 D. The educational and occupational background of the applicant or licensee;



Senator Roger J. Katz
3 State House Station
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**Testimony of Senator Roger Katz In Support of
LD 1267 "An Act to Protect Licensing Information of Medical Professionals"**

Before the Judiciary Committee

April 25, 2017

Senator Keim, Representative Moonen and members of the Judiciary Committee, I am Senator Roger Katz and I am pleased to submit LD 1267 for your consideration.

LD 1267 will create a clear approach to public record requests of licensing information for medical practitioners. The proposal, which is modeled after the State of Maryland's laws, provides appropriate protections of personal information while balancing the rights of the public to access information.

Currently, Maine's public record laws allow for the release of a wide array of personal information that applicants must provide to the licensing boards of Medicine, Nursing and Osteopathy to secure a license to practice. Only personal addresses and phone numbers are protected from being released.

Doctors, physician assistants and nurse practitioners provide a wide range of services in complex environments including private practice, schools, hospitals, homeless shelters, nursing homes, prisons and any number of public and private agencies. They provide high quality care from general practice to behavioral and mental health to substance abuse. Unfortunately, safety is a concern in many of these settings.

Freedom of Access Act laws (FOAA) are designed to ensure the public has access to public information; they are not intended to serve as a tool to aid in the harassment and intimidation of medical practitioners. However, as currently applied, any licensed medical professional could find themselves a victim of harassment or worse as a result of the information released through these types of requests.

LD 1267 would improve the safety and privacy of medical practitioners who hold a license in the state by clearly stating what information is available to the public, which would include the following:

*Fax: (207) 287-1527 * TTY (207) 287-1583 * Message Service 1-800-423-6900 * Website: legislature.maine.gov/senate*

- Name of applicant,
- Business address,
- Business telephone number,
- Educational background,
- Professional qualifications, and
- Any disciplinary actions

This bill would treat all other information, including home address, social security number, photos, Drug Enforcement Agency licenses to prescribe certain drugs, and other personal documents confidential unless the overseeing board finds a compelling public purpose to allow access.

The goal of this legislation is to minimize the likelihood of medical practitioners being exposed to harassment or violence. Unfortunately through the fulfillment of these types of FOAA requests, some practitioners have already found themselves victim of harassment, intimidation, and experienced a loss of privacy. Tragically in some states, this information has been used to threaten and harm people. Suppressing personal information would help keep medical practitioners safe.

Recognizing the need for safety precautions in other occupations, the legislature has enacted laws similar to LD 1267 and provided added privacy protections for certain licensed professionals including private investigators, social workers and members of the Maine Gaming Board. State courts have also weighed in on this issue most recently in New Hampshire, Maryland and Washington, where the courts determined that the risks were great enough to protect this personal information.

There is a public interest in keeping our medical providers safe and I submit this legislation as a practical approach to keeping personal information private. I look forward to your work on this bill and encourage you to vote "ought to pass."

Thank you.

MCEDV.

Maine Coalition to
End Domestic Violence

One Weston Court, Box 2, Augusta, ME 04330

Testimony of Regina Rooney
Speaking in Support of L.D. 1267
"An Act To Protect Licensing Information of Medical Professionals"
Before the Committee on Judiciary
Tuesday, April 25, 2017

Hello Senator Keim, Representative Moonen, and Members of the Joint Standing Committee on Judiciary:

My name is Regina Rooney, I live in Hope, Maine, and I am speaking today on behalf of the Maine Coalition to End Domestic Violence (MCEDV) in support of L.D. 1267, *An Act to Protect Licensing Information of Medical Professionals*.

In 2016, the Domestic Violence Resource Centers that comprise MCEDV provided services for more than 12,000 adult victims of domestic abuse and violence, sheltering 428 adults and 314 children, providing legal services for more than 3600 people, and providing specialized support for more than 2,000 families in the child welfare system. Through 24-hour helplines, outreach offices, shelters, and transitional housing sites, advocates help Maine's victims of domestic abuse and violence move from circumstances of terror and hopelessness to circumstances of possibility with plans to increase their safety, protect and nurture their children, and establish economically sustainable and stable lives.

Our support for this bill is grounded in our concern for the safety and privacy of survivors of domestic abuse and stalking. We live in an increasingly interconnected world, in which information, once available, spreads rapidly. For survivors of abuse, this reality presents particular challenges. The process of survivors going into hiding in order to find safety has never been as simple as popular discourse would have us believe, but now it is even less so. What does a person do when so much information is easily available online—but they are trying to keep their location secret from a former partner who has stalked them relentlessly? How does one network, find a job, establish community, without leaving a trace online that can be found by a determined abuser? These are challenges that face survivors and their support systems in the 21st Century.

Here is one example of the vulnerabilities for survivors under Maine's current law: Knowing that their former partner is a nurse somewhere in the state, an abusive person could file FOIA requests until they obtain their partner's record, which may very well include highly sensitive information, such as the survivor's home address and/or their social security number. With this, an abusive person can cause serious harm. We are obviously concerned with physical safety, with what happens to the survivor and the children if their home address becomes known. We are also concerned with what happens when a controlling abuser gets access to the survivor's

social security number, with which they can wreak havoc through credit manipulation and identity theft. Economic abuse is a major tactic used by abusive people, and our current system provides one more opportunity to derail a survivor's efforts at economic stability.

At the same time, we appreciate the purpose of maintaining publically available licensing records. While the vulnerabilities for survivors are real, we understand that some sharing of these materials is fitting and important, from a provider accountability and patient safety perspective.

We believe that LD 1267 achieves an appropriate balance in establishing a uniform set of shareable information across medical disciplines. It keeps a licensee's most personal data private, while providing the public with the relevant information it is suitable they have. We would like to see this model shared by more of Maine's licensed professions, since the same privacy vulnerabilities exist there.

In closing, I would remind us that survivors are in all walks of life, and often do not share their experiences of violence widely. Privacy is key to safety for many people, whether they make their needs and risks known or not. Gender-based violence takes many forms, and MCEDV condemns all acts of threats, coercion and violence which cause people to live in fear. The belief that anyone has the right to control and terrorize another human being is antithetical to the world we seek to create by ending domestic abuse.

For all of these reasons, we respectfully ask that you vote LD 1267 "ought to pass."



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Pam@mnpa.us
www.mnpa.us

22 Years of Independent Practice as Healthcare Providers for the People of Maine

April 25, 2017

To: Senator Keim, Representative Moonen
Judiciary Committee Members

From: Pamela Cahill, Executive Director
Maine Nurse Practitioner Association

RE: Testimony in Support of LD 1267 An Act To Protect Licensing Information of Medical
Professionals

Senator Keim, Representative Moonen and Committee Members,

My name is Pam Cahill. I live in Woolwich and am here today testifying in support of LD 1267. Currently there are more than 300 nurse practitioners licensed in Maine. NPs provide healthcare services in primary care and other specialty areas throughout Maine. They work in hospitals, independent practices, medical practices, FQHC's, schools and colleges, clinics, prisons and mental health and behavioral health settings.

The subject of this legislation has been a matter of concerns for NPs for several years. As we become more and more of a technically savvy world, the security of private information becomes imperative. While we understand that the public has rights to certain information, increasingly, healthcare professionals and their families become victims of threats, bullying and harassment.

Currently Maine licensing boards are required to release personal information, other than a licensee's home address and phone number, if requested through a Freedom of Access ACT (FOAA) request as provided in Maine law. We do not believe that the FOAA was intended to provide tools for the public to harass and intimidate healthcare providers. In one recent case, the social security number of a MNPA member was mistakenly provided to a person making a FOAA request.

LD 1287 is a definite improvement over the current law. It makes clear what specific information may be released and gives licensing boards more leeway to determine if the release of additional information is warranted.

We believe this legislation keeps the public's "right to know" intact, but also protects the safety of healthcare professionals and their families.

MNPA urges you to support LD 1267.

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128 State Street, Augusta, ME 04330 * Phone: 207-623-1101 * Fax: 207-623-4228 * www.mainedo.org

Testimony of the Maine Osteopathic Association
Before the Judiciary Committee

LD 1267, An Act To Protect Licensing Information of Medical Professionals
Public Hearing: Tuesday, April 25, 2017 at 2:30 pm, Room 438, State House

Senator Keim, Representative Moonen and distinguished members of the Judiciary Committee,

The Maine Osteopathic Association is pleased to submit written testimony neither for nor against **LD 1267, An Act To Protect Licensing Information of Medical Professionals**.

The Maine Osteopathic Association is a professional organization representing approximately 400 osteopathic physicians and an additional 500 residents and students. Our mission is to “serve the Osteopathic profession of the State of Maine through a coordinated effort of professional education, professional advocacy and member services in order to ensure the availability of quality osteopathic health care to the people of this State.”

This bill provides that information concerning the application for and granting of licenses issued by the State Board of Nursing, the Board of Osteopathic Licensure and the Board of Licensure in Medicine is confidential, except that each board is required to allow inspection of certain information. We fully support keeping licensee information confidential. However, we are concerned about the section of the bill regarding the “Sale of licensee names, which states if the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee.”

First of all, we object to the licensing boards selling lists with contact information. Physicians’ privacy should be respected and selling lists often leads to spam and needless marketing. Physicians are already targeted for spam mailings, faxes and phone calls and adding to that only detracts from patient care. Furthermore, the requirement that a physician must opt out in writing is not clear—it is a onetime request and the physician will be excluded indefinitely or will it need to be done annually, every two years at renewal? It’s not clear as written.

Thank you for the opportunity to provide these comments and please do not hesitate to contact us at info@mainedo.org if you have questions. Thank you.

TESTIMONY OF KIM ESQUIBEL
EXECUTIVE DIRECTOR
MAINE STATE BOARD OF NURSING
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

NF/NA

“AN ACT to Protect Licensing Information of Medical Professionals”

Presented by Senator Katz

Before the Joint Standing Committee on Judiciary

April 25, 2017 at 2:30 p.m.

Senator Keim, Representative Moonen, and members of the Committee,

My name is Kim Esquibel. I am the Executive Director of the Maine State Board of Nursing. I appreciate the opportunity to address you today regarding L.D. 1267.

The current Law Regulating the Practice of Nursing (M.R.S.A, Ch. 31.) includes a subsection (§2109) on Confidentiality of personal information of applicant or licensee: The language states: *“For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [2003, c. 64, §1 (NEW).]*

The Board has several questions about the intent and interpretations of the provisions in L.D 1267:

Under Section. 2. 32 MRSA §2109-A **Required disclosures:**

- B. What is the meaning of “an individual with a disability?” How would the Board know an individual has a disability?
- C. What if the applicant or licensee does not provide a business telephone number?
- D. What is meant by “educational and occupational background?”
- E. What is meant by “professional qualifications?” If licensed, does this mean the “licensing file?”
- F. What is the interpretation of “any financial responsibility requirement for licensure?”

Under Section. 3. 32 MRSA §2109-A **Authorized disclosures.**

Does this language mean that the Board would be required to adopt rules in order to make a finding of “a compelling public purpose?”

Given the above the Board cannot form a position on L.D. 1267 without having clearer information about each of these sections.

Thank you for the opportunity to comment on this bill. I would be happy to answer any questions you may have now or at the work session.

**TESTIMONY OF DENNIS E. SMITH
EXECUTIVE DIRECTOR
BOARD OF LICENSURE IN MEDICINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
Neither for nor against of L.D. 1267**

“An Act To Protect Licensing Information of Medical Professionals”

Presented by Senator Katz

Before the Joint Standing Committee on Judiciary

April 25, 2017 at 2:30 p.m.

Senator Keim, Representative Moonen, and members of the Committee:

I am Dennis E. Smith, the Executive Director for the Board of Licensure in Medicine. I appreciate the opportunity to address you today and to convey the Board’s position regarding L.D. 1267.

The purpose of the Board of Licensure in Medicine (“Board”) is to protect the public. It carries out this purpose in part by investigating and correcting the medical practices of physicians and physician assistants who practice unprofessionally or incompetently. It also carries out this mission by ensuring that the physicians and physician assistants who apply for licenses are appropriately qualified, competent and ethical. The Board is made up of six physicians and one physician assistant with many years of medical knowledge and experience, and three public members who provide a “lay person’s” perspective to all issues that come before the Board.

With regard to L.D. 1267 the Board supports the concept that certain information within its possession should be subject to additional confidentiality protections. In addition, the Board offers the following comments and questions regarding L.D. 1267:

First, L.D. 1267 would make all information “concerning the application for and granting of a license... confidential.” It would then identify specific exemptions to that confidentiality. In contrast, at present, like many other State agencies, the records in possession of the Board – including records related to applications for licensure - are “public” unless specifically designated confidential by law. The Board’s statute currently makes certain information submitted to the Board confidential. Title 32 M.R.S. § 3300-A provides:

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges.

Thus, under its current statute, the following information submitted by a licensee in an application is confidential:

- Personal residence

- Personal telephone number
- Personal health information

All other information submitted to the Board, unless made specifically confidential under other laws, is publicly available information and must be provided pursuant to a request under the Freedom of Access Act. An example of information that would be confidential under other laws is a licensee's social security number.

Second, there is information that could be currently publicly available under existing law that could be problematical if publicly disseminated. That information could include:

- Personal email addresses
- Birth dates
- Passport information
- Birth certificates
- Educational transcripts
- Reference letters
- Documents containing licensees' signatures
- Federal DEA registration numbers

This type of information could be used for illegitimate or illegal purposes, such as identity theft and drug diversion (e.g. through the forgery of the signature and use of the federal DEA registration number). Thus, there is a need to make additional information in the possession of the Board confidential so that it is not subject to public dissemination.

Third, L.D. 1267 appears to limit the information that would be confidential to that information "concerning application for and granting of a license." Some of

the information in the Board's possession, such as personal email addresses and federal DEA registration numbers, does not come into its possession solely through the initial license application or license renewal application process. For example, licensees are required to provide the Board with notifications that update their contact information, which could include personal email addresses.

Fourth, L.D. 1267 exempts from confidentiality the "educational and occupational background" and the "professional qualifications" of the licensees. These terms are very general, which generates the following questions:

- Would this information include college and medical school transcripts?
- Would this information include the USMLE score results?
- Would this information include letters of reference and letters from the medical school regarding the licensee's performance?

Fifth, L.D. 1267 provides that the Board could release the "home address of the applicant or licensee after the Board redacts any information that identifies the location of the home address of an individual with a disability." The intent of this language is not clear. In addition, it is not clear how the Board would determine if the individual applicant or licensee has a disability. Applications for licensure ask if the applicant has "a mental or physical condition that currently impairs [his/her] ability to safely and competently practice medicine" – not whether the applicant has a disability.

Finally, section 5 of L.D. 1267 entitled "Sale of licensee names" provides that "If the board sells lists of licensees, the board shall omit from the lists the name of a licensee on written request of that licensee." The fact that a board may or may not sell a list of its licensees should not affect whether or not the information contained in the list is confidential. The information in the list is either confidential or it is not confidential. In addition, it is concerning that this

language gives broad authority to a licensee to prohibit the Board from providing what would otherwise be publicly available information if it was provided free of charge. Do any other State statutes give authority to anyone other than the State agency in possession of the information the ability to deny the release of publicly available information?

Thank you. I would be glad to answer any questions now or at the work session.



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1541

H.P. 1062

House of Representatives, April 27, 2017

An Act To Protect Certain Administrative Licensing Files

Submitted by the Department of Public Safety pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative GERRISH of Lebanon.

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

2 **Sec. 1. 32 MRSA §7391** is enacted to read:

3 **§7391. Confidentiality of application, information and other specified records**
4 **collected by the commissioner**

5 Notwithstanding Title 1, chapter 13, subchapter 1, and except as otherwise provided
6 in this section, all applications for a license to be a polygraph examiner; any records made
7 a part of the application, refusals and any information of record collected by the
8 commissioner during the process of ascertaining whether an applicant meets the
9 requirements of sections 7382 and 7388; and all records collected by the commissioner
10 during the course of administrative licensing investigations conducted in response to a
11 complaint made against a licensee are confidential and may not be made available for
12 public inspection or copying, except that the final written decision of whether a license is
13 issued or denied, or of whether, in response to a complaint, adverse action is taken against
14 a licensee's license, is publicly accessible. In the case of the issuance or denial of a
15 license, the final written decision must state the basis for which a license is issued or
16 denied, and, in the case of a complaint against a licensee's license, the final written
17 decision must state the basis for which adverse action was or was not taken against the
18 license. The applicant may waive this confidentiality by written notice to the
19 commissioner. All proceedings relating to the issuance of a license to be a polygraph
20 examiner are not public proceedings under Title 1, chapter 13, unless otherwise requested
21 by the applicant. This section does not limit disclosure for criminal justice purposes or to
22 a government licensing agency of this State or another state of records made confidential
23 under this section.

24 The commissioner shall make a permanent record of each license to be a polygraph
25 examiner in a suitable file kept for that purpose. The record must include a copy of the
26 information included on issued licenses and must be available for public inspection.

27 **Sec. 2. 32 MRSA §8124**, as enacted by PL 2015, c. 295, §1, is repealed.

28 **Sec. 3. 32 MRSA §8124-A** is enacted to read:

29 **§8124-A. Confidentiality of application, information and other specified records**
30 **collected by the chief**

31 Notwithstanding Title 1, chapter 13, subchapter 1, and except as otherwise provided
32 in this section, all applications for a license to be a professional investigator; any records
33 made a part of the application, refusals and any information of record collected by the
34 chief during the process of ascertaining whether an applicant is of good moral character
35 and meets the additional requirements of sections 8105 and 8113; and all records
36 collected by the chief during the course of administrative licensing investigations
37 conducted in response to a complaint made against a licensee are confidential and may
38 not be made available for public inspection or copying, except that the final written
39 decision of whether a license is issued or denied, or of whether, in response to a
40 complaint, adverse action is taken against a licensee's license, is publicly accessible. In
41 the case of the issuance or denial of a license, the final written decision must state the

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1 basis for which a license is issued or denied, and, in the case of a complaint against a
2 licensee's license, the final written decision must state the basis for which adverse action
3 was or was not taken against the license. The applicant may waive this confidentiality
4 by written notice to the chief. All proceedings relating to the issuance of a license to be a
5 professional investigator are not public proceedings under Title 1, chapter 13, unless
6 otherwise requested by the applicant. This section does not limit disclosure for criminal
7 justice purposes or to a government licensing agency of this State or another state of
8 records made confidential under this section.

9 The chief shall make a permanent record of each license to be a professional
10 investigator in a suitable file kept for that purpose. The record must include a copy of the
11 information included on issued licenses and must be available for public inspection.

12 **Sec. 4. 32 MRSA §9418**, as amended by PL 2011, c. 662, §20, is further amended
13 to read:

14 **§9418. Confidentiality of application and information collected by the commissioner**

15 Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be
16 a contract security company and any documents made a part of the application, refusals
17 and any information of record collected by the commissioner during the process of
18 ascertaining whether an applicant is of good moral character and meets the additional
19 requirements of sections 9405 and 9411-A, and all information of record collected by the
20 commissioner during the process of ascertaining whether a natural person meets the
21 requirements of section 9410-A, are confidential and may not be made available for
22 public inspection or copying, except that the final written decision of whether a license is
23 issued or denied, or of whether, in response to a complaint, adverse action is taken against
24 a licensee's license, is publicly accessible. In the case of the issuance or denial of a
25 license, the final written decision must state the basis for which a license is issued or
26 denied, and, in the case of a complaint against a licensee's license, the final written
27 decision must state the basis for which adverse action was or was not taken against the
28 license. The applicant or natural person may waive this confidentiality by written notice
29 to the commissioner. All proceedings relating to the issuance of a license to be a contract
30 security company are not public proceedings under Title 1, chapter 13, unless otherwise
31 requested by the applicant. This section does not limit disclosure for criminal justice
32 purposes or to a government licensing agency of this State or another state of records
33 made confidential under this section.

34 The commissioner ~~or his designee~~ shall make a permanent record of each license to
35 be a contract security company in a suitable book or file kept for that purpose. The record
36 ~~shall~~ must include a copy of the license and ~~shall~~ must be available for public inspection.
37 Upon a specific request, the commissioner or ~~his~~ the commissioner's designee shall
38 provide a list of names and current addresses of security guards employed by licensed
39 contract security companies.

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SUMMARY

This bill makes polygraph examiner and professional investigator administrative licensing files confidential by law, except the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible and records may be disclosed for criminal justice purposes or to a government licensing agency of this State or another state. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The Private Security Guards Act also is amended to ensure consistency with the changes made to the Polygraph Examiners Act and Professional Investigators Act.



HOUSE OF REPRESENTATIVES

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Karen A. Gerrish

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Lebanon, ME 04027
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**Testimony on L.D. 1541,
"An Act To Protect Certain Administrative Licensing Files"**

**Presented by
Representative Karen A. Gerrish
District 20**

Judiciary Committee
Tuesday, May 16, 2017

Good afternoon, Senator Keim, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary:

I am State Representative Karen Gerrish, and I proudly serve the people of District 20, which consists of Lebanon, Acton, and a portion of Shapleigh. It is an honor to appear before you today for the purpose of introducing L.D. 1541, "**An Act To Protect Certain Administrative Licensing Files.**"

The Maine State Police administers three professional licensing programs for the Department of Public Safety: the professional investigator licensing program, the polygraph examiner licensing program, and the contract security company licensing program.

As you might expect, in administering these programs, the agency uses application forms to amass information about license applicants. Related forms can include personal e-mail addresses, personal cellular telephone numbers, facts about places of birth, and physical description details, such as eye color, height, and weight, just to name a few of the data points collected. In addition, the Department collects various other types of information about applicants, including criminal history records, education and work experience, mental health-related information, legal status information, and disclosures regarding illicit drug use.

When incorporated into the administrative licensing files of polygraph examiner and professional investigator license applicants and holders, correlating information is publicly accessible, except if a type of information, such as Social

Over, please

District 20 Acton, Lebanon and Shapleigh (part)

Printed on recycled paper

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Security numbers, or documentation, like a birth certificate, is confidential by law. Yet the licensing files maintained by the Department often likewise include many other types of documentation in addition to the standard forms and information just described.

If supplemental information is needed by the agency to better determine whether an applicant is qualified to be issued a polygraph examiner or professional investigator license, that information is routinely documented and incorporated into the applicant's file. This can include that relating to an applicant's health, family and personal friendships, romantic relationships, and past criminal conduct.

Under current law, all of this information is publicly accessible once included in the licensing files of professional investigators and polygraph examiners -- unless a legal exception applies. Additionally, when a complaint is made against a licensed polygraph examiner or professional investigator, the documentation and information collected by the Department to investigate the complaint can also be subject to public disclosure, if requested. Such documentation includes the written complaints themselves, which can entail very personal information about not only the person making the complaint (who might have submitted the complaint in presumed confidence), but also about the licensee who is the subject of the complaint and about other third parties, including minors.

Given the breadth of public access to such private information that current law allows, polygraph examiner and professional investigator applicants and licensees -- and, potentially, members of their families -- are vulnerable to the crimes of identity theft, harassment, and stalking. Of equal significance, however, is that the privacy and personal dignity of applicants and licensees, as well as of other persons whose personal information becomes incorporated into the Department's administrative licensing files, is affronted and compromised.

As the Department's representative will soon explain in his testimony, L.D. 1541 seeks to address these concerns while still ensuring a reasonable measure of transparency and accountability with regard to the Department's licensing programs.

Thank you for your consideration. I am happy to make an effort at addressing any questions you may have at this time.

04



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE STATE POLICE

COL. ROBERT A. WILLIAMS
CHIEF

LT. COL. JOHN E. COTE
DEPUTY CHIEF

Christopher Parr, Staff Attorney

Testimony In Support Of

LD 1541, An Act to Protect Certain Administrative Licensing Files

Before the Joint Standing Committee on the Judiciary
Tuesday, 16 May 2017, Maine State House Room 438

Senator Keim, Representative Moonen, Members of the Joint Standing Committee on the Judiciary:

My name is Chris Parr, and I am the Staff Attorney for the Maine State Police. I am here to testify in support of LD 1541, An Act to Protect Certain Administrative Licensing Files, a bill proposed by the Department of Public Safety and Maine State Police.

As an initial matter, our agency wishes to thank Representative Gerrish for her willingness to sponsor and introduce this legislation for us.

As Rep. Gerrish just explained, the Maine State Police administers three professional licensing programs. Although protections presently exist for much (but not all) information contained in Contract Security Company administrative licensing files, no such protections are in place for documents and information contained in the Polygraph Examiner and Professional Investigator licensing files we maintain.

These files can contain a lot of personal information about license applicants and license holders. Some of that information is information collected in the normal course of processing and approving license applications: personal contact information and physical description information, for example, which, in the case of Professional Investigators, includes the photographs of licensees. Other information relates to the personal life of license applicants and holders - their education, their work history, and their military service.

That such information is publicly accessible should itself be cause for concern, given the potential that exists for the information to be accessed and used to commit such crimes

as identity theft, fraud, and harassment. Yet the Polygraph Examiner and Professional Investigator licensing files also can include information that is highly personal - not only about a license applicant or license holder, but also about third parties whose private information can become incorporated into the licensing files as a result of administrative investigations.

Individuals filing complaints against a licensee, for example, might include very sensitive information in their complaints about themselves or other parties, with the erroneous assumption that the information will be able to be held by our agency in confidence. Unfortunately, current law generally does not allow our agency to be able provide such an assurance. As a result, the personal privacy and dignity of individuals is compromised when copies of the licensing files are requested or access to them is sought, pursuant to the Freedom of Access Act or otherwise.

LD 1541 will correct this problem by ensuring that the documents and information included in the licensing files of Polygraph Examiner and Professional Investigator license applicants and holders is protected by law. An exception to that protection, however, will be that the final written determination of our agency about whether to grant or deny a license to an applicant, or whether a complaint made against a license holder is sustained or not sustained, will be publicly accessible. Further, that final written decision will need to state the rationale for the agency's determinations to grant or deny licenses, or to sustain or not sustain complaints made against licensees.

We think the approach the bill takes strikes a fair balance between the importance of ensuring transparency of our agency's decisions, and the personal privacy interests of license applicants and holders, of complainants, and of third parties whose information - perhaps completely without their knowledge or consent - becomes included in our licensing files.

The bill also will amend the Private Security Guards Act to ensure that its existing confidentiality provision is consistent with the provisions we are proposing in Section 1 and Section 3 of the bill.

For the reasons I have discussed, and those that were stated by Representative Gerrish, I urge you to support this bill.

Thank you. I would be happy to try to answer any questions you might have.

Attachments: APPENDIX 1
 APPENDIX 2

APPENDIX 1

Amend bill Section 4 to include the italicized language highlighted here:

Sec. 4. 32 MRSA §9418, as amended by PL 2011, c. 662, §20, is further amended to read:

§ 9418. Confidentiality of application and information collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company; and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A; and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A; and all records collected by the commissioner during the course of administrative licensing investigations conducted in response to a complaint made against a licensee are confidential and may not be made available for public inspection or copying, except that the final written decision of whether a license is issued or denied, or of whether, in response to a complaint, adverse action is taken against a licensee's license, is publicly accessible. In the case of the issuance or denial of a license, the final written decision must state the basis for which a license is issued or denied, and, in the case of a complaint against a licensee's license, the final written decision must state the basis for which adverse action was or was not taken against the license. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. This section does not limit disclosure for criminal justice purposes or to a government licensing agency of this State or another state of records made confidential under this section.

The commissioner ~~or his designee~~ shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall must include a copy of the license and shall must be available for public inspection. Upon a specific request, the commissioner or his the commissioner's designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.

APPENDIX 2

Consider whether the provision of the Private Security Guards Act highlighted here should be modified so as to protect information pertaining to third parties:

§9418. Confidentiality of application and information collected by the commissioner

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant.

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies.

II



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1633

H.P. 1126

House of Representatives, June 7, 2017

An Act Concerning Private Personal Information of Public Employees and Licensed Individuals

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Robert B. Hunt

ROBERT B. HUNT
Clerk

29

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

2 **Sec. 1. 1 MRSA §434, sub-§4** is enacted to read:

3 **4. Private personal information of public employees and licensed individuals.**
4 When the review committee reviews and evaluates a proposed public records exception
5 concerning the private personal information of a public employee or a professional and
6 occupational licensee or license applicant, the review committee shall balance the privacy
7 and safety interests of the individual involved concerning the individual's personal
8 information with the public's right to know regarding public employees and professional
9 and occupational licensees and license applicants.

10 **SUMMARY**

11 This bill is based on a recommendation of the Right To Know Advisory Committee
12 concerning the protection of private personal information that may be considered public
13 records. The bill directs the joint standing committee of the Legislature having
14 jurisdiction over judiciary matters to balance the public's right to know about public
15 employees and professional and occupational licensees and license applicants with the
16 privacy and safety interests of the individuals involved when a proposed public records
17 exception concerns the private personal information of public employees and professional
18 or occupational licensees or license applicants.

III

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Stephanie Grinnell
A. J. Higgins
Richard LaHaye
Mary Ann Lynch
Judy Meyer
Kelly Morgan



Paul Nicklas
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey
Eric Stout

STATE OF MAINE
RIGHT TO KNOW ADVISORY COMMITTEE

September 15, 2016

Sen. David C. Burns, Senate Chair
Rep. Barry J. Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Dear Sen. Burns and Rep. Hobbins,

The Right to Know Advisory Committee has had extensive discussions about your request that the Advisory Committee develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State. During the Second Regular Session, the Legislature enacted LD 1499, An Act to Increase the Safety of Social Workers”, which created a new confidentiality provision for social worker licensees’ and license applicants’ addresses and telephone numbers. In response to suggestions to include other types of licensed professionals in the scope of the confidentiality exception, we understand you have asked for the Advisory Committee’s assistance in developing a uniform policy for all professions and occupations. Under current law, some licensing boards, e.g., nurses, physicians and osteopaths, make certain licensee information confidential already.

The Advisory Committee agreed that any uniform policy needs to balance the consumer interests of the public in having access to licensee information with the privacy interests of licensees and license applicants. The public has a legitimate need for access to licensing information to ensure that individuals employed in certain professions and occupations are adequately trained and competent, but licensed professionals also have an interest in privacy and personal safety.

The Advisory Committee recommends (*by a vote of 11-2*) an approach that focuses on what categories of personal information about licensees should not be accessible to the public, rather than specifying what licensing information should be public. The Advisory Committee supports the general principle that personal contact information should not be public, similar to the criteria at 1 MRSA §402, sub-§3, ¶O for protecting public employee personal information. Pursuant to 1 MRSA §402, sub-§3, ¶O, the home addresses, home phone and fax numbers, personal cellphone numbers and home email addresses are confidential. The Advisory Committee recognizes that, in cases in which the licensee or license applicant has only provided a personal address and not a public business address to a licensing board, the personal address should not be kept confidential.

36

Letter to Judiciary Committee

Page 2 of 2

Sept. 15, 2016

The Advisory Committee also discussed the merits of providing licensees and license applicants an approach that would permit individuals to opt-in or affirmatively approve the disclosure of personal contact information or developing a form for use by the licensing entity that would make public certain information, but would exclude personal information about the individual from being disclosed to the public.

We are hopeful that we've provided enough guidance to assist you in evaluating proposed legislation regarding the confidentiality of personal contact information for professional and occupational licensees and applicants for those licenses. Please feel free to contact us or our committee staff if you have any questions or would like additional input.

Thank you for your consideration.

Sincerely,



Sen. David C. Burns, Chair
Right to Know Advisory Committee

cc: Members, Right to Know Advisory Committee
Members, Joint Standing Committee on Judiciary
Margaret Reinsch, Office of Policy and Legal Analysis



Paul R. LePage
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

LD 146 vetoed /
Sustained by
21-14 vote in Senate;
veto overridden in
House by 97-43 vote

23 May 2017

The 128th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 128th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 146 "An Act To Protect the Confidentiality of State and Local Government Employees' Private Information."

This bill would exempt from public view certain information about public servants. I do think there is an important balance between the public's right to know and the privacy interests of public servants. Unfortunately, this bill strikes the wrong balance. I also believe that this bill, if passed, would have unintended consequences. While I support making social security numbers confidential, the public should have a right to know about those who make decisions on behalf of the public while serving in government.

For this reason, I return LD 146 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

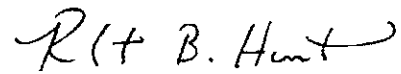
No. 146

H.P. 104

House of Representatives, January 19, 2017

An Act To Protect the Confidentiality of Local Government Employees' Private Information

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.
Cosponsored by Senator CARSON of Cumberland and
Representatives: BABBIDGE of Kennebunk, BATTLE of South Portland, BEEBE-CENTER
of Rockland, COREY of Windham, MONAGHAN of Cape Elizabeth, PIERCE of Dresden,
SIMMONS of Waldoboro, Senator: VITELLI of Sagadahoc.

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

2 **Sec. 1. 30-A MRSA §2702, sub-§1**, as amended by PL 1997, c. 770, §3, is
3 further amended to read:

4 **1. Confidential records.** The following records are confidential and not open to
5 public inspection. They are not "public records" as defined in Title 1, section 402,
6 subsection 3. These records include:

7 A. Except as provided in this paragraph, applications, resumes, letters and notes of
8 reference, working papers, research materials, records, examinations and any other
9 documents or records and the information they contain, solicited or prepared either by
10 the applicant or the municipality for use in the examination or evaluation of
11 applicants for positions as municipal employees.

12 (1) Notwithstanding any confidentiality provision other than this paragraph,
13 applications, resumes and letters and notes of reference, other than those letters
14 and notes of reference expressly submitted in confidence, pertaining to the
15 applicant hired are public records after the applicant is hired.

16 (2) Telephone numbers are not public records if they are designated as
17 "unlisted" or "unpublished" in an application, resume or letter or note of
18 reference.

19 (3) This paragraph does not preclude union representatives from access to
20 personnel records ~~which~~ that may be necessary for the bargaining agent to carry
21 out its collective bargaining responsibilities. Any records available to union
22 representatives ~~which~~ that are otherwise covered by this subsection ~~shall~~ must
23 remain confidential and are not open to public inspection;

24 B. Municipal records pertaining to an identifiable employee and containing the
25 following:

26 (1) Medical information of any kind, including information pertaining to
27 diagnosis or treatment of mental or emotional disorders;

28 (2) Performance evaluations and personal references submitted in confidence;

29 (3) Information pertaining to the creditworthiness of a named employee;

30 (4) Information pertaining to the personal history, general character or conduct
31 of members of an employee's immediate family; ~~and~~

32 (5) Complaints, charges or accusations of misconduct, replies to those
33 complaints, charges or accusations and any other information or materials that
34 may result in disciplinary action. If disciplinary action is taken, the final written
35 decision relating to that action is no longer confidential after the decision is
36 completed if it imposes or upholds discipline. The decision must state the
37 conduct or other facts on the basis of which disciplinary action is being imposed
38 and the conclusions of the acting authority as to the reasons for that action. If an
39 arbitrator completely overturns or removes disciplinary action from an employee
40 personnel file, the final written decision is public except that the employee's
41 name must be deleted from the final written decision and kept confidential. If the

1 employee whose name was deleted from the final written decision discloses that
2 the employee is the person who is the subject of the final written decision, the
3 entire final written report, with regard to that employee, is public.

4 For purposes of this subparagraph, "final written decision" means:

5 (a) The final written administrative decision that is not appealed pursuant to
6 a grievance arbitration procedure; or

7 (b) If the final written administrative decision is appealed to arbitration, the
8 final written decision of a neutral arbitrator.

9 A final written administrative decision that is appealed to arbitration is no longer
10 confidential 120 days after a written request for the decision is made to the
11 employer if the final written decision of the neutral arbitrator is not issued and
12 released before the expiration of the 120 days; and

13 (6) Personal information, including that which pertains to the employee's:

14 (a) Age;

15 (b) Ancestry, ethnicity, genetic information, national origin, race or skin
16 color;

17 (c) Marital status;

18 (d) Mental or physical disabilities;

19 (e) Personal contact information, as described in Title 1, section 402,
20 subsection 3, paragraph O;

21 (f) Personal employment choices pertaining to elected payroll deductions,
22 deferred compensation, saving plans, pension plans, health insurance and life
23 insurance;

24 (g) Religion;

25 (h) Sex or sexual orientation; or

26 (i) Social security; and

27 C. Other information to which access by the general public is prohibited by law.

28 SUMMARY

29 This bill clarifies that certain personal information of municipal employees is
30 confidential and the record or the portion of the record containing that information in the
31 possession of a municipal government is not a public record. The types of information
32 protected include that which pertains to age, ancestry, ethnicity, genetics, national origin,
33 race, skin color, marital status, mental or physical disabilities, personal contact
34 information, religion, sex, sexual orientation, social security and personal employment
35 choices pertaining to elected payroll deductions, deferred compensation, savings plans,
36 pension plans, health insurance and life insurance.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

'Act To Protect the Confidentiality of State and Local Government Employees' Private Information'

Amend the bill by inserting after the enacting clause and before section 1 the following:

'Sec. 1. 5 MRSA §7070, sub-§2, ¶D-1, as amended by PL 2007, c. 597, §6, is further amended to read:

D-1. Personal information pertaining to the employee's race, color, religion, sex, sexual orientation as defined in section 4553, subsection 9-C, national origin, ancestry, genetic information, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance. When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and

Sec. 2. 30-A MRSA §503, sub-§1, ¶B, as amended by PL 1997, c. 770, §2, is further amended to read:

B. County records containing the following:

- (1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;
- (2) Performance evaluations and personal references submitted in confidence;
- (3) Information pertaining to the creditworthiness of a named employee;
- (4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and
- (5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the

final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

(6) Personal information, including that which pertains to the employee's:

- (a) Age;
- (b) Ancestry, ethnicity, genetic information, national origin, race or skin color;
- (c) Marital status;
- (d) Mental or physical disabilities;
- (e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O;
- (f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans, pension plans, health insurance and life insurance;
- (g) Religion;
- (h) Sex or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or
- (i) Social security number; and

Amend the bill in section 1 in subsection 1 in paragraph B in subparagraph (6) in division (h) in the first line (page 2, line 25 in L.D.) by inserting after the following: "orientation" the following: 'as defined in Title 5, section 4553, subsection 9-C'

Amend the bill in section 1 in subsection 1 in paragraph B in subparagraph (6) in division (i) in the first line (page 2, line 26 in L.D.) by inserting after the following: "security" the following: 'number'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

The bill amends the law governing the confidentiality of personal information of municipal employees to parallel the same protections for state employees, with the addition of keeping as confidential any genetic information and information about the sexual orientation of the employee if contained in the records of the municipality. This amendment amends the state employee personnel records provisions to include confidentiality of genetic information and sexual orientation and amends the laws governing county employee personnel records to match. This amendment includes cross-references to the Maine Human Rights Act for the definition of "sexual orientation." It also correctly provides for the confidentiality of a municipal employee's social security number.



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
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Joyce McCreight

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Harpswell, ME 04079

Residence: (207) 449-3293

Jay.McCreight@legislature.maine.gov

March 7, 2017

**Testimony of Rep. Jay McCreight
Before the Joint Standing Committee on Judiciary
In Support Of LD 146**

An Act To Protect the Confidentiality of Local Government Employees' Private Information

Senator Keim, Representative Moonen and distinguished members of the Judiciary Committee, I am Representative Jay McCreight and I am here to present testimony as the sponsor of **LD 146, An Act To Protect the Confidentiality of Local Government Employees' Private Information**. This bill was requested by the Maine Municipal Association (MMA), on behalf of municipalities statewide, in their role as employers subject to Freedom of Access requests.

For the past decade, employees of state government have had available a category of governmental record confidentiality that has been unavailable to employees of Maine's municipalities. LD 146 extends this category of confidentiality to those local government employees as well. In the municipal experience, the types of information described below have been requested both in "sweeping" Freedom of Access Act requests that search for relatively unrestricted amounts of information, as well as in specific requests pertaining to an employee's benefit elections.

Title 5, section 7070 subsection 2 contains six categories which exempt certain types of personal information pertaining to state employees from public inspection. The first three of these six exemptions were enacted in 1985, and two more were enacted in 1997. These five freedom of access exemption subsections are all replicated in current law for municipal officials in Title 30-A, section 2702.

The most recent update to the state employee exemptions in Title 5 was adopted by the Legislature in 2007, and is found in section 7070(2)(D-1). This subsection exempts the following fourteen types of state employee personal information from public inspection: race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status, social security number, personal contact information, and personal employment benefit elections.

LD 146 provides municipal employees with these same exemptions as state employees, with one addition. This addition also affords municipal employees protection against public disclosure of

their sexual orientation, believing that it is just as important to afford municipal employees privacy with respect to the very personal matter of sexual orientation as it is to protect their marital status and the other types of information listed here.

The Legal Department of the MMA recommended this legislation and the 70-member Legislative Policy Committee of MMA reviewed it and voted unanimously to support this in its entirety.

Thank you for your attention and I'm happy to answer any questions.



Maine Municipal
Association

60 COMMUNITY DRIVE
AUGUSTA, MAINE 04330-9486
(207) 623-8428
www.memun.org

Testimony of the Maine Municipal Association

In Support Of LD 146

An Act To Protect the Confidentiality of Local Government Employees' Private Information

March 7, 2017

Senator Keim, Representative Moonen and members of the Judiciary Committee, my name is Garrett Corbin and I am providing testimony in support of LD 146 on behalf of the Maine Municipal Association (MMA), at the direction of MMA's 70-member Legislative Policy Committee (LPC).

LD 146 extends a category of governmental record confidentiality that has been available to employees of state government for the past decade to employees of local government as well. In practice, the types of information described below have been requested both in "sweeping" Freedom of Access Act requests that search for relatively unrestricted amounts of information, as well as in specific requests pertaining to an employee's benefit elections.

As the sponsor's testimony explains, the most recent update to the state employee exemptions in Title 5, found in section 7070(2)(D-1), was adopted by the Legislature in 2007. This subsection exempts the following fourteen types of state employee personal information from public inspection: race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability, marital status, social security number, personal contact information, and personal employment benefit elections.

LD 146 provides municipal employees with these same exemptions as state employees, with one addition. This addition also affords municipal employees protection against public disclosure of their sexual orientation. The municipal officials who reviewed and voted to support this legislation, as well as several municipal attorneys, believe it is just as important to afford municipal employees privacy with respect to the very personal matter of sexual orientation as it is to protect their marital status and the other types of information listed herein.



To: Senator Keim, Representative Moonen, and Members of the Judiciary Committee
From: Kirsten Hebert, Director Maine Rural Water Association
Date: March 7, 2017
Re: Testimony in Support of LD 146 *An Act to Protect the Confidentiality of Local Government Employee's Private Information*

Senator Keim, Representative Moonen, and Members of the Committee, my name is Kirsten Hebert, Director of the Maine Rural Water Association and I am offering testimony in Support of LD 146 *An Act to Protect the Confidentiality of Local Government Employee's Private Information*.

The Maine Rural Water Association and the Maine Water Utilities Association are two of Maine's trade associations representing water and wastewater systems across the State. We provide training and technical assistance with the purpose of improving the operational, managerial and financial capacity of our members. We have a joint Legislative Policy Committee responsible for setting our legislative platform and during our February 27th meeting, the Committee voted to support this bill.

One of the training courses that we offer to our members is the applicability of the Freedom of Access Act. The proper determination of public records is of key importance in today's society as transparency and customer service is of great significance.

The vast majority of our collective membership is comprised of quasi municipal districts, organized by Private and Special Legislation. These districts are units of government for which LD 146's proposed additional protections would apply. We strongly support the inclusion of the personal information identified in LD 146.

Often employees of water districts /departments are required to shut off a customer's water for failure to pay a water bill, or in instances in which the utility is responsible for water *and* sewer, shut off a customer's water for failure to pay a sewer bill. While we all realize that the utility staff are just doing their jobs as directed, they are put in a difficult situation for which the customer may associate the staffer with their frustration of being shut off. We urge the committee to pass LD 146 to protect the employee's personal information.

Thank you for the opportunity to provide testimony. Please do not hesitate to contact me should you have any questions 207 841 8920 or kirstenh@mainerwa.org.

Nale, Craig

From: Fisher, Adam C. <Adam.C.Fisher@Maine.gov>
Sent: Thursday, August 31, 2017 8:39 AM
To: Nale, Craig
Cc: McCarthyReid, Colleen
Subject: RE: Right to Know Advisory Committee

Thanks for your message. I would love the opportunity to talk with the committee next week. I've outlined the key points below.

Maine State Library Role in Collecting and Providing Public Access to Published Reports of State Government

State law requires agencies to send the library copies of their public reports/publications/etc for permanent access in our paper collection. We've never received everything from every agency. Some agencies do a much better job than others in sending in their reports. We do periodic outreach to agencies to remind them of their obligation to send us content, but we've had mixed results in follow-through. The law does not have any specific penalties for institutions that ignore our requests for information.

Launch of a Digital Repository

Since 2013, the Maine State Library has managed a digital repository to collect agency content and make it available online. We know that there is a lot of content that is being created and distributed in digital-only format and the repository provides a place for it. We also know that agency websites are frequently updated and older publications and reports are cycled out and not all new content created by agencies ever makes it online.

We allow any agency to upload content directly to the repository. Although the licensing/storage costs of the system run us about \$20,000 a year, we provide the service to agencies at no charge. Earlier this year we partnered with Maine Geological Survey to make thousands of maps and publications available online through the service. We have also recently worked with the Maine Arts Commission, Maine Department of Inland Fisheries and Wildlife and the Maine Department of Labor to digitize and make available thousands of historical documents and images related to their agency's history. In the case of IF&W, they specifically targeted the digitization of older materials that were subject to access requests in the past.

We have also started to use the repository to build collections of municipal documents. State law requires all municipalities to send us copies of their town reports and the library has an enormous collection of these historical documents that date back to the very beginning of many Maine towns.

The Town of Cumberland, for example, is using the system to store an archive of meeting minutes from over 300 town meetings and over 500 municipal planning maps. Other towns have used our digitization equipment to image some of their oldest vital records and town documents to ensure the information is preserved in the event of a fire or flood at the town office.

We've worked closely with the Maine State Archives in developing this system and this partnership has helped the repository to grow to over 66,000 digital items in the last four years.

Our Concerns About the Shift in How Government Documents are Created

While digital documents provide much more accessibility in terms of ease of distribution and availability online, the content is at much higher risk of permanent loss in the years ahead.

- Agency websites are frequently updated and most online content will eventually disappear. Content is even more apt to change when there is a turnover in administration. The system used by some agencies to provide

direct access to their reports online is not fully indexed by search engines and content saved in this system cannot be retrieved through tools like the wayback machine.

- It will be harder for Maine State Library to catch up on reports and publications that may not have made their way here - while printed publications may sit in someone's desk or file cabinet for decades, a digital file has a much shorter shelf life when buried in an email inbox or stored on a computer hard drive.
- Even under the best conditions, digital content is at risk for loss due to format obsolescence, hardware failure, or file corruption from bit rot. The Maine State Library has government documents dating back to before Maine was even a state and those files shed light on the important policy considerations of the time. On the other end of the spectrum we have encountered digital files that are fewer than 20 years old that are completely inaccessible to us today because the files became corrupt or inaccessible due to technology changes.
- Changes in how the state does its printing has also put an end to an important tool at our disposal to identify documents that agencies are creating that should be sent to the Maine State Library. When Central Printing closed we stopped receiving copies of all of their requisition forms that provided us with information on the types of things that agencies were printing.

-Adam

From: Nale, Craig [mailto:Craig.Nale@legislature.maine.gov]
Sent: Thursday, August 24, 2017 9:42 AM
To: Fisher, Adam C.
Cc: McCarthyReid, Colleen
Subject: Right to Know Advisory Committee

Hi Adam,

Peggy Reinsch forwarded your email about possibly presenting some of the Library's work on digitization and public access and concerns about ensuring permanent public access to the Right to Know Advisory Committee this year. Senator Lisa Keim and Representative Chris Babbidge are the legislative members of the Advisory Committee this year and they've expressed an interest in hearing more about this at the Advisory Committee's first meeting on Wednesday, September 6 at 9:00 am in the Judiciary Committee room of the State House. Would you be available for a brief presentation then?

Colleen McCarthy Reid (copied here) and I are staff to the Advisory Committee this year; please feel free to contact either of us about scheduling something. (I am out of the office for the rest of the week, but checking email.)

Thanks very much. Looking forward to talking more soon,
Craig

Craig T. Nale, Esq.
Legislative Analyst
Office of Policy and Legal Analysis
Maine State Legislature
13 State House Station, Augusta, ME 04330
(207) 287-1670
craig.nale@legislature.maine.gov

STATUTE: 1 M.R.S. §402, Sub-§3, ¶C-1

AGENCY: Legislative Council, Executive Director

CONTACT PERSON: Grant Pennoyer

CONTACT PERSON'S EMAIL ADDRESS: Grant.Pennoyer@legislature.maine.gov

QUESTIONS

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

My experience in administering or applying this public records exception for certain constituent correspondence is very limited. I was able to seek some input from some partisan staff that have helped Legislators with constituent requests. They indicated that constituents often send confidential personal data or agency case files including this confidential data when seeking a Legislator's assistance with an issue before a state agency.

However, the staff also indicated that there were not aware of an instance when a Legislator applied this exception in denying a FOA request for a constituent request record. It seems highly unlikely that a constituent request would be captured in a FOA request unless it later became a public controversy. If that were the case and the press or someone requested a copy of the constituent's request, the confidential data could be redacted from the copy provided.

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

It makes sense to continue this public records exception given the high probability that future constituents requests will contain confidential data either intentional by the constituent or naively and unaware that most correspondence with Legislators is public information.

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the

FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

I am not aware of problem with the application of this exception. The language is pretty straightforward in terms of what is covered by the exception.

4. Does your agency recommend changes to this exception?

I am not aware of recommended changes that would improve this exception or its application.

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

I reached out by an email to the Chiefs of Staff of the partisan offices as their staff would be most likely help a Legislator respond to a constituent request and potentially possess the file with the confidential information. I did not reach out or survey individual Legislators for their input as the direct stakeholders for this exception.

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

As I noted earlier, I have virtually no direct experience with constituent requests to Legislators. The generalizations provided above are all that I can provide.

RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, October 12, 2017

9:00 am

State House Room 438

Meeting Agenda

1. Welcome and introductions
2. Discussion of access to records and personal information related to licensed professionals and state and local government employees
3. Discussion of remote participation by members of public bodies; review of LD 1586 (127th Legislature)
4. Discussion of the penalty provision in the Freedom of Access Act at 1 MRSA §410
5. Opportunity for members of the Advisory Committee to raise other topics for potential discussion
6. Adjourn

Next meetings:

Wednesday, November 15 at 9 am in State House Room 438 (Judiciary Committee)

- Subcommittee meeting to review existing public records exceptions meeting at 1 pm

Issues for Discussion:
**Access to records and personal information related to licensed professionals
and state and local government employees**

1. Is there a recommended approach for how to address access to records containing personal information?
 - A. Records maintained by government are presumed public unless designated as confidential (*reflected in current law current approach; suggested in discussion draft for LD 1267 and LD 146*)
 - B. Records containing personal information are presumed confidential and certain categories of information are specifically identified as public (*reflected in discussion draft for LD 1541*)
2. Are there types of personal information that should be designated as confidential and protected from public disclosure?
 - A. Consider types of personal information designated as confidential for State employees and other employees in current law? (*see comparison of current law*)
 - B. Should similar information be designated as confidential for licensed professionals?
3. Consider approach under Federal Privacy Act for records containing personally identifiable information?

Background Information Attached

1. Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541 {p. 3}
2. Comparison of Current Law Related to Confidentiality of Employee Personnel Records for State Employees, County Employees, Municipal Employees and Employees of the Maine State Housing Authority {p.9}
3. Federal Privacy Act; definition of "record" {p.13}

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
Applicability	Records and information held by State Board of Nursing, Board of Licensure in Medicine, Board of Osteopathic Licensure	Records and information held by Department of Public Safety related to professional investigators, security guards and polygraph examiners
Treatment of Contact Information	<p>1. Contact Address. An applicant or licensee shall provide the board with a current employment address, employment email address, and employment telephone number, which will be her/his public contact address. In addition, an applicant or licensee shall provide the board with a current personal residence address, personal email address, and personal telephone number, which will be her/his public contact information if she/he does not provide employment contact information.</p>	<p>1. Contact Information. An applicant or licensee shall provide the department with a current business address, business email address, and business telephone number, which will be publicly accessible as public contact information. In addition, an applicant or licensee shall provide the department with a current personal residential address, personal email address, and personal telephone number. If an applicant or licensee does not provide a business address, business email address, or business telephone number, the personal residential address, personal email address, or personal telephone number, as applicable, will be publicly accessible as public contact information.</p> <p>A. Notwithstanding subsection 1, the department may withhold from public disclosure a personal residential address, personal telephone number, or personal email address that serves as public contact information if the department determines that there is a reasonable possibility that disclosure of the information would endanger the life or personal safety of one or more individuals, including, but not limited to, an applicant or licensee.</p>
Information Designated as Confidential	<p>3. Confidential Information of Applicant or Licensee. Except for disclosures authorized in subsection 2, the following information is confidential and may not be disclosed:</p> <p>A. Personal residence address, unless it is the public contact address;</p> <p>B. Personal email address, unless it is the public contact email address;</p> <p>C. Personal telephone number, unless it is the public contact telephone number;</p>	<p>3. Confidential records and information. Except as provided in subsection 2, <i>all</i> records and information submitted to, collected by, or created by the department in administering this chapter are confidential and not public records for the purposes of Title 1, chapter 13.</p>

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
	<p>D. Personal health information;</p> <p>E. Birth certificate or the equivalent;</p> <p>F. Marriage certificate or the equivalent;</p> <p>G. Divorce judgment or the equivalent;</p> <p>H. Passport information;</p> <p>I. Social Security Number or the equivalent;</p> <p>J. Photographs;</p> <p>K. College or medical school transcripts;</p> <p>L. National examination scores; and</p> <p>M. U.S. Drug Enforcement Administration Registration Number.</p>	
<p>Information Designated as Public</p>		<p>2. Publicly records and information. The following records and information may be publicly disclosed by the department.</p> <p>A. The full name, age, and gender of an applicant or licensee, as well as all prior full names by which the applicant has gone. This paragraph does not authorize disclosure of the date of birth of an applicant or licensee, or documentation submitted to or ascertained by the department to substantiate the identity or age of an applicant or licensee;</p> <p>B. A copy of the licensing certificate issued to a licensee;</p> <p>C. Public contact information, as described in subsection 1;</p> <p>D. Confirmation that an individual has met the licensure requirement established in section 7382, subsection 1, paragraph A. This paragraph does not authorize disclosure of any records or information ascertained by the department to substantiate that an applicant or</p>

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
		<p>licensee has met that requirement; however, the department may refer a person seeking such information to the Department of Public Safety, Maine State Police, State Bureau of Identification to ensure the person will obtain the most up-to-date public criminal history record information available;</p> <p>E. If applicable, the name of the accredited college or university from which an applicant or licensee has earned a baccalaureate degree. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate that an applicant or licensee has met this requirement of licensure, such as academic transcripts or a copy of the degree certification document;</p> <p>F. If applicable, the name of each agency for which an applicant or licensee has worked to satisfy the requirement established in section 7382, subsection 1, paragraph B, subparagraph 2. This paragraph does not authorize disclosure any documentation submitted to or ascertained by the department to substantiate such employment;</p> <p>G. The name of the commissioner-approved polygraph examiner course an applicant or licensee has satisfactorily completed to meet the requirement established in section 7382, subsection 1, paragraph C. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate the completion of such a course;</p> <p>H. The name of the polygraph examiner with whom an applicant or licensee worked during the polygraph examiner internship of an applicant or licensee required in section 7382, subsection 1, paragraph C;</p> <p>I. Confirmation that an applicant or licensee has passed an examination pursuant to section 7382, subsection 1, paragraph D. This paragraph does not authorize disclosure of the examination;</p> <p>J. If applicable, confirmation that an applicant</p>

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
		<p>has filed an “irrevocable consent” statement or form pursuant to section 7383. This paragraph does not authorize disclosure of the filing made pursuant to that section;</p> <p>K. If applicable, confirmation that a licensee holds a polygraph examiner license from another state that has license requirements substantially equivalent to or more stringent than those of this State;</p> <p>L. Confirmation that a licensee has met the continuing education requirements established in section 7385. This paragraph does not authorize disclosure of any documentation submitted to or ascertained by the department to substantiate that such continuing education requirements have been satisfied;</p> <p>M. Any dates during which a licensee’s polygraph examiner license was suspended or revoked in this State or any other state in which the licensee held or holds a polygraph examiner license issued by that state. Except as provided in paragraph O, this paragraph does not authorize disclosure of any documentation submitted to or ascertained or created by the department to substantiate or document such suspensions or revocations;</p> <p>N. Confirmation that an applicant has been denied a license pursuant to this chapter. In the case of such denial, only the final written decision of the department that states the reasons why the license was denied may be disclosed;</p> <p>O. In a case in which a complaint has been made against an applicant or licensee, the final written decision of the department that states the grounds for which a complaint has been found to have merit. If a complaint is found by the department not to have merit, that determination may be disclosed to the person making the complaint; and</p> <p>P. Confirmation that an applicant or licensee has paid the fee required pursuant to section 7381.</p>

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
<p>Authorized Disclosure of Confidential Information</p>	<p>2. Authorized Disclosure. The information designated in subsection 3 regarding an applicant or licensee in the possession of the board is confidential, and may only be disclosed:</p> <p>A. To governmental licensing or disciplinary authorities or to any health care providers or healthcare entities located within or outside this State that are concerned with granting, limiting, denying, suspending or revoking a physician’s employment or privileges not be disclosed without an order issued by a court of competent jurisdiction;</p> <p>B. To the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners, the National Council of State Boards of Nursing, the National Commission on Certification of Physician Assistants, the International Association of Medical Regulatory Authorities, the American Board of Medical Specialties or their successor organizations;</p> <p>C. To criminal justice agencies for use in a law enforcement investigation or criminal prosecution;</p> <p>D. In a disciplinary hearing before the licensing authority or in any subsequent trial or appeal of a licensing authority’s action or order relating to such disciplinary hearing;</p> <p>E. Pursuant to an order of a court of competent jurisdiction;</p> <p>F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies;</p> <p>G. To employees designated by the commissioner of an agency of which a licensing authority is a part;</p> <p>H. To designated complaint officers or Board</p>	<p>4. Permissible disclosure of confidential records and information. Notwithstanding subsection 3, records and information made confidential under this section may be disseminated by the department:</p> <p>A. To a criminal justice agency for use in a criminal investigation or prosecution. For the purposes of this paragraph, “criminal justice agency” has the same meaning as in Title 16, section 803, subsection 4;</p> <p>B. To a governmental licensing or disciplinary authority of this State, any other state, or the federal government;</p> <p>C. In accordance with an order issued on a finding of good cause by a court of competent jurisdiction;</p> <p>D. To another state or federal government agency when the record contains or information is evidence of a possible violation of a law enforced by that agency;</p> <p>E. To the extent reasonably necessary to further an administrative licensing investigation being conducted by the department;</p> <p>F. When, and to the extent, deemed necessary by the commissioner in order to avoid imminent and serious harm to any person. The authority of the commissioner to make such a disclosure may not be delegated;</p> <p>G. To an applicant or licensee, or the applicant or licensee’s attorneys and authorized professional agents, for use in administrative or court proceedings related to licensure under this chapter. Records and information that may be disclosed pursuant to this paragraph only may be used for the purpose described in this paragraph and may not be disclosed further except to the extent deemed necessary and ordered by an administrative hearings officer or a court in order to fairly adjudicate a matter in dispute;</p> <p>H. When required by any state or federal law; and</p>

Comparison of Proposed Discussion Draft Amendments Related to Personal Information about Licensed Professionals: LD 1267 and LD 1541

	Proposed Discussion Draft Amendment to LD 1267	Proposed Discussion Draft Amendment to LD 1541
	<p>members of a licensing authority;</p> <p>I. By an employee or agent of the Board or by a complaint officer designated by the commissioner of the agency of which the licensing authority is a part, when, and to the extent, deemed necessary to facilitate an investigation; and</p> <p>J. To the person investigated and/or licensed by the licensing authority, on request. The commissioner of the agency of which the licensing authority is a part may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure might prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated.</p>	<p>I. In a consent agreement resolving a disciplinary or licensing action.</p>

Current Law: Employee Records and Personal Information Designated as Confidential*

State Employees {5 MRSA §7070, sub-§2}	County Employees {30-A MRSA §503, sub-§1}	Municipal Employees {30-A MRSA §2072, sub-§1}	Maine State Housing Authority Employees {30-A MRSA §4706, sub-§5 (enacted by Public Law 2017, c. 234)}
Records containing the following, except they may be examined by the employee to whom they relate when the examination is permitted or required by law:	County records containing the following:	Municipal records pertaining to an <i>identifiable</i> employee and containing the following:	Authority records pertaining to an <i>identifiable</i> employee and containing the following:
A. Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;	(1) Medical information of any kind, including information pertaining to the diagnosis or treatment of mental or emotional disorders;	(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;	(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;
B. Performance evaluations and personal references submitted in confidence;	(2) Performance evaluations and personal references submitted in confidence;	(2) Performance evaluations and personal references submitted in confidence;	(2) Performance evaluations and personal references submitted in confidence;
C. Information pertaining to the credit worthiness of a named employee;	(3) Information pertaining to the creditworthiness of a named employee;	(3) Information pertaining to the creditworthiness of a named employee;	(3) Information pertaining to the creditworthiness of a named employee;
D. Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;	(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and	(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and	(4) Information pertaining to the personal history, general character or conduct of members of the employee's immediate family;
D-1. Personal information pertaining to the employee's race, color, religion, sex, national origin, ancestry, age, physical disability, mental disability and marital status; social security number; personal contact information as provided in Title 1, section 402, subsection 3, paragraph O [^] ; and personal employment choices pertaining to elected payroll deductions, deferred compensation, savings plans,			(6) Personal information, including that which pertains to the employee's: <ul style="list-style-type: none"> (a) Age; (b) Ancestry, ethnicity, genetic information, national origin, race or skin color; (c) Marital status; (d) Mental or physical disabilities;

Current Law: Employee Records and Personal Information Designated as Confidential*

<p>State Employees {5 MRSA §7070, sub-§2}</p>	<p>County Employees {30-A MRSA §503, sub-§1}</p>	<p>Municipal Employees {30-A MRSA §2072, sub-§1}</p>	<p>Maine State Housing Authority Employees {30-A MRSA §4706, sub-§5 (enacted by Public Law 2017, c. 234)}</p>
<p>pension plans, health insurance and life insurance.</p> <p>When there is a work requirement for public access to personal information under this paragraph that is not otherwise protected by law, that information may be made public. The Director of the Bureau of Human Resources, upon the request of the employing agency, shall make the determination that the release of certain personal information not otherwise protected by law is allowed; and</p>			<p>(e) Personal contact information, as described in Title 1, section 402, subsection 3, paragraph O[^];</p> <p>(f) Personal employment choices pertaining to elected payroll deductions, deferred compensation, saving plans, pension plans, health insurance and life insurance;</p> <p>(g) Religion;</p> <p>(h) Sex or sexual orientation as defined in Title 5, section 4553, subsection 9-C; or</p> <p>(i) Social security number; and</p>
<p>E. Except as provided in section 7070-A, complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written</p>	<p>(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be</p>	<p>(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an</p>	<p>(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and</p>

Current Law: Employee Records and Personal Information Designated as Confidential*

<p>State Employees {5 MRSA §7070, sub-§2}</p>	<p>County Employees {30-A MRSA §503, sub-§1}</p>	<p>Municipal Employees {30-A MRSA §2072, sub-§1}</p>	<p>Maine State Housing Authority Employees {30-A MRSA §4706, sub-§5 (enacted by Public Law 2017, c. 234)}</p>
<p>decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.</p> <p>For purposes of this paragraph, "final written decision" means:</p> <p>(1) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or</p> <p>(2) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.</p> <p>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days;</p> <p>This subsection does not preclude union representatives from having access to personnel records, consistent with subsection 4, that may be necessary for the bargaining agent to carry out its collective bargaining responsibilities. Any records available to union</p>	<p>deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.</p> <p>For purposes of this subparagraph, "final written decision" means:</p> <p>(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or</p> <p>(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.</p> <p>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and</p>	<p>arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.</p> <p>For purposes of this subparagraph, "final written decision" means:</p> <p>(a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or</p> <p>(b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.</p> <p>A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and</p>	



Current Law: Employee Records and Personal Information Designated as Confidential*

State Employees {5 MRSA §7070, sub-§2}	County Employees {30-A MRSA §503, sub-§1}	Municipal Employees {30-A MRSA §2072, sub-§1}	Maine State Housing Authority Employees {30-A MRSA §4706, sub-§5 (enacted by Public Law 2017, c. 234)}
representatives that are otherwise covered by this subsection remain confidential and are not open for public inspection;			
3. Other information. Other information to which access by the general public is prohibited by law.	C. Other information to which access by the general public is prohibited by law.	C. Other information to which access by the general public is prohibited by law.	C. Other information to which access by the general public is prohibited by law.

*LD 146, An Act to Protect the Confidentiality of State and Local Government Employees' Private Information, proposed to make the categories of personal information designated as confidential for county and municipal employees parallel with State employees with the additional inclusion of genetic information and sexual orientation. LD 146 was not enacted. LD 1340, An Act to Amend the Laws Governing the Maine State Housing Authority, was considered separately and enacted a provision related to MSHA employee records that was modelled after current law for State employees and LD 146.

^ Personal contact information defined in 1 MRSA §402, sub-§3, ¶ O means "home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number."


THE PRIVACY ACT OF 1974

5 U.S.C. § 552a
As Amended

§ 552a. Records maintained on individuals

(a) Definitions

For purposes of this section—

- 
- (1) the term “agency” means agency as defined in section 552(e) of this title;
 - (2) the term “individual” means a citizen of the United States or an alien lawfully admitted for permanent residence;
 - (3) the term “maintain” includes maintain, collect, use, or disseminate;
 - (4) the term “record” means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;
 - (5) the term “system of records” means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;
 - (6) the term “statistical record” means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13;
 - (7) the term “routine use” means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;
 - (8) the term “matching program”—
 - (A) means any computerized comparison of—
 - (i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—
 - (I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of

the Internal Revenue Code of 1986;

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(ix) matches performed by the Secretary of Health and Human Services or the Inspector General of the Department of Health and Human Services with respect to potential fraud, waste, and abuse, including matches of a system of records with non-Federal records; or

(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014¹;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals² entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure

No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be--

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

- (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;
- (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;
- (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the Government Accountability Office;
- (11) pursuant to the order of a court of competent jurisdiction; or
- (12) to a consumer reporting agency in accordance with section 3711(e) of Title 31.

(c) Accounting of certain disclosures.

Each agency, with respect to each system of records under its control, shall—

- (1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—
 - (A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and
 - (B) the name and address of the person or agency to whom the disclosure is made;
- (2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to records

Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and

provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency requirements

Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (1) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency rules

In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall--

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil remedies

Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of,

or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the

action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of legal guardians

For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal penalties

Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific exemptions

The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

- (1) subject to the provisions of section 552(b)(1) of this title;
- (2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;
- (4) required by statute to be maintained and used solely as statistical records;
- (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;
- (6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or
- (7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be

exempted from a provision of this section.

(l) Archival records.

(1) Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m) Government contractors

(1) When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing lists

An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching agreements

(1) No record which is contained in a system of records may be disclosed to a recipient

agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

- (A) the purpose and legal authority for conducting the program;
- (B) the justification for the program and the anticipated results, including a specific estimate of any savings;
- (C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;
- (D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—
 - (i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and
 - (ii) applicants for and holders of positions as Federal personnel, that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;
- (E) procedures for verifying information produced in such matching program as required by subsection (p);
- (F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;
- (G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;
- (H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;
- (I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;
- (J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and
- (K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if--

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and opportunity to contest findings

(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that--

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions

(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on new systems and matching programs.

Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial report.

The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

- (1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;
- (2) describing the exercise of individual rights of access and amendment under this section during such years;
- (3) identifying changes in or additions to systems of records;
- (4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t) Effect of other laws

- (1) No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.
- (2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards.

- (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.
- (2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.
- (3) Each Data Integrity Board—
 - (A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;
 - (B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;
 - (C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding

approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget responsibilities

The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(w) Applicability to Bureau of Consumer Financial Protection

Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.

The following section originally was part of the Privacy Act but was not codified; it may be found at § 552a (note).

Sec. 7(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The following sections originally were part of Pub. L. No. 100-503, the Computer Matching and Privacy Protection Act of 1988; they may be found at § 552a (note).

Sec. 6 Functions of the Director of the Office of Management and Budget

(b) Implementation Guidance for Amendments – The Director shall, pursuant to section 552a(v) of Title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act not later than 8 months after the date of enactment of this Act.

Sec. 9 Rules of Construction

Nothing in the amendments made by this Act shall be construed to authorize

(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

(2) the direct linking of computerized systems of records maintained by Federal agencies;

(3) the computer matching of records not otherwise authorized by law; or

(4) the disclosure of records for computer matching except to a Federal, State, or local agency.

Sec. 10 Effective Dates.

(a) In General – Except as provided in subsection (b), the amendments made by this Act shall take effect 9 months after the date of enactment of this Act.

(b) Exceptions – The amendment made by sections 3(b) [Notice of Matching Programs – Report to Congress and the Office of Management and Budget], 6 [Functions of the Director of the Office of Management and Budget], 7 [Compilation of Rules and Notices], and 8 [Annual Report] of this Act shall take effect upon enactment.

RIGHT TO KNOW ADVISORY COMMITTEE

Thursday, October 12, 2017

Review of LD 1586: An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings

1. Background of 2015 RTKAC process
 - a. Used LD 258 (126th Legislature) as a starting point
 - b. Survey of RTKAC members' preferences
 - c. Worksheet of potential bill language

2. Summary of LD 1586
 - Allows a body subject to the Freedom of Access Act, except a publicly-elected body, to conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if:
 - The body has adopted a written policy on remote participation;
 - Notice of the meeting has been provided;
 - A quorum of the body is physically present at the meeting location (unless there is a public health emergency or other emergency declared by the Governor);
 - Each member of the body can hear and speak to all other members, and the public in attendance can hear all members;
 - Each remote member identifies anyone else at the remote location
 - All votes are taken by roll call; and
 - Materials to be discussed at the meeting have been received by remote members, and materials presented at the meeting can be made available to remote members if possible.
 - Prohibits remote members from participating in executive sessions
 - Prohibits remote members from voting in quasi-judicial proceedings on any issue concerning testimony or other evidence provided during the proceeding
 - Requires at least one meeting annually where no members participate remotely

3. Public hearing testimony on LD 1586
 - a. Proponents supported concept of remote participation, but many expressed concern that it would not allow publicly-elected officials to participate remotely
 - b. Opponents opposed the prohibition on remote participation by publicly-elected officials
 - c. Testimony neither for nor against expressed concern about the requirement that a quorum be physically present, the prohibition on participating remotely in an executive session, and the requirement that at least one meeting involve no remote participation annually

4. Current practices in state government
 - a. Workers Compensation Board
 - b. Public Utilities Commission

5. Other states
 - a. States that are silent on remote participation: Arkansas, Maine, Michigan, Pennsylvania, Washington, Wisconsin
 - b. States that expressly prohibit remote participation: Louisiana, Ohio
 - c. States that have general policy statements allowing remote participation in special circumstances: Alabama, Massachusetts
 - d. States that include “electronic access” in their definitions or public meetings: Arizona, Connecticut, Kansas, Montana, New Jersey, New York, South Carolina, West Virginia
 - e. Remaining states specifically allow remote participation and define circumstances and procedures, including New Hampshire, Vermont and Rhode Island



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 258

H.P. 195

House of Representatives, February 5, 2013

An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies

Reported by Representative PRIEST of Brunswick for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 PART A

3 Sec. A-1. 1 MRSA §403-A is enacted to read:

4 §403-A. Public proceedings through other means of communication

5 This section governs public proceedings, including executive sessions, during which
6 public or governmental business is discussed or transacted through telephonic, video,
7 electronic or other similar means of communication.

8 1. Requirements. A body subject to this subchapter may conduct a public
9 proceeding during which a member of the body participates in the discussion or
10 transaction of public or governmental business through telephonic, video, electronic or
11 other similar means of communication only if the following requirements are met:

12 A. The body has adopted a policy that authorizes a member of the body who is not
13 physically present to participate in a public proceeding through telephonic, video,
14 electronic or other similar means of communication in accordance with this section.
15 The policy may establish circumstances under which a member may participate when
16 not physically present;

17 B. Notice of the public proceeding has been given in accordance with section 406;

18 C. Except as provided in subsection 3, a quorum of the body is assembled physically
19 at the location identified in the notice required by section 406;

20 D. Each member of the body participating in the public proceeding is able to hear all
21 the other members and speak to all the other members during the public proceeding,
22 and members of the public attending the public proceeding in the location identified
23 in the notice required by section 406 are able to hear all members participating from
24 other locations;

25 E. Each member who is not physically present and who is participating through
26 telephonic, video, electronic or other similar means of communication identifies the
27 persons present at the location from which the member is participating;

28 F. All votes taken during the public proceeding are taken by roll call vote; and

29 G. Each member who is not physically present and who is participating through
30 telephonic, video, electronic or other similar means of communication has received
31 prior to the public proceeding any documents or other materials that will be discussed
32 at the public proceeding, with substantially the same content as those documents
33 actually presented. Documents or other materials made available at the public
34 proceeding may be transmitted to the member not physically present during the
35 public proceeding if the transmission technology is available. Failure to comply with
36 this paragraph does not invalidate the action of a body in a public proceeding.

37 2. Voting; judicial or quasi-judicial proceeding. A member of a body who is not
38 physically present and who is participating in a judicial or quasi-judicial public
39 proceeding through telephonic, video, electronic or other similar means of

1 communication may not vote on any issue concerning testimony or other evidence
2 provided during the judicial or quasi-judicial public proceeding.

3 3. Exception to quorum requirement. A body may convene a public proceeding
4 by telephonic, video, electronic or other similar means of communication without a
5 quorum under subsection 1, paragraph C if:

6 A. An emergency has been declared in accordance with Title 22, section 802,
7 subsection 2-A or Title 37-B, section 742;

8 B. The public proceeding is necessary to take action to address the emergency; and

9 C. The body otherwise complies with the provisions of this section to the extent
10 practicable based on the circumstances of the emergency.

11 4. Annual meeting. If a body conducts one or more public proceedings pursuant to
12 this section, it shall also hold at least one public proceeding annually during which
13 members of the body in attendance are physically assembled at one location and where no
14 members of the body participate by telephonic, video, electronic or other similar means
15 of communication from a different location.

16 PART B

17 **Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

18 5. Meetings. The board shall have a physical location for each meeting.
19 Notwithstanding Title 1, section 403-A, board members may participate in meetings by
20 teleconference. Board members participating in the meeting by teleconference are not
21 entitled to vote and are not considered present for the purposes of determining a quorum,
22 except in cases in which the chair of the board determines that the counting of members
23 participating by teleconference and the allowance of votes by those members is necessary
24 to avoid undue hardship to an applicant for an investment.

25 **Sec. B-2. 32 MRSA §88, sub-§1, ¶D**, as amended by PL 2007, c. 274, §19, is
26 further amended to read:

27 D. A majority of the members appointed and currently serving constitutes a quorum
28 for all purposes and no decision of the board may be made without a quorum present.
29 A majority vote of those present and voting is required for board action, except that
30 for purposes of either granting a waiver of any of its rules or deciding to pursue the
31 suspension or revocation of a license, the board may take action only if the proposed
32 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the
33 members present and voting and from no less than a majority of the appointed and
34 currently serving members. ~~The Notwithstanding Title 1, section 403-A, the board~~
35 ~~may use video conferencing and other technologies to conduct its business but is not~~
36 ~~exempt from Title 1, chapter 13, subchapter 1.~~ Members of the board, its
37 subcommittees or its staff may participate in a meeting of the board, subcommittees
38 or staff via video conferencing, conference telephone or similar communications
39 equipment by means of which all persons participating in the meeting can hear each
40 other, and participation in a meeting pursuant to this subsection constitutes presence
41 in person at such meeting.

1 7. Each member who is not physically present and who is participating through
2 telephonic, video, electronic or other similar means of communication must have
3 received, prior to the proceeding, any documents or other materials that will be discussed
4 at the public proceeding, with substantially the same content as those documents actually
5 presented.

6 8. A member of a body who is not physically present may not vote on any issue
7 concerning testimony or other evidence provided during the public proceeding if it is a
8 judicial or quasi-judicial proceeding.

9 9. If a body conducts one or more public proceedings using remote-access
10 technology, the body must also hold at least one public proceeding annually during which
11 all members of the body in attendance are physically assembled at one location.

12 Under current law, the following state agencies are authorized to use remote-access
13 technology to conduct meetings: the Finance Authority of Maine, the Commission on
14 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
15 the Workers' Compensation Board. Part B provides a specific exemption from the new
16 requirements for the Small Enterprise Growth Board, the Emergency Medical Services'
17 Board and the Workers' Compensation Board.

Right to Know Advisory Committee
Remote Participation Survey Responses

Question	YES	NO
1. Should remote participation be available to elected officials?	4	3
2. Should remote participation be available to members of a public body with statewide jurisdiction?	6	1
3. Should remote participation be available to members of a public body with less than statewide jurisdiction?	6	1
4. Should a member's ability to participate remotely be contingent upon the occurrence of a specified event? (An amendment to LD 1241, currently in the Judiciary Committee, would require either: (1) illness of the member; (2) weather that makes driving hazardous; or (3) unexpected traffic delays or vehicle breakdowns when the member is traveling to the meeting.)	5	2
5. Should remote participation be permitted in quasi-judicial proceedings?	3	4
6. If a member is permitted to participate remotely in a quasi-judicial proceeding, should the member participating remotely be allowed to vote?	3	4
7. Should a quorum be required to be physically present at the noticed meeting location?	5	2
8. Should a member be permitted to participate remotely only if participation by that member is needed for a quorum?	1	6
9. If members of a body are permitted to participate remotely, should they be allowed to participate remotely in executive sessions of the body?	5	2
10. Should remote participation in executive sessions be permitted if the language from LD 1809 is included, specifically addressing the circumstances under which the executive session may be conducted to ensure privacy?	5	2

****Note: Many YES/NO answers were qualified on other conditions being met***

Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Public proceedings through other means of communication

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written policy that authorizes a member of the body who is not physically present to participate in a public proceeding through

telephonic, video, electronic or other similar means of communication in accordance with this section.

OR

combined audio and video means of communication in accordance with this section.

The policy may establish circumstances under which a member may participate when not physically present.

OR

The policy must establish criteria that must be met before a member may participate when not physically present.

If the policy allows a member who is not physically present to participate in an executive session, the policy must specifically address the circumstances under which the executive session may be conducted to ensure privacy;

OR

The policy may not allow a member who is not physically present to participate in an executive session;

B. Notice of the public proceeding has been given in accordance with section 406;

C. Except as provided in subsection 3, a quorum of the governing body is assembled physically at the location identified in the notice required by section 406;

D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations;

[No additional language regarding ability of members participating remotely to view visual materials as they are presented or receive them before or during the proceeding]

OR

If documents or materials that include pictures, graphs, illustrations or other information presented in a visual format are part of the discussion, either the communications technology used must ensure that all members can see the documents and materials while the documents and materials are being discussed or the documents and materials must be provided to all members not physically present before or during the proceeding;

E. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating;

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

2. Voting; judicial or quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a judicial or quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the judicial or quasi-judicial public proceeding.

[No additional language regarding quasi-judicial proceedings]

OR

For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw

conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum under subsection 1, paragraph C if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

OR

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

(1) The public proceeding is necessary to take action to address the emergency; and

(2) The governing body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or

B. The governing body is expressly authorized by its governing statute to convene a public proceeding by combined audio and video means of communication with less than a quorum of the body assembled physically at the location identified in the notice required by section 406.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1586

H.P. 1077

House of Representatives, February 9, 2016

**An Act To Implement Recommendations of the Right To Know
Advisory Committee Concerning Remote Participation in Public
Proceedings**

Reported by Representative HOBBS of Saco for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

2 PART A

3 Sec. A-1. 1 MRSA §403-A is enacted to read:

4 §403-A. Public proceedings through other means of communication

5 1. Requirements. A body, except a publicly elected body, subject to this subchapter
6 may conduct a public proceeding through telephonic, video, electronic or other similar
7 means of communication only if the following requirements are met:

8 A. The body has adopted a written policy that authorizes a member of the body who
9 is not physically present to participate in a public proceeding. The policy must
10 establish criteria that must be met before a member may participate when not
11 physically present. The policy may not allow a member who is not physically present
12 to participate in an executive session;

13 B. Notice of the public proceeding has been given in accordance with section 406;

14 C. A quorum of the body is assembled physically at the location identified in the
15 notice required by section 406, except that a body may convene a public proceeding
16 by telephonic, video, electronic or other similar means of communication without a
17 quorum if:

18 (1) An emergency has been declared in accordance with Title 22, section 802,
19 subsection 2-A or Title 37-B, section 742;

20 (2) The public proceeding is necessary to take action to address the emergency;
21 and

22 (3) The body otherwise complies with the provisions of this section to the extent
23 practicable based on the circumstances of the emergency;

24 D. Each member of the body who is participating in the public proceeding is able to
25 hear all the other members and speak to all the other members during the public
26 proceeding, and members of the public attending the public proceeding in the
27 location identified in the notice required by section 406 are able to hear all members
28 participating from other locations;

29 E. Each member of the body who is not physically present and who is participating
30 through telephonic, video, electronic or other similar means of communication
31 identifies the persons present at the location from which the member is participating;

32 F. All votes taken during the public proceeding are taken by roll call vote; and

33 G. Each member of the body who is not physically present and who is participating
34 through telephonic, video, electronic or other similar means of communication has
35 received prior to the public proceeding any documents or other materials that will be
36 discussed or presented at the public proceeding, with substantially the same content
37 as those documents actually discussed or presented. Documents or other materials
38 made available at the public proceeding may be transmitted to the member not
39 physically present during the public proceeding if the transmission technology is

1 available. Failure to comply with this paragraph does not invalidate the action of a
2 body in a public proceeding.

3 **2. Voting; quasi-judicial proceeding.** A member of a body who is not physically
4 present and who is participating in a quasi-judicial public proceeding through telephonic,
5 video, electronic or other similar means of communication may not vote on any issue
6 concerning testimony or other evidence provided during the quasi-judicial public
7 proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a
8 proceeding in which the governing body is obligated to objectively determine facts and
9 draw conclusions from the facts so as to provide the basis of an official action when that
10 action may affect the legal rights, duties or privileges of specific persons.

11 **3. Annual meeting.** If a body conducts one or more public proceedings pursuant to
12 this section, it shall also hold at least one public proceeding annually during which
13 members of the body in attendance are physically assembled at one location and where no
14 members of the body participate by telephonic, video, electronic or other similar means
15 of communication from a different location.

16

PART B

17 **Sec. B-1. 32 MRSA §88, sub-§1, ¶D,** as amended by PL 2007, c. 274, §19, is
18 further amended to read:

19 D. A majority of the members appointed and currently serving constitutes a quorum
20 for all purposes and no decision of the board may be made without a quorum present.
21 A majority vote of those present and voting is required for board action, except that
22 for purposes of either granting a waiver of any of its rules or deciding to pursue the
23 suspension or revocation of a license, the board may take action only if the proposed
24 waiver, suspension or revocation receives a favorable vote from at least 2/3 of the
25 members present and voting and from no less than a majority of the appointed and
26 currently serving members. The board may use video conferencing and other
27 technologies to conduct its business but is not ~~exempt from Title 1, chapter 13,~~
28 ~~subchapter 1~~ subject to the requirements of Title 1, section 403-A. Members of the
29 board, its subcommittees or its staff may participate in a meeting of the board,
30 subcommittees or staff via video conferencing, conference telephone or similar
31 communications equipment by means of which all persons participating in the
32 meeting can hear each other, and participation in a meeting pursuant to this
33 subsection constitutes presence in person at such meeting.

34 **Sec. B-2. 39-A MRSA §151, sub-§5,** as amended by PL 2003, c. 608, §9, is
35 further amended to read:

36 **5. Voting requirements; meetings.** The board may take action only by majority
37 vote of its membership. The board may hold sessions at its central office or at any other
38 place within the State and shall establish procedures through which members who are not
39 physically present may participate by telephone or other remote-access technology but is
40 not subject to the requirements of Title 1, section 403-A. Regular meetings may be called
41 by the executive director or by any 4 members of the board, and all members must be
42 given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of

1 the board is 4 members, but a smaller number may adjourn until a quorum is present.
2 Emergency meetings may be called by the executive director when it is necessary to take
3 action before a regular meeting can be scheduled. The executive director shall make all
4 reasonable efforts to notify all members as promptly as possible of the time and place of
5 any emergency meeting and the specific purpose or purposes for which the meeting is
6 called. For an emergency meeting, the 4 members constituting a quorum must include at
7 least one board member representing management and at least one board member
8 representing labor.

9

SUMMARY

10 Part A of this bill allows members of a body subject to the Freedom of Access Act to
11 participate in meetings of the body through telephonic, video, electronic or other similar
12 means of communication under certain conditions; however, the bill does not allow
13 members of publicly elected bodies to participate in public proceedings unless physically
14 present. The body must have adopted a written policy authorizing remote participation
15 with criteria that must be met before a member may participate remotely, but the policy
16 may not allow a member to participate remotely in an executive session of the body. The
17 bill also requires that notice of the proceeding must be given as if no members were
18 participating remotely, each member of the body must be able to hear and speak to all
19 other members, members of the public must be able to hear all members of the body, each
20 member participating remotely must identify anyone else present at the location from
21 which the member is participating, documents or materials discussed or presented at the
22 proceeding must have been received by or transmitted to members participating remotely
23 and all votes must be taken by roll call vote. A member who is not physically present may
24 not vote in a quasi-judicial proceeding of the body. A quorum of the body must be
25 physically present unless an emergency has been declared and the proceeding is
26 necessary to address the emergency. If the body conducts proceedings with members
27 participating remotely, the body must also hold at least one proceeding annually where no
28 members participate remotely.

29 Under current law, the following state agencies are authorized to use remote-access
30 technology to conduct meetings: the Finance Authority of Maine, the Commission on
31 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
32 the Workers' Compensation Board. Part B provides a specific exemption from the new
33 requirements for the Emergency Medical Services' Board and the Workers' Compensation
34 Board and does not affect the existing authority of those agencies or the Finance
35 Authority of Maine or the Commission on Governmental Ethics and Election Practices to
36 use remote-access technology to conduct meetings.

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Date:

(Filing No. H-)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1077, L.D. 1586, Bill, “An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

1. Written policy required; posted. A body subject to this subchapter may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication only if the body first adopts a written policy that governs remote participation and that explicitly describes how the policy meets the principles of this subchapter. The body shall make the policy available on its publicly accessible website, if any, and shall post a copy of the policy at the site of the proceeding included in the notice under section 406 in which one or more members participate remotely.

2. Policy contents. The policy adopted under subsection 1 must address under what circumstances a member may participate remotely, whether a quorum is required to physically assemble, whether the body may conduct an executive session when a member is participating remotely, the regular, quasi-judicial or other proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice under section 406 can hear or see and hear the members who are participating remotely.

3. Policy provided to Public Access Ombudsman; review. A body shall submit a copy of the policy adopted under subsection 1 to the Public Access Ombudsman, appointed pursuant to Title 5, section 200-I, subsection 1, who shall make all the policies received available to the public and submit them annually to the advisory committee.'

COMMITTEE AMENDMENT

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SUMMARY

This amendment is the minority report of the Joint Standing Committee on Judiciary.

This amendment replaces the bill, which restricts which public bodies may conduct public proceedings when one or more members are participating remotely through telephonic, video, electronic or other similar means of communication. Instead, this amendment provides that any body subject to the Freedom of Access Act may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication, but only if the body first adopts a written policy that governs the remote participation and that explicitly describes how the policy meets the principles of the Freedom of Access Act. The policy must address under what circumstances a member may participate remotely, whether the body may conduct an executive session when a member is participating remotely, whether a quorum must physically assemble, the proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice can hear or see and hear the members who are participating remotely.

A body that adopts a remote participation policy must make the policy available on the body's publicly accessible website and must post a copy at the location of each meeting during which one or more members participate remotely.

A body that adopts a remote participation policy must send a copy of the policy to the Public Access Ombudsman, who will make all the policies received available to the public and submit them annually to the Right To Know Advisory Committee.

FISCAL NOTE REQUIRED

(See attached)

127th Maine Legislature, Second Regular Session

An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

LD 1586, HP 1077

Fiscal Status Fiscal Impact

Final Disposition Accepted Majority (ONTP) Report, Apr 11, 2016

C-A (H-660) Fiscal Status Fiscal Impact

Amendments to LD 1586

Status In Committee

Referred to Committee on Judiciary on Feb 11, 2016.

Latest Committee Action: Reported Out, Apr 8, 2016, ONTP/OTP-AM

Latest Committee Report: Apr 8, 2016, MAJ: Ought Not To Pass, MIN: Ought To Pass As Amended

Public Hearings

Wednesday, February 24, 2016 10:00 AM, State House, Room 438

Disclaimer: The following documents are digital reproductions of written testimony presented to joint standing committees before and during public hearings. The Legislature is not responsible for the content, accuracy, or appropriateness of any testimony posted herein and takes no position supporting or opposing views expressed in the testimony. The documents are posted solely for convenient viewing by interested persons; they are not official copies and may not represent a complete record of a hearing. Contact the committee clerk for additional information.

Public Hearing Testimony, 13 items

Blanchette, Leonard	Brunswick Sewer District	(53 KB)
Brown, Connie	Maine School Management Association	(57 KB)
Corbin, Garrett	Maine Municipal Association	(120 KB)
Haskell, Timothy	Maine Water Environment Assn.	(130 KB)
Johnson, Christopher	Maine State Legislature	(214 KB)
Katsiaficas, Donna	Portland Water District	(116 KB)
Labbe, Normand	Southern Maine Regional Water Council	(81 KB)
Langhauser, Derek	Maine Community College System	(120 KB)
McLean, Carly	Public Utilities Commission	(255 KB)
McNelly, Jeffrey	Maine Water Utilities Association	(198 KB)
Meyer, Judith	Maine Freedom of Information Coalition	(74 KB)
Sucy, Alison	University of Maine System	(122 KB)
Ziegra, Jonathan	Boothbay Water District	(117 KB)

Work Sessions

Wednesday, March 2, 2016 1:00 PM, State House, Room 438

Committee Docket

Date	Action	Result
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2-7

Mar 2, 2016 Work Session Held

Mar 2, 2016 Voted Divided Report

Apr 4, 2016 Work Session Reconsidered

Apr 4, 2016 Voted Divided Report

Apr 8, 2016 Reported Out ONTP/OTP-AM

Divided Reports

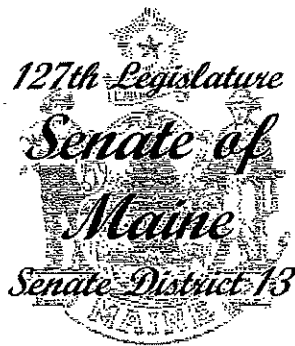
Report	Report Signer
MAJ, Ought Not To Pass	Senator Burns of Washington, Chair Representative Evangelos of Friendship Representative Ginzler of Bridgton Representative Guerin of Glenburn Representative Herrick of Paris Representative Moonen of Portland Representative Sherman of Hodgdon
MIN, Ought To Pass As Amended	Representative Hobbins of Saco, Chair Senator Johnson of Lincoln Senator Volk of Cumberland Representative McCreight of Harpswell Representative Monaghan of Cape Elizabeth Representative Warren of Hallowell

Affected Statute Titles and Sections

None listed at this time.

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Testimony of Senator Chris Johnson in Support of LD 1586, *An Act to Implement The Recommendations of the RTKAC Concerning Remote Participation*

FOR
amend
Good morning Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on the Judiciary. I am Senator Chris Johnson, representing State Senate District 13, in the Mid-coast region. I am testifying in support of LD 1586 and offering an amendment which you should already have before you. It has been distributed to interested parties and posted publicly in the hope that all who testify today could do so with knowledge of the amendment I propose.

It is high time Maine brought statutory certainty to the question of whether boards can allow members to participate remotely. I applaud the work of the Right to Know Advisory Committee in proposing legislation that balances the public's right to know with the realities of modern lives and modern modes of communication. We are no longer in the days of letters being the best way to communicate between cities or continents. Telegrams are no longer the most effective and most immediate. Phone calls are no longer scratchy very low fidelity party line communication. Skype and other audio/video calls are widely available. Today we have ubiquitous capacity to communicate not just words, but also inflection, sounds, and two-way video. It is time to catch up with the reality of modern communication.

A shortcoming of the proposed legislation is that it excludes all publicly elected boards. That's a problem that would if passed create a presumption that much of the remote participation currently practiced by select boards and others around the state are no longer legal. And that would likely prevent passage of a bill to bring legal certainty regarding remote participation.

But the shortcoming can be fixed, and the amendment which I present does so while addressing the dominant objection raised in earlier considerations of remote participation legislation. That objection was the concern that when members are elected, the electorate should have a right to face their elected members at board meetings. This amendment allows remote participation for publicly elected boards under the same conditions as other boards, plus the requirement that the practice be authorized by the electorate of the board members. In other words if the people who elect the board members are OK with the board adopting a remote access policy and practice, then we as legislators should not interfere with their doing so.

Accordingly I ask that you consider LD 1586 with my amendment as a starting point for discussing the issues you hear today, and ask for an Ought-To-Pass-Amended report from the committee. It is time to bring certainty to whether remote participation is legal, and in doing so to be responsibly inclusive, to accommodate the many publicly elected boards who currently rely on remote participation while honoring the wishes of their electorate.

Thank you for your consideration.

PROPOSED COMMITTEE AMENDMENT TO LD 1586

Proposed by Senator Johnson

Deletions = ~~double strike through~~

Additions = double underline

2/17/2016 11:51 AM

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO
KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN
PUBLIC PROCEEDINGS

Amend the bill in Section A-1 to read:

§403-A. Public proceedings through other means of communication

1. Requirements. A body, ~~except a publicly elected body,~~ subject to this subchapter may conduct a public proceeding through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a written *remote participation* policy that authorizes a member of the body who is not physically present to participate in a public proceeding. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session.

The remote participation policy governing a publicly-elected body is valid only if the electorate represented by the body votes to approve the policy or votes to authorize the body to adopt a policy. For a publicly-elected body that represents more than one municipality the policy or the authorization to adopt a policy must be adopted through a referendum vote.

B. Notice of the public proceeding has been given in accordance with section 406;

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406, except that a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum if:

(1) An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

(2) The public proceeding is necessary to take action to address the emergency; and

(3) The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency;

D. Each member of the body who is participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations, *or, upon request, by accommodations for persons who are deaf or hard of hearing, all members of the body and the public are afforded an ability to participate equivalent to hearing.*

PROPOSED COMMITTEE AMENDMENT TO LD 1586

Proposed by Senator Johnson

Deletions = ~~double strike through~~

Additions = double underline

2/17/2016 11:51 AM

E. Each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating;

F. All votes taken during the public proceeding are taken by roll call vote; and

G. Each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed or presented at the public proceeding, with substantially the same content as those documents actually discussed or presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

2. Voting; quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

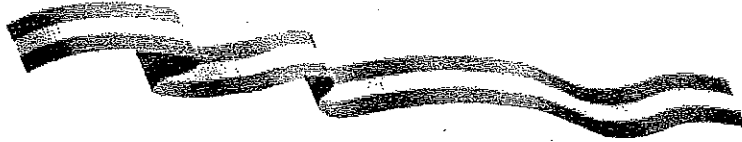
3. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

(No change to Part B)

SUMMARY

This amendment authorizes a public-elected body to allow remote participation of its members only if the electorate the body represents either approves a remote participation policy or authorizes the body to adopt a remote participation policy. If the body covers more than one municipality, the adoption or approval must be done through a referendum vote.

This amendment also provides for accommodations for person who are deaf or hard of hearing when members of a body are participating remotely.



Maine Freedom of Information Coalition

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MAINE FREEDOM OF INFORMATION COALITION IN SUPPORT OF L.D. 1586:

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

for
Sen. Burns, Rep. Monaghan, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am a vice president of the Maine Freedom of Information Coalition, which is a coalition of interested friends of freedom of information, including attorneys, librarians, political advocacy groups and Maine's press. I am also a member of the Right to Know Advisory Committee and the managing editor of the Sun Journal in Lewiston. I appear before you today in support of L.D. 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings.

- ☞ An opportunity for appointed bodies to employ remote technology. It is not a mandate, preserving local choice for public bodies. You don't want to do it? Don't do it.
- ☞ Tradition of public proceedings is wholly preserved through the physical quorum requirement, maintaining access to public proceedings. We can still see and hear government in action.
- ☞ Confidentiality of the executive session is preserved by banning remote participation. No leaks.
- ☞ Roll call provides accountability. We know where our officials stand.
- ☞ Requirement for all participants to have access to documents ensures awareness of discussion items. Everyone has the information they need to make informed decisions.
- ☞ Narrowly drafted to include appointed bodies and exclude elected officials. Elected officials shouldn't be calling in their jobs because constituents expect full and effective representation. So, they should represent.
- ☞ No votes on quasi-judicial proceedings. Your rights won't be affected by someone who can't see you.
- ☞ Bodies already expressly permitted by statute to participate through remote technology are grandfathered. Everyone else will have to follow standard requirements.

The MFOIC has one concern, and that is the requirement for the person participating remotely to identify the people present at the remote location. That is not a requirement in the physical location, so must it be a requirement in the remote one?

MFOIC does not support any amendment that would expand the allowance to participate by remote technology to elected officials.



MAINE SCHOOL MANAGEMENT ASSOCIATION

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TESTIMONY ON

L.D. 1586

FOR

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

Senator Burnis, Representative Hobbins and members of the Judiciary Committee. I am Connie Brown, executive director of Maine School Management Association, and am submitting this testimony on behalf of the Maine School Boards Association and Maine School Superintendents Association in support of an amended version of L.D. 1586 that would allow the provisions of the bill to apply to school boards.

Our associations support allowing remote participation by school board members, with parameters, because we believe it will help us attract well-rounded boards with varied experience. Business people who have to travel might be more willing to run, for example, if they knew they could call in on those occasions when they have to be on the road.

Remote participation also would allow a board member who is temporarily housebound to keep up with the board's work or accommodate those times when there is critical business on the agenda and a Maine blizzard raging outside.

Our associations would advise boards to adopt policies that lay out the parameters around remote participation to make sure technology is used to support open communication and not be an impediment to it. We believe remote participation should be the necessary exception, not the rule.

Our one concern about the amendment is the process by which voters would approve remote participation. We think this process needs to be more clearly delineated.

*For
back
amend*

OPENING:

GOOD MORNING SENATOR BURNS AND REPRESENTATIVE HOBBS AND THE MEMBERS OF THE JUDICIARY COMMITTEE.

MY NAME IS LEONARD BLANCHETTE. I AM THE GENERAL MANAGER FOR THE BRUNSWICK SEWER DISTRICT.

I AM HERE TO TESTIFY IN FAVOR OF LD 1586:

AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS.

TESTIMONY

SOME OF MY COLEAQUES IN THE WATER AND WASTEWATER UTILITY SECTOR BELIEVE THAT THIS BILL IS UNNECESSARY DUE TO A BELIEF THAT THE RIGHT TO HAVE REMOTE PARTICIPATION OF ITS BOARD MEMBERS IS NOT IN VIOLATION OF ANY LAW.

THAT BELIEF IS THE REASON I, AND MY BOARD MEMBERS, WISH TO SEE THIS BILL PASS. I THINK MY COLEAQUES BELIEFS ARE BASED ON THE LEGAL AXIOM THAT UNLESS IT IS SPECIFICALLY PROHIBITED, IT IS ALLOWED. MY BOARD ON THE OTHER HAND, WHILE RECEIVING TRAINING ON THE FREEDOM OF ACCESS ACT, HEARD THAT IT IS THE OPINION OF THE ATTORNEY GENERAL'S OFFICE THAT REMOTE PARTICIPATION FOR OUR BOARD MEMBERS IS NOT ALLOWED.

THIS NEEDS TO BE CLEARLY SPELLED OUT IN LAW SO THAT THIS CONTINUING MISUNDERSTANDING BY THE MANY BOARDS OF MAINE'S WATER AND WASTEWATER UTILITIES IS FINALLY RESOLVED. LD 1586 IS A STEP IN THIS DIRECTION. THE EXCEPTION IS THAT NOT ALL WATER AND WASTEWATER BOARD MEMBERS ARE APPOINTED AS THEY ARE FOR THE BRUNSWICK SEWER DISTRICT. WE WOULD RECOMMEND THAT THIS BILL BE AMENDED TO INCLUDE ELECTED BOARD MEMBERS OF WATER AND WASTEWATER BOARDS.

THANK YOU.



Maine Municipal
Association

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Testimony of the Maine Municipal Association

In Opposition to LD 1586

An Act To Implement Recommendations of the Right To Know Advisory Committee
Concerning Remote Participation in Public Proceedings

February 24, 2016

AGAINST

Senator Burns, Representative Hobbins, members of the Judiciary Committee, my name is Garrett Corbin and I am testifying in opposition to LD 1586 on behalf of the Maine Municipal Association at the direction of our 70-member Legislative Policy Committee. Our Policy Committee's opposition centers solely on the legislation's incongruous distinction between elected and appointed officials. Only one other state makes such a distinction in their law. The majority of U.S. states explicitly allow the use of remote participation in public proceedings for elected and appointed board members.

MMA supported LD 258, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies*, which was introduced in the 126th Legislature. It seemed fair to require all public bodies to play by the same fundamental rules while allowing each entity to set the specific terms that made sense, subject to reasonable parameters appropriate and necessary for the conduct of public proceedings.

LD 1586 represents a step backwards from LD 258. Without any fact-based justification, this bill allows the use of remote technology in meetings of public bodies comprised of appointed officials, while universally prohibiting any remote participation whatsoever in public meetings by elected officials. This distinction directly discriminates against elected boards, without reason.

MMA would not oppose LD 1586 if the five words "except a publicly elected body" were removed from the first sentence of the bill.

The vast majority of Maine's elected public bodies are local. To some members of our Policy Committee, LD 1586's prohibition on any and all elected official remote participation appears to create a solution in search of a problem given that no specific examples of municipal misuse of remote participation have ever, to MMA's knowledge, been brought to the Right to Know Advisory Committee's or Judiciary Committee's attention.

As far as we know, the only actual instance of abuse of remote participation is one 1978 vote conducted entirely over the phone by county officials to expend public funds on a certain project. Nearly forty years later, this type of entirely telephonic and publicly inaccessible meeting is widely understood to be impermissible under Maine's Freedom of Access Act. Aside from the Legislature's Appropriations and Financial Affairs Committee's annually increased utilization of closed-door meetings on major state budget matters, MMA has been unable to find a single report in Maine in this century of elected officials making private what would have properly been a public deliberation. Meanwhile, the use of remote technology has become commonplace in, and widely accepted by, today's society.

Based on the experience of MMA's Legal Department, which has for decades fielded questions from municipal officials regarding Maine's Freedom of Access Act, remote participation is typically only needed under exceptional circumstances whereby one or more members of an elected 3-person board is physically unable to attend. For hundreds of municipalities in this state, the three-member select board is the municipal manager, requiring the presence of two members to act. Issues like ice storms, hospitalizations, ferries running off schedule, or a call out for a fire or rescue emergency all give rise to the need to utilize an offsite participation capacity to function, particularly with respect to time-sensitive matters.

In addition to select boards, there are numerous local government entities that would be impacted. These include not only school boards but also the elected planning boards, conservation commissions, utilities districts, library boards, road committees, health and/or hospital boards, airport boards, and others. In some cases, such as a charter commission, the board may be comprised of both elected and appointed members. It is unclear whether LD 1586's prohibition would apply to these boards in their entirety, or only their elected members. If the latter, it is hard for MMA to appreciate a justifiable basis for such a distinction.

An appropriate balance must be found between the need of governmental entities to conduct meetings in order to serve the public and the need of the public to freely access those meetings. From the municipal perspective, if the general parameters established in this bill were applied equally to all public bodies, they would create a level playing field of reasonable remote meeting rules to be followed not just by some, but by all.



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February 24, 2016

Testimony in Opposition to LD 1586 An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings

JGANNIF
LD 1586, as written, would prohibit members of publicly elected bodies from participating in public proceedings unless physically present. Public bodies that are not elected would be authorized to conduct public proceedings through telephonic, video, electronic or other similar means of communication only if specific, prescriptive requirements are met; however a member would not be allowed to participate remotely in an executive session of the body.

Maine Water Utilities Association represents and advocates for the water profession in Maine. For a number of reasons, and as elaborated below, we are opposed to LD 1586.

We have raised an issue relative to remote participation in the past and we raise it today. At face value one could presume that this bill is before us because remotely participating in meetings, including executive sessions, is in violation of statute. The FOAA Ombudsman has weighed in on this issue in the past and has stated that the current use of conference calls, Go To Meeting, Skype, etc. by our members is not in violation of statute. Some of our members have paid for legal opinions which have told them the same thing. The Attorney General's Office has been asked – several times – to come forth with an opinion. The answer has always been that we “advise people not to do this”. We would expect that if we were in violation of the law, the AG's Office could - and would - make us aware of that fact. Advice is not an opinion.

So, to us, this bill presents a solution where there has been no problem. The bill does not address any real issues, yet it has the potential to create many. We are not opposed to implementing remote participation technology; in fact many of our members have done that. This bill (and the proposed amendment) would add unnecessary layers of red tape where there has never been an issue before. Our members strive for effective and efficient operations. The mandates being proposed in the bill and the amendment are counter to that objective. That, in and of itself, is reason enough for us to oppose the bill.

We will discuss the provisions of the bill and the amendment separately but combine the two where it makes the most sense to discuss them that way.

As noted in our first paragraph, the bill would prohibit members of publicly elected bodies from participating in public proceedings unless physically present; the amendment strikes that. Either way, what is proposed would prohibit public bodies from continuing to practice protocol they might be utilizing to govern their organizations.

Boards could conduct public proceedings through telephonic, video or other similar means of communication if the body adopts a written policy that authorizes a member who is not physically present to participate in the public proceeding. Some of the written policy provisions are as follows:

A member who is not physically present could not participate in an executive session.

A quorum of the body must be assembled physically at the location identified in the meeting notice except that public proceedings through telephonic, video or other similar means of communication could be conducted without a quorum if .

In the event of an actual or threatened epidemic or public health threat the Department of Health and Human Services declares that a health emergency exists and adopts emergency rules for the protection of the public health relating to procedures for the isolation and placement of infected persons for purposes of care and treatment or infection control, or

A disaster or civil emergency exists or appears imminent, and the Governor declares a state of emergency in the State or any section of the State,

And, if we are reading this correctly, the public proceeding must be necessary to take action to address the health emergency or the disaster or civil emergency.

Envision a water district with a three member Board of Trustees. If a trustee is away and another is sick (but could call in) these statutory requirements would prevent the board from having a quorum and voting on matters unless DHHS declares a health emergency or the Governor declares a state of emergency. Setting aside, for a moment, the notion that DHHS or the Governor would come to our rescue in this situation, it is puzzling to us that, apparently, one of our agenda items must be to develop an action plan to address what conceivably could be a statewide epidemic or local or statewide disaster or civil emergency.

The amendment proposes a referendum in order to ratify a remote participation policy. We have one member district that serves 10 communities. Another serves 7 communities and others serve 2 – 5 communities. These elected officials can adopt multi-million dollar budgets, levy taxes and rates/charges, take property by eminent domain, serve in quasi-judicial capacities, and perform other necessary functions, yet this amendment would prohibit them from adopting a policy without voter authority.

We suspect that these districts might not even consider a policy that would require them to coordinate a referendum among multiple member communities. Such an outcome, we feel, would infringe on an elected trustee's duty to provide representation to constituents.

We understand, and generally agree with, the intent of the proposed provision whereby everyone, regardless of their location, can hear and speak to the other members. However, we believe that the proposed provision that each member of the body who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication identifies the persons present at the location from which the member is participating crosses a line that should not even be encroached upon. Specifically, this requirement would turn someone's living room into a public space – actually more of a public space than the meeting location because the general public present at that location might choose not to be, and (we believe) could not be compelled to be, identified.

Based on our observations in this room over the past few summers, and albeit limited discussions we have had with Right to Know Advisory Committee members plus some of the members of this committee, it appears to us that the primary objective of this bill (and the amendment) is to adopt legislation which passes muster with the Right to Know Advisory Committee.


We do appreciate the commitment of the RTK committee members to their tasks. Among their duties and powers, as stated in their enabling legislation, is that they *may make recommendations for changes in the statutes to improve the laws*. We would argue that, implicit in that charge, is the basic tenant that they first do no harm.

What is being proposed in LD 1586 and the proposed committee amendment will adversely impact the ability of public bodies (and the smaller one in particular) to effectively and efficiently perform their functions.

Technology has left lawmakers far behind in this instance. To reduce the effectiveness of remote participation by making it so cumbersome undermines the spirit of unhindered public access, in reality making meetings less accessible by members.

Our association has spent considerable time over the past couple of weeks discussing this legislative initiative. We even considered the possibility of offering our own amendment. Towards the end of last week, after we had analyzed the bill, the amendment and the projected impacts, we came to the conclusion that the best outcome would be for the committee to report this bill out as Ought Not to Pass.

We respectfully ask that you do that.

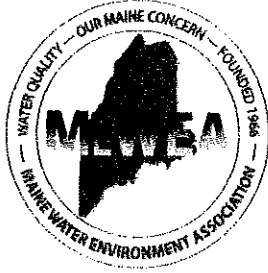

Jeffrey L. McNelly
Executive Director

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Scott Firmin
Portland Water District
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AGAIN

February 23, 2016

Senator David Burns, Chair
Representative Barry Hobbins, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Subject: LD 1586, *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings*

Dear Senator Burns, Representative Hobbins, and Members of the Judiciary Committee,

The Maine Water Environment Association (MEWEA) represents more than 600 members, including towns and sewer districts, who are on the front line of keeping the waters of Maine clean, in part through our diligent operation of sewer systems, including underground utilities. The mission of MEWEA is to promote professional environmental management practices to protect and improve the waters and related environments of the State of Maine. Consistent with this mission, the Association is offering this testimony in opposition to LD 1586.

MEWEA supports allowing remote participation in meetings. Many of our members have small boards, some appointed and some elected, and have difficulty attracting and keeping qualified people to serve on those boards. Our concern with LD 1586 is not that it will allow remote participation, but just the opposite. It would end remote participation for all of our members with elected Boards.

You may hear some testimony today that current law does not permit remote participation. That is not the case. Current law is silent on the issue and Boards may choose to allow it, an option many pursue. Many of our Boards have legal opinions to that effect. LD 1586, as written, would prohibit remote participation for all elected boards. Therefore, MEWEA must oppose it.

MEWEA is aware that an amendment has been distributed that would allow elected boards to use remote participation. That is an improvement, but it still falls short of a proposal that MEWEA could support.

Follow us on

3-5-16

We recommend two additional changes to the bill. First, board members participating remotely should count toward a quorum. Some MEWEA members literally have 3 person boards and gathering a quorum can be difficult. Some are currently counting remotely participating members toward a quorum and there have been no complaints. This is an unnecessary restriction on the use of remote participation.

Second, there is no need for a referendum to establish a remote participation policy. Again, many boards have currently adopted remote participation policies without public complaint. Remote participation should be decided by a board like any other policy question. A referendum will be a time consuming waste of resources and, for multi-municipal entities, an administrative headache. Every board was given specific authority when it was created. Please let them exercise that authority.

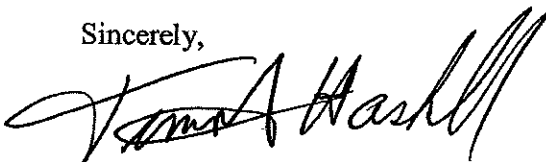
MEWEA is in agreement with two limits on remote participation that are contained in the proposed amendment. We agree that the issues raised in Executive Session are sensitive and complex enough that they require an in person discussion. We also agree that an annual in person meeting is a reasonable requirement.

To summarize: MEWEA opposes the bill in its current form. We can support the bill if it is amended to:

1. Allow remote participation for elected boards;
2. Allow those participating remotely to count toward a quorum; and
3. Allow boards to adopt a remote participation policy using their usual process. No referendum is necessary.

Thank you for your attention and consideration, we look forward to your work session on the bill, and we'll be available should you have any questions or if you would like further input.

Sincerely,



Timothy Haskell
Chair, Government Affairs Committee
Maine Water Environment Association



Portland Water District

FROM SEBAGO LAKE TO CASCO BAY

TESTIMONY OF THE PORTLAND WATER DISTRICT IN OPPOSITION TO
LD 1586 – AN ACT TO IMPLEMENT RECOMMENDATIONS OF THE RIGHT TO KNOW ADVISORY
COMMITTEE CONCERNING REMOTE PARTICIPATION IN PUBLIC PROCEEDINGS

AGAINST

Senator Burns, Representative Hobbins, and members of the Judiciary Committee, I am Donna Katsiaficas, and I am the Corporate Counsel for the Portland Water District. I am here to testify in opposition to LD 1586 - "An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings."

The Portland Water District is a quasi-municipal utility authorized by State charter to provide water service to over 200,000 people in eleven Greater Portland communities, and wastewater treatment and interception services to six of those communities. The affairs of the District are managed by a Board of Trustees composed of eleven members, all popularly elected at municipal elections by a plurality of the voters from the towns and cities that they represent. Trustees are elected for a five-year term.

The Board of Trustees meets in public session twice a month -- in a workshop on the second Monday of each month, and in a business meeting on the fourth Monday of each month. Notices of Trustee meetings are published on the District website (PWD.org) and published in the *Portland Press Herald*. The meeting agenda is sent to the town and city managers of District member communities. At the beginning of each year, a notice is published in the *Portland Press Herald* reminding the public of the Board's schedule of meetings for the year. In addition, business meetings are broadcast on public access cable TV. Meeting minutes are also available to the public on the District's website.

I provide this information about the District's governance and meetings to illustrate that there is ample opportunity for public participation and public notice of the District's activities, and that its operations are transparent.

The Portland Water District supports the concept of remote meetings, but opposes LD 1586 as drafted because it does not apply to publicly elected officials. Again, our Trustees are elected, not appointed. Therefore, as drafted, this bill would not allow the District's Trustees to participate in a public meeting unless physically present. Allowing appointed Trustees to meet with remote participation while disallowing elected Trustees the same opportunity makes no sense. If the concern is that elected trustees will not attend public meetings, voters who are unhappy with the attendance of their elected representatives can express that displeasure at a

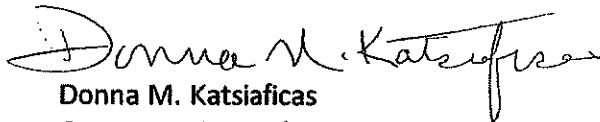
public meeting, or at the ballot box. However, Customers who are unhappy with the attendance of an appointed Trustee, who could attend a meeting remotely under this bill, would have no recourse for removal of that Trustee.

The District has a quorum requirement of six Trustees to conduct business. With a full Board of eleven, the District recognizes that it is unlikely that remote participation would be required to conduct business; however, in the event of an emergency, the District should not forego its ability to conduct a meeting with remote participation simply because its Trustees are elected.

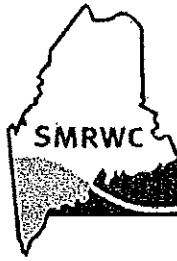
The amendment to the bill proposes a referendum in order to ratify a remote participation policy. The District serves ten member communities and one non-member. Presumably the amendment would require a referendum in all ten communities. What is not clear is whether the referendum must pass by a plurality of the votes in each municipality, or whether a plurality of the voters in the combined ten municipalities is sufficient. In any event, the cost of such a referendum in ten communities could be substantial and the effort to coordinate such a referendum difficult. Our Trustees vote on water rate changes, authorize bond indebtedness, and conduct the District's business without public referendum. Surely our Trustees could be trusted to enact a reasonable policy, after public hearing, for the remote participation of members without the need for a referendum.

Technology has made the conduct of the public's business much easier, and allows opportunity for public participation in ways never contemplated before. We suggest that the bill and amendment before you do not recognize these improvements in technology and their ability to make the conduct of the public's business more efficient, and urge you to reject this bill and its amendment. We would welcome legislation or further changes to this bill and its amendment that would make remote meetings available to elected officials such as our Trustees upon their adoption of a suitable policy.

Thank you for your consideration.



Donna M. Katsiaficas
Corporate Counsel



Southern Maine Regional Water Council

February 12, 2016

Honorable Senator David Burns, Senate Chair
Honorable Representative Barry Hobbins, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

RE: LD 1586 Remote Participation in Public Proceedings

Dear Senator Burns and Representative Hobbins:

The Southern Maine Regional Water Council (SMRWC) urges you to oppose LD 1586. This legislation seeks to prohibit elected officials, including water district Trustees, from remotely participating in a meeting. For Maine's many quasi-municipal water utilities, this bill presents a solution where there has been no problem. Such legislation is often wrought with unintended consequences, which are clearly apparent in this bill.

Some SMRWC members have used remote participation to enable elected Trustees to participate in meetings for over 20 years. Meeting materials are sent to the Trustee in advance, either through postal mail or email. The remotely attending Trustee is capable of fully participating in all discussions and debates that occur via a conference phone. None of our members can recall any issues that have arisen at any time due to remote participation.

Our member-utility Trustees are elected by voters to represent the ratepayers of the water system. SMRWC feels that prohibiting a time tested method of participation, which has proven both effective and at times necessary, would infringe on an elected Trustee's duty to provide such representation to constituents. Many water utilities only have three Trustees. Preventing participation of even one has a significant impact on ratepayer representation. Also, many of our Trustees are retired and may travel to warmer areas during some of the winter months. Passage of LD 1586 would make it challenging, if not impossible to physically gather a quorum; possibly preventing important business from taking place. SMRWC also does not agree with the distinction the bill makes between appointed and elected boards. We believe that remote participation is a reasonable accommodation and tool to provide elected officials. It enables better participation and thereby better constituent representation. Please report out LD 1586 Ought Not to Pass.

Sincerely,

Normand Labbe, President

Boothbay Region

Water District

PO Box 520, Boothbay, ME 04537 207-633-4723 Fax 207-633-7921

24 February 2016

From: General Manager
To: Judiciary Committee

Subj: Boothbay Region Water District Testimony in Opposition to LD 1586 *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings*

AGAINST

My name is Jonathan Ziegler and I am the General Manager of the Boothbay Region Water District and I am representing my duly elected board of trustees. In addition I am also representing the 5 Rivers Regional Water Council, composed of the Bath Water District, Brunswick Topsham Water District, Wiscasset Water District, Great Salt Bay Sanitary District, Richmond Utility District, Bowdoinham Water District and the Boothbay Region Water District. Both organizations are urging the committee vote Ought Not to Pass on LD 1586.

The Boothbay Region Water District's service area encompasses the towns of Boothbay, Boothbay Harbor and Southport of which the town of Boothbay Harbor median age is 59 – years old. Many of Boothbay Harbor's well-seasoned citizenry are retired professionals with a lifetime of experience and an eager willingness to serve in elected positions. Many organizations within Maine have actively encouraged seniors to refocus, utilize their rich life experience through a myriad of senior initiatives to great success. I for one am very appreciative and an unintended beneficiary of that effort.

Since the inception of the Boothbay Region Water District at any given time the governing elected board has never had less than forty-percent of its members either retired or well into second careers and for many years has been comprised exclusively of retirees. It is my experience that retirees bring much to the table and is a leading factor as to why the Boothbay Region Water District is considered to be among the best water districts in Maine.

Even though the summers along the mid-coast are idyllic, the winters are often cold, bleak and unforgiving. As expected many of the regions resident seniors pack up and head for warmer climates during the harsh winter months. Even with this annual migration, through readily available technology, many stay fully connected with their hometown and continue to remotely serve with great distinction.

The last three-governors, and independent, democrat and republican, have championed revolutionizing and improving technological communication capabilities in Maine and the legislature has followed suit. It is now commonplace in Maine to have access to high-speed, high-definition, high-capacity communication at a reasonable expense.


Because it is currently legal, for nearly a decade during the winter months the Boothbay Region Water District has had at least one trustee remotely access the regular trustee meetings. During this time the public has been well served. With the aid of high speed fiber optic cable, Skype and other free software, the public has been able to see and speak with the trustee who is accessing the meeting remotely and vice-versa. In the grand scheme the technology is cheap, readily available and very dependable. This makes the prohibition of elected bodies having members access and participate remotely as outlined in this legislation all the more absurd.

There is no problem here, the system actually works, and works well. Why is the legislature pushing legislation that will effectively disenfranchise many of Maine's senior citizens or those with physical disabilities which make attending public meetings in person sometimes difficult or impossible, but otherwise are more than capable to serve through the plethora of technology that exists to make it so? This does not make sense!

As was offered last year during my testimony objecting to a similar legislative initiative, on behalf of the board of trustees I would like to extend an invitation each committee member to the next regularly scheduled board of trustee meeting on March 8, 2016 at 6:00 pm. at the district offices located at 184 Adams Pond Road, Boothbay so that you can see for yourselves how effectively an excellent board of elected officials operates with a member remotely accessing.

The elected board of trustees of the Boothbay Region Water District representing the towns of Boothbay, Boothbay Harbor and Southport strongly urge the committee to vote Ought Not to Pass on LD 1586 *An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings.*

Thank you,



Jonathan E. Ziegler
General Manager



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Mark A. Vannoy
CHAIRMAN

Harry Lanphear
ADMINISTRATIVE DIRECTOR

Carlisle J. T. McLean
R. Bruce Williamson
COMMISSIONERS

February 24, 2016

Honorable David C. Burns, Senate Chair
Honorable Barry J. Hobbins, House Chair
Judiciary Committee
100 State House Station
Augusta, Maine 04333

**Re: LD 1586, An Act To Implement Recommendations of the Right To Know
Advisory Committee Concerning Remote Participation in Public
Proceedings**

Dear Senator Burns and Representative Hobbins:

The Public Utilities Commission (Commission) testifies neither for nor against LD 1586, An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings. The bill would allow members of a body subject to Maine's Freedom of Access Act (FOAA) to participate in public proceedings via remote access technology under certain conditions.

The Commission's Adjudicatory Proceedings

Much of the Commission's work occurs in adjudicatory or quasi-adjudicatory proceedings. Like a court, the Commission adjudicates cases, takes testimony, subpoenas witnesses and records, issues decisions and orders and holds public and evidentiary hearings. The Commission acts on hundreds of cases and rulemakings each year. Cases are the subject of sometimes voluminous prefiled testimony and adjudicatory hearings in front of the Commissioners and staff. The proceedings are very similar to litigation in a court case and are governed by the Administrative Procedures Act and the Commission's Rules of Practice and Procedure (Chapter 110 of the Commission's rules).

Much of the testimony and evidence relied upon by the Commission is presented in technical conferences and evidentiary hearings presided over by a Hearing Examiner (a Commission attorney). The Hearing Examiner makes rulings during these conferences and hearings as a judge would. Each Commissioner reviews the record in each case prior to deciding the case at its public deliberations.

3-c-1

NEITHER
FOR NOR
AGAINST

The Commission addresses approximately 400 cases annually. Due to the large volume of cases, there are occasions where technical and/or evidentiary hearings are held simultaneously making it impossible for Commissioners to attend all such hearings. All three Commissioners typically do attend both rulemaking hearings and evidentiary hearings in adjudicatory cases. Some adjudicatory cases, such as rate cases, may take up to nine months (statutory deadline for a decision) and include many hearings and conferences of the parties to the case.

The Commission's three Commissioners typically deliberate and vote on cases once a week. Deliberations are open to the public, but only the Commissioners and Commission staff, if asked a question, participate at deliberations. Again, like a court, the Commissioners each state their position on the case and vote. Parties to the case and the public are not permitted to participate. However, parties have participated in the proceeding leading up to the decision (which includes testimony, discovery, technical conferences, evidentiary hearings, briefs and reply briefs, a staff recommendation referred to as an Examiner's Report and written comments on the Examiner's Report).

Notice of the Commission's deliberative sessions is posted on the Commission's website and all parties and interested persons to cases to be deliberated are notified of the deliberation the week before. The Commission broadcasts its deliberations over the internet (both video and audio) and they are also recorded and archived on our website so anyone interested can watch and listen to the deliberations as, or after, they occur.

Commission Statutes and Policies

Title 35-A M.R.S. § 108-A, of the Commission's governing statutes, establishes that a quorum of two of three Commissioners is necessary for the Commission to act. In rare circumstances, a Commissioner may need to call into its public deliberations, typically due to weather or attendance at a regional utility meeting. The Commission's telebridge is connected to the sound system in our hearing room so anyone participating by phone can be heard in the room and clearly recorded. As noted below, in these rare cases, a Commissioner participating remotely has all relevant documents related to cases being deliberated. In addition to Commission deliberations, it also could be necessary for two Commissioners to call into an evidentiary hearing or other meeting which meets Maine's FOAA definition of public meeting.

The Commission has a policy, adopted in July of 2013, for Commissioner participation in hearings and deliberations remotely by telephonic, video, electronic or other similar means. Specifically, the policy provides that one or more Commissioners may participate in deliberations remotely if the following requirements are met:

- 1) Notice of the deliberations has been provided pursuant to 1 M.R.S. § 406 and 35-A M.R.S. § 108-A;
- 2) The Commission's sound system is operating in a manner that allows all Commissioners to hear and speak to each other during the deliberations;
- 3) The Commission's sound system is operating in a manner that allows persons attending deliberations to hear all Commissioners participating in the deliberations; and

- 4) Any Commissioner participating remotely has all documents or materials to be discussed at the deliberations.

The policy provides that if these requirements have been met, the deliberations and any votes that take place will be treated in the same manner as if the Commissioner was attending in person. With respect to hearings presided over by Hearing Examiners, the policy provides that a Commissioner may participate in hearings remotely and that participating in a hearing remotely is the same as if the Commissioner was attending in person.

Legislative Background:

Last session the Commission submitted LD 448, An Act Regarding the Use of Remote-access Technology at Public Meetings of the Public Utilities Commission for the Legislature's consideration. A public hearing was held on the bill in the Judiciary Committee on April 1, 2015 and on April 9 the Committee voted ought not to pass on the bill intending to address the issue raised by LD 448 when it considered LD 1241, An Act to Increase Government Efficiency. The Commission testified on LD 1241 and prior bills dealing with the use of remote access technology by State agencies.

As the Committee is aware, some State agencies have language regarding the ability to use remote-access technology to conduct meetings in their governing statutes. For example, the Workers Compensation Board's statutes provide that the Board shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology¹ and the Emergency Medical Services' Board's statutes provide that the board may use video conferencing and other technologies to conduct its business.² LD 448 would have added similar language to the Commission's governing statutes.

LD 1586

Section 403-A(1) would allow members of a body subject to FOAA to participate in meetings through telephonic, video electronic or other similar means of communications under certain conditions. The body must have adopted a written policy authorizing remote participation with criteria that must be met before a member may participate remotely, but the policy may not allow a member to participate remotely in an executive session. As noted above, the Commission has a policy regarding the use of remote participation.

Section 403-A (1) would also require that a quorum of the body must be physically present unless an emergency has been declared (e.g., disasters or a public health epidemic) and the proceeding is necessary to address the emergency. With respect to the Commission's public deliberations of cases, we understand this language to mean that a Commissioner could participate and vote on cases remotely provided there is a quorum of the other two Commissioners physically present at deliberations. We note that the Commission already meets the majority of the other requirements for remote participation in LD 1586 (notice of the proceeding, each Commissioner is able to hear and speak with other Commissioners and members of the public in attendance are able to hear the Commissioners participating

¹ 39-A M.R.S. § 151(5).

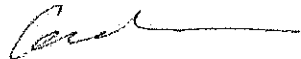
² 32 M.R.S. § 88(1)(D).

remotely, documents discussed at the proceeding must have been received by or transmitted to members participating remotely and all votes must be taken by roll call vote). The final requirement, that a Commissioner participating remotely must identify anyone else present at their location can easily be added to the Commission's procedure.

Section 403-A (2) can be interpreted in two different ways. Both of these interpretations are of concern to the Commission. First, the language can be read to prevent a Commissioner that is participating remotely in a deliberative session from actually voting on the matters before the Commission. If this is a correct interpretation, then, in effect, a Commissioner would not be able to participate in a deliberative session remotely. Second, the language can be read to mean that a Commissioner who is not physically present at an evidentiary hearing in a case cannot vote on evidence presented at that hearing at a future deliberative session. If this is a correct reading of the language, then Commissioners would have to attend in person every session in every proceeding in which potential evidence may be presented. As discussed above, the Commission's Hearing Examiners preside over these hearings and typically rule on evidentiary issues. If this language means that a Commissioner who heard evidence remotely could not ultimately vote on the issues of the case issue several months later, than essentially a requirement would be created that all Commissioners attend all of these sessions. This would have a serious impact on the Commission's ability to process cases in a timely manner and to meet its statutory deadlines for processing cases.

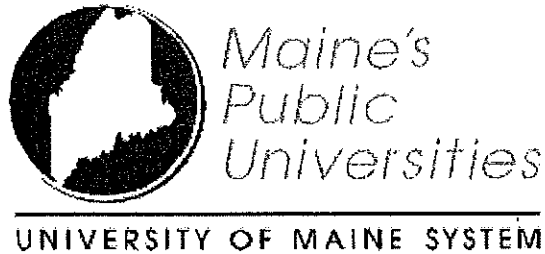
The Commission looks forward to working with the Committee on LD 1586 and I would be happy to respond to any questions the Committee has at this time. The Commission will also be present at the work session should the Committee have any additional questions in its consideration of this bill.

Sincerely,



Carlisle J. T. McLean
Commissioner

cc: Judiciary Committee Members
Energy, Utilities and Technology Committee Members
Margaret Reincsh, Legislative Analyst
Deirdre Schneider, Legislative Analyst



Testimony of the University of Maine System

LD 1586, An Act to Implement the Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Meetings

February 24, 2016

Senator Burns, Representative Hobbins, and Members of the Joint Standing Committee on Judiciary. I am Alison Sucey, Assistant Director of Government Relations for the University of Maine System. I am here today to testify neither for nor against LD 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Meetings.

The University of Maine System fully supports the public's right to participate in Board of Trustees meetings, whether full board meetings or committee meetings. We already have policies reflective of many of those outlined in LD 1586 regarding meetings conducted through telephonic, video, electronic or other similar means of communication.

Our major concern is the physical presence requirement in Part A, Section 403-A(1)(C). We have related concerns about the annual physical presence requirement in Section 403-A(3) and the executive session physical presence requirement in Section 403-A(1)(A).

Section 403-A(1)(C)

The Bylaws of the System require that the Board must meet a minimum of once a quarter. Currently the Board is meeting 6 times a year. In addition, we have 6 standing committees that meet regularly.

Our 16 Board members come from all corners of the state. While a physical presence at our Board meetings is generally the norm, requiring a quorum to be physically at the location of all standing committee meetings would be extremely challenging. It would be nearly impossible to carry out the current level of Board engagement with a physical presence requirement due to the number of committee meetings and the time and travel commitments necessary.

We have adopted policies for quorums and physical presence at meetings. Our bylaws for standing committees and quorum requirements of full Board meetings are as follows:

3.1(h) Standing Committees Committee meetings held at time other than a regular meeting of the Board may be conducted using interactive technology and all members participating by such technology shall be considered as present, count towards the quorum, and are eligible to vote provided there is a physical location designated as the meeting site for inclusion of the public and that each Trustee must be able to clearly see or hear and understand the proceedings in process and the public is able to see or hear the Trustees participating by interactive technology.

4.6 Quorum A Trustee who cannot be in physical attendance may participate and vote by telephone, Polycom, or other similar interactive technology where the Chair has determined on the record that the physical presence of the non-attending Trustee is prevented by an exceptional occasion which makes it inadvisable or impossible to attend the meeting. The presence of the non-attending Trustee in this manner shall be counted towards a quorum. In order to exercise this option the Trustee must be able to clearly hear and understand the proceedings in process and the public must be able to hear clearly the non-attending Trustee.

We believe that the language adopted by our Trustees strikes the right balance between the public's right to have full access to all UMS Board, committee and sub-committee meetings and the unique challenges of scheduling regular meetings with Trustees scattered in all corners of Maine. To that end, we ask that you consider removing the physical presence requirement in Part A, Section 403-A(1)(C).

Section 403-A(3)

Relatedly, we are concerned that a perhaps unintended consequence of proposed Section 403-A(3)—which would require all members of a public body to physically assemble in the same location at least once annually—will have the unintended effect of denying a member the ability to participate in the meeting at all if he or she is unable, through no fault of his or her own, to travel to the designated meeting location on the designated day. While we routinely have full Board meetings with no members participating remotely, there cannot be a guarantee that all Board members will be able to travel to a particular meeting set as the “in presence” annual meeting called for by this provision. We would thus encourage that this provision be an aspirational goal but not a legal mandate.

Section 403-A(1)(A)

Finally, Section 403-A(1)(A) would apparently bar a Board or committee member from participating in an otherwise lawful executive session simply because he or she was participating remotely. Currently, the University System permits members who are unable to travel to the physical meeting location to participate fully in executive session, if one is called under 1 MRSA Section 405, just as they are permitted to participate in the public portion of the meeting.

Given the important subjects that Maine's Freedom of Access Act authorizes members of a public body to properly discuss in executive session—legal or labor relations matters, for example—we urge you to permit a member who is lawfully able to remotely participate in the public portion of a meeting to equally participate in a lawful executive session of that meeting.

Thank you for the opportunity to testify and for considering our concerns.



Maine Community College System

OFFICE OF THE PRESIDENT

323 State Street, Augusta, ME 04330-7131
(207) 629-4000 | Fax (207) 629-4048 | mccs.me.edu

February 24, 2016

The Honorable Senator Burns, Chair
The Honorable Representative Hobbins, Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

RE: LD 1586, *An Act To Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings*

Dear Chairs Burns and Hobbins and Members of the Committee:

This letter addresses LD 1586, An Act to Implement Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings. The Maine Community College System (MCCS) requests consideration of the following.

State law requires that the MCCS Board of Trustees attempt to “achieve statewide geographical representation.” *20-A MRS 12705(2)*. And the MCCS Board has such representation, with members from Lebanon and Kennebunk to Calais to Fort Fairfield.

The Board is also required by law to hold at least six regular meetings per year. *20-A MRS 12705(2)*. Notice of these meetings is given in advance, and these meeting are always “open to the press and the public, except by vote of the Board for discussion of those matters which are permitted by law to be discussed in executive session.” *MCCS Bylaw 4.6*. These regular meetings are also always in person, and the Board’s Bylaws expressly state the preference that the members should attend in person: “A trustee who cannot be in physical attendance may participate and vote by telephone, Polycom, or other similar interactive technology” only if “the Chair determines that the trustee’s physical presence is prevented by an exceptional circumstance which makes it inadvisable or impossible to so participate.” *MCCS Bylaw 4.8*

When attendance at a regular meeting is not possible, or when there is a need for a special meeting of the Board or its Committees, our rules provide that the Board “may meet by use of interactive technology provided that there is a physical location designated as the meeting site for inclusion of the public; that each trustee can see or hear and understand the proceedings in process; and provided further that the public is able to see or hear the trustees participating by interactive technology. All Board members participating by such technology shall be considered present, counted for the quorum and eligible to vote.” *MCCS Bylaw 4.5*.

Central Maine
Community College
Auburn
cmcc.edu

Eastern Maine
Community College
Bangor
emcc.edu

Kennebec Valley
Community College
Fairfield/Hinckley
kvcc.me.edu

Northern Maine
Community College
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nmcc.edu

Southern Maine
Community College
South Portland/
Brunswick
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Washington County
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Calais
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York County
Community College
Wells
yccc.edu

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Requests
Exemption

Joint Standing Committee on Judiciary
February 24, 2016
Page Two

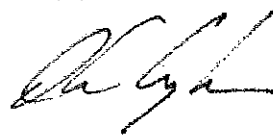
The above approach works very well; it enables MCCS to meet its fiduciary obligation to make thoughtful and timely decisions, and to do so in compliance with Maine's Freedom of Access Act

Part A, section 1, paragraph A of this bill would prohibit a member of a board who is not physically present to participate in an executive session. This prohibition would seriously hinder the MCCS Board of Trustees' ability to conduct business. Board items that are discussed in executive session are often items that are time sensitive in nature and require thoughtful and prompt action. MCCS' ability to conduct meetings in executive session through remote means ensures timely action on key matters all the while respecting the geographical, professional, and personal constraints of our board members who may not always be able to drive 4-5 hours for what would amount to a half hour long meeting.

Because our Board is truly a statewide entity, MCCS requests being exempt from the requirements of this bill, just as other statewide boards such as the Finance Authority of Maine are exempt.

Thank you for your consideration. As always, I am available should you have any questions or would like to discuss this matter further.

Truly yours,



Derek P. Langhauser
Interim President and General Counsel
Maine Community College System

to prior notice of the intent to discuss official business must meet the requirements of the Open Meetings Laws.

La. Atty. Gen. Op. No. 84-0395: A "public body" includes any committee or subcommittee of a city governing authority, and the fact that a committee cannot make a final decision on a matter does not remove meetings of that committee from the ambit of the open meetings requirements. It was found, "In conclusion, a working committee of a municipality constitutes a public body when it meets to discuss matters over which it has authority or advisory power, even if the committee takes no binding action."

La. R.S. 42:14 **Meetings of public bodies to be open to the public**

A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, R.S. 42:17, or R.S. 42:18.

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of R.S. 42:12 through R.S. 42:23.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules, regulations, and restrictions regarding such comment period.

La. Atty. Gen. Op. No. 13-0221: The mayor of a Lawrason Act municipality has the authority to control which items appear on the agenda for a meeting of the municipality. This authority may be delegated to a municipal officer or employee as the mayor deems necessary and advisable. The public comment period at a meeting of a public body must occur at the beginning of the meeting, prior to action on an agenda item upon which a vote is to be taken.

La. R.S. 42:15 **School board meetings; public comment**

A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.

B. The Orleans Parish School Board, at any meeting of the school board, shall provide an opportunity for public comment subject to reasonable rules, regulations, and restrictions as adopted by the school board.

C. For purposes of this Section, a comment period for all comments at the beginning of a meeting shall not suffice to meet the requirements of Subsection A or Subsection B of this Section.

121.22 Public meetings - exceptions.

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness, an intellectual disability, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in section 149.011 of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

(1) A grand jury;

(2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;

5-6-2

Part I	ADMINISTRATION OF THE GOVERNMENT
Title III	LAWS RELATING TO STATE OFFICERS
Chapter 30A	STATE ADMINISTRATIVE PROCEDURE
Section 20	MEETINGS OF A PUBLIC BODY TO BE OPEN TO THE PUBLIC; NOTICE OF MEETING; REMOTE PARTICIPATION; RECORDING AND TRANSMISSION OF MEETING; REMOVAL OF PERSONS FOR DISRUPTION OF PROCEEDINGS; OFFICE HOLDERS TO CERTIFY RECEIPT OF OPEN MEETING LAW AND EDUCATIONAL MATERIALS

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within the district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in the places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website under the procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division in the state secretary's office.

The attorney general may prescribe or approve alternative methods of notice where the attorney general determines the alternative methods will afford more effective notice to the public.

(d) The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided further, that a quorum of the body, including the chair, are present at the meeting location. The authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

[Subsection (e) effective until July 1, 2015. For text effective July 1, 2015, see below.]

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(e) A local commission on disability may by majority vote of the commissioners at a regular meeting permit remote participation applicable to a specific meeting or generally to all of the commission's meetings; provided, however, that the commission shall comply with all other requirements of law and regulation.

[Subsection (e) as amended by 2015, 46, Sec. 52 effective July 1, 2015. See 2015, 46, Sec. 216. For text effective until July 1, 2015, see above.]

(e) A local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(f) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting, the chair shall inform other attendees of any recordings.

(g) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(h) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated under section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application under section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

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940 CMR: OFFICE OF THE ATTORNEY GENERAL

940 CMR 29.00: OPEN MEETINGS

Section

29.01: Purpose, Scope and Other General Provisions

29.02: Definitions

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29.05: Complaints

29.06: Investigation

29.07: Resolution

29.08: Advisory Opinions

29.09: Other Enforcement Actions

29.10: Remote Participation

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29.01: Purpose, Scope and Other General Provisions

(1) Purpose. The purpose of 940 CMR 29.00 is to interpret, enforce and effectuate the purposes of the Open Meeting Law, M.G.L. c. 30A, §§ 18 through 25.

(2) Severability. If any provision of 940 CMR 29.00 or the application of such provision to any person, public body, or circumstances shall be held invalid, the validity of the remainder of 940 CMR 29.00 and the applicability of such provision to other persons, public bodies, or circumstances shall not be affected thereby.

(3) Mailing. All complaints, notices (except meeting notices), and other materials that must be sent to another party shall be sent by one of the following means: first class mail, email, hand delivery, or by any other means at least as expeditious as first class mail.

29.02: Definitions

As used in 940 CMR 29.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

County Public Body means a public body created by county government with jurisdiction that comprises a single county.

District Public Body means a public body with jurisdiction that extends to two or more municipalities.

Emergency means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, §§ 18 through 25. Evidence of an intentional violation of M.G.L. c. 30A, §§ 18 through 25 shall include, but not be limited to, that the public body or public body member: (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, §§ 18 through 25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements, such conduct will not be considered an intentional violation of M.G.L. c. 30A, §§ 18 through 25.

Person means all individuals and entities, including governmental officials and employees. Person does not include public bodies.

Post Notice means to place a written announcement of a meeting on a bulletin board, electronic display, website, or in a loose-leaf binder in a manner conspicuously visible to the public, including persons with disabilities, at all hours, in accordance with 940 CMR 29.03.

Public Body has the identical meaning as set forth in M.G.L. c. 30A, § 18, that is, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that "public body" shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

Qualification for Office means the election or appointment of a person to a public body and the taking of the oath of office, where required, and shall include qualification for a second or any subsequent term of office. Where no term of office for a member of a public body is specified, the member shall be deemed to be qualified for office on a biennial basis following appointment or election to office.

Regional Public Body means a public body with jurisdiction that extends to two or more municipalities.

Remote Participation means participation by a member of a public body during a meeting of that public body where the member is not physically present at the meeting location.

29.03: Notice Posting Requirements

(f) that minutes, records or other materials be made public; or

(g) other appropriate action.

Orders issued following a hearing shall be available on the Attorney General's website.

(4) A public body subject to an order of the Attorney General following a written determination issued pursuant to 940 CMR 29.07 shall notify the Attorney General in writing of its compliance with the order within 30 days of receipt of the order, unless otherwise indicated by the order itself. A public body need not notify the Attorney General of its compliance with an order requiring solely immediate and future compliance pursuant to 940 CMR 29.07(2)(b)(1) or 940 CMR 29.07(3)(a).

(5) A public body or any member of a body aggrieved by any order issued by the Attorney General under 940 CMR 29.07 may obtain judicial review of the order through an action in Superior Court seeking relief in the nature of certiorari. Any such action must be commenced in Superior Court within 21 days of receipt of the order.

29.08: Advisory Opinions

The Attorney General will generally not issue advisory opinions. However, the Attorney General may issue written guidance to address common requests for interpretation. Such written guidance will appear on the Attorney General's website.

29.09: Other Enforcement Actions

Nothing in 940 CMR 29.06 or 29.07 shall limit the Attorney General's authority to file a civil action to enforce M.G.L. c. 30A, §§ 18 through 25, pursuant to M.G.L. c. 30A, § 23(f).

29.10: Remote Participation

(1) Preamble. Remote participation may be permitted subject to the following procedures and restrictions. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. By promulgating 940 CMR 29.10, the Attorney General hopes to promote greater participation in government. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the M.G.L. c. 30A, §§ 18 through 25, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

(2) Adoption of Remote Participation. Remote participation in meetings of public bodies is not permitted unless the practice has been adopted as follows:

(a) Local Public Bodies. The Chief Executive Officer, as defined in M.G.L. c. 4, § 7, must authorize or, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that authorization or vote applying to all subsequent meetings of all local public bodies in that municipality.

(b) Regional or District Public Bodies. The regional or district public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(c) Regional School Districts. The regional school district committee must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(d) County Public Bodies. The county commissioners must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of all county public bodies in that county.

(e) State Public Bodies. The state public body must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(f) Retirement Boards. A retirement board created pursuant to M.G.L. c. 32, § 20 or M.G.L. c. 34B, § 19 must, by a simple majority, vote to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees.

(g) Local Commissions on Disability. In accordance with M.G.L. c. 30A, § 20(e), a local commission on disability may by majority vote of the commissioners at a regular meeting authorize remote participation applicable to a specific meeting or generally to all of the commission's meetings. If a local commission on disability is authorized to utilize remote participation, a physical quorum of that commission's members shall not be required to be present at the meeting location; provided, however, that the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location. The commission shall comply with all other requirements of law.

(3) Revocation of Remote Participation. Any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) may revoke that adoption in the same manner.

(4) Minimum Requirements for Remote Participation.

(a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other, as required by M.G.L. c. 30A, § 20(d);

(b) A quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, § 20(d);

(c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, § 23D.

(5) Permissible Reason for Remote Participation. If remote participation has been adopted in accordance with 940 CMR 29.10(2), a member of a public body shall be permitted to participate remotely in a meeting, in accordance with the procedures described in 940 CMR 29.10(7), only if physical attendance would be unreasonably difficult.

(6) Technology.

(a) The following media are acceptable methods for remote participation. Remote participation by any other means is not permitted. Accommodations shall be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications.

i. telephone, internet, or satellite enabled audio or video conferencing;

ii. any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

(b) When video technology is in use, the remote participant shall be clearly visible to all persons present in the meeting location.

(c) The public body shall determine which of the acceptable methods may be used by its members.

(d) The chair or, in the chair's absence, the person chairing the meeting, may decide how to address technical difficulties that arise as a result of utilizing remote participation, but is encouraged, wherever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant's ability to hear or be heard clearly by all persons present at the meeting location. If technical difficulties result in a remote participant being disconnected from the meeting, that fact and the time at which the disconnection occurred shall be noted in the meeting minutes.

(e) The amount and source of payment for any costs associated with remote participation shall be determined by the applicable adopting entity identified in 940 CMR 29.10(2).

(7) Procedures for Remote Participation.

(a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or, in the chair's absence, the person chairing the meeting, of his or her desire to do so and the reason for and facts supporting his or her request.

(b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes.

(c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote.

(d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.

(e) When feasible, the chair or, in the chair's absence, the person chairing the meeting, shall distribute to remote participants, in advance of the meeting, copies of any documents or exhibits that he or she reasonably anticipates will be used during the meeting. If used during the meeting, such documents shall be part of the official record of the meeting, and shall be listed in the meeting minutes and retained in accordance with M.G.L. c. 30A, § 22.

(8) Further Restriction by Adopting Authority. 940 CMR 29.10 does not prohibit any person or entity with the authority to adopt remote participation pursuant to 940 CMR 29.10(2) from enacting policies, laws, rules or regulations that prohibit or further restrict the use of remote participation by public bodies within that person or entity's jurisdiction, provided those policies, laws, rules or regulations do not violate state or federal law.

(9) Remedy for Violation. If the Attorney General determines, after investigation, that 940 CMR 29.10 has been violated, the Attorney General may resolve the investigation by ordering the public body to temporarily or permanently discontinue its use of remote participation.

29.11: Meeting Minutes

(1) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes, in accordance with M.G.L. c. 30A, § 22(a).

(2) Minutes of all open and executive sessions shall be created and approved in a timely manner. A "timely manner" will generally be considered to be within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay. The Attorney General encourages public bodies to approve minutes at the next meeting whenever possible.

REGULATORY AUTHORITY 940 CMR 29.00: M.G.L. c. 30A, § 25(a) and (b).

Sec. 1-200. (Formerly Sec. 1-18a). Definitions. As used in this chapter, the following words and phrases shall have the following meanings, except where such terms are used in a context which clearly indicates the contrary:

(1) "Public agency" or "agency" means:

(A) Any executive, administrative or legislative office of the state or any political subdivision of the state and any state or town agency, any department, institution, bureau, board, commission, authority or official of the state or of any city, town, borough, municipal corporation, school district, regional district or other district or other political subdivision of the state, including any committee of, or created by, any such office, subdivision, agency, department, institution, bureau, board, commission, authority or official, and also includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, "judicial office" includes, but is not limited to, the Division of Public Defender Services;

(B) Any person to the extent such person is deemed to be the functional equivalent of a public agency pursuant to law; or

(C) Any "implementing agency", as defined in section 32-222.

(2) "Meeting" means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, whether in person or by means of electronic equipment, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power. "Meeting" does not include: Any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; a caucus of members of a single political party notwithstanding that such members also constitute a quorum of a public agency; an administrative or staff meeting of a single-member public agency; and communication limited to notice of meetings of any public agency or the agendas thereof. A quorum of the members of a public agency who are present at any event which has been noticed and conducted as a meeting of another public agency under the provisions of the Freedom of Information Act shall not be deemed to be holding a meeting of the public agency of which they are members as a result of their presence at such event.

(3) "Caucus" means (A) a convening or assembly of the enrolled members of a single political party who are members of a public agency within the state or a political subdivision, or (B) the members of a multimember public agency, which members constitute a majority of the membership of the agency, or the other members of the agency who constitute a minority of the membership of the agency, who register their intention to be considered a majority caucus or minority caucus, as the case may be, for the purposes of the Freedom of Information Act, provided (i) the registration is made with the office of the Secretary of the State for any such public agency of the state, in the office of the clerk of a political subdivision of the state for any public agency of a political subdivision of the state, or in the office of the clerk of each municipal member of any multitown district or agency, (ii) no member is registered in more than one caucus at any one time, (iii) no such member's registration is rescinded during the member's remaining term of office, and (iv) a member may remain a registered member of the majority caucus or minority caucus regardless of whether the member changes his or her party affiliation under chapter 143.

(4) "Person" means natural person, partnership, corporation, limited liability company, association or society.

(5) "Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

(6) "Executive sessions" means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation,

health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting; (B) strategy and negotiations with respect to pending claims or pending litigation to which the public agency or a member thereof, because of the member's conduct as a member of such agency, is a party until such litigation or claim has been finally adjudicated or otherwise settled; (C) matters concerning security strategy or the deployment of security personnel, or devices affecting public security; (D) discussion of the selection of a site or the lease, sale or purchase of real estate by the state or a political subdivision of the state when publicity regarding such site, lease, sale, purchase or construction would adversely impact the price of such site, lease, sale, purchase or construction until such time as all of the property has been acquired or all proceedings or transactions concerning same have been terminated or abandoned; and (E) discussion of any matter which would result in the disclosure of public records or the information contained therein described in subsection (b) of section 1-210.

(7) "Personnel search committee" means a body appointed by a public agency, whose sole purpose is to recommend to the appointing agency a candidate or candidates for an executive-level employment position. Members of a "personnel search committee" shall not be considered in determining whether there is a quorum of the appointing or any other public agency.

(8) "Pending claim" means a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

(9) "Pending litigation" means (A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

(10) "Freedom of Information Act" means this chapter.

(11) "Governmental function" means the administration or management of a program of a public agency, which program has been authorized by law to be administered or managed by a person, where (A) the person receives funding from the public agency for administering or managing the program, (B) the public agency is involved in or regulates to a significant extent such person's administration or management of the program, whether or not such involvement or regulation is direct, pervasive, continuous or day-to-day, and (C) the person participates in the formulation of governmental policies or decisions in connection with the administration or management of the program and such policies or decisions bind the public agency. "Governmental function" shall not include the mere provision of goods or services to a public agency without the delegated responsibility to administer or manage a program of a public agency.

(P.A. 75-342, S. 1; P.A. 77-421; 77-609, S. 1, 8; P.A. 83-67, S. 1; 83-372; P.A. 84-546, S. 3, 173; P.A. 87-568, S. 1, 2; P.A. 90-307, S. 2, 5; P.A. 91-140, S. 1, 3; P.A. 93-195, S. 1; P.A. 95-79, S. 2, 189; P.A. 97-47, S. 1; P.A. 00-136, S. 1; P.A. 01-169, S. 1; P.A. 02-130, S. 17; P.A. 11-220, S. 1; P.A. 13-263, S. 7.)

History: P.A. 77-421 deleted reference to court of common pleas, probate court and juvenile court in Subsec. (a); P.A. 77-609 redefined "meeting" and "executive sessions"; P.A. 83-67 amended Subsec. (a) by including any state, municipal or district authority within the meaning of "agency" or "public agency"; P.A. 83-372 included within the definition of "agency" or "public agency" any committee formed by a body previously defined as an agency or public agency; P.A. 84-546 included committees of authorities in definition of "public agency"; P.A. 87-568 excluded from definition of "meeting" any "meeting of a personnel search committee for executive level employment candidates" and added Subsec. (f), defining "personnel search committee"; P.A. 90-307 added Subsec. (g) re exception to meeting provisions; P.A. 91-140 inserted new Subsecs. (g) and (h), defining "pending claim" and "pending litigation", and relettered former Subsec. (g) as Subsec. (i); P.A. 93-195 inserted ", or created by," in definition of "public agency" or "agency" in Subsec. (a); P.A. 95-79 redefined "person" to include a limited liability company, effective May 31, 1995; P.A. 97-47 replaced alphabetic Subdiv. indicators with numbers, transferred quorum provisions (formerly Subdiv. (i)) to Subdiv. (2), defining "meeting", and

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:2

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

- (a) Strategy or negotiations with respect to collective bargaining;
- (b) Consultation with legal counsel;
- (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
- (d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

[Paragraph II effective until January 1, 2017; see also paragraph II set out below.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions, shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take

precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

[Paragraph II effective January 1, 2017; see also paragraph II set out above.]

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

The Vermont Statutes Online

Title 01 : General Provisions

Chapter 005 : Common Law; General Rights

Subchapter 002 : Public Information

(Cite as: 1 V.S.A. § 312)

§ 312. Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. No resolution, rule, regulation, appointment, or formal action shall be considered binding except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title. A meeting of a public body is subject to the public accommodation requirements of 9 V.S.A. chapter 139. A public body shall electronically record all public hearings held to provide a forum for public comment on a proposed rule, pursuant to 3 V.S.A. § 840. The public shall have access to copies of such electronic recordings as described in section 316 of this title.

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

- (i) identify himself or herself when the meeting is convened; and
- (ii) be able to hear the conduct of the meeting and be heard throughout the meeting.

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting. Minutes shall include at least the following minimal information:

- (A) all members of the public body present;
- (B) all other active participants in the meeting;
- (C) all motions, proposals, and resolutions made, offered, and considered, and what disposition is made of same; and
- (D) the results of any votes, with a record of the individual vote of each member if a roll call is taken.

(2) Minutes of all public meetings shall be matters of public record, shall be kept by the clerk or secretary of the public body, and shall be available for inspection by any person and for purchase of copies at cost upon request after five calendar days from the date of any meeting. Meeting minutes shall be posted no later than five calendar days from the date of the meeting to a website, if one exists, that the public body maintains or has designated as the official website of the body. Except for draft minutes that have been substituted with updated minutes, posted minutes shall not be removed from the website sooner than one year from the date of the meeting for which the minutes were taken.

(c)(1) The time and place of all regular meetings subject to this section shall be clearly designated by statute, charter, regulation, ordinance, bylaw, resolution, or other determining authority of the public body, and this information shall be available to any person upon request. The time and place of all public hearings and meetings scheduled by all Executive Branch State agencies, departments, boards, or commissions shall be available to the public as required under 3 V.S.A. § 2222(c).

(2) The time, place, and purpose of a special meeting subject to this section shall be publicly announced at least 24 hours before the meeting. Municipal public bodies shall post notices of special meetings in or near the municipal clerk's office and in at least two other designated public places in the municipality, at least 24 hours before the meeting. In addition, notice shall be given, either orally or in writing, to each member of the public body at least 24 hours before the meeting, except that a member may waive notice of a special meeting.

(3) Emergency meetings may be held without public announcement, without posting of notices, and without 24-hour notice to members, provided some public notice thereof is given as soon as possible before any such meeting. Emergency meetings may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

(4) Any adjourned meeting shall be considered a new meeting, unless the time and place for the adjourned meeting is announced before the meeting adjourns.

(5) A person may request in writing that a public body notify the person of special meetings of the public body. The request shall apply only to the calendar year in which it is made, unless made in December, in which case it shall apply also to the following year.

(d)(1) At least 48 hours prior to a regular meeting, and at least 24 hours prior to a special meeting, a meeting agenda shall be:

(A) posted to a website, if one exists, that the public body maintains or designates as the official website of the body; and

(B) in the case of a municipal public body, posted in or near the municipal office and in at least two other designated public places in the municipality.

(2) A meeting agenda shall be made available to a person prior to the meeting upon specific request.

(3)(A) Any addition to or deletion from the agenda shall be made as the first act of business at the meeting.

(B) Any other adjustment to the agenda may be made at any time during the meeting.

(e) Nothing in this section or in section 313 of this title shall be construed as extending to the Judicial Branch of the Government of Vermont or of any part of the same or to the Public Service Board; nor shall it extend to the deliberations of any public body in connection with a quasi-judicial proceeding; nor shall anything in this section be construed to require the making public of any proceedings, records, or acts which are specifically made confidential by the laws of the United States of America or of this State.

(f) A written decision issued by a public body in connection with a quasi-judicial proceeding need not be adopted at an open meeting if the decision will be a public record.

(g) The provisions of this subchapter shall not apply to site inspections for the purpose of assessing damage or making tax assessments or abatements, clerical work, or work assignments of staff or other personnel. Routine, day-to-day administrative matters that do not require action by the public body, may be conducted outside a duly warned meeting, provided that no money is appropriated, expended, or encumbered.

(h) At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting as long as order is maintained. Public comment shall be subject to reasonable rules established by the chairperson. This subsection shall not apply to quasi-judicial proceedings.

(i) Nothing in this section shall be construed to prohibit the Parole Board from meeting at correctional facilities with attendance at the meeting subject to rules regarding access and security established by the superintendent of the facility. (Amended 1973, No. 78, § 1, eff. April 23, 1973; 1979, No. 151 (Adj. Sess.), § 2; 1987, No. 256 (Adj. Sess.), § 2; 1997, No. 148 (Adj. Sess.), § 64, eff. April 29, 1998; 1999, No. 146 (Adj. Sess.), § 7; 2013, No. 143 (Adj. Sess.), § 2; 2015, No. 129 (Adj. Sess.), § 1, eff. May 24, 2016.)

TITLE 42

State Affairs and Government

CHAPTER 42-46

Open Meetings

SECTION 42-46-5

§ 42-46-5 Purposes for which meeting may be closed – Use of electronic communications – Judicial proceedings – Disruptive conduct.

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(1) Any discussions of the job performance, character, or physical or mental health of a person or persons provided that such person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.

Failure to provide such notification shall render any action taken against the person or persons affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any persons to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.

(3) Discussion regarding the matter of security including, but not limited to, the deployment of security personnel or devices.

(4) Any investigative proceedings regarding allegations of misconduct, either civil or criminal.

(5) Any discussions or considerations related to the acquisition or lease of real property for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.

(6) Any discussions related to or concerning a prospective business or industry locating in the state of Rhode Island when an open meeting would have a detrimental effect on the interest of the public.

(7) A matter related to the question of the investment of public funds where the premature disclosure would adversely affect the public interest. Public funds shall include any investment plan or matter related thereto, including, but not limited to, state lottery plans for new promotions.

(8) Any executive sessions of a local school committee exclusively for the purposes: (i) of conducting student disciplinary hearings; or (ii) of reviewing other matters which relate to the privacy of students and their records, including all hearings of the various juvenile hearing boards of any municipality; provided, however, that any affected student shall have been notified in advance in writing and advised that he or she may require that the discussion be held in an open meeting.

Failure to provide such notification shall render any action taken against the student or students affected null and void. Before going into a closed meeting pursuant to this subsection, the public body shall state for the record that any students to be discussed have been so notified and this statement shall be noted in the minutes of the meeting.

(9) Any hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.

(10) Any discussion of the personal finances of a prospective donor to a library.

~~(b)~~ No meeting of members of a public body or use of electronic communication, including telephonic communication and telephone conferencing, shall be used to circumvent the spirit or requirements of this chapter; provided, however, these meetings and discussions are not prohibited.

(1) Provided, further however, that discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting.

(2) Provided, further however, that a member of a public body may participate by use of electronic communication or telephone communication while on active duty in the armed services of the United States.

(3) Provided, further however, that a member of that public body, who has a disability as defined in chapter 87 of title 42 and:

(i) Cannot attend meetings of that public body solely by reason of his or her disability; and

(ii) Cannot otherwise participate in the meeting without the use of electronic communication or telephone communication as reasonable accommodation, may participate by use of electronic communication or telephone communication in accordance with the process below.

(4) The governor's commission on disabilities is authorized and directed to:

(i) Establish rules and regulations for determining whether a member of a public body is not otherwise able to participate in meetings of that public body without the use of electronic communication or telephone communication as a reasonable accommodation due to that member's disability;

(ii) Grant a waiver that allows a member to participate by electronic communication or telephone communication only if the member's disability would prevent him/her from being physically present at the meeting location, and the use of such communication is the only reasonable accommodation; and

(iii) Any waiver decisions shall be a matter of public record.

(c) This chapter shall not apply to proceedings of the judicial branch of state government or probate court or municipal court proceedings in any city or town.

(d) This chapter shall not prohibit the removal of any person who willfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.

History of Section.

(G.L. 1956, § 42-46-5; P.L. 1976, ch. 330, § 2; P.L. 1982, ch. 352, § 1; P.L. 1988, ch. 659, § 1; P.L. 1995, ch. 265, § 1; P.L. 1998, ch. 379, § 1; P.L. 2000, ch. 330, § 1; P.L. 2000, ch. 463, § 1; P.L. 2005, ch. 91, § 1; P.L. 2005, ch. 98, § 1; P.L. 2005, ch. 103, § 1; P.L. 2005, ch. 134, § 1; P.L. 2006, ch. 602, § 1; P.L. 2007, ch. 433, § 1.)



STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Mark A. Vannoy
CHAIRMAN

R. Bruce Williamson
COMMISSIONER

Harry Lanphear
ADMINISTRATIVE DIRECTOR

October 11, 2017

Right to Know Advisory Committee
13 State House Station
Augusta, ME 04333-0013

Re: Remote Participation

To the Right to Know Advisory Committee:

The Maine Public Utilities Commission (MPUC) has monitored the work of the Right to Know Advisory Committee including the meeting held on September 20, 2017. Based on this meeting, it appears that there may be some misunderstanding regarding the use and frequency of remote participation at the MPUC.

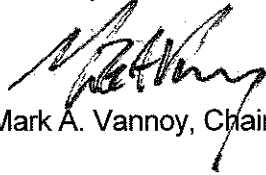
As the MPUC stated in testimony to the Judiciary Committee presented on April 1, 2015 and February 24, 2016, the MPUC has three full-time Commissioners and addresses approximately 400 cases annually. As required by law (35-A M.R.S. § 108-A), the Commission decides these cases through an open meeting referred to as "deliberations." Notice of MPUC deliberation sessions is posted on the MPUC website and parties and interested persons of specific cases receive direct notice a week before the session. In addition, the MPUC broadcasts its deliberations over the internet (both audio and video) and they are also recorded and archived on the MPUC website.

On vary rare occasions (twice in the last two years), a single Commissioner may call in for a deliberation session due to unique scheduling or special circumstances. In such an event, members of the public can fully hear and monitor the complete discussion among all the Commissioners.

This remote participation process has been reviewed by MPUC counsel who has advised that the process is lawful. However, because the MPUC was aware that some State agencies have specific language on the use of remote-access technology in their governing statutes and there was some general confusion regarding the legality of other State agencies deciding matters remotely, the MPUC submitted LD 448, An Act Regarding the Use of Remote-access Technology at Public Meetings of the Public Utilities Commission, to clarify the matter regarding its operations. The MPUC is not advocating for any particular policy outcome on this matter; however, the MPUC does believe that it would be useful for the Legislature to act to clarify the issue.

If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Vannoy". The signature is fluid and cursive, with the first name being the most prominent.

Mark A. Vannoy, Chairman

On behalf of the Chairman and
R. Bruce Williamson, Commissioner
Maine Public Utilities Commission

Distributed by 10/12/17
Linda Pistner to RTKAC

REMOTE PARTICIPATION ISSUES

1. Are all state and local agencies covered by the FOAA eligible for the remote participation option or should distinctions be drawn among them?
 - A. Based on the entity's function
 - B. Elected official members v. appointed members

2. Should the public served by a body have input or be required to approve a remote participation policy? Or is board/agency head written policy enough?

3. Possible conditions on permitting remote participation
 - A. Quorum at the meeting location
 - B. Voting only by those present
 - C. Limitations on reason for absence, for ex., illness/weather, or should these be left up to the entity to decide
 - D. Participation in executive sessions?
 - E. Participation in adjudicatory matters?
 - F. Access to materials available at the meeting
 - G. A/V requirements, such as visibility of the remote participant

4. Should there be an emergency exception to complying with the requirements if it is the business of the entity that creates the emergency (rather than the personal circumstances of the member)?

ADDENDUM

The bodies covered by FOAA, as listed in 1 MRS § 402(2), are:

- A. The Legislature and its committees and subcommittees;
- B. Any board or commission of any state agency or authority.

This expressly includes the Board of Trustees (and any of its committees and subcommittees) of the University of Maine System, the Maine Maritime Academy and the Maine Community College;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

F. Any advisory organization established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

- (1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and
- (2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

But only as to interscholastic sports and not including personnel issues, allegations of interscholastic athletic rule violations by participants.

RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, November 15, 2017

9:00 am

State House Room 438

Meeting Agenda

1. Welcome and introductions
2. Discussion of suggested changes to the Freedom of Access Act recommended for RTKAC consideration
 - a. Amend training provision to require municipal officials to complete training when appointed to offices for which training is required if elected (§412)
 - b. Amend penalty provision (§410)
3. Discussion of whether to comment on proposed recommendations of the Maine Judicial Branch Task Force on Transparency and Privacy in Court Records
4. Discussion of remote participation by members of public bodies; review of straw votes on elements of proposed legislation from LD 1586 and outline of issues
5. Discussion of access to records and personal information related to licensed professionals and state and local government employees
6. Opportunity for members of the Advisory Committee to raise other topics for potential discussion
7. Update on review of existing public records exceptions—submission of questionnaires by agencies
8. Outline of draft report
9. Adjourn

Next meeting:

- Subcommittee meeting to review existing public records exceptions at 1 pm today

RIGHT TO KNOW ADVISORY COMMITTEE
Wednesday, November 15, 2017

Summary of Remote Participation Discussion Topics

Summary of October 12, 2017 RTKAC meeting

1. A majority of members of the Advisory Committee supported:
 - a. Allowing remote participation based on the entity's function (12-0)
 - b. Allowing remote participation by elected officials (7-5)
 - c. Requiring a quorum to be present at the meeting location (11-1)
 - d. Allowing voting only by those physically present (9-2)
 - e. Prohibiting remote participation in executive sessions (9-3)
 - f. Prohibiting remote participation in adjudicatory matters (12-0)
 - g. Requiring remote participants to be able to access materials available at the meeting (9-3)

2. Remaining questions to consider:
 - a. Should the law establish certain reasons why a member is absent as a precondition to remote participation (such as illness or weather)?
 - b. Should the law require certain audio/visual requirements for the meeting? If so, what should those include?
 - c. Is clarity needed on whether an absent member may participate or vote in certain matters – i.e., is participation allowed in some instances where voting is not?
 - d. Should the public served by a body have input or be required to approve a remote participation policy?

Comparison of past bills resulting from recommendations of the RTKAC:

	LD 258 126th Legislature – 1R JUD: ONTP House & Senate: ONTP	LD 1586 127th Legislature – 2R JUD: ONTP/OTPA House & Senate: Accepted ONTP Report
Terms governing use of remote participation	A policy adopted by the body	A written policy adopted by the body
Which bodies may use remote participation	A body subject to FOAA	A body subject to FOAA, except a publicly elected body
Quorum requirements	A quorum must be physically present at the noticed meeting location, unless: an emergency has been declared, the meeting is necessary to address the emergency and the body otherwise complies with other requirements to the extent practicable	A quorum must be physically present at the noticed meeting location, unless: an emergency has been declared, the meeting is necessary to address the emergency and the body otherwise complies with other requirements to the extent practicable
Authorized means of remote participation	Through telephonic, video, electronic or other similar means of communication	Through telephonic, video, electronic or other similar means of communication
Reasons for public body member's physical absence	The adopted policy may establish circumstances under which a member may participate when not physically present	The adopted policy must establish criteria that must be met before a member may participate when not physically present
Voting	When a meeting includes remote members all votes must be taken by roll call; a member not physically present may participate in a quasi-judicial proceeding but may not vote on any issue concerning testimony or other evidence provided during the proceeding	When a meeting includes remote members all votes must be taken by roll call; a member not physically present may participate in a quasi-judicial proceeding but may not vote on any issue concerning testimony or other evidence provided during the proceeding
Executive sessions	The adopted policy may allow a member to participate remotely in an executive session	The adopted written policy may not allow a member to participate remotely in an executive session
Audio/visual requirements	Members of the body must be able to hear and speak to all other members; members of the public in the noticed meeting location must be able to hear all members participating from other locations. Members must receive documents and materials discussed at the proceeding prior to the meeting; materials made available at the meeting may be transmitted to members not present if the technology is available.	Members of the body must be able to hear and speak to all other members; members of the public in the noticed meeting location must be able to hear all members participating from other locations. Members must receive documents and materials discussed at the proceeding prior to the meeting; materials made available at the meeting may be transmitted to members not present if the technology is available.
Annual meeting	If a body conducts one or more meetings with members participating remotely, it must also hold at least one public meeting annually where no members participate remotely	If a body conducts one or more meetings with members participating remotely, it must also hold at least one public meeting annually where no members participate remotely

*Prepared by the Office of Policy and Legal Analysis for the Right to Know Advisory Committee
November 15, 2017*

Existing Maine law specifically allowing remote participation:

1. Workers Compensation Board (“The board . . . shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology.”). 39-A MRSA §151, sub-§5. PL 2003, c. 608, §9.
2. Finance Authority of Maine (When the chief executive officer of FAME determines there is an emergency requiring action on not more than 3 days’ notice, an emergency meeting may be conducted by telephone if: (1) the conference call is placed by ordinary commercial means at an appointed time; (2) FAME records the conference call and prepares minutes of the emergency meeting; (3) public notice is given in accordance with FOAA, including the time of the meeting and the location of a telephone with a speaker attachment that allows everyone participating in the meeting to be heard and understood and available for members of the public to hear the business conducted at the meeting.). 10 MRSA §971. PL 1995, c. 117, Pt. C, §1.
3. Emergency Medical Services’ Board (“The board may use video conferencing and other technologies to conduct its business but is not exempt from [FOAA].” The board and its staff may participate in meetings by video conferencing or telephone conferencing or similar equipment if all persons participating in the meeting can hear each other; such participation “constitutes presence” at the meeting.). 32 MRSA §88, sub-§1, ¶D. PL 1987, c. 273, §5.
4. Commission on Governmental Ethics and Election Practices (“The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties . . . and the commission’s office remains open for attendance.” Telephone meetings are permitted during the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of a complaint or to address procedural or logistical issues before a monthly meeting.). 21-A MRSA §1002, sub-§2. PL 2001, c. 470, §4.
5. Maine Governmental Facilities Authority (“The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public meeting . . . only if” each member can hear and speak to all other members and the public can hear the members, anyone present at the remote location is identified, the member’s attendance is not reasonably practical, and documents are available to the remote members. 4 MRSA §1602, sub-§3. PL 2015, c. 449.
6. Maine Health and Higher Education Facilities Authority (same as Maine Governmental Facilities Authority). 22 MRSA §2054, sub-§4. PL 2015, c. 449.
7. Maine State Housing Authority (same as Maine Governmental Facilities Authority). 30-A MRSA §4723, sub-§2, ¶B. PL 2015, c. 449.

8. Maine Municipal Bond Bank (same as Maine Governmental Facilities Authority). 30-A MRSA §5951, sub-§4. PL 2015, c. 449.

Examples of other states' laws allowing remote participation:

1. Massachusetts

The attorney general may, by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are **clearly audible** to each other; and provided further, that a **quorum** of the body, including the chair, are present at the meeting location. The authorized members **may vote** and shall not be deemed absent for the purposes of section 23D of chapter 39 [relating to presence when hearing testimony]. *See also* adopted regulations.

2. Connecticut

“Meeting” means any hearing or other proceeding of a public agency, any convening or assembly of a quorum of a multimember public agency, and any communication by or to a quorum of a multimember public agency, **whether in person or by means of electronic equipment**, to discuss or act upon a matter over which the public agency has supervision, control, jurisdiction or advisory power.”

3. New Hampshire

For the purpose of this chapter, a ‘meeting’ means the convening of a quorum of the membership of a public body . . . or the majority of the members of such public body if the rules of that body define ‘quorum’ as more than a majority of its members, **whether in person, by means of telephone or electronic communication**, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power.

A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

- (a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting **only when such attendance is not reasonably practical**. Any reason that such attendance is not reasonably practical **shall be stated in the minutes** of the meeting.

*Prepared by the Office of Policy and Legal Analysis for the Right to Know Advisory Committee
November 15, 2017*

(b) **Except in an emergency, a quorum of the public body shall be physically present** at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "**emergency**" means that **immediate action is imperative and the physical presence of a quorum is not reasonably practical** within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise **must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public** in attendance at the meeting's location. Any member participating in such fashion shall **identify the persons present** in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is **deemed to be present** at the meeting for purposes of voting. All votes taken during such a meeting shall be by **roll call vote**.

4. Vermont

(2) Participation in meetings through electronic or other means.

(A) As long as the requirements of this subchapter are met, one or more of the members of a public body may attend a regular, special, or emergency meeting by electronic or other means without being physically present at a designated meeting location.

(B) If one or more members attend a meeting by electronic or other means, such members **may fully participate in discussing the business of the public body and voting to take an action, but any vote of the public body that is not unanimous shall be taken by roll call**.

(C) Each member who attends a meeting without being physically present at a designated meeting location shall:

(i) identify himself or herself when the meeting is convened; and

(ii) **be able to hear the conduct of the meeting and be heard throughout the meeting.**

(D) If a quorum or more of the members of a public body attend a meeting without being physically present at a designated meeting location, the agenda required under subsection (d) of this section shall designate at least one physical location where a member of the public can attend and participate in the meeting. **At least one member of the public body, or at least one staff or designee of the public body, shall be physically present at each designated meeting location.**

RIGHT TO KNOW ADVISORY COMMITTEE

Wednesday, November 15, 2017

Summary of Freedom of Access Act Violations Provisions

1. \$500 fine for willful violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged. 1 MRSA § 410. (Unchanged since 1987, when a willful violation was changed from a Class E crime.)

2. Civil violations enforceable by Attorney General

The Law Court has held that “only the Attorney General or his [or her] representative may enforce the Freedom of Access Act by seeking the imposition of a fine pursuant to § 410.” *Scola v. Town of Sanford*, 1997 ME 119, ¶ 7, 695 A.2d 1194, 1195. In Maine, civil violations “are enforceable by the Attorney General, the Attorney General's representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the law.” 17-A MRSA § 4-B(1).

3. Attorney's fees

In the event that a request to inspect or copy a public record is denied or an action is illegally taken in an executive session, a substantially prevailing plaintiff in an appeal to the Superior Court may be awarded attorney's fees if the court determines the violation was committed in bad faith. 1 MRSA § 409. (Enacted in 2009.)

Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
*(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by
Board of Licensure in Medicine staff*

**CONFIDENTIALITY OF CERTAIN INFORMATION OF APPLICANT OR
LICENSEE IN POSSESSION OF THE BOARD**

The following provisions apply to records pertaining to an identifiable applicant or licensee collected and maintained by the board.

1. Contact address. An applicant or licensee shall provide the board with a current professional address and telephone number, and email address, which is the applicant or licensee's public contact address. In addition, an applicant or licensee shall provide the board with a current personal residence address and telephone number, and personal email address, which is the applicant or licensee's public contact address unless the applicant or licensee has provided a professional address.

2. Confidential information pertaining to applicant or licensee. Except for disclosures authorized in subsection 3, the following information is confidential and may not be disclosed:

- A. Personal residence address, unless it is the public contact address;
- B. Personal email address, unless it is the public contact email address;
- C. Personal telephone number, unless it is the public contact telephone number;
- D. Personal health information;
- E. Birth certificate or the equivalent;
- F. Marriage certificate or the equivalent;
- G. Divorce judgment or the equivalent;
- H. Passport information;
- I. Social security number or the equivalent;
- J. Photographs;
- K. College or medical school transcripts;
- L. National examination scores; and
- M. U.S. Drug Enforcement Administration Registration Number.

[N. Age;

O. Ancestry, ethnicity, genetic information, national origin, race or skin color;

P. Sex or sexual orientation as defined in Title 5, section 4553, subsection 9-C;

Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
*(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by
Board of Licensure in Medicine staff*

Q. Mental or physical disabilities;

R. Information pertaining to the creditworthiness of an applicant or licensee.]

3. Authorized disclosure. The information designated in subsection 2 regarding an applicant or licensee in the possession of the board is confidential, and may only be disclosed:

- A. To governmental licensing or disciplinary authorities or to any health care providers or healthcare entities located within or outside this State that are concerned with granting, limiting, denying, suspending or revoking a physician's employment or privileges not be disclosed without an order issued by a court of competent jurisdiction;
- B. To the Federation of State Medical Boards, the National Board of Osteopathic Medical Examiners, the National Council of State Boards of Nursing, the National Commission on Certification of Physician Assistants, the International Association of Medical Regulatory Authorities, the American Board of Medical Specialties or their successor organizations;
- C. To criminal justice agencies for use in a law enforcement investigation or criminal prosecution;
- D. In a disciplinary hearing before the licensing authority or in any subsequent trial or appeal of a licensing authority's action or order relating to such disciplinary hearing;
- E. Pursuant to an order of a court of competent jurisdiction;
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies;
- G. To employees designated by the commissioner of an agency of which a licensing authority is a part;
- H. To designated complaint officers or Board members of a licensing authority;
- I. By an employee or agent of the Board or by a complaint officer designated by the commissioner of the agency of which the licensing authority is a part, when, and to the extent, deemed necessary to facilitate an investigation; and
- J. To the person investigated and/or licensed by the licensing authority, on request. The commissioner of the agency of which the licensing authority is a part may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the commissioner determines that disclosure might prejudice the investigation. The authority of the commissioner to make such a determination may not be delegated.

Outline of Draft Proposal
Related to Personal Information about Licensed Professionals
*(based on 10/12 RTKAC discussion and proposed draft amendment to LD 1267 prepared by
Board of Licensure in Medicine staff*

4. Aggregate information. Nothing in this section prohibits the disclosure of information designated as confidential in subsection 2 if the information is disclosed in the aggregate and does not directly or indirectly identify an applicant or licensee.

Summary

This draft designates certain information pertaining to an applicant or licensee held by a licensing board as confidential. The draft permits the release of confidential information if the information is disclosed in the aggregate and does not directly or indirectly identify an applicant or licenses. The draft also authorizes the disclosure or confidential information about an applicant or licensee for specific purposes.

Outline of Draft Proposal
Related to Privacy of Personal Information
(based on suggestion made by Chris Parr at 10/12 RTKAC meeting)

____. 1 M RSA §434, sub-§2 is amended to read:

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained;
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;
- C. Whether federal law requires a record covered by the proposed exception to be confidential;
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;
- H. Whether the proposed exception is as narrowly tailored as possible; ~~and~~
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception; ~~and~~
- J. Whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government.

Summary

This draft proposes to add to the statutory criteria for review of proposed public records exceptions consideration of whether public disclosure of the record or information contributes significantly to public understanding of the operations or activities of government.

Maine Revised Statutes
Title 1: GENERAL PROVISIONS
Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

**§434. REVIEW OF PROPOSED EXCEPTIONS TO PUBLIC RECORDS;
ACCESSIBILITY OF PUBLIC RECORDS**

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

[2011, c. 320, Pt. D, §3 (AMD) .]

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

- A. Whether a record protected by the proposed exception needs to be collected and maintained; [2003, c. 709, §3 (NEW).]
- B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception; [2003, c. 709, §3 (NEW).]
- C. Whether federal law requires a record covered by the proposed exception to be confidential; [2003, c. 709, §3 (NEW).]
- D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW).]
- E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW).]
- F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW).]
- G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records; [2003, c. 709, §3 (NEW).]
- H. Whether the proposed exception is as narrowly tailored as possible; and [2003, c. 709, §3 (NEW).]
- I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception. [2003, c. 709, §3 (NEW).]

[2003, c. 709, §3 (NEW) .]

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

[2005, c. 631, §6 (NEW) .]

2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

[2011, c. 320, Pt. D, §3 (NEW) .]

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

[2011, c. 320, Pt. D, §3 (AMD) .]

SECTION HISTORY

2003, c. 709, §3 (NEW). 2005, c. 631, §6 (AMD). 2011, c. 320, Pt. D, §3 (AMD).

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**STATE OF MAINE
128th LEGISLATURE
SECOND REGULAR SESSION**

**Twelfth Annual Report
of the
Right to Know Advisory Committee**

January 2018

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EXECUTIVE SUMMARY

[to be added]

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I. INTRODUCTION

This is the twelfth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. Lisa Keim Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Christopher Babbidge	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
James Campbell	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House [appointed effective September 2017]</i>
Suzanne Goucher	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>
Stephanie Grinnell	<i>Representing newspapers and other press interests, appointed by the President of the Senate</i>
A.J. Higgins	<i>Representing broadcasting interests, appointed by the President of the Senate {resigned in October 2017}</i>
Richard LaHaye	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Mary-Anne LaMarte	<i>Representing school interests, appointed by the Governor</i>
Mary Ann Lynch	<i>Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court</i>
Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Paul Nicklas	<i>Representing municipal interests, appointed by the Governor</i>

Christopher Parr	<i>Representing state government interests, appointed by the Governor</i>
Linda Pistner	<i>Attorney General's designee</i>
Luke Rossignol	<i>Representing the public, appointed by the President of the Senate</i>
William Shorey	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Eric Stout	<i>A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor</i>
Vacant	<i>Representing the public, appointed by the Speaker of the House</i>

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- Examining inconsistencies in statutory language and proposing clarifying standard language; and
- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2017, the Advisory Committee met on September 6, September 20, October 12 and November 15. Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage, which can be found at www.maine.gov/legis/opa/righttoknow.htm. Agendas, meeting materials and summaries of the meetings are available on the webpage.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its twelfth annual report, the Advisory Committee has identified and summarized the following Maine Supreme Judicial Court decision related to freedom of access issues.

{summaries of recent decisions to be added}

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years, the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. In 2017, the Advisory Committee chose to appoint one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee's

focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions in Titles 1 to 7-A no later than 2019.

Rep. Babbidge, Ms. Grinnell, Mr. Nicklas, Mr. Parr, Mr. Rossignol and Mr. Stout serve as members of the subcommittee.

As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body.

{discussion and deliberations on exceptions made by Subcommittee at November 15th meeting to be added}

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held four committee meetings, which are summarized below.

Summary of September 6, 2017 meeting

[to be added]

Summary of September 20, 2017 meeting

[to be added]

Summary of October 12, 2017 meeting

[to be added]

Summary of November 15, 2017 meeting

[to be added]

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN ELEVENTH ANNUAL REPORT

The Right to Know Advisory Committee made two recommendations in its eleventh annual report. The legislative actions taken in 2017 as a result of those recommendations are summarized below.

Recommendation:	Action:
Communicate the Advisory Committee's interpretation of	The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee's belief that the exception "is not

<p>1 MRSA §402, sub-§3, ¶U, which relates to hazardous materials transported by rail, to the Joint Standing Committee on Judiciary and recommend that the Judiciary Committee draft a bill and hold a public hearing on that bill to elicit public input on public access concerns associated with passage of PL 2015, ch. 161, §3.</p>	<p>intended to prevent public access to summary or aggregate information about the transportation of hazardous materials by rail in the State . . . or to prohibit disclosure of information about spills or discharges of hazardous materials.” The Advisory Committee also recommended that the Judiciary Committee consider submitting a committee bill to allow additional input from stakeholders and further expressed concerns about the scope of the exception.</p> <p>The Judiciary Committee considered the Advisory Committee’s recommendation and felt a bill would be a good vehicle for raising potential issues with the law, but, after seeking input through its committee analyst, ultimately did not feel stakeholders could express concerns that would be helpful in drafting proposed legislation.</p>
<p>Recommendation: Communicate to the Joint Standing Committee on Judiciary guidelines for considering proposed legislation relating to the confidentiality of personal information about professional and occupational licensees and applicants.</p>	<p>Action: The Advisory Committee sent a letter to the Judiciary Committee expressing the Advisory Committee’s determination that a uniform policy on the confidentiality of licensed professionals’ contact information must balance the professionals’ privacy and safety interests with the public’s interest in determining a professional’s training and competency. The Advisory Committee recommended focusing on keeping categories of information confidential, such as personal contact information, unless personal contact information is the other way to identify the professional when the professional affirmatively opts to allow the information to be disclosed.</p> <p>In response, the Judiciary Committee considered two bills (LD 1267 and LD 1341) related to the confidentiality of professional licensing information. The Judiciary Committee has carried those bills over to any special or regular session of the 128th Legislature and has asked that the Advisory Committee provide input on resolution of the issues presented in those bills.</p>
<p>Recommendation: Communicate to the Joint Standing Committee on Health and Human Services potential concerns that the proposed rule of the Maine Center for Disease Control and Prevention appears to limit the scope of information available to the public about threats to public health, including communicable diseases.</p>	<p>Action: The Advisory Committee sent a letter to the Health and Human Services Committee about the Department of Health and Human Services proposed Data Release Rule, 10-144 CMR, ch. 175, which would have affected the release of certain data held by the Maine Center for Disease Control and Prevention. The Advisory Committee expressed concerns about the proposed rule’s limitation on the release of records.</p> <p>The Department of Health and Human Services rescinded the proposed rule.</p>
<p>Recommendation: Enact legislation to clarify</p>	<p>Action: The Legislature accepted the recommendation of the Advisory</p>

<p>that government entities may require advance payment before providing a public record to a requestor.</p>	<p>Committee and passed Public Law 2017, chapter 158, which enacted Title 1, section 408-A, subsection 8, paragraph F, and allows an agency or official having custody of a public record to require payment of all costs before the public record is provided to the requestor.</p>
<p>Recommendation: Continue without modification, amend or repeal certain existing public records exceptions enacted after 2004 and before 2013.</p>	<p>Action: The Legislature accepted most of the recommendation of the Advisory Committee and passed Public Law 2017, chapter 163, which amended Title 35-A, section 10106, subsection 1 to change the criteria for designation of records of the Efficiency Maine Trust as confidential, except that the Legislature did not accept the recommendation that the director of the Efficiency Maine Trust be allowed to determine which records contain information that would give a user a competitive advantage and instead kept that authority in the Efficiency Maine Trust Board. The Legislature accepted the recommendation of the Advisory Committee that a redundant public records exception for social security numbers be repealed.</p>
<p>Recommendation: Communicate with the Joint Standing Committee on Health and Human Services about potential repeal of the Mental Health Homicide, Suicide and Aggravated Assault Review Board.</p>	<p>Action: The Advisory Committee sent a letter to the Health and Human Services Committee notifying it of the apparent dormancy of the Mental Health Homicide, Suicide and Aggravated Assault Review Board, but asked the Committee to consider whether the Board should be revived or if the provision of law establishing the Board should be repealed. The Health and Human Services Committee drafted a bill to repeal this board and, after holding a public hearing on the bill, voted to repeal the Mental Health Homicide, Suicide and Aggravated Assault Review Board. The Legislature repealed the board and its associated public records exceptions in Public Law 2017, chapter 93.</p>

VII. RECOMMENDATIONS

Arising from its activities and discussions in 2017, the Advisory Committee makes the following recommendations in this, its eleventh annual report.

{to be added}

VIII. FUTURE PLANS

{to be added}

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APPENDIX A

Authorizing Legislation: 1 MRSA §411

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APPENDIX B
Membership List

Remote Participation Decision-making Matrix
 Wednesday, November 13, 2017

Terms governing use of remote participation (should the body be required to adopt its own policy?)	Elected membership (statewide jurisdiction or less than statewide jurisdiction?)	Elected membership – Adjudicatory function (statewide jurisdiction or less than statewide jurisdiction?)	Appointed membership (statewide jurisdiction or less than statewide jurisdiction?)	Appointed membership – Adjudicatory function (statewide jurisdiction or less than statewide jurisdiction?)
Which bodies may use remote participation (include elected officials?)				
Quorum requirements (should a physical quorum be required at the meeting location?)				
Authorized means of remote participation (telephonic, video, electronic; clarify no text messaging or email?)				

	Elected membership (statewide jurisdiction or less than statewide jurisdiction?)	Elected membership – Adjudicatory function (statewide jurisdiction or less than statewide jurisdiction?)	Appointed membership (statewide jurisdiction or less than statewide jurisdiction?)	Appointed membership – Adjudicatory function (statewide jurisdiction or less than statewide jurisdiction?)
Reasons for public body member's physical absence (A) any reason is acceptable; B) require the body to establish acceptable reasons; or C) provide acceptable reasons in law)				
Voting (require votes to be by roll call?)				
Executive sessions (prohibit remote participation in executive sessions?)				
Audio/visual requirements (specify certain requirements regarding access to materials, sight, sound?)				
Annual meeting (include a requirement that at least one meeting include no remote participation?)				