

# RIGHT TO KNOW ADVISORY COMMITTEE

## DRAFT AGENDA

June 30, 2009

12:30 p.m.

Room 438, State House

### Welcome and introductions

1. Summary of First Regular Session, 124th Legislature's FOA actions in 2009
  - RTK AC recommendations
    - LD 1199, An Act to Implement the Recommendations of the Right to Know Advisory Committee (PL 2009, c. 240 and Section 15)
  - Proposed public records exceptions reviews
2. Existing exceptions review process
  - Chart
3. Requests from Legislature
  - Health and Human Services Committee: LD 757, AN Act to Improve the Transparency of Certain Hospitals (see letter)
  - Judiciary Committee: LD 1353 An Act Regarding Salary Information for Public Employees (see letter)
  - Judiciary Committee: concern about standard language currently in statute used to protect information in an application for State funding or other assistance (included in LD 1485, Energy Bill)
4. Law School Externship - discussion
  - Assess
  - Continue? Changes?
5. Education and training for elected public officials - discussion
6. Additional FOA issues, projects, activities
  - Social Security Numbers (see memo from RTK AC law school extern)
  - Use of technology in public proceedings
  - Taking and keeping of minutes and records of public proceedings, statutory requirements
  - Classification of records of advisory panels conducting reviews of internal activities of state agencies or officials (follow up on Abbott)
7. Scheduling future meetings, subcommittee meetings
8. Other?

### Adjourn

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

## An Act To Implement the Recommendations of the Right To Know Advisory Committee

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

**Whereas,** when the Public Access Division and the Public Access Ombudsman were created in statute by Public Law 2007, chapter 603, a sunset of June 30, 2009 was included; and

**Whereas,** the Public Access Division and the Public Access Ombudsman concept needs to be continued in case funding, other than from the General Fund, is identified; and

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

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

**Sec. 1. 1 MRSA §403,** as repealed and replaced by PL 1975, c. 758, is amended to read:

### § 403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings ~~shall~~must be open to the public, any person ~~shall~~must be permitted to attend any public proceeding and any public record or minutes of such proceedings that ~~is~~are required by law ~~shall~~must be made promptly and ~~shall~~must be open to public inspection.

**Sec. 2. 1 MRSA §405,** as amended by PL 2003, c. 709, §1, is further amended to read:

### § 405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

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

**2. Final approval of certain items prohibited.** ~~No ordinances, orders, rules, resolutions, regulations, contracts, appointments~~An ordinance, order, rule, resolution, regulation, contract, appointment or other official actions shallaction may not be finally approved at an executive ~~session~~session.

**3. Procedure for calling of executive session.** ~~Executive sessions~~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.

**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.

**5. Matters not contained in motion prohibited.** ~~No~~ Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.

**6. Permitted deliberation.** Deliberations on only the following matters may be conducted during an executive session on the following matters and no others:

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 ~~shall~~must be permitted to be present at an executive session if ~~he~~that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against ~~him~~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 ~~shall~~must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

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, ~~provided that~~as long as:

(1) The student and legal counsel and, if the student ~~beis~~ is a minor, the student's parents or legal guardians ~~shall be~~ are permitted to be present at an executive session if the student, parents or guardians so desire;

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;

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;

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 ~~his~~ 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;

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;

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

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.

**Sec. 3. 1 MRSA §407, sub-§2**, as enacted by PL 1975, c. 758, is amended to read:

**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 ~~appraise~~ appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof ~~shall~~ must be kept by the agency and made available to any interested member of the public who may wish to review it.

**Sec. 4. 1 MRSA §408, sub-§6, ¶B**, as enacted by PL 2003, c. 709, §2, is amended to read:

B. Release of the public record requested is in the public interest because ~~it~~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.

**Sec. 5. 1 MRSA §409, sub-§1**, as amended by PL 1987, c. 477, §5, is further amended to read:

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

**Sec. 6. 1 MRSA §409, sub-§3**, as enacted by PL 1975, c. 758, is amended to read:

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

**Sec. 7. 5 MRSA §200-I, sub-§6**, as enacted by PL 2007, c. 603, §1, is repealed.

**Sec. 8. 12 MRSA §6072, sub-§10, ¶D**, as repealed and replaced by PL 2003, c. 247, §6, is amended to read:

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered ~~confidential business record~~proprietary information for the purposes of section 6077, subsection 4.

**Sec. 9. 12 MRSA §6072-A, sub-§17-A, ¶B**, as enacted by PL 2003, c. 247, §13, is amended to read:

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; ~~and~~

**Sec. 10. 12 MRSA §6072-A, sub-§17-A, ¶C**, as enacted by PL 2003, c. 247, §13, is amended to read:

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. ~~Upon written request, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located; and~~

**Sec. 11. 12 MRSA §6072-A, sub-§17-A, ¶D** is enacted to read:

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered proprietary information for the purposes of section 6077, subsection 4.

**Sec. 12. 12 MRSA §6077, sub-§4, ¶A**, as amended by PL 2003, c. 247, §17, is further amended to read:

A. Information submitted to the department under this section may be designated by the submitter as proprietary information and being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed ~~because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.~~ Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. Information that has been designated by the submitter as proprietary information may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph.

**Sec. 13. 12 MRSA §6077, sub-§4, ¶E**, as enacted by PL 1991, c. 381, §6, is amended to read:

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that the information is a trade secret or production, commercial or financial proprietary information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

**Sec. 14. 12 MRSA §6077, sub-§4, ¶F** is enacted to read:

F. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

**Sec. 15. 12 MRSA §6078-A, sub-§1**, as enacted by PL 2003, c. 247, §19, is amended to read:

**1. Fund established.** The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered ~~confidential business record~~ proprietary information for the purposes of section 6077, subsection 4.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.



**Sec. 15. 20-A MRS §13004, sub-§2-A**, as amended by PL 2007, c. 666, §1, is repealed and the following enacted in its place:

**2-A. Complaints, replies, investigations, decisions; national clearinghouse.** This subsection governs the confidentiality of records concerning complaints, charges, accusations, replies, investigations and certification decisions.

A. Complaints, charges or accusations made and investigated pursuant to section 13020, replies to those complaints, charges or accusations and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential.

B. Any charges or information filed by the commissioner with the District Court in support of a petition to revoke or suspend certification and any decision of the court are public records.

C. The following information concerning final written decisions relating to disciplinary action taken by the commissioner against persons holding certifications are public records:

(1) Name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The grounds for the action taken;

(4) The relevant dates of the action;

(5) The type of certification and endorsements held, including relevant dates;

(6) The schools where the person was or is employed; and

(7) The dates of employment.

D. The department shall report all denials, revocations, suspensions, surrenders and reinstatements of certification that are not under appeal or still subject to appeal, and the grounds for the action taken, to a national association of state directors of teacher education and certification within 30 days of the action. In reports to the national association of state directors of teacher education and certification, the department may not disclose any information designated in paragraph A as confidential.



## SUMMARY

This bill also clarifies confidentiality with regard to educational personnel credentialing records concerning actions taken by the Commissioner of Education. This bill clarifies that complaints, charges or accusations made and investigated pursuant to Title 20-A, section 13020, replies to those complaints, charges or accusations and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, but that the action taken by the commissioner, whether it is denial, revocation, suspension, surrender or reinstatement, is public. The grounds for the action are also public. In addition, specific information about the person is public once the action is taken: the name of the person; the relevant dates of the action; the type of certification and endorsements held, including relevant dates; the schools where the person was or is employed; and the dates of employment. In addition, this bill clarifies that the Department of Education shall report information about disciplinary action to a national association of state directors of teacher education and certification, including the grounds for the action. The department may not report to the national association of state directors of teacher education and certification information that is designated confidential by Title 20-A, section 13004.

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## 2009 FOA Reviews - proposed public records exceptions

LD OR LR	PL CHAPTER	COMMITTEE OF JURISDICTION	SUBJECT	PAGE
59	339	CRJ	Correctional facility security plans	1
276	200	UTE	Carbon dioxide budget trading program	2
640	221	JUD	Public contracts for personal services	7
757	(carried over)	HHS (not reviewed)	See letter from HHS	8
826	176	JUD	Recreational trails on private land	9
965	323	ACF	Genetically engineered crops	10
1159	320	ACF	Industrial hemp	11
1191	331	EDU (not reviewed)	Teacher disciplinary records	13
1205	439	IFS	Health Care Bill of Rights	14
1255	393	ACF	FDA and USDA food safety info	20
1327	406	LVA	Case review team for families of members of the Guard	25
1374	289	CRJ	Critical Incident Stress Management Teams	29
1418	402	IFS	Foreclosures	31
LR 1989 (LD 1485)	372	Energy	Maine's Energy Future	37
LD 2005 (LD 1484)	370	LVA	Central Voter Registration System	41
1357	VETOED	TRA	Driver's license laws	43
LD 1306	334	JUD	Interscholastic athletic organizations - public proceedings	45

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## An Act To Amend the Laws Governing the Confidentiality of Correctional Facility Plans

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

**Sec. 1. 1 MRSA §402, sub-§3, ¶N**, as amended by PL 2005, c. 381, §2, is further amended to read:

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

**Sec. 2. 1 MRSA §402, sub-§3, ¶O**, as amended by PL 2007, c. 597, §1, is further amended to read:

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; and

**Sec. 3. 1 MRSA §402, sub-§3, ¶P** is enacted to read:

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, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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## **An Act To Protect the Integrity of the State's Carbon Dioxide Budget Trading Program and Auction Process and To Provide Allocations to the Energy and Carbon Savings Trust Fund**

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

**Whereas,** the Maine State Legislature enacted the Regional Greenhouse Gas Initiative Act of 2007, or RGGI, which is designed to stabilize and then reduce anthropogenic emissions of carbon dioxide, a greenhouse gas, from large electrical generating sources using a cap-and-trade mechanism; and

**Whereas,** the cap-and-trade mechanism uses an auction platform to sell state allocations of carbon dioxide allowances that will generate revenue for the State for purposes of electrical and fossil fuel conservation; and

**Whereas,** RGGI established the Energy and Carbon Savings Trust to oversee the expenditure of auction revenue on cost-effective electrical and fossil fuel conservation measures, investments and arrangements that will provide the citizens of the State with measurable economic and greenhouse gas reduction benefits; and

**Whereas,** RGGI also established the Energy and Carbon Savings Trust Fund, for the Energy and Carbon Savings Trust, to receive and expend revenue money associated with the auctioned sale of RGGI allowances but did not provide for allocation for receipt and expenditure of the auction revenues within the Energy and Carbon Savings Trust Fund; and

**Whereas,** the current statutory limit on the administrative costs of the Energy and Carbon Savings Trust may not enable the trust to adequately perform certain functions necessary to ensure that the expenditures from the Energy and Carbon Savings Trust Fund meet the statutory obligations of the trust; and

**Whereas,** the participating RGGI states conducted an auction in September 2008 and an auction in December 2008, and auctions are expected to continue at quarterly intervals in the future; and

**Whereas,** this much-needed revenue could be used to decrease electrical and heating energy costs beginning this winter for the State's citizens; and

**Whereas,** the Governor has declared that emergency conditions exist this winter for many citizens due to the unprecedented increases in petroleum product prices; and

**Whereas,** in addition, the primary purpose of the RGGI auction platform is to sell the State's allocations of carbon dioxide allowances at prices that are reflective of a competitive market that is free from collusion and market manipulation among the auction participants; and

**Whereas,** the release of RGGI information specific to any one account holder, including all auction bids and awards, carbon dioxide allowance and carbon dioxide offset allowance holdings and

transactions or any applications and financial security information or summaries thereof, has the potential to increase collusive or market manipulative behavior in RGGI auctions; and

**Whereas**, there is an immediate need to ensure future RGGI auctions will have robust competitive market conditions; and

**Whereas**, Public Law 2007, chapter 317, section 15 established a system under which the proceeds from the sale of carbon dioxide allowances are returned to electric customers as direct credits on their bills when the price of the allowances in the regional allowance market rises above a statutorily established price ceiling; and

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

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

**Sec. 1. 35-A MRSA §10008, sub-§5**, as amended by PL 2007, c. 695, Pt. A, §42, is further amended to read:

**5. Ceiling on energy efficiency spending; rebates to electric ratepayers; rules.**  
There is established a ceiling on energy efficiency spending from the trust equal to \$5 per carbon dioxide allowance. Until that price ceiling is adjusted or removed, only the first \$5 of each carbon dioxide allowance sold and deposited in the trust fund may be awarded to or directed to qualified projects for purposes of energy efficiency improvements. While the ceiling is in place, revenue received by the trust from an allowance value above \$5 must be transferred to the commission for use by the commission pursuant to sections 301 and 1322 for rebates to electric ratepayers calculated on a per-kilowatt-hour basis. The commission shall adopt rules to implement this subsection. The rules must establish a system under which proceeds from the sale of carbon dioxide allowances may be returned to electric ratepayers as direct credits on their bills at times of heightened price pressure in regional carbon dioxide allowance markets due to an extraordinary circumstance. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 35-A MRSA §10008, sub-§6, ¶G**, as amended by PL 2007, c. 608, §2, is repealed and the following enacted in its place:

G. No more than \$800,000 of trust fund receipts in any one year may be used for the costs of administering the trust pursuant to this section. The limit on administrative costs established in this paragraph does not apply to the following costs that may be funded by the trust:

(1) Costs of the Department of Environmental Protection for participating in the regional organization as defined in Title 38, section 580-A, subsection 20 and for administering the allowance auction under Title 38, chapter 3-B; and

(2) Costs of the Attorney General for activities pertaining to the tracking and monitoring of allowance trading activity and managing and evaluating the trust's funding of conservation programs.

**Sec. 3. 38 MRSA §580-A, sub-§1-A** is enacted to read:

**1-A. Account.** "Account" means a general account or a compliance account.

**Sec. 4. 38 MRSA §580-A, sub-§4,** as enacted by PL 2007, c. 317, §17, is amended to read:

**4. Carbon dioxide budget unit compliance account or compliance account.** "Carbon dioxide budget unit compliance account" or "compliance account" means the account established by the department for a carbon dioxide budget unit wherein carbon dioxide budget units deposit carbon dioxide emissions allowances and carbon dioxide offset allowances are held and available for compliance purposes under the carbon dioxide cap-and-trade program.

**Sec. 5. 38 MRSA §580-A, sub-§6-A** is enacted to read:

**6-A. Carbon dioxide general account or general account.** "Carbon dioxide general account" or "general account" means the account established by the department upon the request of an entity wherein the entity may hold carbon dioxide allowances and carbon dioxide offset allowances. The general account is separate from the compliance account.

**Sec. 6. 38 MRSA §580-A, sub-§18-A** is enacted to read:

**18-A. Proprietary information.** "Proprietary information" means production, commercial or financial information claimed as confidential on documents required to be submitted to participate in an auction, the disclosure of which would impair the competitive position of the account holder and would make available information that is not otherwise available.

**Sec. 7. 38 MRSA §580-B, sub-§7,** as enacted by PL 2007, c. 317, §17, is amended to read:

**7. Allocation of carbon dioxide emissions allowances.** The department shall allocate 100% of the annual carbon dioxide emissions allowances for public benefit to produce funds for carbon reduction and energy conservation, as specified in Title 35-A, section 10008. Except as provided in subsection 7-A and subsection 8, the department shall sell the carbon dioxide emissions allowances at public auction, in accordance with rules adopted under subsection 4. Revenue resulting from the sale of allowances must be deposited in the Energy and Carbon Savings Trust Fund established under Title 35-A, section 10008.

**Sec. 8. 38 MRSA §580-B, sub-§10, ¶E,** as enacted by PL 2007, c. 317, §17, is amended to read:

E. Management and cost-effectiveness of the State's energy conservation and carbon reduction programs and efforts funded by the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 10008; and

**Sec. 9. 38 MRSA §580-B, sub-§10, ¶F**, as enacted by PL 2007, c. 317, §17, is amended to read:

F. The extent to which funds from the Energy and Carbon Savings Trust established pursuant to Title 35-A, section 10008 serve customers from all classes of the State's transmission and distribution utilities; and

**Sec. 10. 38 MRSA §580-B, sub-§10, ¶G** is enacted to read:

G. The revenues and expenditures of the Energy and Carbon Savings Trust Fund, established pursuant to Title 35-A, section 10008.

**Sec. 11. 38 MRSA §580-B, sub-§11** is enacted to read:

**11. Confidentiality.** To protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program established in this section, the following records are confidential as provided in this subsection.

A. Except as provided in this paragraph, the following records are confidential for a period of 3 years beginning at the time of application, submission, award or record creation by the department or its agents:

- (1) Auction bid and award information specific to any one account holder;
- (2) Carbon dioxide allowance and carbon dioxide offset allowance account holdings; and
- (3) Carbon dioxide allowance and carbon dioxide offset allowance transactions.

This paragraph does not prohibit the release of carbon dioxide allowance and carbon dioxide offset allowance account holdings and transactions in an aggregated form that does not permit the identification of any person or entity.

The commissioner may release information described in subparagraph (1), (2) or (3) before the expiration of the 3-year period if the commissioner determines that confidentiality of that information is no longer required to protect the integrity of individual auctions administered under the carbon dioxide cap-and-trade program.

B. The following records remain confidential and may not be disclosed except pursuant to a court order or upon the written consent of the account holder:

- (1) Proprietary information contained in documents required to be submitted to participate in an auction conducted under the carbon dioxide cap-and-trade program; and



(2) Carbon dioxide allowance and carbon dioxide offset allowance transaction prices. This subparagraph does not prohibit the release of transaction prices calculated in an aggregated manner that does not permit the identification of any person or entity.

Records containing any emission, offset or allowance tracking information submitted for the purpose of demonstrating compliance with the carbon dioxide cap-and-trade program and rules adopted to implement the program are public records subject to disclosure under Title 1, chapter 13.

**Sec. 12. Public Law 2007, c. 317, §24, sub-§3** is repealed.

**Sec. 13. Appropriations and allocations.** The following appropriations and allocations are made.

**PUBLIC UTILITIES COMMISSION**

**Energy and Carbon Savings Trust Fund N027**

Initiative: Provides an allocation to the Energy and Carbon Savings Trust Fund that will be used to reduce electricity consumption and greenhouse gas emissions.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>
All Other	\$30,000,000	\$30,000,000	\$30,000,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$30,000,000</b>	<b>\$30,000,000</b>	<b>\$30,000,000</b>

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

LD 640  
JUD

PL 221

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

## **An Act To Ensure Public Access to Records Relating to Public Contracts for Personal Services**

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

**Sec. 1. 5 MRSA §1816-A, sub-§4** is enacted to read:

**4. Access to public records.** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

LD 757  
HHS  
carried over

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

## An Act To Improve the Transparency of Certain Hospitals

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

**Sec. 1. 1 MRSA §402, sub-§2, ¶E**, as amended by PL 1995, c. 608, §2, is further amended to read:

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; and

**Sec. 2. 1 MRSA §402, sub-§2, ¶F**, as enacted by PL 1995, c. 608, §3, is amended to read:

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

**Sec. 3. 1 MRSA §402, sub-§2, ¶G** is enacted to read:

G. An organization and any board, commission, committee, subcommittee or wholly or partially owned subsidiary of that organization if the organization receives over \$250,000 annually in public funds for medical services and provides medical services as its primary function.

### SUMMARY

This bill makes medical organizations that receive over \$250,000 annually in public funds for medical services subject to the freedom of access laws.

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**An Act To Protect Recreational Trails on Private Land  
by Exempting Certain Information on Recreational  
Trails from the Definition of "Public Records"**

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

**Sec. 1. 1 MRSA §402, sub-§3, ¶N**, as amended by PL 2005, c. 381, §2, is further amended to read:

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife; and

**Sec. 2. 1 MRSA §402, sub-§3, ¶O**, as amended by PL 2007, c. 597, §1, is further amended to read:

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; and

**Sec. 3. 1 MRSA §402, sub-§3, ¶P** is enacted to read:

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.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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

## An Act To Establish Annual Reporting for Genetically Engineered Crops

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

**Sec. 1. 7 MRSA §1051, sub-§4**, as enacted by PL 2007, c. 602, §3, is amended to read:

**4. Manufacturer.** "Manufacturer" means a person that produces or commercializes a genetically engineered plant part, seed or plant, not including a farm operation for the purposes of Title 17, section 2805 as defined in section 152, subsection 6.

**Sec. 2. 7 MRSA §1052, sub-§2-A** is enacted to read:

**2-A. Reporting.** A manufacturer selling genetically engineered plant parts, plants or seeds in the State shall annually report to the commissioner the total potential acreage at a given planting density of genetically modified crops that could be grown based on the amount of each genetically engineered product sold in the State. Individual manufacturer data received under this subsection is confidential and may not be made public. The commissioner shall make public aggregate data that does not reveal the sales activities of an individual manufacturer. The commissioner shall provide aggregate data on sales of genetically engineered trees, tree seedlings, tree seeds, tree scions and other propagative materials to the Department of Conservation, Bureau of Forestry.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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

## An Act Relating to Industrial Hemp

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

Sec. 1. 7 MRSA c. 406-A is enacted to read:

### CHAPTER 406-A

### HEMP

#### § 2231. Industrial hemp

**1. Definition.** As used in this chapter, unless the context otherwise indicates, "industrial hemp" means any variety of Cannabis sativa L. with a delta-9-tetrahydrocannabinol concentration that does not exceed 0.3% on a dry weight basis and that is grown or possessed by a licensed grower in compliance with this chapter.

**2. Growing permitted.** Notwithstanding any other provision of law, a person may plant, grow, harvest, possess, process, sell and buy industrial hemp if that person holds a license issued pursuant to subsection 4.

**3. Application.** A person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of industrial hemp and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields. Except for employees of the Maine Agricultural Experiment Station and the University of Maine System involved in research and related activities, an applicant for an initial licensure must submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history record check by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.

**4. License issued.** Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee and in accordance with subsection 8, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

**5. Documentation.** A licensee shall file with the commissioner documentation indicating that the seeds planted were of a type and variety of hemp approved by the commissioner as having a concentration of no more than 0.3% delta-9-tetrahydrocannabinol by dry weight and a copy of any contract to grow industrial hemp. A licensee shall notify the commissioner of the sale or distribution of industrial hemp grown by the licensee and the name of each person to whom the industrial hemp was sold or distributed.

**6. Rules.** The commissioner shall adopt rules to establish approved varieties of industrial hemp, protocols for testing plant parts during growth for delta-9-tetrahydrocannabinol levels and guidelines for monitoring the growth and harvest of industrial hemp. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

**7. Fees.** The commissioner shall establish through rulemaking under subsection 6 an application fee, a license fee and per acre fees for monitoring, sampling and testing that are reasonable and necessary to cover the costs of the department.

All fees received pursuant to this subsection must be paid to the Treasurer of State and credited to a separate, nonlapsing account in the department. Money received pursuant to this subsection must be used for the expenses of administering this chapter.

**8. Licensing contingent upon action by Federal Government.** A license may not be issued under this section unless:

A. The United States Congress excludes industrial hemp from the definition of "marihuana" for the purpose of the Controlled Substances Act, 21 United States Code, Section 802(16); or

B. The United States Department of Justice, Drug Enforcement Administration takes affirmative steps towards issuing a permit under 21 United States Code, Chapter 13, Subchapter 1, Part C to a person holding a license issued by a state to grow industrial hemp.

The commissioner shall notify the Revisor of Statutes and the Commissioner of Public Safety when the requirements of either paragraph A or B have been met.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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## An Act To Improve Teacher Confidentiality Laws

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

**Sec. 1. 20-A MRS §13004, sub-§2-A**, as amended by PL 2007, c. 666, §1, is repealed and the following enacted in its place:

**2-A. Confidentiality.** The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. Except for information designated confidential under section 6101 or section 6103, information designated confidential under paragraph A may be released or used by the department as necessary to:

(1) Complete its own investigations;

(2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

(3) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

(4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

(5) Report child abuse or neglect under Title 22, section 4011-A.

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.



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## An Act To Establish a Health Care Bill of Rights

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

### PART A

**Sec. A-1. 24-A MRSA §2809-A, sub-§1-A, ¶B-2** is enacted to read:

B-2. All notices of cancellation sent to certificate holders pursuant to paragraph B-1 must include a toll-free telephone number that certificate holders can call to determine if the policy has been cancelled for nonpayment of premium or if the policy has been reinstated because the premium has been paid.

**Sec. A-2. 24-A MRSA §4302, sub-§1, ¶A**, as enacted by PL 1995, c. 673, Pt. C, §1 and affected by §2, is amended to read:

A. Coverage provisions, benefits and any exclusions by category of service, type of provider and, if applicable, by specific service, including but not limited to the following types of exclusions and limitations:

- (1) Health care services excluded from coverage;
- (2) Health care services requiring copayments or deductibles paid by enrollees;
- (3) Restrictions on access to a particular provider type; and
- (4) Health care services that are or may be provided only by referral; and
- (5) Childhood immunizations as recommended by the United States Department of Health and Human Services, Centers for Disease Control and Prevention and the American Academy of Pediatrics;

**Sec. A-3. 24-A MRSA §4303, sub-§12** is enacted to read:

**12. Publication of policies by carriers.** A carrier must publish at least 5 individual health plans with the highest level of enrollment and at least 5 small group health plans with the highest level of enrollment on the carrier's publicly accessible website in a manner that will allow consumers to review the coverage offered under each policy. The policies posted on the website must be updated when changes are made to the policies by the carrier. The appearance of the policy on the website must duplicate the appearance of a paper copy of the policy. The bureau shall provide a link from its website to each carrier's

website. A carrier must review annually which policies to post and make any necessary changes on its website. A carrier must post the required policies on its website within 90 days after the effective date of this subsection.

**Sec. A-4. 24-A MRSA §4303, sub-§13** is enacted to read:

**13. Explanation of benefits.** A carrier offering an individual expense-incurred health plan to residents of this State or an expense-incurred group health plan to an employer in this State shall provide individual policyholders and group certificate holders with clear written explanations of benefit documents in response to the filing of any claim providing for coverage of hospital or medical expenses. The explanation of benefits must include all of the following information:

- A. The date of service;
- B. The provider of the service;
- C. An identification of the service for which the claim is made;
- D. Any amount the insured is obligated to pay under the policy for copayment or coinsurance;
- E. A telephone number and address where the insured may obtain clarification of the explanation of benefits;
- F. A notice of appeal rights; and
- G. A notice of the right to file a complaint with the bureau after exhausting any appeals under a carrier's internal appeals process.

The superintendent shall establish by rule the minimum information and standards for explanation of benefits forms used by carriers, taking into consideration any input from stakeholders and any national standards for explanation of benefits forms. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. This subsection applies to any explanation of benefits form issued on or after January 1, 2010.

**Sec. A-5. 24-A MRSA §4303, sub-§14** is enacted to read:

**14. Policy terms.** The superintendent may by rule define standard policy terms that must be used in all policies issued by carriers offering health plans in the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. A-6. Appropriations and allocations.** The following appropriations and allocations are made.

## **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

### **Insurance - Bureau of 0092**

Initiative: Allocates funds for the one-time costs of required rule-making proceedings.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$2,100	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,100	\$0

## PART B

**Sec. B-1. 24-A MRSA §4301-A, sub-§16-A** is enacted to read:

**16-A. Provider profiling program.** "Provider profiling program" means a program that uses provider data in order to rate or rank provider quality or efficiency of care by the use of a grade, star, tier, rating or any other form of designation.

**Sec. B-2. 24-A MRSA §4302, sub-§1, ¶J**, as enacted by PL 1999, c. 742, §5, is amended to read:

J. A description of the independent external review procedures and the circumstances under which an enrollee is entitled to independent external review as required by this chapter; and

**Sec. B-3. 24-A MRSA §4302, sub-§1, ¶K**, as enacted by PL 1999, c. 742, §5, is amended to read:

K. A description of the requirements for enrollees to obtain coverage of routine costs of clinical trials and information on the manner in which enrollees not eligible to participate in clinical trials may qualify for the compassionate use program of the federal Food and Drug Administration for use of investigational drugs pursuant to 21 Code of Federal Regulations, Section 312.34, as amended; and

**Sec. B-4. 24-A MRSA §4302, sub-§1, ¶L** is enacted to read:

L. A description of a provider profiling program that may be a part of the health plan, including the location of provider performance ratings in the plan materials or on a publicly accessible website, information explaining the provider rating system and the basis upon which provider performance is measured, the limitations of the data used to measure provider performance, the process for selecting providers and a conspicuous written disclaimer explaining the provider performance ratings should only be used as a guide for choosing a provider and that enrollees should consult their current provider before making a decision about their health care based on a provider rating.

**Sec. B-5. 24-A MRSA §4303, sub-§2, ¶E** is enacted to read:

E. A carrier with a provider profiling program shall:

(1) Disclose to providers the methodologies, criteria, data and analysis used to evaluate provider quality, performance and cost-efficiency ratings;

(2) Create and share with providers their provider profile at least 60 days prior to using or publicly disclosing the results of the provider profiling program;

(3) Afford providers the opportunity to correct errors, submit additional information for consideration and seek review of data and performance ratings; and

(4) Afford providers due process appeal rights to challenge the profiling determination described in this subsection and by Bureau of Insurance Rule Chapter 850, Health Plan Accountability.

If a carrier has a provider profiling program that includes out-of-network providers, a carrier must meet the requirements of this paragraph with regard to an out-of-network provider as well as for a provider in a carrier's network.

## PART C

**Sec. C-1. 24-A MRSA §2736, sub-§1**, as amended by PL 2009, c. 14, §4 and c. 244, Pt. G, §1, is repealed and the following enacted in its place:

**1. Filing of rate information.** Every insurer shall file for approval by the superintendent every rate, rating formula, classification of risks and every modification of any formula or classification that it proposes to use in connection with individual health insurance policies and certain group policies specified in section 2701. If the filing applies to individual health plans as defined in section 2736-C, the insurer shall simultaneously file a copy with the Attorney General. Every such filing must state the effective date of the filing. Every such filing must be made not less than 60 days in advance of the stated effective date, unless the 60-day requirement is waived by the superintendent, and the effective date may be suspended by the superintendent for a period of time not to exceed 30 days. A filing required under this section must be made electronically in a format required by the superintendent unless exempted by rule adopted by the superintendent. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. C-2. 24-A MRSA §2736, sub-§2**, as amended by PL 1997, c. 344, §8, is further amended to read:

**2. Filing; information.** When a filing is not accompanied by the information upon which the insurer supports such filing, or the superintendent does not have sufficient information to determine whether such filing meets the requirements that rates not be excessive, inadequate or unfairly discriminatory, the superintendent shall require the insurer to furnish the information upon which it supports the filing. A filing and all supporting information, except for protected health information required to be kept confidential by state or federal statute and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party, are public records within the meaning of notwithstanding Title 1, section 402, subsection 3, paragraph B and become part of the official record of any hearing held pursuant to section 2736-A.

**Sec. C-3. 24-A MRSA §2736-A, first ¶**, as amended by PL 2007, c. 629, Pt. M, §3, is further amended to read:

If at any time the superintendent has reason to believe that a filing does not meet the requirements that rates not be excessive, inadequate, unfairly discriminatory or not in compliance with former section 6913 or that the filing violates any of the provisions of chapter 23, the superintendent shall cause a hearing to be held. If a filing proposes an increase in rates in an individual health plan as defined in section 2736-C, the superintendent shall cause a hearing to be held at the request of the Attorney General. In any hearing conducted under this section, the insurer has the burden of proving rates are not excessive, inadequate or unfairly discriminatory and in compliance with section 6913.

## PART D

**Sec. D-1. 24-A MRSA §2808-B, sub-§2-A, ¶B**, as enacted by PL 2003, c. 469, Pt. E, §16, is amended to read:

B. A filing and all supporting information, except for protected health information required to be kept confidential by state or federal statute and except for descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party, are public records except as provided by notwithstanding Title 1, section 402, subsection 3, paragraph B and become part of the official record of any hearing held pursuant to subsection 2-B, paragraphs paragraph B or F.

**Sec. D-2. 24-A MRSA §2808-B, sub-§6, ¶A**, as amended by PL 2001, c. 410, Pt. A, §6, is further amended to read:

A. Each carrier must actively market small group health plan coverage, including any standardized plans required to be offered pursuant to subsection 8-A, to eligible groups in this State.

**Sec. D-3. 24-A MRSA §2808-B, sub-§8-A** is enacted to read:

**8-A. Authority of the superintendent.** The superintendent may by rule define one or more standardized small group health plans that must be offered by all carriers offering small group health plans in the State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. D-4. Superintendent of Insurance report.** The Superintendent of Insurance shall review possible ways to improve the availability and affordability of the State's individual health insurance market, including, but not limited to, increases in the minimum loss-ratio standards applicable to that market and consideration of an insurer's loss experience in all lines of insurance marketed by a carrier in this State when reviewing health insurance rate filings. The superintendent shall report the results of the review, including any recommendations for legislation, to the Joint Standing Committee on Insurance and Financial Services no later than February 1, 2010. The joint standing committee may report out a bill based on the report to the Second Regular Session of the 124th Legislature.

## PART E

**Sec. E-1. 24-A MRSA §221, sub-§5** is enacted to read:

**5. Examination of health carriers.** The superintendent shall examine the market conduct of each domestic health carrier, as defined in section 4301-A, subsection 3, and each foreign health carrier with at least 1,000 covered lives in this State, offering a health plan as defined in section 4301-A, subsection 7, no less frequently than once every 5 years. An examination under this subsection may be comprehensive or may target specific issues of concern observed in the State's health insurance market or in the company under examination. In lieu of an examination conducted by the superintendent, the superintendent may participate in a multistate examination, or, in the case of a foreign company, approve an examination by the company's domiciliary regulator upon a finding that the examination and report adequately address relevant aspects of the company's market conduct within this State.

**Sec. E-2. Transition.** The Superintendent of Insurance shall begin conducting the market conduct examinations required by the Maine Revised Statutes, Title 24-A, section 221, subsection 5 during calendar year 2010, and all health carriers subject to the examination requirement must be examined at least once before January 1, 2015.

## PART F

**Sec. F-1. 24-A MRSA §4303, sub-§7-A** is enacted to read:

**7-A. Continuity of prescriptions.** If an enrollee has been undergoing a course of treatment with a prescription drug by prior authorization of a carrier and the enrollee's coverage with one carrier is replaced with coverage from another carrier pursuant to section 2849-B, the replacement carrier shall honor the prior authorization for that prescription drug and provide coverage in the same manner as the previous carrier until the replacement carrier conducts a review of the prior authorization for that prescription drug with the enrollee's prescribing provider. Policies must include a notice of the right to request a review with the enrollee's provider, and the replacing carrier must honor the prior carrier's authorization for a period not to exceed 6 months if the enrollee's provider participates in the review and requests the prior authorization be continued. The replacing carrier is not required to provide benefits for conditions or services not otherwise covered under the replacement policy, and cost sharing may be based on the copayments and coinsurance requirements of the replacement policy.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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## An Act To Amend Certain Laws Related to the Department of Agriculture, Food and Rural Resources

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

**Sec. 1. 7 MRSA §125, sub-§2**, as enacted by PL 1997, c. 711, §5, is amended to read:

**2. Membership.** The board consists of the following ~~19~~<sup>20</sup> members:

- A. A designee of the President of the University of Maine at Orono;
- B. A designee of the Chancellor of the University of Maine System;
- C. The Commissioner of Agriculture, Food and Rural Resources or the commissioner's designee;
- D. The president of a statewide farm bureau or the president's designee;
- E. The president of a statewide agricultural council or the president's designee;
- F. Eight members representing the agricultural industry, one person designated by each of the following:

- (1) The Maine Potato Board;
- (2) The Wild Blueberry Commission of Maine;
- (3) A statewide pomological society;
- (4) A statewide vegetable and small fruit growers association;
- (5) A statewide dairy industry association;
- (6) A statewide landscape and nursery association;
- (7) A statewide florist and growers association; and
- (8) A statewide organic farmers and gardeners association;

G. Two members of the joint standing committee of the Legislature having jurisdiction over agricultural matters, one appointed by the President of the Senate and one appointed by the Speaker of the House;

H. One farmer with livestock experience in an area other than dairy farming, chosen from a list of 3 nominees submitted by a statewide beef and sheep producers association, appointed by the Governor;

I. Two research faculty members associated with agricultural research at the University of Maine at Orono, appointed by the Board of Trustees of the University of Maine System; and

J. The Director of the University of Maine Cooperative Extension Service; and

K. One member representing the aquaculture industry designated by a statewide aquaculture industry association.

**Sec. 2. 7 MRSA §742, sub-§8** is amended to read:

**8. Grade.** "Grade" means any commercial fertilizer having a specific ~~and~~minimum percentage of plant nutrients that is the same ~~guarantee~~as the guaranteed analysis, expressed in whole numbers.

**Sec. 3. 7 MRSA §743-A** is enacted to read:

### **§ 743-A. Tonnage report**

**1. Registrants required to report.** On or before September 1st of each year, a registrant shall file with the commissioner, on a form prescribed by the commissioner, the number of tons of each brand and grade of commercial fertilizer sold by the registrant in the State during the 12 months preceding July 1st of that year. A fee of \$1 per ton or \$100 for each brand and grade of fertilizer, whichever is more, sold during the 12 months preceding July 1st of that year must accompany the form.

**2. Fees; nonlapsing fund.** The commissioner shall deposit all fees collected under this section in a dedicated, nonlapsing account established under section 765, subsection 2 for the purpose of administering and enforcing this subchapter and subchapter 5-A.

**3. Commissioner's report.** The commissioner may publish and distribute annually, to each registrant and other interested persons, a report showing the total tons of commercial fertilizer and the total tons by grade sold in the State.

**Sec. 4. 7 MRSA §765, sub-§2,** as enacted by PL 1987, c. 425, §§1 and 3, is amended to read:

**2. Fees; nonlapsing fund.** The commissioner shall collect all fees under this subchapter and section 743-A and deposit them with the Treasurer of State. ~~These funds shall be appropriated for in a separate account to be used for carrying out this subchapter and subchapter 5,~~ including the cost of inspection, sampling and analysis of commercial fertilizers and agricultural liming materials. These funds shall do not lapse, but shall remain in a carry-over account.

**Sec. 5. 7 MRSA §766, sub-§1,** as enacted by PL 1987, c. 425, §§1 and 3, is amended to read:



**1. By registrants.** On or before September 1st in each year each registrant shall file with the commissioner, on forms prescribed by ~~him~~the commissioner, the number of tons of each agricultural liming material sold during the 12 months preceding July 1st of ~~the current~~that year. A fee of \$1 per ton or \$100 for each brand of agricultural liming material, whichever is more, sold during the 12 months preceding July 1st of that year must accompany the form.

**Sec. 6. 7 MRSA §2104-A** is enacted to read:

**§ 2104-A. Arrears in payments to Seed Potato Board**

A person who on July 15th of any year is in arrears as to full payment for potato seed purchased from the Seed Potato Board is not eligible for listing in the Maine certified seed potatoes book for that year published by the department's Division of Plant Industry.

**Sec. 7. 7 MRSA §2701**, as amended by PL 1999, c. 401, Pt. H, §2, is further amended to read:

**§ 2701. Licensing**

All persons owning honeybees within the State shall annually notify the commissioner of the keeping of bees and the location of the bees and shall forward to the commissioner for deposit with the Treasurer of State an annual license fee ~~not to exceed \$2 per colony~~ for all bees kept on June 15th of each year. A license may be issued for a one-year, 2-year or 3-year period. Licenses for a period in excess of one year may be issued only with the agreement of or at the request of the applicant. The fee for a 2-year license is 2 times the annual fee. The fee for a 3-year license is 3 times the annual fee. Fees must be established by rule in accordance with the Maine Administrative Procedure Act. ~~No license fee returned may be less than \$2 per beekeeper.~~ Notwithstanding Title 5, section 8071, subsection 3, rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. License fees accrue as a dedicated revenue to the Division of Plant Industry to fund the cost of apiary inspection and licensing.

Between 14 and 30 days prior to June 15th annually, the commissioner shall cause notice of the annual notification and license fee requirement to be ~~published at least twice in the state newspaper and in other newspapers or journals of general circulation adequate to provide reasonable notice throughout the State~~publicized.

**Sec. 8. 22 MRSA §1471-N**, as amended by PL 1979, c. 187, is repealed.

**Sec. 9. 22 MRSA §2153-A** is enacted to read:

**§ 2153-A. Confidentiality of certain information**

The following information is confidential and may not be disclosed to the public:

**1. United States Department of Agriculture, Food Safety and Inspection Service.**  
Information provided to the department or to any employee of the department by the United States Department of Agriculture, Food Safety and Inspection Service pursuant to 9 Code of Federal Regulations, Section 390.9 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure; and

**2. Food and Drug Administration.** Information provided to the department or to any employee of the department by the United States Food and Drug Administration pursuant to 21 Code of Federal Regulations, Section 20.88 (2008) to the extent that the regulations designate the information confidential, the information is otherwise identified pursuant to the regulations as confidential or the regulations require the information to be protected from public disclosure.

**Sec. 10. 22 MRSA §2169, 3rd ¶**, as enacted by PL 1999, c. 598, §1 and affected by §4, is amended to read:

Beginning August 1, 2000, each one-, 2- or 3-year license or license renewal issued expires on December 31st of the appropriate year except that, beginning January 1, 2010, each one-year, 2-year or 3-year license or license renewal expires on the date of issuance of the appropriate year. When an initial license is issued or when a license is renewed between August 1, 2000 and August 1, 2003, the license fee is prorated based on the number of months the license is valid and the annual fee. When a license is renewed between January 1, 2010 and January 1, 2011, the period of time that the license is valid may be increased by up to 11 months and the license fee is prorated based on the number of months the license is valid and the annual fee.

**Sec. 11. 22 MRSA §2513**, as enacted by PL 1999, c. 777, §1, is amended to read:

### § 2513.Rules

The commissioner shall adopt rules to carry out the purposes of this chapter. Rules adopted under this section may incorporate by reference those provisions of the Code of Federal Regulations that are applicable to meat and poultry inspection, as such regulations may be amended, and that are necessary to remain in compliance with the federal requirements for the State's meat and poultry products inspection and licensing program under section 2512. Rules adopted under this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter H-A2-A.

**Sec. 12. Appropriations and allocations.** The following appropriations and allocations are made.

### AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

#### Division of Plant Industry 0831

Initiative: Provides one-time funding for rule-making costs.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$2,500	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,500	\$0

**Sec. 13. Appropriations and allocations.** The following appropriations and allocations are made.

**AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF**

**Division of Quality Assurance and Regulation 0393**

Initiative: Provides funding for a limited-period Consumer Protection Inspector position and related All Other costs to establish and administer the commercial fertilizer sampling program.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
Personal Services	\$65,832	\$67,860
All Other	\$56,155	\$56,155
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$121,987</b>	<b>\$124,015</b>

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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

## **An Act To Update Department of Defense, Veterans and Emergency Management Laws**

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

**Sec. 1. 37-B MRSA §264, sub-§3, ¶K**, as enacted by PL 2007, c. 167, §1, is amended to read:

K. The Bath Armory, or any portion thereof, located on Lincoln Street, Bath, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory;

**Sec. 2. 37-B MRSA §264, sub-§3, ¶N**, as enacted by PL 2007, c. 167, §1, is amended to read:

N. The Presque Isle Armory located on North Main Street, Presque Isle, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; ~~and~~

**Sec. 3. 37-B MRSA §264, sub-§3, ¶O**, as enacted by PL 2007, c. 167, §1, is amended to read:

O. The Caribou Armory, also known as the "Solman Armory," located on York Street, Caribou, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory;

**Sec. 4. 37-B MRSA §264, sub-§3, ¶P** is enacted to read:

P. The Fort Kent Armory, located on Armory Road, Fort Kent, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; and

**Sec. 5. 37-B MRSA §264, sub-§3, ¶Q** is enacted to read:

Q. The Gardiner Armory, located on Brunswick Avenue, Gardiner, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory.

**Sec. 6. 37-B MRSA §264, sub-§5** is enacted to read:

**5. Special provisions for the Portland Armory.** Notwithstanding subsection 1, the Adjutant General may execute a like-kind exchange of the Portland Armory, or any portion thereof, located on Stevens Avenue, Portland, for real property of substantially equal value, subject to the provisions of subsection 3, paragraph L.

**Sec. 7. 37-B MRSA §460** is enacted to read:

**§ 460. Behavior that is prejudicial to good order and discipline of military forces or that discredits military forces**

Any person subject to this Code who behaves in a manner that is prejudicial to the good order and discipline of the military forces or that discredits the military forces must be punished as a court-martial may direct.

**Sec. 8. 37-B MRSA §503, sub-§1**, as amended by PL 2001, c. 662, §61, is further amended to read:

**1. Employment of personnel.** The director may employ, subject to approval of the appointing authority and the Civil Service Law, the personnel necessary to administer this chapter. The director may employ a ~~directorsuperintendent~~ of the cemetery system, a veteran claims specialist and veteran ~~advocate~~ service officers. The director and other employees referred to in this subsection must be veterans as defined by 38 United States Code, Section 101 (2) who were separated with an honorable discharge.

**Sec. 9. 37-B MRSA §504, sub-§2**, as amended by PL 2001, c. 662, §63, is further amended to read:

**2. Superintendent of the cemetery system.** The director, with approval of the appointing authority, shall appoint a competent and trustworthy ~~directorsuperintendent~~ of the cemetery system and shall arrange for personnel, material and equipment necessary for adequate maintenance of the cemeteries.

**Sec. 10. 37-B MRSA §505, sub-§2, ¶H** is enacted to read:

H. A school that provides tuition assistance pursuant to this subsection shall provide any information, such as enrollment verification, current contact information, semester grade point average, accumulated credit hours and transcripts, to the bureau as necessary for the bureau to properly administer the educational benefits described in this subsection in accordance with current laws.

**Sec. 11. 37-B MRSA §508**, as enacted by PL 2001, c. 662, §71, is amended to read:

**§ 508. Veteran service officers**

Veteran ~~advocate~~ service officers shall serve, assist and advocate for all veterans. A veteran ~~advocate~~ service officer must be trained and conversant on the issues, benefits and definitions affecting all veterans, including atomic, Vietnam, Desert Storm and female veterans.

**Sec. 12. 37-B MRSA §536** is enacted to read:

**§ 536. Case Review Team**

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There is created within the commission the Case Review Team, referred to in this section as "the team."

**1. Composition of Case Review Team.** The team consists of the chair of the commission and, as determined by the chair of the commission, may consist of any current or advisory members of the commission, as described in section 532, subsections 1 and 2, depending upon the nature and requirements of each case review. If the team includes advisory members of the commission, those members serve as nonvoting members of the team.

**2. Meetings; officers.** The team shall meet at such time or times as may be reasonably necessary to carry out its duties, as the team determines, and it shall meet at the call of the chair of the commission.

**3. Powers and duties.** The team shall examine cases involving Maine National Guard noncombat death and disability associated with military service in the Maine National Guard. The purpose of the examinations must be consistent with the provisions of this chapter. In addition, the team shall assist specific individual Maine National Guard service members as necessary.

**4. Confidentiality.** For the purposes of Title 1, section 402, proceedings and records of the team are confidential and are not subject to disclosure under any state law, subpoena, discovery or introduction into evidence in a civil or criminal action and must be sealed. The chair of the commission shall disclose statistical information and conclusions of the team upon request but may not disclose the materials that are otherwise confidential.

**Sec. 13. 37-B MRSA §601**, as amended by PL 2007, c. 167, §9, is further amended to read:

### **§ 601. Home established; purpose**

There must be public homes for veterans in Maine known as "Maine Veterans' Homes." In addition to the existing 120-bed home located in Augusta, a 120-bed home located in Scarborough, a home not to exceed 40 beds located in Caribou, a home located in Bangor not to exceed 120 beds, of which 40 beds are dedicated to senile dementia patients, and a home located in South Paris not to exceed 90 beds, of which 30 beds are dedicated to senile dementia patients, may be constructed if federal Veterans' Administration funds are available to meet part of the costs of each facility for construction or operation. In addition, a home located in Machias not to exceed 60 beds may be constructed if federal Veterans' Administration funds or funds from any other state, federal or private source are available to meet part of the costs of the facility for construction or operation, except that the Machias home may not begin operation prior to July 1, 1995 and the construction and funding of the Machias home may not in any way jeopardize the construction, funding or financial viability of any other home. The Maine Veterans' Homes also are authorized to provide nonnursing facility care and services to Maine veterans if approved by appropriate state and federal authorities. The Board of Trustees of the Maine Veterans' Homes shall plan and develop the Machias home and any nonnursing facility care and services using any funds available for that purpose, except for the Augusta facility's funded depreciation account. The Maine Veterans' Homes are authorized to construct community-based outpatient clinics for Maine veterans in cooperation with the United States Department of Veterans Affairs and may construct and operate veterans hospice facilities, veterans housing facilities and other facilities authorized by the Board of Trustees of the Maine Veterans'

PUBLIC Law, Chapter 406 LD 1327, item 1, 124th Maine State Legislature  
An Act To Update Department of Defense, Veterans and Emergency Management Laws

Homes, using available funds. Any funds loaned to the Maine Veterans' Homes for operating purposes from the funded depreciation accounts of the Maine Veterans' Homes must be reimbursed from any funds received by the Maine Veterans' Homes and available for that purpose. The primary purpose of the Maine Veterans' Homes is to provide support and care for honorably discharged veterans who served on active duty in the United States Armed Forces or who served in the Reserves of the United States Armed Forces on active duty for other than training purposes ~~or are entitled to retired pay under 10 United States Code, Chapter 1223~~ regardless of the age of such persons.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

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

## An Act To Ensure the Effectiveness of Critical Incident Stress Management Teams

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

Sec. 1. 25 MRSA Pt. 11 is enacted to read:

### PART 11

### CRITICAL INCIDENTS

### CHAPTER 501

### CRITICAL INCIDENT STRESS MANAGEMENT TEAMS

#### § 4201. Definitions

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

**1. Critical incident.** "Critical incident" means a work-related incident that causes or has the potential to cause a law enforcement officer to experience emotional or physical stress. "Critical incident" includes, but is not limited to, use-of-force encounters that may result in the death of or serious injury to another person or an officer, fatal motor vehicle accidents, child abuse investigations and death investigations.

**2. Critical incident stress management team.** "Critical incident stress management team" means a team composed of members of a state, county or municipal law enforcement agency that is trained, in accordance with standards established by rule by the Commissioner of Public Safety, to assist and provide support to any person employed by the team's own agency or another law enforcement agency who has been involved in a critical incident that may affect, or has affected, the person's work performance or general well-being. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

#### § 4202. Critical incident stress management teams

**1. Information confidential.** Except as provided in subsection 2, all proceedings, communications and records, including, but not limited to, information concerning the identity of a person seeking or being furnished assistance, connected in any way with the work of a critical incident stress management team are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the



affected person. Statistical data not identifying a person seeking the assistance of a critical incident stress management team must be made available for statistical evaluation and may not be made available for any other purpose.

**2. Mandatory disclosure of information.** Unless protected by a privilege of law recognized by this State, a member of a critical incident stress management team must disclose to appropriate federal, state or local government agencies or law enforcement agencies the following types of information:

- A. An admission by a person seeking the assistance of the critical incident stress management team that the person has committed a crime;
- B. A disclosure of information by a person seeking the assistance of a critical incident stress management team that must be reported pursuant to any applicable law; or
- C. A disclosure of information by a person seeking the assistance of a critical incident stress management team that would lead one to reasonably think that the person seeking assistance is a danger to that person or to another person.

Information disclosed under this subsection is no longer confidential unless it is otherwise designated confidential by statute.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

LD 1418  
IFS  
P.L.C. 402  
(excerpts)

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

## An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures

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

**Whereas,** the State's rate of mortgages in foreclosure is rising to unprecedented levels, both for prime and subprime mortgages; and

**Whereas,** foreclosures are expected to continue in the State because homeowners will not be able to afford payments due to rising adjustable mortgage payments, rising unemployment and job loss; and

**Whereas,** homeowners are expected to have continued problems selling their properties at the value of their mortgages due to falling housing prices; and

**Whereas,** foreclosures contribute to the decline in the State's housing market, loss of property values and loss of tax revenues; and

**Whereas,** the number of foreclosure actions in the courts is rapidly increasing and the current system for resolving foreclosure actions is creating a burden on the court system; and

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

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

**Sec. 1. 4 MRSA §18-B, sub-§12** is enacted to read:

**12. Mediation involving mortgage foreclosures on owner-occupied residential property.** The foreclosure mediation program is a program within the Supreme Judicial Court to provide mediation in the courts throughout the State pursuant to Title 14, section 6321-A.

A. The Supreme Judicial Court, or a person or organization designated by the court, shall administer the foreclosure mediation program.

B. A foreclosure mediation program fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected to support mediation services pursuant to Title 14, section 6321-A, subsection 3 must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 14, section 6321-A.

**Sec. 2. 4 MRSA §104,** as amended by PL 2009, c. 136, §1, is further amended to read:

**§ 104.Active retired justices**

any district and when so directed has authority and jurisdiction therein the same as if that judge were the regular judge of that court and, whenever the Chief Judge of the District Court so orders, may hear all matters and issue all orders, notices, decrees and judgments that any Judge of that District Court is authorized to hear and issue. An Active Retired Judge of the District Court receives reimbursement for expenses actually and reasonably incurred in the performance of that judge's duties. An Active Retired Judge of the District Court may be assigned by the Chief Judge of the District Court to act as a mediator for the foreclosure mediation program in accordance with Title 14, section 6321-A, subsection 7.

**Sec. 4. 9-A MRSA §6-116, sub-§2**, as amended by PL 1995, c. 397, §1, is further amended to read:

2. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with the licensing, registration or other regulatory functions of the administrator; and

**Sec. 5. 9-A MRSA §6-116, sub-§3**, as enacted by PL 1985, c. 763, Pt. A, §51, is amended to read:

3. Proposed loan documents and other commercial paper submitted to be approved for use and not yet available to the general public or customers of the submitting institution or firm; and

**Sec. 6. 9-A MRSA §6-116, sub-§4** is enacted to read:

4. Any contact information or financial information relating to a mortgagor submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a mortgagor's contact information.

**Sec. 7. 9-A MRSA §9-408** is enacted to read:

**§ 9-408. Violation of the Maine Unfair Trade Practices Act**

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act.

**Sec. 8. 9-B MRSA §162, sub-§7** is enacted to read:

7. **Disclosure of notice of mortgagor's right to cure.** The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

**Sec. 9. 14 MRSA §2401, sub-§3**, as amended by PL 1993, c. 114, §2 and affected by §4, is further amended to read:

**3. Judgment required; recording and contents.** The judgment in the proceeding must be signed by the judge and contain the following provisions:

- A. The names and addresses, if known, of all parties to the action, including the counsel of record;
- B. The docket number;

C. A finding that all parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure and, if the notice was served or given pursuant to an order of a court, including service by publication, that the notice was served or given pursuant to the order;

D. An adequate description of real estate involved; and

F. A certification to be signed by the clerk after the appeal period has expired, certifying that the applicable period has expired without action or the final judgment has been entered after remand following appeal; and

G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure and sale," the street address of the real estate involved, if any, and the book and page number of the mortgage.

Unless a proposed judgment with the provisions required in this subsection is presented to the court at the time of the court's decision, the court shall name the party responsible for preparing a judgment with the required provisions. An attested copy of the judgment with the signed clerk's certification must be recorded in the registry of deeds for the county or counties where the subject property is located within one year of the entry of the final judgment unless otherwise ordered by the court. For the purposes of this section, a judgment is not final until all applicable appeal periods have expired and any appellate proceedings and subsequent actions on remand, if any, have been concluded. The court shall name the party responsible for recording the attested copy of the judgment and for paying the appropriate recording fees. The judgment has no effect as to any person not a party to the proceeding who has no actual knowledge of the judgment unless an attested copy of the judgment is recorded in accordance with this section. A judgment of foreclosure and sale for recording may not be recorded in the registry of deeds unless it is in compliance with the requirements of this section. Failure to comply with this section does not affect the validity of the underlying judgment.

**Sec. 10. 14 MRSA §6111, sub-§1**, as amended by PL 1997, c. 579, §1, is further amended to read:

**1. Notice; payment.** With respect to mortgages upon residential property located in this State when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, the mortgagee may not accelerate maturity of the unpaid balance of the obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any required payment, tax payment or insurance premium payment, by any method authorized by this chapter until at least ~~30~~<sup>35</sup> days after the date that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor and any cosigner against whom the mortgagee is enforcing the obligation secured by the mortgage at the last known addresses of the mortgagor and any cosigner that the mortgagor has the right to cure the default by full payment of all amounts that are due without acceleration, including reasonable interest and late charges specified in the mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment of the amounts before the date specified in the notice, the mortgagor is restored to all rights under the mortgage deed as though the default had not occurred.

**Sec. 11. 14 MRSA §6111, sub-§1-A** is enacted to read:

**1-A. Contents of notice.** A mortgagee shall include in the written notice under subsection 1 the following:

- A. The mortgagor's right to cure the default as provided in subsection 1;
- B. An itemization of all past due amounts causing the loan to be in default;
- C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan;
- D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period;
- E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee;
- F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; and
- G. Where mediation is available as set forth in section 6321-A, a statement that a mortgagor may request mediation to explore options for avoiding foreclosure judgment.

**Sec. 12. 14 MRSA §6111, sub-§3-A** is enacted to read:

**3-A. Information; Bureau of Consumer Credit Protection.** Within 3 days of providing written notice to the mortgagor as required by subsections 1 and 1-A, the mortgagee shall file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

- A. The name and address of the mortgagor and the date the written notice required by subsections 1 and 1-A was mailed to the mortgagor and the address to which the notice was sent;
- B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and
- C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection.

**Sec. 13. 14 MRSA §6111, sub-§3-B** is enacted to read:

**3-B. Report.** On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

**Sec. 14. 14 MRSA §6111, sub-§4-A** is enacted to read:

**4-A. Letter to mortgagor.** Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the foreclosure mediation program as established in section 6321-A.

**Sec. 15. 14 MRSA §6112** is enacted to read:

**§ 6112. Statewide outreach**

To the extent resources are available pursuant to subsection 4, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall engage in the following activities.

**1. Hotline.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

**2. Outreach; housing counseling services.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.

**3. Form.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court a one-page form notice for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.

**4. Funding.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a nonlapsing, dedicated account for the deposit of revenues transferred from the Department of Administrative and Financial Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and for any funds received from any public or private source. The

**4. Financial information confidential.** Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.

**5. No waiver of rights.** The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

**6. Commencement of mediation.** When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

**7. Provisions of mediation services; filing and fees.** The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

(1) Are trained in mediation and all relevant aspects of the law;

(2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;

(3) Have knowledge of mortgage assistance programs; and

(4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets.

The court may establish a training program for mediators and require that mediators receive such training prior to being appointed;

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

(1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and

LD 1485  
ENERGY

PL C. 372  
(excerpts)

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

## An Act Regarding Maine's Energy Future

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

**Whereas,** this legislation establishes the Efficiency Maine Trust to operate an integrated suite of energy efficiency and renewable energy programs; and

**Whereas,** it is necessary that the changes made by this legislation take effect as soon as possible for the maximum benefit of the people of the State to aid them in developing efficient uses of energy; and

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

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

### PART A

**Sec. A-1. 5 MRSA §949, sub-§1, ¶D,** as amended by PL 2009, c. 122, §5, is further amended to read:

D. Director of electric and gas utility industries; and

**Sec. A-2. 5 MRSA §949, sub-§1, ¶D-1,** as enacted by PL 2007, c. 482, §4, is repealed.

**Sec. A-3. 5 MRSA §3327,** as amended by PL 2007, c. 656, Pt. C, §§3 to 5, is repealed.

**Sec. A-4. 5 MRSA §12004-G, sub-§13-F,** as enacted by PL 2007, c. 317, §1, is repealed.

**Sec. A-5. 5 MRSA §12004-I, sub-§20-B,** as enacted by PL 2007, c. 317, §2, is repealed.

**Sec. A-6. 35-A MRSA §3211-A,** as amended by PL 2007, c. 317, §§3 to 13, is repealed.

**Sec. A-7. 35-A MRSA §3211-C,** as amended by PL 2009, c. 88, §1, is repealed.

**Sec. A-8. 35-A MRSA §4711,** as amended by PL 2009, c. 122, §17, is repealed.

**Sec. A-9. 35-A MRSA c. 95,** as amended, is repealed.

**Sec. A-10. Effective date.** This Part takes effect July 1, 2010.

### PART B

**Sec. B-1. 5 MRSA §12004-G, sub-§10-C** is enacted to read:

**10-C.**



*Efficiency Maine Trust Board = board*

**4. Triennial plan.** The board shall vote on a detailed, triennial, energy efficiency, alternative energy resources and conservation plan that includes the quantifiable measures of performance developed under subsection 3 and make a full report of the vote to the commission in accordance with this subsection. The triennial plan must provide integrated planning, program design and implementation strategies for all energy efficiency, alternative energy resources and conservation programs administered by the trust, including but not limited to the electric efficiency and conservation programs under section 10110, the natural gas efficiency and conservation programs under section 10111, the Regional Greenhouse Gas Initiative Trust Fund under section 10109, the Heating Fuels Efficiency and Weatherization Fund under section 10119 and any state or federal funds or publicly directed funds accepted by or allocated to the trust for the purposes of this chapter. The triennial plan must include provisions for the application of appropriate program funds to support workforce development efforts that are consistent with and promote the purposes of the trust. The plan must be consistent with the comprehensive state energy plan pursuant to Title 2, section 9, subsection 3, paragraph C.

A. The triennial plan must be developed by the trust, in consultation with entities and agencies engaged in delivering efficiency programs in the State, to authorize and govern or coordinate implementation of energy efficiency and weatherization programs in the State.

(1) Transmission and distribution utilities and natural gas utilities shall furnish data to the trust that the trust requests under this subsection subject to such confidential treatment as a utility may request and the board determines appropriate pursuant to section 10106. The costs of providing the data are deemed reasonable and prudent expenses of the utilities and are recoverable in rates.

B. In developing the triennial plan, the staff of the trust shall consult the board and provide the opportunity for the board to provide input on drafts of the plan.

C. The board shall review and approve the triennial plan by affirmative vote of 2/3 of the trustees upon a finding that the plan is consistent with the statutory authority for each source of funds that will be used to implement the plan, the state energy efficiency targets in paragraph F and the best practices of program administration under subsection 2. The plan must include, but is not limited to, efficiency and conservation program budget allocations, objectives, targets, measures of performance, program designs, program implementation strategies, timelines and other relevant information.

D. Prior to submission of the triennial plan to the commission, the trust shall offer to provide a detailed briefing on the draft plan to the joint standing committee of the Legislature having jurisdiction over energy matters and, at the request of the committee, shall provide such a briefing and opportunity for input from the committee. After providing such opportunity for input and making any changes as a result of any input received, the board shall deliver the plan to the commission for its review and approval. The commission shall open a proceeding and issue an order either approving the plan or rejecting the plan and stating the reasons for the rejection. The commission shall reject elements of the plan that propose to use funds generated pursuant to sections 10110, 10111 or 10119 if the plan fails to reasonably explain how these elements of the program would achieve the objectives and implementation requirements of the programs established under those

**5. Rules.** The board shall adopt rules for establishing and administering the trust and its programs. These rules must include:

A. Provisions for the expenditure of trust funds, including, but not limited to, the development of program budgets, criteria for energy efficiency and conservation programs and other consumer benefit programs, the process for project selection and approval, minimum requirements for project monitoring and verification and the cost-effectiveness tests to be used for measuring and comparing program benefits and costs; and

B. Provisions for the independent evaluation of program expenditures to ensure cost-effectiveness of projects to improve energy efficiency or to reduce greenhouse gases.

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**6. Self-dealing prohibited.** In the operation or dissolution of the trust, no part of the net earnings of the trust may benefit any trustee, officer or employee except that the trust may pay reasonable compensation for services rendered and otherwise hold, manage and dispose of its property in furtherance of the purposes of the trust.

**7. Recommendations; advisory groups.** The trust may make recommendations to the Governor, the Legislature and other public officials regarding energy efficiency, weatherization and renewable energy programs. The trust may establish technical advisory groups as needed for the purposes of gathering technical knowledge on any aspect of energy conservation or policy.

### **§ 10106. Freedom of access; confidentiality**

The proceedings of the board and records of the trust are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this subsection.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the trust that:

(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential; and

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result

in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains; and

B. A financial statement or tax return.

The trust shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it.

**2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the board determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** The director or a trustee, officer, employee, agent, other representative of the trust or other person may not knowingly divulge or disclose records designated confidential by this section, except that the board, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. To a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the trust has or may have an interest;

E. In any litigation or proceeding in which the trust has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority.

## **§ 10107. Conflicts of interest; financial disclosure statements**

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

## An Act Regarding the Central Voter Registration System

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

**Sec. 1. 21-A MRSA §161, sub-§2-A**, as enacted by PL 2005, c. 453, §32, is amended to read:

**2-A. Maintenance of voter registration information.** The registrar in each municipality shall keep the central voter registration system current at all times for the voters in the registrar's municipality. The Secretary of State is authorized to conduct maintenance of the central voter registration system. The Secretary of State shall by rule determine the program for voter list maintenance required by the National Voter Registration Act of 1993. A registrar may not cancel a voter's registration in the central voter registration system solely because the registered voter did not vote in previous elections. A voter's registration record in the central voter registration system must be cancelled by either the registrar for the voter's municipality or by the Secretary of State as follows:

A. When it is determined that a voter has registered to vote in another jurisdiction in the State, the voter registration record from the former jurisdiction must be cancelled; and

B. When it is determined that the voter has registered to vote in another jurisdiction outside of the State, the voter registration record in the State must be cancelled.

**Sec. 2. 21-A MRSA §162-A, sub-§1**, as enacted by PL 1993, c. 695, §17, is amended to read:

**1. Change of address confirmation notice.** Except as provided in section 122, subsection 3, a registrar, or the Secretary of State when conducting maintenance of the central voter registration system, shall send by forwardable mail a change of address confirmation notice, with a postage prepaid and preaddressed return notice, to the last known place of residence of each person the registrar or the Secretary of State has identified as having a change of address. If a registrant has moved within the municipality's jurisdiction, a registrar shall change the voter's record to reflect the new address before sending the change of address confirmation notice. If a registrant has moved outside the municipality's jurisdiction, a registrar shall also include information on voter registration procedures in the new jurisdiction.

**Sec. 3. 21-A MRSA §162-A, sub-§2**, as amended by PL 2005, c. 453, §33, is further amended to read:

**2. Change of voter's status.** A voter's registration may be cancelled in the central voter registration system if the voter confirms that the voter has moved from the municipality's jurisdiction. If a voter fails to respond to the change of address confirmation notice, the voter must be designated on the incoming voting list and in the central voter registration system as inactive. A voter who has been designated as inactive and fails to vote for the next 2 general elections must be cancelled in the central voter registration system. If a voter who is designated as inactive votes at any election prior to cancellation in the central voter registration system, the inactive designation of the voter must be changed

to active. Address verification may be requested at the polls before allowing a voter designated as inactive to vote. Cancellation of a voter's registration record in the central voter registration system pursuant to this subsection may be performed by either the registrar for the voter's municipality or the Secretary of State.

**Sec. 4. 21-A MRSA §196, sub-§3**, as amended by PL 2007, c. 397, §2 and c. 455, §12, is repealed and the following enacted in its place:

**3. Other reports.** The Secretary of State shall make available to any person upon request and free of charge the following voter record information in electronic form: either the voter's first name or last name, but not both names in the same report; year of birth; enrollment status; electoral districts to include congressional district and county only; voter status; the date of registration or the date of change of the voter record if applicable; the date of the last statewide election in which each voter voted; and any special designations indicating uniformed service voters, overseas voters or township voters. The Secretary of State or the registrar also may make available to any person upon request and free of charge any other reports that do not contain the names, dates of birth or addresses of individual voters.

**Sec. 5. 21-A MRSA §196, last ¶**, as amended by PL 2007, c. 397, §2, is further amended to read:

This section is repealed September 30, ~~2009~~2011.

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

Vetred

L.D. 1357

Date: 5-28-09

(Filing No. S-247)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE  
SENATE  
124TH LEGISLATURE  
FIRST REGULAR SESSION

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 492,  
L.D. 1357, Bill, "An Act To Protect the Privacy of Maine Residents under the Driver's  
License Laws"

Amend the amendment by striking out all of the first paragraph after the title (page 1,  
lines 11 to 13 in amendment) and inserting the following:

'Amend the bill in section 5 in subsection 6-A in the first line (page 1, line 21 in L.D.)  
by striking out the following: "The" and inserting the following: 'Except as authorized  
under 18 United States Code, Section 2721, the'

Amend the amendment by striking out all of subsection 6 (page 1, lines 16 to 24 in  
amendment) and inserting the following:

**'6. Storage, recording, retention and distribution of digital images and digitized  
signatures.** Digital image information images and digitized signatures used to produce a  
license is are confidential and may be distributed only as required to comply with for use  
by a law enforcement agency in carrying out its functions or as otherwise authorized  
under the provisions of 18 United States Code, Chapter 123, except that digital image  
information may not be distributed to sales and marketing companies or to the public  
Section 2721. The Secretary of State may store, record and retain digital images and  
digitized signatures used to produce a license solely for the purpose of producing  
duplicate licenses and for renewal of licenses. A violation of this subsection is a violation  
of section 2103, subsection 4.'

Amend the amendment in section 10 by striking out all of subsection 5 (page 1, lines  
34 and 35 and page 2, lines 1 to 5 in amendment) and inserting the following:

**'5. Storage, recording, retention and distribution of digital images and digitized  
signatures.** Digital images and digitized signatures used to produce a nondriver  
identification card are confidential and may be distributed only for use by a law  
enforcement agency in carrying out its functions or as otherwise authorized under the  
provisions of 18 United States Code, Section 2721. The Secretary of State may store,  
record and retain digital images and digitized signatures used to produce a nondriver  
identification card solely for the purpose of producing duplicate nondriver identification  
cards and for renewal of nondriver identification cards. A violation of this subsection is a  
violation of section 2103, subsection 4.'

**SUMMARY**

This amendment specifies the federal law that provides an exemption to the provision that prohibits the Secretary of State from disseminating social security numbers collected from applicants for a driver's license or nondriver identification card.

It provides that digital images and digitized signatures, as opposed to digital information in Committee Amendment "A," used to produce a driver's license or nondriver identification card are confidential, and it specifies the federal law that provides an exemption to this provision.

SPONSORED BY: Dennis J. Damon

(Senator DAMON)

COUNTY: Hancock

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

**An Act To Require Interscholastic Athletic Organizations  
To Comply with the Public Proceedings Provisions  
of the Freedom of Access Laws for Certain Meetings**

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

**Sec. 1. 1 MRSA §402, sub-§2, ¶E**, as amended by PL 1995, c. 608, §2, is further amended to read:

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; ~~and~~

**Sec. 2. 1 MRSA §402, sub-§2, ¶F**, as enacted by PL 1995, c. 608, §3, is amended to read:

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

**Sec. 3. 1 MRSA §402, sub-§2, ¶G** is enacted to read:

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.

**Sec. 4. 1 MRSA §402, sub-§4** is enacted to read:

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



PUBLIC Law, Chapter 334 LD 1306, item 1, 124th Maine State Legislature  
An Act To Require Interscholastic Athletic Organizations To Comply with the Public  
Proceedings Provisions of the Freedom of Access Laws for Certain Meetings

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
12.2	549-B	5	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas  "shall not constitute records available for public inspection or disclosure"	<ul style="list-style-type: none"> <li>Department of Conservation, Maine Geological Survey</li> </ul>	<ul style="list-style-type: none"> <li>Never invoked bring claims process (2 claims pending); no changes</li> </ul>	TABLED for more information, discussion
19	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>Approx. 6 requests per month, approx. 2 must be modified to not release confidential data; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
21.1	6445		Title 12, section 6445, relating to logbooks for lobster harvesters  "disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173"	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
22	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	<ul style="list-style-type: none"> <li>Lobster Promotion Council</li> </ul>	<ul style="list-style-type: none"> <li>Administered infrequently; no changes</li> </ul>	TABLED for more information, discussion

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
<b>22.1</b>	12	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors  “disclosure of any date collected under this section is subject to the confidentiality provisions of section 6173	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No FOA denials; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
<b>25</b>	12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	<ul style="list-style-type: none"> <li>Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	TABLED for more information, discussion
<b>27</b>	12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	<ul style="list-style-type: none"> <li>Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no change</li> </ul>	TABLED for more information, discussion
<b>32</b>	14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	<ul style="list-style-type: none"> <li>Judicial Branch</li> <li>Attorney General</li> <li>Maine Prosecutors Association</li> <li>Maine Association of Criminal Defense Lawyers</li> <li>Maine State Bar Association</li> <li>Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>AG: if any changes, make consistent with SIC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
33	1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)
34	1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests frequently made but seldom granted absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
40	16		Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	<ul style="list-style-type: none"> <li>• Attorney General</li> <li>• Department of Public Safety</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• DPS: Discussion needed; changes recommended</li> </ul>	HOLD
41	16	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	<ul style="list-style-type: none"> <li>• Department of Agriculture, Food and Rural Resources</li> </ul>	<ul style="list-style-type: none"> <li>• Requests; no change</li> </ul>	HOLD
56	19-A	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	<ul style="list-style-type: none"> <li>• Attorney General</li> </ul>	<ul style="list-style-type: none"> <li>• Many records otherwise confidential, panel's findings released when final; no changes</li> </ul>	HOLD 11/13/08
69	20-A	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	<ul style="list-style-type: none"> <li>• Department of Education</li> <li>• Maine Education Association</li> </ul>	<ul style="list-style-type: none"> <li>• DOE: On average once a week; CONSIDER CHANGE: AMBIGUOUS AS WRITTEN</li> </ul>	Committee: recommend amendment, with comment 11/17/08

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## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
2	10	945-J	Title 10, section 945-J, relating to the Maine International Trade Center	<ul style="list-style-type: none"> <li>Maine International Trade Center (Board of Directors?)</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	Amend, but hold until next year 11/13/08
3	10	975-A	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	<ul style="list-style-type: none"> <li>Finance Authority of Maine</li> </ul>	<ul style="list-style-type: none"> <li>Regularly applied; 3 denials for info per year; used to go into executive session; CHANGE: CLARIFY THAT APPLIES TO PERSONALLY IDENTIFIABLE INFORMATION OF MAINE CONSUMERS</li> </ul>	Amend, but hold until next year 11/13/08
11.1	10	9202	Title 10, section 9202, subsection 1-B, relating to records of the Northern Maine Transmission Corporation - subject to same confidentiality provisions applicable to FAME under Title 10, section 975-A  "subject to the disclosure and confidentiality provisions governing the records of the authority under section 975-A"	<ul style="list-style-type: none"> <li>Northern Maine Transmission Corporation</li> <li>Finance Authority of Maine</li> </ul>	<ul style="list-style-type: none"> <li>FAME: entity not active in recent years; records covered by §975-A; no changes</li> </ul>	OK; No change (7/30/08)
12	12	550-B	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	<ul style="list-style-type: none"> <li>Department of Conservation, Maine Geological Survey</li> </ul>	<ul style="list-style-type: none"> <li>No FOA requests; exception cited few times per year</li> <li>No changes</li> </ul>	TABLED for more information, discussion

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
12.2	549-B	5	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas  "shall not constitute records available for public inspection or disclosure"	<ul style="list-style-type: none"> <li>Department of Conservation, Maine Geological Survey</li> </ul>	<ul style="list-style-type: none"> <li>Never invoked bring claims process (2 claims pending); no changes</li> </ul>	TABLED for more information, discussion
19	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>Approx. 6 requests per month, approx. 2 must be modified to not release confidential data; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
21.1	6445		Title 12, section 6445, relating to logbooks for lobster harvesters  "disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173"	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
22	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	<ul style="list-style-type: none"> <li>Lobster Promotion Council</li> </ul>	<ul style="list-style-type: none"> <li>Administered infrequently; no changes</li> </ul>	TABLED for more information, discussion

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Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

	Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
22.1	12	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors  "disclosure of any date collected under this section is subject to the confidentiality provisions of section 6173"	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No FOA denials; no changes</li> </ul>	RECOMMEND review by Judiciary Committee
25	12	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	<ul style="list-style-type: none"> <li>Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	TABLED for more information, discussion
27	12	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	<ul style="list-style-type: none"> <li>Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no change</li> </ul>	TABLED for more information, discussion
32	14	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	<ul style="list-style-type: none"> <li>Judicial Branch</li> <li>Attorney General</li> <li>Maine Prosecutors Association</li> <li>Maine Association of Criminal Defense Lawyers</li> <li>Maine State Bar Association</li> <li>Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)



## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
33	14	1254-A	8 Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)
34	14	1254-B	2 Title 14, section 1254-B, subsection 2, relating to juror selection records and information	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests frequently made but seldom granted absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	HOLD (10/06/08)

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
40	16		Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	<ul style="list-style-type: none"> <li>• Attorney General</li> <li>• Department of Public Safety</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• DPS: Discussion needed; changes recommended</li> </ul>	HOLD
41	16	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	<ul style="list-style-type: none"> <li>• Department of Agriculture, Food and Rural Resources</li> </ul>	<ul style="list-style-type: none"> <li>• Requests; no change</li> </ul>	HOLD
56	19-A	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	<ul style="list-style-type: none"> <li>• Attorney General</li> </ul>	<ul style="list-style-type: none"> <li>• Many records otherwise confidential, panel's findings released when final; no changes</li> </ul>	HOLD 11/13/08
69	20-A	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	<ul style="list-style-type: none"> <li>• Department of Education</li> <li>• Maine Education Association</li> </ul>	<ul style="list-style-type: none"> <li>• DOE: On average once a week; CONSIDER CHANGE: AMBIGUOUS AS WRITTEN</li> </ul>	Committee: recommend amendment, with comment 11/17/08

G:\STUDIES 2009\Right to Know Advisory Committee\Exceptions to be reviewed by 2010.doc (6/29/2009 1:15:00 PM)

SENATE

JOSEPH C. BRANNIGAN, DISTRICT 9, CHAIR  
LISA T. MARRACHE', DISTRICT 25  
PETER MILLS, DISTRICT 26

JANE ORBETON, LEGISLATIVE ANALYST  
ELIZABETH COOPER, LEGISLATIVE ANALYST  
JAN CLARK, COMMITTEE CLERK



HOUSE

ANNE C. PERRY, CALAIS, CHAIR  
PATRICIA R. JONES, MOUNT VERNON  
MARKEVES, NORTH BERWICK  
MATTHEW J. PETERSON, RUMFORD  
LINDA F. SANBORN, GORHAM  
PETER C. STUCKEY, PORTLAND  
HENRY L. JOY, CRYSTAL  
SARAH O. LEWIN, ELIOT  
JAMES J. CAMPBELL, SR., NEWFIELD  
MEREDITH N. STRANG BURGESS, CUMBERLAND  
DONALD G. SOCTOMAH, PASSAMAQUODDY TRIBE

STATE OF MAINE


ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON HEALTH AND HUMAN SERVICES

MEMORANDUM

DATE: June 1, 2009

TO: Senator Barry J. Hobbins, Chair  
Right to Know Advisory Committee

FROM:  Joseph C. Brannigan, Senate Chair  
Anne C. Perry, House Chair  
Joint Standing Committee on Health and Human Services

SUBJECT: **Review by Right to Know Advisory Committee**  
**LD 757, An Act to Improve the Transparency of Certain Hospitals**

On April 9, 2009, the Health and Human Services Committee considered LD 757, An Act to Improve the Transparency of Certain Hospitals. Sponsored by Representative Adam Goode, this bill makes medical organizations that receive over \$250,000 annually in public funds for medical services subject specific provisions of the Freedom of Access (FOA) Laws. A copy of the bill is attached along with a copy of the bill analysis and testimony from the public hearing.

The Health and Human Services Committee is interested in initiatives that make the business operations of hospitals more transparent to the public. Therefore, we would like to learn more about the possibility of applying the public proceedings and open meetings provisions of the FOA (1 MRSA §402 and §403) to hospital board meetings and the issues we may need to consider related to our work on LD 757.

The Health and Human Services Committee has permission to carry over LD 757 to the Second Regular Session of the 124<sup>th</sup> Legislature and would like to get the opinion of the Right to Know Advisory Committee before making a decision on the bill. In particular, the HHS Committee would like the opinion of the Right to Know Advisory Committee about possible

unintended consequences of expanding the FOA laws to non-governmental entities should we move forward with the bill. We also want to get the Right to Know Advisory Committee's opinion about whether this application to non-profit hospitals is appropriate under the original intent of FOA. Finally, we welcome any suggestions for changes to the bill or other issues the Advisory Committee identifies for the HHS Committee to consider during our deliberations on the bill next year.

Thank you for your assistance with this matter and we look forward to your response.



# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 757

H.P. 516

House of Representatives, February 26, 2009

### An Act To Improve the Transparency of Certain Hospitals

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Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative GOODE of Bangor.  
Cosponsored by Senator PERRY of Penobscot and  
Representatives: BUTTERFIELD of Bangor, CAMPBELL of Newfield, CHASE of Wells,  
HINCK of Portland, KNIGHT of Livermore Falls, O'BRIEN of Lincolnville, ROSEN of  
Bucksport, SANBORN of Gorham.

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

2 **Sec. 1. 1 MRSA §402, sub-§2, ¶E,** as amended by PL 1995, c. 608, §2, is further  
3 amended to read:

4 E. The board of directors of a nonprofit, nonstock private corporation that provides  
5 statewide noncommercial public broadcasting services and any of its committees and  
6 subcommittees; ~~and~~

7 **Sec. 2. 1 MRSA §402, sub-§2, ¶F,** as enacted by PL 1995, c. 608, §3, is  
8 amended to read:

9 F. Any advisory organization, including any authority, board, commission,  
10 committee, council, task force or similar organization of an advisory nature,  
11 established, authorized or organized by law or resolve or by Executive Order issued  
12 by the Governor and not otherwise covered by this subsection, unless the law, resolve  
13 or Executive Order establishing, authorizing or organizing the advisory organization  
14 specifically exempts the organization from the application of this subchapter; and

15 **Sec. 3. 1 MRSA §402, sub-§2, ¶G** is enacted to read:

16 G. An organization and any board, commission, committee, subcommittee or wholly  
17 or partially owned subsidiary of that organization if the organization receives over  
18 \$250,000 annually in public funds for medical services and provides medical services  
19 as its primary function.

20 **SUMMARY**

21 This bill makes medical organizations that receive over \$250,000 annually in public  
22 funds for medical services subject to the freedom of access laws.

SENATE

LAWRENCE BLISS, District 7, Chair  
BARRY J. HOBBS, District 5  
DAVID R. HASTINGS III, District 13

MARGARET J. REINSCH, Legislative Analyst  
SUSAN M. PINETTE, Committee Clerk



HOUSE

CHARLES R. PRIEST, Brunswick, Chair  
MARK E. BRYANT, Windham  
CYNTHIA A. DILL, Cape Elizabeth  
RICHARD C. CLEARY, Houlton  
DAWN HILL, York  
CHARLES B. KRUGER, Thomaston  
SARA R. STEVENS, Bangor  
JOAN M. NASS, Acton  
MICHAEL G. BEAULIEU, Auburn  
JARROD S. CROCKETT, Bethel  
WAYNE T. MITCHELL, Penobscot Nation

State of Maine  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
COMMITTEE ON JUDICIARY

June 11, 2009

Senator Barry J. Hobbins, Chair  
Right to Know Advisory Committee

Re: Treatment of Information Relating to Public Employees

The Joint Standing Committee on Judiciary had before it LD 1353, An Act Concerning Salary Information of Public Employees. The main impetus for the bill was the posting of public employee names, positions and salaries on a private organization's website. The website provided an opportunity to post comments directly associated with individuals named on the site, and public employees felt they were unfairly targeted.

The fact that publicly available information was made so easily accessible was a concern for many people. Although the testimony was overwhelmingly against enactment of the bill as written, we believe important questions need to be addressed. We voted Ought Not to Pass on LD 1353, with the understanding that we would ask the Advisory Committee to examine the following issues and make recommendations back to the Judiciary Committee in January of next year.

Specifically, the Judiciary Committee would like the Advisory Committee to recommend any changes that may be needed to balance the public's interest in the disclosure of the names and salaries of public employees with the privacy rights of employees. In addition to normal privacy issues, some individuals also have significant safety concerns. Victims of domestic violence and others who have a legitimate fear about their safety or the safety of their children, including participants in the Address Confidentiality Program administered by the Secretary of State, have a significant interest in protecting their whereabouts, and the release of certain public information may put them in jeopardy. We are also very concerned about law enforcement officers who work undercover or have other legitimate needs to avoid releasing identifying information to the public. We believe there may be other public employees who have a greater need for protecting


identifying information than the average public employee, and their concerns should be considered as well.

The presumption that information about public employees is public should remain, but we think there needs to be thought given to protecting certain information in special situations. We believe that the Right to Know Advisory Committee is the appropriate entity to conduct the weighing of the interests involved. We look forward to your analysis and recommendations.

Thank you.

Sincerely,

  
Senator Lawrence Bliss  
Senate Chair

  
Representative Charles R. Priest  
House Chair





# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1353

S.P. 488

In Senate, April 2, 2009

### An Act Regarding Salary Information for Public Employees

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MARRACHÉ of Kennebec.  
Cosponsored by Representative CROCKETT of Augusta and  
Senators: BLISS of Cumberland, BOWMAN of York, President MITCHELL of Kennebec,  
SIMPSON of Androscoggin, Representatives: BLODGETT of Augusta, BRYANT of  
Windham, SMITH of Monmouth.

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

2             **Sec. 1. 5 MRSA §7065, sub-§5** is enacted to read:

3             **5. Confidential information; public information.** Salary information as it relates to  
4 an individual state, county, municipal, school, University of Maine System, Maine  
5 Community College System or Maine Maritime Academy employee is confidential.  
6 Salary information as it relates to specified positions, identified by those positions, is  
7 public information.

8   **SUMMARY**

9             This bill provides that salary information as it relates to an individual state, county,  
10 municipal, school, University of Maine System, Maine Community College System or  
11 Maine Maritime Academy employee is confidential. Salary information as it relates to  
12 specified positions, identified by those positions, is public information.

EXAMPLES OF FOA EXCEPTIONS  
FOR ENTITIES THAT PROVIDE LOANS, GRANTS OR OTHER FINANCIAL  
ASSISTANCE TO INDIVIDUALS OR BUSINESSES

1. FAME (USED AS MODEL)
2. MTI
3. MSHA
4. ME EDUCATIONAL LOAN AUTHORITY

\*12579 10 M.R.S.A. § 975-A

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 10. COMMERCE AND TRADE**  
**PART 2. BUILDING AND DEVELOPMENT**  
**CHAPTER 110. FINANCE AUTHORITY OF MAINE**  
**SUBCHAPTER 1. FINANCE AUTHORITY OF MAINE ACT**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session  
of the 124th Legislature*

**§ 975-A. Disclosure and confidentiality of records**

1. Disclosure required. Notwithstanding subsections 2 and 3 and except as provided in paragraph F, the following shall be made available to any person upon request reasonably describing the records to which access is sought or, if no request is made, in any manner and at any time which the authority may determine:

A. After filing of a written application or proposal for financial assistance or property transfer, in form specified by or acceptable to the authority:

- (1) Names of recipients of or applicants for financial assistance, including principals, where applicable;
- (2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;
- (3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;
- (4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;
- (5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;
- (6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and
- (7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;

B. Any information pursuant to waiver deemed satisfactory by the authority;

C. Information which, as determined by the authority, has already been made available to the public;

D. Any information necessary to carry out section 1043 or 1063;

\*12580 E. Information necessary to comply with Title 1, section 407, subsection 1;

F. Information or records specified in a written request signed by the chairmen of a legislative committee shall be provided to the legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it; and

G. The annual report of the authority required pursuant to section 974.

2. Confidential information. The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any record obtained or developed by the authority prior to receipt of a written application or proposal, in form specified by or acceptable to the authority, for financial assistance to be provided by or with the assistance of the authority or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal shall not be considered confidential unless it meets the requirements of other paragraphs of this subsection;

B. Any record obtained or developed by the authority which fulfills the following requirements:

(1) A person, including the authority, to whom the record belongs or pertains has requested that the record be designated confidential; and

(2) The authority has determined that information in the record gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through authority records, or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the authority, in the case of a person other than the authority, to any person to whom the record belongs or pertains;

C. Any financial statement or tax return of an individual or any other record obtained or developed by the authority the disclosure of which would constitute an invasion of personal privacy, as determined by the authority;

\*12581 D. Any record including any financial statement or tax return obtained or developed by the authority in connection with any monitoring or servicing activity by the authority pertaining to any financial assistance provided or to be provided by or with the assistance of the authority;

E. Any record obtained or developed by the authority which contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project;

F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the authority pursuant only to subchapters III [FN1] or IV, [FN2] except section 1053, subsection 5, if a person to whom the statement or

plan belongs or pertains has requested that the record be designated confidential; and

G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.

3. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

A. Impersonal, statistical or general information;

B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;

C. To a financing institution or credit reporting service;

D. Information necessary to comply with any federal or state law, including section 979, or rule or with any agreement pertaining to financial assistance;

E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State;

\*12582 F. If necessary to assure collection of any obligation in which it has or may have an interest;

G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and

H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.

4. Records on effective date. Whether any record in the possession of the authority on the effective date of this section is confidential shall be determined pursuant to this section and not pursuant to the law in effect when the authority or any of its predecessors obtained any such record and any such record shall or may be disclosed or divulged to the extent required or permitted by this section.

#### CREDIT(S)

*1985, c. 344, § 25; 1987, c. 697, § 3; 1989, c. 552, §§ 10, 11; 2003, c. 537, § 17, eff. Jan. 1, 2005.*

[FN1] 10 M.R.S.A. § 1041 et seq.

[FN2] 10 M.R.S.A. § 1061 et seq.

<General Materials (GM) - References, Annotations, or Tables>

## HISTORICAL NOTES

### HISTORICAL AND STATUTORY NOTES

#### 1996 Main Volume

##### 1987 Legislation

Laws 1987, c. 697, § 3, in par. D of subsec. 3, inserted ", including section 979,".

##### 1989 Legislation

Laws 1989, c. 552, §§ 10, 11, in subsec. 2, added par. G.

##### Derivation:

R.S.1954, c. 38-B, § 13-A; Laws 1959, c. 157, § 5; Laws 1965, c. 471, § 9; Laws 1967, c. 345, § 5; Laws 1967, c. 345, § 5; Laws 1969, c. 584, § 1; Laws 1973, c. 633, § 21; Laws 1977, c. 489, § 12; Laws 1981, c. 476, §§ 1 to 3; Laws 1985, c. 519, § 6; Laws 1985, c. 344, § 24; former 10 M.R.S.A. §§ 852, 875, 1007; former 30 M.R.S.A. § 5340-A.

#### 2008 Electronic Pocket Part Update

##### 2003 Legislation

Laws 2003, c. 537, § 17, in subsec. 1, par. A, subpar. (6), substituted "loan" for "mortgage" in three places.

\*12583 Laws 2003, c. 537, § 53, provides:

"Sec. 53. Effective date. This Act takes effect January 1, 2005."

## REFERENCES

### LAW REVIEW AND JOURNAL COMMENTARIES

A section-by-section analysis of Maine's Freedom of Access Act. Anne. C. Lucey, 43 Me.L.Rev. 169 (1991).

## ANNOTATIONS

### NOTES OF DECISIONS

#### Competitor information 1

##### 1. Competitor information

State Finance Authority acted within its discretion in limiting disclosure of information concerning competitor, submitted within city's application for financing of construction project under Municipal Securities Approval Program. Hammond Lumber Co. v. Finance Authority of Maine (1987) Me., 521 A.2d 283. Municipal Corporations ↻917(2); Records ↻64

**\*6297 5 M.R.S.A. § 15302-A**

**MAINE REVISED STATUTES ANNOTATED  
TITLE 5. ADMINISTRATIVE PROCEDURES AND SERVICES  
PART 19. RESEARCH AND DEVELOPMENT  
CHAPTER 407. RESEARCH AND DEVELOPMENT  
SUBCHAPTER 1. MAINE TECHNOLOGY INSTITUTE**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session  
of the 124th Legislature*

**§ 15302-A. Confidentiality; freedom of access**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Commercial or financial information" means information related to businesses, commerce, trade, employment, profits or finances, including personal finances.

B. "Grant" means any disbursement of funds through grants or other financial awards to private companies, targeted technology incubators or nonprofit organizations, pursuant to section 15303, as well as any investment of funds, equity investment, securities, loan, contractual arrangement or other evidence of indebtedness authorized by section 15304.

C. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for the making, preparing, compounding or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

2. Proceedings; records; confidentiality. The proceedings of the board and the records of the institute are public for the purposes of Title 1, chapter 13, except that the following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the board prior to receipt of a written application or proposal in a form acceptable to the board for either financial assistance from the board or in connection with a transfer of property to or from the board. After receipt by the board of the application or proposal, a record pertaining to the application or proposal may not be considered confidential unless it is confidential under another provision of this subsection;

B. A peer review or analysis or other document related to the evaluation of a grant application or proposal;

**\*6298** C. A record that the person, including the institute, to whom the record belongs or pertains has requested be designated confidential and that the institute has determined contains proprietary information, trade secrets or commercial or financial information, the release of which could be competitively harmful to the submitter of the information, could impair the institute's ability in the future to obtain similar necessary information solely through the voluntary provision of such information and could affect other institute interests, such as program effectiveness and compliance;



D. A financial statement, credit report or tax return of an individual or other record obtained or developed by the board, the disclosure of which would constitute an invasion of personal privacy as determined by the board;

E. A record, including a financial statement or tax return obtained or developed by the board in connection with monitoring or servicing activity of the board, pertaining to financial assistance provided or to be provided by or with the assistance of the board;

F. A record obtained or developed by the board that contains an assessment by a person who is not employed by the board of the creditworthiness or financial condition of a person or project;

G. A financial statement or business and marketing plan in connection with a project receiving or to receive financial assistance from the board, if the person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and

H. Those employee personnel records made confidential pursuant to section 957, subsection 5 and section 17057.

3. Wrongful disclosure prohibited. A member, officer, employee, agent, other representative of the board or other person may not knowingly divulge or disclose records declared confidential by this section, except that the board may, in its discretion, make or authorize a disclosure of impersonal, statistical or general information or may make or authorize disclosure of information:

A. If necessary in connection with processing an application for or obtaining or maintaining financial assistance for a person or in connection with acquiring, maintaining or disposing of property;

B. To a financing institution or credit reporting service;

C. If necessary to comply with any federal or state law or rule or with an agreement pertaining to financial assistance;

D. If necessary to ensure collection of an obligation in which the board has or may have an interest;

E. Obtained from records declared confidential by this section for introduction for the record in litigation or a proceeding in which the board has appeared; or

\*6299 F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

4. Public information. Notwithstanding subsection 2, the institute shall make available the following information upon request:

A. Names and addresses of recipients of or applicants for financial assistance, including principals where applicable;

B. Amounts, types and terms of financial assistance provided to recipients or requested by applicants, including, without limitation, repayment period, security and rights of the institute to receive royalties and other payments, if any;

C. General descriptions of projects and businesses benefiting or to benefit from financial assistance;

D. Names of transferors or transferees, including principals, of property to or from the institute, the general terms of transfer, the transfer instrument or agreement and the purposes for which the transferred property will be used;

E. Number of new jobs created, the number of patents and copyrightable works produced, information identifying the patents and registered copyrightable works produced, the amount of royalties or returns on equity investments received by the institute or the amount of repayments received by the institute in connection with institute grants, except for information that would place a recipient of or an applicant for financial assistance at a competitive disadvantage;

F. Policies concerning institute governance, operations or procedures for review or funding of applications; and

G. Any information pursuant to waiver considered satisfactory by the institute.

5. Construction. This section must be strictly construed to protect the confidentiality of all documents designated as confidential, the confidentiality of which is essential to the technology development purpose of the institute and to the confidence of the private sector in the institute and its mission.

#### CREDIT(S)

*2001, c. 562, § 2.*

<General Materials (GM) - References, Annotations, or Tables>

\*60739 30-A M.R.S.A. § 4706

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 30-A. MUNICIPALITIES AND COUNTIES**  
**PART 2. MUNICIPALITIES**  
**SUBPART 8. DEVELOPMENT**  
**CHAPTER 201. HOUSING AUTHORITY**  
**SUBCHAPTER 1. GENERAL PROVISIONS**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session  
of the 124th Legislature*

**§ 4706. Records confidential**

1. Confidential information. Records containing the following information are deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Any information acquired by an authority or a member, officer, employee or agent of an authority from applicants for residential tenancy in housing owned, financed, assisted or managed by an authority or from any residential tenants of such housing or from any 3rd person pertaining to any applicant for tenancy or to any tenant of such housing;

B. Any written or recorded financial statement, as determined by an authority, of an individual submitted to an authority or a member, officer, employee or agent of an authority, in connection with an application for, or receipt of, a grant, mortgage or mortgage insurance;

C. Any information acquired by the Maine State Housing Authority or a state public body, private corporation, copartnership, association, fuel vendor, private contractor or individual, or an employee, officer or agent of any of those persons or entities, providing services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority, when that information was provided by the applicant for, or recipient of, those services or by a 3rd person;

D. Any statements of financial condition or information pertaining to financial condition submitted to any of the persons or entities set forth in paragraph C in connection with an application for services related to weatherization, energy conservation, homeless assistance or fuel assistance programs of the Maine State Housing Authority; and

E. The address of a shelter or other living accommodations for victims of domestic violence.

2. Wrongful disclosure prohibited. No member, officer, employee or agent of an authority may knowingly divulge or disclose information declared confidential by this section, except that:

\*60740 A. An authority may make such full and complete reports concerning administration of its programs as required by the Federal Government, any agency or department of the Federal Government, or the Legislature;

B. An authority may publish statistics or other information of a general nature drawn from information declared confidential by this section, provided that the publication is

accomplished in a manner which preserves confidentiality;

C. An authority may comply with a subpoena, request for production of documents, warrant or court order that appears on its face to have been issued or made upon lawful authority;

D. In any litigation or proceeding in which an authority is a party, the authority may introduce evidence based on any information that is deemed confidential and is within the control or custody of the authority; and

E. Any person or agency directly involved in the administration or auditing of weatherization, energy conservation or fuel assistance programs of the Maine State Housing Authority and any agency of the State with a legitimate reason to know must be given access to those records described in subsection 1, paragraphs C and D.

3. Waiver. This section shall not be construed to limit in any way the right of any person whose interest is protected by this section to waive, in writing or otherwise, the benefits of that protection.

4. Penalty. A member, officer, employee or agent of an authority who violates subsection 2 commits a civil violation for which a forfeiture of not more than \$200 may be adjudged against the member, officer, employee or agent of an authority for each violation. For the purpose of applying penalties under this subsection, a separate violation is deemed to have occurred with respect to each separate act of disclosure.

#### CREDIT(S)

*1987, c. 737, § A, 2; 1993, c. 175, §§ 1 to 4; 2007, c. 562, §§ 1 to 4.*

<General Materials (GM) - References, Annotations, or Tables>

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1996 Main Volume

##### Amendments

1993 Amendment. Laws 1993, c. 175, §§ 1, 2, in subsec. 1, added pars. C and D.

Laws 1993, c. 175, § 3, in subsec. 2, par. A, deleted reference to reports concerning administration of federal housing, and added reference to such reports as required by any agency or department of the Federal Government, or the Legislature.

\*60741 Laws 1993, c. 175, § 4, in subsec. 2, added par. E.

##### Derivation:

Laws 1977, c. 256, § 1; Laws 1983, c. 414, §§ 3, 4; Laws 1987, c. 737, § A, 1; former 30 M.R.S.A. § 4557.

#### 2008 Electronic Pocket Part Update

##### 2007 Legislation

Laws 2007, c. 562, § 1, in subsec. 1, in par. B, inserted ", or receipt of," following "application for" and "grant," preceding "mortgage or".

Laws 2007, c. 562, § 2, in subsec. 1, in par. C, inserted ", or receipt of," following "application for", and deleted "and" at the end thereof.


Laws 2007, c. 562, § 3, in subsec. 1, in par. D, substituted "; and" for a period at the end thereof.

Laws 2007, c. 562, § 4, in subsec. 1, added par. E.

## REFERENCES

### LIBRARY REFERENCES

#### 1996 Main Volume

Duty to make and keep public records; public access to records, see Records  2 et seq., 30 et seq.

Duty to make and keep public records; public access to records, see C.J.S. Records §§ 4 et seq., 60 et seq.

\*38225 20-A M.R.S.A. § 11418

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 20-A. EDUCATION**  
**PART 5. POST-SECONDARY EDUCATION**  
**CHAPTER 417-A. MAINE EDUCATIONAL LOAN AUTHORITY**

*Current with emergency legislation through Chapter 1 of the 2009 First Regular Session  
of the 124th Legislature*

**§ 11418. Records confidential**

1. Confidential information. Records containing any information acquired by the authority or a member, officer, employee or agent of the authority from applicants for or recipients of financial assistance provided pursuant to a program administered or established by the authority shall be deemed confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

2. Wrongful disclosure prohibited. No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

- A. Impersonal, statistical or general information;
- B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;
- C. To a financial institution or credit reporting service;
- D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of its bonds;
- F. If necessary to assure collection of any obligation in which it has or may have an interest;
- G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and
- H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority. \*38226

**CREDIT(S)**

*1987, c. 807, § 3, eff. April 28, 1988.*

<General Materials (GM) - References, Annotations, or Tables>

**REFERENCES**

**CROSS REFERENCES**

Freedom of access, public records, see 1 M.R.S.A. § 401 et seq.

**REFERENCES**

**LIBRARY REFERENCES**

**2008 Main Volume**

Colleges and Universities ↻9.25(2).

Westlaw Topic No. 81.

C.J.S. Civil Rights §§ 122, 140.

C.J.S. Colleges and Universities §§ 29, 33 to 34.

**EXTERNSHIP PROPOSAL  
RIGHT TO KNOW ADVISORY COMMITTEE  
For Spring 2009**

The Right to Know Advisory Committee was created by the Legislature and charged with ensuring the integrity of the Freedom of Access laws and their underlying principles. The ongoing duties of the permanent Advisory Committee are listed in Title 1, the Maine Revised Statutes, section 411. The Legislative Council provides staff to the Advisory Committee through the Office of Policy and Legal Analysis, but only when the Legislature is not in Regular or Special Session. The extern will have the opportunity to provide direct staffing services to the Advisory Committee as well as assisting the Advisory Committee in carrying out its duties. The webpage for the Advisory Committee: <http://www.maine.gov/legis/opla/righttoknow.htm>.

The extern will work under the supervision of the Chief Deputy Attorney General, who currently serves as a member of the Right to Know Advisory Committee, in consultation with the Chair of the Advisory Committee. The extern may also act as liaison between the Advisory Committee and the Governor's Office, the designated FOA contact persons for state agencies and departments and organizations representing public officials.

General responsibilities may include analyzing policy and legal issues for the Advisory Committee, drafting legislation, conducting research and preparing study reports related to Freedom of Access laws in Maine and other states. The extern may act as liaison between the Advisory Committee and the Joint Standing Committee on Judiciary, as well as other committees of the Legislature, and their staff.

The Advisory Committee has identified three specific activities with which the extern may assist.

- The first activity is review of existing public records exceptions. The Advisory Committee is required to review and make recommendations about the continuance, modification or repeal of statutory public records exceptions. The recommendations are to be considered by the Judiciary Committee of the Legislature.
- The second activity is review of proposed legislation for new public records exceptions. At the request of the Judiciary Committee, the Advisory Committee provides assistance in the review and consideration of proposed public records exceptions in legislation presented in a Regular or Special Session. The extern may be asked to work with the Judiciary Committee to provide analysis of the policy and legal issues associated with proposed public records exceptions.
- The third activity is research and analysis of federal law and laws in Maine and other states regulating the use, disclosure and confidentiality of Social Security numbers contained in public records maintained by government agencies.



**Reinsch, Margaret**

---

**From:** Richard Flewelling [rflewelling@memun.org]  
**Sent:** Wednesday, June 24, 2009 3:26 PM  
**To:** Reinsch, Margaret  
**Subject:** RE: Right to Know Advisory Committee  
**Attachments:** BOARD MEETING MINUTES.docx

Dear Peggy,

As you know, I will not be able to attend next Tuesday's Right to Know Advisory Committee meeting. However, I want to give you (and the Committee) a brief update on MMA's efforts over the past year to promote Right to Know training for local elected officials (item #5 on Tuesday's agenda).

Since the Legislature mandated Right to Know training in 2007, our monthly magazine, the *Maine Townsman*, has included at least three announcements describing the requirement and advising local officials how they can satisfy it. The magazine is mailed to all selectmen and councilors and town and city clerks. It is also available on our website to all municipal officials. In addition, this announcement was included in several issues of our monthly e-mail newsletter, *MMA Today*. The newsletter is sent automatically to almost 3,000 subscribing local officials.

Also, at MMA's annual convention last October we offered Right to Know training sessions on two separate days, with a total of about 200 local officials attending. We plan to do the same thing at this year's annual convention, also in October. This is in addition to the Right to Know training we routinely offer (and have offered for many years) during our newly elected officials workshops, which we hold multiple times a year at locations around the state. Since last July (when the new training requirement took effect), several hundred local officials have received their training at these workshops.

Of course, most officials know they can satisfy the training requirement by visiting the State's FOAA website, but many prefer an interactive experience, so we will continue to offer and aggressively market Right to Know training at our annual convention and at our workshops for the indefinite future.

On a different note (item #6, third bullet, on Tuesday's agenda), I've attached an article I wrote on meeting minutes for the July 2009 issue of the *Maine Townsman*. The agenda item refers to "statutory requirements," so I thought I'd share with you what I've found for statutory requirements insofar as *municipal* board meetings are concerned. Hope it helps.

Best regards,

**Richard P. Flewelling, Assistant Director**

**Legal Services Department**

**Maine Municipal Association**

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---

**From:** Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]

**Sent:** Wednesday, June 24, 2009 11:27 AM

6/25/2009

**To:** bhobbins@hggm.net; Black, Karla; bgdevlin@kennebecso.com; islandhousingtrust@roadrunner.com; cjspruce@gmail.com; dawn@dawnhill.org; econrad@centralmaine.com; Glessner, James T.; hrpringle@dwmlaw.com; jmeyer@sunjournal.com; mal@mainecapitolnews.com; dion@cumberlandcounty.org; maryann.nowak@maine.edu; maureen.obrien@wcsh6.com; McCarthyReid, Colleen; Pistner, Linda; corona@cumberlandcounty.org; Reinsch, Margaret; Richard Flewelling; Shenna Bellows; suzanne@mab.org  
**Subject:** Right to Know Advisory Committee

Draft agenda for meeting on Tuesday, June 30th.

<<DRAFT AGENDA for June 30 2009.doc>>

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## BOARD MEETING MINUTES

*Question:* Are municipal boards legally required to take minutes of their meetings?

*Answer:* As a general rule, no. State law does not require minutes or a record of most municipal board meetings. But here are some important exceptions:

*Board of appeals meetings.* The secretary of the board must maintain a permanent record of all board of appeals meetings, including a transcript or tape recording, if made, and all papers, exhibits, applications and decisions, including findings and conclusions (see 30-A M.R.S.A. § 2691(3)). A board of assessment review is also governed by these requirements (see 30-A M.R.S.A. § 2526(6)(G)).

*Conditional approval or denial of applications.* Maine's Freedom of Access Act ("Right to Know" law) requires a written record of every decision by any board or official involving the conditional approval or denial of an application, license, certificate or any other type of permit, with findings and reasons (see 1 M.R.S.A. § 407(1)).

*Dismissal or refusal to renew contracts.* The Right to Know law also requires a written record of every decision involving the dismissal or refusal to renew the contract of any public official, employee or appointee, again, with findings and reasons (see 1 M.R.S.A. § 407(2)).

*Conflicts of interest.* Any official with a financial ("pecuniary") conflict of interest must disclose it and abstain from participating in the decision in which the official has a conflict. This disclosure and abstention must be recorded with the municipal clerk (see 30-A M.R.S.A. § 2605(4)).

*Executive sessions.* A motion to go into executive session must be approved by a public, recorded vote of 3/5 of the members present and voting (see 1 M.R.S.A. § 405(3)). The motion must also indicate the precise nature of the business to be discussed and cite the legal authority for the executive session. (There is no requirement for minutes or a recording of the executive session itself, however, and we generally recommend against it.)

*General assistance fair hearings.* The general assistance fair hearing authority must make a tape recording of every fair hearing (see 22 M.R.S.A. § 4352). The applicant must pay the cost of preparing any transcript required to appeal the decision, however. (All records and proceedings relating to general assistance are of course strictly confidential, see 22 M.R.S.A. §§ 4306, 4321.)

Even though minutes are not generally required, we strongly recommend them as a way of accurately recording the decisions of a board. Minutes need not be overly detailed. The time and date of the meeting, the members in attendance, the business discussed, and the motions made and votes taken should be sufficient in most cases. Where specific findings are required, however, a mere narrative of the discussion will not suffice (see "Minutes Are Not 'Findings'," *Maine Townsman*, "Legal Notes," July 2007).

Where minutes are taken, they will generally be public records. (Notable exceptions include records of general assistance, poverty abatement and concealed weapons proceedings.) Minutes that have yet to be approved by a board (if that is the custom) may be marked “draft” before being made available to the public. They cannot be withheld simply because they have not been approved yet, however.

Minutes are also subject to the State Archives Advisory Board’s rules for disposition of local government records (see “Disposition of Records,” *Maine Townsman*, “Legal Notes,” May 2009). According to the rules, official minutes of board meetings must be retained permanently.

For more on any of these subjects, use the keyword(s) search feature on our website at [www.memun.org](http://www.memun.org). (*By R.P.F.*)

# Memo

**To:** Linda Pistner  
**From:** Heidi M. Pushard  
**CC:** Colleen McCarthy-Reid  
Margaret Reinsch  
**Date:** 6/29/2009  
**Re:** Social Security Number Confidentiality

---

A review of existing federal and state laws, as well as actions of other states to maintain SSN privacy reveals the following information:

The Social Security Act Amendment of 1990 requires that SSNs obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990, be kept confidential.<sup>1</sup> To date, no regulations have been promulgated to implement the provision.<sup>2</sup>

## **GAO Study: Issues Identified**<sup>3</sup>

- State FOA laws cited as primary reason for making records available.
- Some companies commonly send public records data for processing to at least two countries – India and the Philippines.
  - Bulk transfer of records raises other concerns about security of SSNs
    - Record keepers do not or cannot restrict the types of entities that can obtain public records and may not know how the records are being used
    - Little is known about how records sent overseas are protected

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<sup>1</sup> 42 U.S.C. § 405(c)(2)(C)(viii).

<sup>2</sup> Although SSA has general rulemaking authority with respect to this provision, it has not explored the extent of this authority. In addition, SSA officials stated that even if SSA were to promulgate regulations under this provision, it does not have the authority to enforce them. FTC does not have authority under the amendment, according to FTC staff.

<sup>3</sup> GAO, *Social Security Numbers: Transfers and Sales of Public Records That May Contain Social Security Numbers, an E-supplement to GAO-08-1009R*, GAO-08-1004SP (Washington, D.C.: Sept 19, 2008).

- No federal laws that restrict state or local governments from making records available in bulk or governing how private entities may use SSNs obtained from public records, including offshoring of records with SSNs.

### **Methods in Use to Protect SSNs**

- Redaction or truncation of publically available versions of recorded documents; full SSNs retained in nonpublic versions that are not available online or for bulk purchase

### **Actions to Limit Availability of SSNs in Public Records**

- IRS and DOJ are truncating SSNs in liens and other records that are filed with county record keepers<sup>4</sup>
- Some states mandating truncation
  - California – recorders must begin truncating SSNs in publicly available records between 1980 and 2008. For records filed on or after January 1, 2009, recorders are required to truncate SSNs in the public versions of filings. They can petition their county board of supervisors for authority to charge additional fees
  - Florida – Since 2002, officials have been required to redact SSNs in records upon written request of the SSN holder, and parties filing documents have generally been required to exclude SSNs. SSNs in electronic records must be kept confidential beginning in 2011.
  - Other states have narrower requirements – Virginia law authorizes circuit court clerks to redact SSNs from certain land records and provides that they may receive reimbursement for this effort from a state trust fund.
- Other states taking initiative to redact or truncate without mandate in response to privacy concerns
- 11 states have taken steps to remove SSNs from public documents, unless SSNs are required by federal law to be included in those records<sup>5</sup>
- 24 states have passed laws to protect individuals' SSNs from being on public documents<sup>6</sup>
- Within these two groups, there is variation in the scope and applicability of these laws. For example:

<sup>4</sup> GAO, *Social Security Numbers: Federal Actions Could Further Decrease Availability in Public Records, though Other Vulnerabilities Remain*, GAO-07-752, (Washington, DC., June 15, 2007).

<sup>5</sup> Office of the Inspector General, Social Security Administration, *State and Local Governments' Collection and Use of Social Security Numbers*, September 2007, A-08-07-17086.

<sup>6</sup> *Id.*

- Some states, such as New Jersey and Ohio, prohibit SSNs from appearing in any publicly recorded document
- Others limit the requirement to specific types of records; for example, Kansas and Utah prohibit SSNs from being shown in voter registration records
- Certain states allow individuals to request that their SSNs be removed from public records

As we discussed in our meeting last week, Indiana Code 4-1-10<sup>7</sup>, enacted in 2006, deals with the release of social security numbers by state agencies. Although the law does not specifically designate the records as “confidential,” it is overarching and prohibits disclosure except in cases where explicitly permitted. Examples of permitted disclosure include when the underlying individual gives written consent, where required by federal or state law, where required by court order, or when administering health benefit plans. I believe the language of the Indiana statute could be easily adapted for use in Maine and that it is a good model for Maine to consider as it works to find a balance between individuals’ rights of privacy and the public’s freedom of access to information.

Much of the policy deliberations on limiting the display of SSNs appear to take great pains in considering and balancing the need to keep SSNs confidential and the longstanding tradition of open access to records, as well as the rights of states and localities to regulate the availability of their records. Recent federal and states actions to truncate SSNs represent one effort that may strike an appropriate balance between protecting SSNs from issue and making a portion available to appropriate parties to firmly establish the identity of specific individuals.

Please let me know if there is further information I can provide in this area or if you could like to further discuss my findings.

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<sup>7</sup> Available electronically at <http://www.in.gov/legislative/ic/code/title4/ar1/ch10.html>

**Information Maintained by the Office of Code Revision Indiana Legislative Services  
Agency**

03/05/2009 12:30:12 PM EST

**IC 4-1-10**

Chapter 10. Release of Social Security Number

**IC 4-1-10-1**

**Applicability**

Sec. 1. This chapter applies after June 30, 2006.

*As added by P.L.91-2005, SEC.1.*

**IC 4-1-10-1.5**

**"Person"**

Sec. 1.5. As used in this chapter, "person" means an individual, a corporation, a limited liability company, a partnership, or other legal entity.

*As added by P.L.160-2007, SEC.1.*

**IC 4-1-10-2**

**"State agency"**

Sec. 2. As used in this chapter, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of the executive, including the administrative, department of state government. Except as provided in subdivision (4), the term does not include the judicial or legislative department of state government. The term includes the following:

- (1) A state elected official's office.
- (2) A state educational institution.
- (3) A body corporate and politic of the state created by state statute.
- (4) The Indiana lobby registration commission established by IC 2-7-1.6-1.

*As added by P.L.91-2005, SEC.1. Amended by P.L.2-2007, SEC.18.*

**IC 4-1-10-3**

**Nondisclosure of Social Security number**

Sec. 3. (a) For purposes of this section, disclosure of the last four (4) digits of an individual's Social Security number is not a disclosure of the individual's Social Security number.

(b) Except as provided in section 4 or 5 of this chapter, a state agency may not disclose an individual's Social Security number.

*As added by P.L.91-2005, SEC.1.*

**IC 4-1-10-4**

**Exceptions to nondisclosures of Social Security number**

Sec. 4. Unless prohibited by state law, federal law, or court order, the following apply:

(1) A state agency may disclose the Social Security number of an individual to a state, local, or federal agency.

(2) A state law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local, or federal



agency, or other legal entity.  
*As added by P.L.91-2005, SEC.1.*

#### **IC 4-1-10-5**

##### **Permitted disclosures of Social Security number**

Sec. 5. (a) A state agency may disclose the Social Security number of an individual if any of the following apply:

(1) The disclosure of the Social Security number is expressly required by state law, federal law, or a court order.

(2) The individual expressly consents in writing to the disclosure of the individual's Social Security number.

(3) The disclosure of the Social Security number is:

(A) made to comply with:

(i) the USA Patriot Act of 2001 (P.L. 107-56); or

(ii) Presidential Executive Order 13224; or

(B) to a commercial entity for the permissible uses set forth in the:

(i) Drivers Privacy Protection Act (18 U.S.C. 2721 et seq.);

(ii) Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(iii) Financial Modernization Act of 1999 (15 U.S.C. 6801 et seq.).

(4) The disclosure of the Social Security number is for the purpose of administration of a state agency employee's or the state agency employee's dependent's health benefits.

(5) The disclosure of the Social Security number is for the purpose of administration of:

(A) a pension fund administered by the board of trustees of the public employees' retirement fund;

(B) the Indiana state teachers' retirement fund;

(C) a deferred compensation plan or defined contribution plan established under IC 5-10-1.1;

(D) a pension plan established by the state police department under IC 10-12; or

(E) the Uniform Commercial Code (IC 26-1) by the office of the secretary of state.

(b) A state agency's disclosure of the Social Security number of an individual in compliance with subsection (a) does not violate IC 5-14-3-4(a)(12).

*As added by P.L.91-2005, SEC.1. Amended by P.L.29-2006, SEC.1; P.L.106-2008, SEC.1.*

#### **IC 4-1-10-5.5**

##### **Disclosure of Social Security number by state educational institution**

Sec. 5.5. Unless prohibited by state law, federal law, or a court order, the following apply:

(1) A state educational institution may disclose, in addition to the disclosures otherwise permitted by this chapter, a Social Security number of an individual to the following:

---

(A) A state, local, or federal agency or a person with whom a state, local, or federal agency has a contract to perform the agency's duties and responsibilities.

(B) A person that the state educational institution contracts with to provide goods or services to the state educational institution if:

(i) the disclosure is necessary for the contractor to perform the contractor's duties and responsibilities under the contract; and

(ii) the contract requires adequate safeguards, including any safeguards required by state or federal law, to prevent any use or disclosure of the Social Security numbers for any purpose other than those purposes described in the contract and to require the return or confirmed destruction of any Social Security numbers following termination of the contractual relationship.

(C) Persons to whom the state educational institution may otherwise legally disclose for the permissible purposes of the following:

(i) The Family Education Rights and Privacy Act (20 U.S.C. 1232g et seq.).

(ii) The Health Insurance Portability and Accountability Act (42 U.S.C. 201 et seq.).

(D) The state educational institution's legal counsel, but only to the extent that a state educational institution could disclose a Social Security number to an in-house counsel.

(2) Consent for the authorized disclosure of any individual's Social Security number may be given to a state educational institution by electronic transmission if the state educational institution is reasonably able to verify the authenticity of the consent. A state educational institution may rely on the written consent of an individual given to a third party if the consent expressly permits the disclosure of the individual's Social Security number by the state educational institution.

*As added by P.L.160-2007, SEC.2.*

#### **IC 4-1-10-6**

##### **State agency compliance**

Sec. 6. A state agency complies with section 3 of this chapter if the agency:

(1) removes; or

(2) completely and permanently obscures;

a Social Security number on a public record before disclosing the public record.

*As added by P.L.91-2005, SEC.1.*

#### **IC 4-1-10-7**

##### **Impermissible disclosure of Social Security number; required notice**

Sec. 7. If a state agency releases a Social Security number in

violation of this chapter, the agency shall provide notice to the person whose Social Security number was disclosed in the manner set forth in IC 4-1-11.

*As added by P.L.91-2005, SEC.1.*

#### **IC 4-1-10-8**

##### **Criminal disclosures of Social Security number; Class D felony**

Sec. 8. An employee of a state agency who knowingly, intentionally, or recklessly discloses a Social Security number in violation of this chapter commits a Class D felony.

*As added by P.L.91-2005, SEC.1.*

#### **IC 4-1-10-9**

##### **False representation to obtain Social Security number; Class D felony**

Sec. 9. A person who knowingly, intentionally, or recklessly makes a false representation to a state agency to obtain a Social Security number from the state agency commits a Class D felony.

*As added by P.L.91-2005, SEC.1.*



**IC 4-1-10-10**

**Negligent disclosure of Social Security number; Class A infraction**

Sec. 10. An employee of a state agency who negligently discloses a Social Security number in violation of this chapter commits a Class A infraction.

*As added by P.L.91-2005, SEC.1.*

**IC 4-1-10-11**

**Attorney general investigation of disclosures; notice to county prosecutor and state police**

Sec. 11. (a) The attorney general may investigate any allegation that a Social Security number was disclosed in violation of this chapter.

(b) If the attorney general determines that there is evidence that a state employee committed a criminal act under section 8 or 9 of this chapter, the attorney general shall report the attorney general's findings to:

- (1) the prosecuting attorney in the county where the criminal act occurred; and
- (2) the state police department.

*As added by P.L.91-2005, SEC.1.*

**IC 4-1-10-12**

**Attorney general determination of infraction; report to appointing authority and county prosecutor**

Sec. 12. If the attorney general determines that there is evidence that a state employee committed an infraction under section 10 of this chapter, the attorney general:

(1) shall report the attorney general's findings to the appointing authority (as defined in IC 4-2-6-1) of the agency that employs

the employee; and

(2) may report the attorney general's findings to the local prosecuting attorney in the county where the infraction occurred.

*As added by P.L.91-2005, SEC.1.*

**IC 4-1-10-13**

**Attorney general rulemaking authority**

Sec. 13. The attorney general may adopt rules under IC 4-22-2 that the attorney general considers necessary to carry out this chapter.

*As added by P.L.91-2005, SEC.1.*

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Health & Human Services



Commissioner's Office

MEMORANDUM

**TO:** Commissioners and Agency Heads  
**FROM:** Ryan Low, Commissioner DAFS *RL*  
**DATE:** October 31, 2008  
**SUBJ:** Social Security Number Usage and Security

*cc  
IMT  
ELT  
Marina Shibeau*

.....

During the First Legislative Session of the 123<sup>rd</sup> Legislature, there were two bills that sought to eliminate the use of Social Security Numbers by state government. Both LD 1017, An Act to Protect Citizens' Privacy and LD 1453, Resolve, Regarding the Privacy of Social Security Numbers were voted out not to pass by the Joint Standing Committees on State and Local Government and Judiciary, respectively. However, both Legislative Committees asked that the Department of Administrative and Financial Services contact all state agencies to ensure that state government is appropriately maintaining and providing appropriate security when Social Security Numbers are utilized and stored, through both electronic and paper processes.

Additionally, the Judiciary Committee requested that we further encourage state agencies to review the usage of Social Security Numbers to ensure that these personal identification numbers are only requested when required by federal or state law, and to take steps to eliminate any casual use. If you have any questions regarding this issue as it relates to information technology (IT) or IT security, please contact the state's Chief Information Officer, Richard Thompson.

I know that each agency understands the importance of safeguarding confidential information, consistent with state and federal laws.

Cc: R. Thompson, CIO



# Administrative Office of the Courts

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March 23, 2009

Peggy Reinsch  
c/o OPLA  
13 State House Station  
Augusta, Maine 04333-0013

RE: Social Security Numbers

Dear Peggy,

Attached is a letter that was originally drafted several months ago to the Chairs of the Right to Know Advisory Committee, addressing a concern on the part of the Judicial Branch with regard to the confidentiality of social security numbers. The Right to Know Advisory Committee has agreed that the issue of social security numbers will be taken up at some point. Unfortunately, we are in a state of transition with regard to our legislative committee members, who are also the Chairs of the Committee. Nonetheless, I am anxious to have on record a statement of the concern about this issue that exists for the Judicial Branch. We hope that the Committee will soon have an opportunity to take this up. In the meantime I am writing to you with a request that we bring this to the attention of the Committee. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "James T. Glessner".

James T. Glessner

JTG/dl



# Administrative Office of the Courts

James T. Glessner  
State Court Administrator  
125 Presumpscot Street (zip 04103)  
P.O. Box 4820  
Portland, Maine 04112-4820

Telephone: (207) 822-0792  
FAX: (207) 822-0781  
TTY: (207) 822-0701

March 23, 2009

Right to Know Advisory Committee  
Attn: Peggy Reinsch  
OPLA  
13 State House Station  
Augusta, Maine 04333-0013

The issue of the confidentiality of social security numbers is something that has been identified as a concern by the Right to Know Advisory Committee. I believe that we determined that it was an issue of such magnitude and seriousness that rather than asking a sub-committee to work on it, it should be reviewed by the committee as a whole.

The Judicial Branch has been grappling with this issue for some time. Our dilemma is that we see the availability of social security numbers as a problem for the public in this time when identity theft has grown to such serious proportions. We are concerned that the availability of this information, in court files, can be contributing to the problem in a significant way. We have considered the number of approaches, but they are time intensive and in a time of diminishing staff resources we are not in a position to take on this additional responsibility. The overarching concern is that there is no statutory provision which makes social security numbers confidential. There are specific circumstances where they are protected; there are also circumstances where state law requires that social security numbers be provided as part of court proceedings.

There appears to be considerable support for making social security numbers confidential under state law. It is my understanding that in the past such legislation was not enacted because of the large fiscal note that would accompany enactment of such legislation, particularly if the legislation required agencies to go back, retrospectively, and remove social security numbers that exist in the files.

The purpose of this letter is primarily to alert the committee that the Judicial Branch of government is struggling with the same issue that confronts the rest of state government, and that we have not been able to identify the resources to address this issue especially when there is no statutory mandate to do so. We look forward to the work to be done by this committee and its ultimate recommendation to the Judiciary Committee in the hope that the legislature will be able to take some definitive action.

Sincerely,

James T. Glessner

JTG/dl

10

**STATE OF MAINE  
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-09-2

**ACCESS TO SOCIAL SECURITY NUMBERS AND  
QUALIFIED DOMESTIC RELATIONS ORDERS (“QUADROS”)**

Effective: April 1, 2009

**I. SCOPE AND PURPOSE**

There is often a need for the Judicial Branch to collect Social Security Numbers (SSNs). It is the goal of the Judicial Branch to reduce the possibility of identity theft through use of court records and the Judicial Branch now intends to allow access to Social Security Numbers only to organizations, entities, and individuals with a demonstrated need to possess them. Because the Judicial Branch has neither the staff nor the resources to redact Social Security Numbers from all files, it has developed a protocol to segregate that information in incoming court files.

This Administrative Order does not apply to the Maine Violations Bureau.

**II. PROTOCOL**

Beginning on the effective date of this Order, when disclosure of an SSN is required in any court proceeding, and the SSN is to be maintained in a case file in the office of the Clerk of Court, individuals will record their Social Security Numbers only on specific forms provided by the Court for that purpose. The forms, and all QUADROs filed after this date, shall be maintained by the Clerk of Court in a separate, sealed envelope in the case file, and shall not be disclosed or provided to any other person unless specifically provided by court order or the exceptions noted below.





# RIGHT TO KNOW ADVISORY COMMITTEE DRAFT

## IS AN ENTITY OR INDIVIDUAL AN “AGENCY OR PUBLIC OFFICIAL” FOR PURPOSES OF THE FREEDOM OF ACCESS LAW?

In the *Moore v. Abbott* (Me. Supreme Judicial Court, 2008 ME 100) decision by a vote of 3-2, the Law Court reaffirmed its use of a functional equivalency test to evaluate whether an entity or individual, alone or collectively, qualifies as “an agency or public official” under 1 MRSA § 402, sub-§ 3 so that records of that agency or public official are subject to public inspection and disclosure under the Freedom of Access laws. The functional equivalency test used by the Law Court was first adopted in *Town of Burlington v. Hosp. Admin. Dist. No. 1*, 2001 ME 59, 769 A.2d 857).

The four-part test requires the application of the following factors; however, the description of the four factors was expressed differently in the written majority and dissenting opinions in the *Moore v. Abbott* decision. See outline below. The court did not require that an entity conform to all factors, but considered and weighed the factors.

<i>Town of Burlington v. Hosp. Admin. Dist. No. 1</i> Opinion (Alexander filed concurring opinion)	<i>Moore v. Abbott</i> Majority Opinion (Alexander, Silver and Gorman)	<i>Moore v. Abbott</i> Dissenting Opinion (Levy and Mead)
1. Whether the entity performs a government function	1. Whether the entity is performing a governmental function	1. Whether the entity performs a government function
2. Whether the funding of the entity is governmental	2. Whether the funding of the entity is governmental	2. Whether the government funds the entity
3. The extent of government involvement or control	3. The extent of governmental involvement or control	3. The extent of governmental involvement or control
4. Whether the entity was created by private or legislative action	4. Whether the entity was created by private or legislative action	4. Whether the government created the entity

Members of the Right to Know Advisory Committee:

In our discussions about an amendment to the FOAL that would cause a different result in the type of matter addressed by the Law Court in *Moore v. Abbott*, we have been unable to come up with language that would capture records of various private groups acting to provide input or advice to government without being overbroad. For example, I have not understood anyone to be advocating that if a legislative committee directs a number of stakeholders to get together and work out proposed compromise legislation, or if a school board suggests that parents talk to their friends and seek input on a controversial proposal, that the records of these groups should be required to be public. As a result, it was suggested that I draft a proposal that addresses the specific situation of an internal review undertaken by private citizen(s).

I would add this to 1 MRSA § 402(3-A), rewriting the existing language without substantive change, along the following lines. For clarity, I have italicized the part that addresses the *Moore v. Abbott* issue and have drafted this in a way that is designed to show what's changed and what is the same as current law.

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

A. Criminal justice agency records:

1. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;

~~B. 2. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and~~

~~C. 3. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data 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.~~

*B. Records of an individual or group charged by the governing body or head of an agency of government with undertaking a review of the agency's conduct with respect to an identified matter and making findings or recommendations, except those records that are otherwise confidential under this chapter.*

This approach is intended to preserve application of other confidentiality provisions, such as the personnel laws, which should not be preempted.

**Reinsch, Margaret**

**From:** James Moore [author@suscom-maine.net]  
**Sent:** Thursday, June 25, 2009 1:43 AM  
**To:** Reinsch, Margaret; lwwme@gwi.net; Bellis, V. Kelly; Bevery Bustin Hathaway; Blocher, David M; Boulter, David; Cloutier, Mary; dwalker@preti.com; gilmour@maine.edu; Dunbar, Doug; Dunbar, Lisa; Ed Benedikt; Faye Luppi; Furlow, Rita; Giatas, Domna; Hurley, Donna; Jeff Austin; Ken Capron; koffman@acadia.net; koffman@coa.edu; Lawrencerobertt@aol.com; Linda Smith; Mahoney, Mike; maine.press@verizon.net; Matt Manahan; Mead, Larry; mmalloy@centralmaine.com; Moore, James P.; mrotundo@bates.edu; mta@mtla.org; Nancy Gibson; O'Hanlon, Laura; Pam Lovley; Parr, Christopher; rthompson@adelphia.net; Schroeder, Paul; schwartz@mainechiefs.us; Small, Mary; Sturtevant, Tom; Weston, SenCarol  
**Cc:** McCarthyReid, Colleen  
**Subject:** Re: Right to Know Advisory Committee meeting

The Court decided *Moore v. Abbott et al* based on their interpretation of the FOAA statute as it stands. The Legislature has the power and obligation to amend the statute if it desires to preserve the law's intent stated in its introduction:

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. [1975, c. 758 (rpr).]

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

It's significant that the Court did not dispute the proof that officials had concealed evidence, destroyed evidence and testified falsely at a criminal trial -- facts which constituted the background of the case before them. Nor did the Court endorse the private citizens' vague, inexplicable claim that there had been no official misconduct.

The loophole created by the Court's interpretation of FOAA is an invitation for government officials to "justify" acts or whitewash conduct which cannot stand the light of day. It benefits only those officials who wish to circumvent the basic purpose of FOAA by having a few private citizens issue conclusions regarding any proposed action or any allegation of misconduct without giving any reason or evidence supporting their decision.

If the Legislature wishes to retain the basic purpose of FOAA, it can and should close that loophole.

On the other hand, if you wish to render the FOAA impotent, simply do nothing.

|

# Calendar for July–December 2009 (United States)

July						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	<del>3</del>	4
5	<del>6</del>	7	8	9	10	11
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August						
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November						
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27	28	29	30	31		

Calendar generated on [www.timeanddate.com/calendar](http://www.timeanddate.com/calendar)

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6/17/09 | 15 comments

## LAWSUIT

## County's \$1.50 copy fee focus of court case

By **Bill Trotter**  
BDN Staff

ELLSWORTH, Maine — In a case that could have costly implications throughout Maine, Hancock County is being sued by a private company that essentially wants free access to all of the electronic records filed in the county's registry of deeds.

Last fall, MacImage of Maine LLC filed a Freedom of Access Act request with the county in order to obtain electronic copies of documents in the county's deeds office. The county responded by directing MacImage to the county's Web site, where all of the documents requested by the company can be downloaded by anyone for \$1.50 a page.

MacImage, which asserts that the actual cost to the county of reproducing electronic copies of the documents is virtually nonexistent, then filed suit against the county in Cumberland County Superior Court.

MacImage, which is based in the town of Cumberland, also claims in a separate suit that the county owes it more than \$300,000 for work it has done for the registry of deeds.

Oral arguments in the civil trial were expected to be heard this week, but according to the county's attorney, Anthony Pellegrini of Bangor, the trial has been delayed, likely until sometime next month.

Pellegrini said Monday that the outcome of the case could have repercussions for many counties in Maine, if not all. If MacImage prevails, the ruling could erase all future revenue from deed-related paper and electronic copies, which likely would result in higher county tax bills across the state. Who would pay for paper copies, he noted, if anyone could get the electronic versions for free?

"It potentially has huge significance for every county in the state, to the extent that they have electronic copies of their documents," Pellegrini said.

John Simpson, the owner of MacImage, contends that what he is doing is no different from what many online services do. They offer some services such as viewing public documents for free and then charge a premium for other services, such as printing or downloading. All he is doing, with software his company has developed, is offering taxpayers a competitive choice.

"The law is very clear here," Simpson said Monday. "It says public officials can charge for the cost of copying."

With modern technology, he said, original documents in many offices — including deeds and related documents — are created electronically before they are ever copied for other parties, which means the subsequent cost of

reproducing them electronically is virtually nil.

"If they can demonstrate there is a cost, we'll be glad to pay it," Simpson said.

Pellegrini said it is the county's position that MacImage's lawsuit is without merit because his FOA request was not denied. He has access to the documents, the same as everybody else, at the same per-page rate that everyone else pays. The \$1.50 rate applies both to copies printed or downloaded off the county's Web site and to paper copies made at the registry of deeds office.

As part of its FOA lawsuit, MacImage has obtained a temporary restraining order against the county so that, while the case is pending, it has free access to all electronic copies on the county's registry of deeds Web site.

"There was no denial of the [FOA] request," Pellegrini said. "The fee charged by the [county] Web site is a legitimate fee."

Hancock County Clerk Cynthia Deprenger said Monday that the county always has charged for copies of public documents on file in its deeds office. This fee, which has changed in value over the years, is aimed at covering the expenses of reproducing the documents, she said.

Deprenger said the county doesn't believe it should have to provide copies of its documents free to a private company while it charges everyone else for the same thing. Deprenger said Simpson essentially is asking for preferential treatment.

"We feel like we've treated him as fairly as everybody else," she said. "But he's asking for more. He wants them for free."

Deprenger said that the county had expected to earn \$45,000 in revenue this year from electronic copies generated by the registry of deeds. The amount the county budgeted this year for revenue from paper copies made in the deeds office is \$100,000.

All counties charge fees for reproducing documents at their deeds registries, according to Deprenger.

"We're all pretty level across the board with what we charge," she said.

A separate suit filed by MacImage claims the county owes it more than \$300,000 for work the company has done for the registry of deeds in making documents available online.

According to Simpson, MacImage of Maine provided online document services to the Hancock County Registry of Deeds for nearly 10 years, including managing the county's deeds Web site, until last fall. He said he did work for the county at little to no charge because he had promised that it would pay his firm more substantially to pursue bigger projects later on.

Simpson said he even had a written agreement that the county would pay him for some work he already had done if it opted instead to hire a different

online document service firm for that later work. He alleges that the county did hire another firm, but then hid that decision from him and improperly denied him the chance to offer a competitive bid on the work.

Because of that prior agreement, Simpson said, the county owes his company more than \$300,000.

Simpson, who charges 75 cents a page for copies of the county's deed records on the MacImage Web site, said the reason he wants electronic copies of the documents even though he now is not doing any work for the county is that he wants to keep his Web site, which he claims is superior to the county's, up-to-date and competitive. That is why he filed the FOA request, he said.

Simpson, who acknowledged his lawsuit could have implications for every county in the state, put much of the blame for the disagreement between Hancock County and his firm on Julie Curtis, who was elected the county's register of deeds at the end of 2006.

Curtis, contacted Tuesday by phone, declined to get into specifics about the county's dispute with Simpson but said it predates her tenure in county government.

"This started before me," she said. "I'm not the cause of him not being welcome at the county [offices]."

Simpson stressed, however, that MacImage still is interested in working with the county and that he has tried and is still trying to negotiate a settlement with county officials.

"This is not the way I want to work," Simpson said. "There is an offer on the table that will cost the county nothing."

btrotter@bangordailynews.net

460-6318

June 29, 2009

Sen. Barry Hobbins, Chair  
Right to Know Advisory Committee  
Augusta, ME 04333

**Re: LD 1271, An Act to Generate Savings by Changing Public Notice Requirements (Public Laws 2009, Chapter 256) and the General Issue of Public Notice**

Dear Senator Hobbins,

Please consider this letter a request from the Maine Press Association for the Right to Know Advisory Committee to include LD 1271, An Act to Generate Savings by Changing Public Notice Requirements (Public Laws 2009, Chapter 256) and the issue of public notice posting in newspapers as part of its agenda for an upcoming meeting. LD 1271 changes the requirements for public notice of proposed rules in the newspaper with the intention of making the notices shorter, while maintaining the original requirements for public notice on the state's website. It removes from the newspaper notice the requirement to refer to the statutory or federal authority for the rule and replaces the requirement for the express terms of the proposed rule with a general statement on the substance.

Although LD 1271 only slightly shortens the public notice required to be posted in newspapers, past efforts by the members of the Legislature have sought to completely eliminate public notice from newspapers in favor of only posting public notice on a publicly accessible website. The latest efforts have taken place before the State and Local Government Committee where the context has been fiscal crisis and the focus has been how to save public funds. The Maine Press Association has opposed each of these efforts of legislators to shorten or eliminate public notice.

The Right to Know Advisory Committee is tasked with "ensuring access to public records and proceedings" and providing "general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government." The Maine Press Association believes that providing citizens with effective public notice of public meetings and actions is essential to maintaining the underlying principles of open government. We respectfully request that the Right to Know Advisory Committee review LD 1271 and the past efforts to shorten and eliminate public notice in newspapers. Our hope is that the Right to Know Advisory Committee can give this important issue a thoughtful review and analysis within the context of preserving the principles of open government and freedom of access, outside of the fiscal pressures of the legislative session.



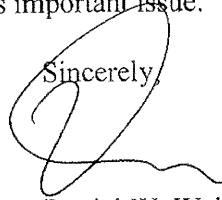
PRETI FLAHERTY

June 29, 2009

Page 2

Thank you very much for considering this important issue.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Walker', written over the word 'Sincerely,'.

Daniel W. Walker  
Attorney for the Maine Press Association

DWW:rgp

cc: Margaret R. Reinsch, Committee Analyst  
Tony Ronzio, Maine Press Association

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

## **An Act To Generate Savings by Changing Public Notice Requirements**

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

**Sec. 1. 5 MRSA §8053, sub-§3**, as amended by PL 2007, c. 181, §§2 to 4, is further amended to read:

**3. Contents of notice.**~~The notice shall~~Except for notices governed by subsections 5 and 7, a notice under this section must:

- A. Refer to the statutory authority under which the adoption of the rule is proposed;
- B. State the time and place of any scheduled public hearing or state the manner in which a hearing may be requested;
- C. State the manner and time within which data, views or arguments may be submitted to the agency for consideration, whether or not a hearing is held;
- C-1. State the name, address and phone number of the staff person responsible for providing additional information or a printed version of the proposed rule;
- D. If possible, contain the express terms of the proposed rule or otherwise describe the substance of the proposed rule, stating the subjects and issues involved and indicate where a copy of the proposed rule may be obtained;
- E. Refer to the substantive state or federal law to be implemented by the rules; and
- F. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained.

**Sec. 2. 5 MRSA §8053, sub-§5**, as amended by PL 1991, c. 837, Pt. A, §11, is further amended to read:

**5. Publication.**~~The~~Using the format of notice pursuant to subsection 7, the Secretary of State shall:

- A. Arrange for the weekly publication of a consolidated notice of rule making of all state agencies, which shall also include a brief explanation to assist the public in participating in the rule-making process. Notice of each rule-making proceeding shall be published once 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing is scheduled;
- B. Designate certain newspapers, which together have general circulation throughout the State, as papers of record for the purpose of publishing notice under paragraph A. Notice of proposed rules affecting only a particular locality or region need only be published in the designated newspapers having general circulation in the area affected;

*Subsection 5, paragraph B should end with a semicolon.*

C. Designate one day as rules day for publication of notices on rulemaking as set forth in this subsection; and

D. Be reimbursed for the cost of publication of rule-making notice by the agencies proposing the rulemaking. The total costs of each consolidated publication will be prorated by the Secretary of State among all agencies submitting notice for a particular week.

**Sec. 3. 5 MRSA §8053, sub-§6**, as enacted by PL 2007, c. 581, §3, is amended to read:

**6. Electronic publication.** In addition to the printed publication required in subsection 5, the Secretary of State shall maintain a publicly accessible website for posting the notices of all proposed and adopted rules. ~~The notice must include a brief explanation of the proposed or adopted rule and an e-mail link to the agency liaison. Departments and agencies shall either post proposed and adopted rules in their jurisdictions on publicly accessible agency websites or link to the rules posted on the Secretary of State's website. The contents of the notice for electronic publication are pursuant to subsection 3.~~ Notice of each rule-making proceeding must be published on the Secretary of State's website 17 to 24 days prior to the public hearing on the proposed rule or at least 30 days prior to the last date on which views and arguments may be submitted to the agency for consideration if no public hearing was scheduled.

**Sec. 4. 5 MRSA §8053, sub-§7** is enacted to read:

**7. Contents of notice for newspaper publication.** The notice for publication in the newspaper under subsection 5 is shorter than the notice provided for all other purposes pursuant to subsection 3. The notice for newspaper publication must:

A. State the time and place of any scheduled public hearing or state the manner in which a hearing may be requested;

B. State the manner and time within which data, views or arguments may be submitted to the agency for consideration, whether or not a hearing is held;

C. State the name, address and phone number of the staff person responsible for providing additional information or a printed version of the proposed rule;

D. Include a brief and general summary of the substance of the proposed rule;

E. Provide the website address where the long notice pursuant to subsection 3 is posted;

F. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained; and

G. Indicate the impact on municipalities or counties only if there is an expected financial impact on municipalities identified under section 8063.

PUBLIC Law, Chapter 256 LD 1271, item 1, 124th Maine State Legislature  
An Act To Generate Savings by Changing Public Notice Requirements

Effective 90 days following adjournment of the 124th  
Legislature, First Regular Session, unless otherwise indicated.

# RIGHT TO KNOW ADVISORY COMMITTEE

DRAFT AGENDA

December 1, 2009

12:30 p.m.

Room 438, State House

## Welcome and introductions

### 1. LONGITUDINAL STUDIES BY DEPARTMENT OF EDUCATION (PL 2009, C. 448)

Commissioner Susan Gendron

### 2. TRANSPARENCY OF INFORMATION RELATED TO STATE GOVERNMENT CONTRACTS AND SPENDING

- Update from Office of Information Technology

### 3. REPORTS OF SUBCOMMITTEES

- **Legislative Subcommittee** Chris Spruce, Chair
  - Requests for bulk electronic data
  - Communications outside of public proceedings (Rep. Dostie's bill)
- **Public Records Exceptions Subcommittee** Shenna Bellows, Chair
  - Review and recommendations, existing public records exceptions (Title 10 - 21-A)
    - Recommendations - proposed amendments
    - Special issues
      - Juror confidentiality (14 §§1254-A and 1254-B)
      - Criminal History Record Information Act (16 c. 3, subc. 8)
      - Education credentialing confidentiality (20-A §13004)
      - Central Voter Registration System (CVR) (21-A §196) - Julie Flynn, Deputy Secretary of State
      - Standard language: Protect information submitted in request for technical or financial assistance (at request of the Judiciary Committee)

### 4. REVIEW DRAFTS, RECOMMENDATIONS FOR OTHER LEGISLATION

- Social Security numbers
  - Comments and suggestions
- Use of technology in public proceedings; revision
- Taking and keeping minutes/records of public proceedings; revision

### 5. REVIEW LIST OF BILL TITLES FOR 2<sup>ND</sup> REGULAR SESSION RELATED TO FOA ISSUES

### 6. EXTERNSHIP UPDATE

### 7. REPORT

- Contents
- Process, timing

### 8. OTHER MATTERS?

## Adjourn

Schedule future meetings?





STATE OF MAINE  
DEPARTMENT OF EDUCATION  
23 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0023

JOHN ELIAS BALDACCI  
GOVERNOR

SUSAN A. GENDRON  
COMMISSIONER

**TO:** Margaret Reinsch  
Colleen McCarthy Reid  
Staff for the Right to Know Advisory Committee

**FROM:** Greg Scott, Department of Education FOA Contact

**DATE:** November 30, 2009

**SUBJECT:** Right To Know Advisory Committee / December 1, 2009 Meeting

Attached is a summary of PL 2009, Chapter 448; a copy of Commissioner Gendron's testimony at the public hearing on L.D. 1356; and a copy of Department of Education Informational Letter # 28, *Postponement of Requirement to Collect Student Social Security Numbers*.

Hopefully, these materials will be informative and helpful to you and the Committee in advance of tomorrow's presentation.

**PL 2009, Chapter 448**  
**An Act To Improve the Ability of the Department of Education To Conduct  
Longitudinal Data Studies**

PL 2009, Chapter 448 was a Committee Amendment that incorporated the concerns of all parties private and public, was a unanimous Education Committee report and was enacted in the Maine Legislature without a roll call vote.

1. It reallocates the provisions establishing the Maine Statewide Longitudinal Data System from the Maine Revised Statutes, Title 20-A, chapter 606-B to chapter 221, subchapter 1, which pertains to student records.

2. It provides that the Department of Education shall develop and maintain the Maine Statewide Longitudinal Data System and authorizes the Commissioner to collect and report individual student social security numbers to implement that statewide longitudinal data system.

3. It provides that if the Commissioner of Education requires a school administrative unit to collect and report individual social security numbers, that the school administrative unit must notify parents in the annual notice required under the federal Family Educational Rights and Privacy Act of 1974, "FERPA," that the data is being collected and used for longitudinal data purposes and that the school administrative unit requests that the parent provides written consent to use the child's social security number for the collection of longitudinal data for the parent's child.

4. It provides that the parental notification must include an explanation of the parent's right that the child's social security number is not required as a condition of enrollment and that the child's social security number may not be used for longitudinal data purposes unless the parent provides prior written consent. It also provides that when a student attains 18 years of age, the written consent required of the parent, and the rights accorded to the parent, are thereafter required of and accorded to the student.

5. It clarifies that personally identifiable information contained in an educational record that is not directory information as defined by FERPA may only be released to other state agencies and postsecondary education institutions under a signed memorandum of understanding in compliance with FERPA.

6. It directs the Commissioner of Education to send an administrative letter to superintendents, principals and school counselors on the establishment of the Maine Statewide Longitudinal Data System, including suggested language to be included in the annual notice to parents required under FERPA that explains a parent's right that the child's social security number is not required as a condition of enrollment and that the child's social security number may not be used for the purposes of the Maine Statewide Longitudinal Data System unless the parent provides prior written consent.



State of Maine  
DEPARTMENT OF EDUCATION

Testimony of Susan Gendron, Commissioner of the Department of Education

In Support Of: L.D. 1356

An Act To Improve the Ability of the Department of Education To Conduct Longitudinal Data Studies

Before the Joint Standing Committee on Education and Cultural Affairs

Sponsored by: Senator Mills

Cosponsored by: Senators Bartlett, Jackson, Rector, and Weston, President Mitchell, and Representatives Crockett, Lovejoy, Miller, Piotti, Stuckey, and Sutherland

Date: May 6, 2009

Senator Alford, Representative Sutherland, and Members of the Joint Standing Committee on Education and Cultural Affairs:

My name is Susan Gendron, Commissioner, and I am representing the Department of Education speaking in support of L.D. 1356 An Act to Improve the Ability of the Department of Education to Conduct Longitudinal Data Studies.

The intent of L.D. 1356 is to improve the ability of the Department of Education to conduct longitudinal data studies by permitting the use of social security numbers for the tracking of individual student enrollment history and achievement data over time.

While the Department of Education understands the concerns about the confidentiality of the social security number, it does serve as an important link in State agency data sharing. The University of Maine System, Community Colleges and Department of Labor each maintain their own separate data systems and, unlike the Department of Education, all store the social security number in their databases. The social security number is not meant to be used as a student's unique identifier, but would only be used as a common link between secondary, postsecondary and labor data. These data are essential for evaluating the effectiveness of education programs and curriculum in impacting postsecondary and labor market outcomes.

In addition LD 1356 will support the following initiatives:

- *American Recovery and Reinvestment Act (ARRA)* areas of reform - "Gathering information to improve student learning, teacher performance, and college and career-readiness through enhanced data systems that track progress" and accounts for over \$294 million in PreK-20 federal funds.

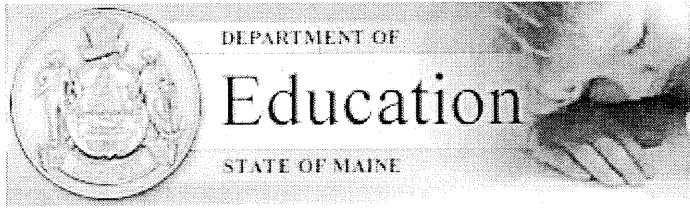
- Initiatives which may require the Department of Education to integrate an educational attainment database that permits integration with labor market data systems.

Creating a fully integrated longitudinal PreK-20 database is a goal of the Department of Education. The Department is currently midway through a three-year \$3.25 million federally funded project to create a K-12 longitudinal data system (LDS). Additional funding will be made available through a competitive ARRA longitudinal data system grant. The initial Statewide Longitudinal Data Systems program provided grants to State Education Agencies to enable them to design, develop, and implement statewide, longitudinal data systems to efficiently and accurately manage, analyze, disaggregate and use individual student data. As provided for under ARRA, funding available under the new competition is to be used for statewide data systems that, in addition to K-12 data, also include postsecondary and workforce information. L.D. 1356 will position Maine well to receive millions of dollars of additional grant funding by demonstrating the State's commitment to sharing of student data with postsecondary and workforce systems and facilitating that process.

The longitudinal data system complies with the State Office of Information Technology security policies and is prohibited from releasing any individually identifiable student data protected by the Family Educational Rights and Privacy Act (FERPA).

The bill also has language for the parent to opt out of the collection of data for the parent's child.

For these reasons, the Department supports L.D. 1356 An Act To Improve the Ability of the Department of Education To Conduct Longitudinal Data Studies. I would be happy to answer any questions the Committee may have, and I will be available for work sessions on this bill.



# Postponement of Requirement to Collect Student Social Security Numbers

**INFORMATIONAL LETTER NO: 28**  
**POLICY CODE: JF/KLL**

TO: Superintendents  
FROM: Susan A. Gendron, Commissioner  
DATE: September 22, 2009  
RE: Postponement of Requirement to Collect Student Social Security Numbers

The purpose of this informational letter is to inform you that the Department of Education will delay implementation of the requirements of PL Chapter 448 (LD 1356), including the possible collection of student social security numbers, until the 2010-11 school year.

The reason for the delay is that there is a need to increase awareness about the passage of the law, as well as to provide guidance for its implementation by school systems. Also, because FERPA disclosure statements and requests for data by school administrative units have already gone out for the current school year, we believe that implementation now would present an additional burden. While the law went into effect on September 12, 2009, it does not require school units to implement it until after receiving guidance from the Commissioner of Education. Thus, the delay does not put any school unit at risk of noncompliance.

If you have additional questions, please do not hesitate to contact Bill Hurwitch, Director Statewide Longitudinal Data System, at [Bill.Hurwitch@maine.gov](mailto:Bill.Hurwitch@maine.gov) or 624-6816.

[http://www.maine.gov/tools/whatsnew/index.php?topic=edu\\_letters&id=79625&v=article](http://www.maine.gov/tools/whatsnew/index.php?topic=edu_letters&id=79625&v=article)



PLEASE NOTE: The Office of the Revisor of Statutes *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

**Public Law**  
124th Legislature  
First Regular Session

**Chapter 448**  
S.P. 491 - L.D. 1356

**An Act To Improve the Ability of the Department of  
Education To Conduct Longitudinal Data Studies**

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

Sec. 1. 20-A MRS §6005 is enacted to read:

**§ 6005. Maine Statewide Longitudinal Data System**

The department shall develop and maintain the Maine Statewide Longitudinal Data System, a continuing program of information management, the purpose of which is to compile, maintain and disseminate information concerning the educational histories, placement, employment and other measures of success of participants in state educational programs. The commissioner may require a school administrative unit to collect and report individual student social security numbers to implement the Maine Statewide Longitudinal Data System only if additional federal funding is received to expand the department's kindergarten to grade 12 longitudinal data system existing as of the effective date of this section to a statewide system.

**1. Placement information.** A project conducted by the department that requires placement information must use information provided through the Maine Statewide Longitudinal Data System. The department shall implement an automated system that matches the social security numbers of former participants in state educational and training programs with information in the files of state and federal agencies that maintain educational, employment and United States armed services records and shall implement procedures to identify the occupations of those former participants whose social security numbers are found in employment records.

**2. Dissemination of education records.** The Maine Statewide Longitudinal Data System may not make public any information that could identify an individual or the individual's employer. The department must ensure that the purpose of obtaining placement information is to evaluate and improve education programs or to conduct research for the purpose of improving education services. Education records must be managed in compliance with the federal Family Educational Rights and Privacy Act of 1974, 20 United States Code, Section 1232g, referred to in this section as "FERPA." Personally identifiable information in an education record that is not directory information may be released to other agencies within State Government, including postsecondary institutions, only under a signed memorandum of understanding requiring compliance with FERPA.

**3. Notification and consent.** If the commissioner requires a school administrative unit to collect and report individual social security numbers pursuant to section 15689-B, subsection 7, the school administrative unit must notify parents in the annual notice required under FERPA that the data is being collected and used for longitudinal data purposes and must request the parent to provide written consent to use the child's social security number for the collection of longitudinal data. The parental notification must include an explanation of the parent's right that the child's social security number is not required as a condition of enrollment and that the child's social security number may not be used for longitudinal data purposes unless the parent provides prior written consent. When a student attains 18 years of age, the written consent must be obtained from the student, and the rights accorded to the parent before the student attained 18 years of age are then accorded to the student.

**Sec. 2. 20-A MRSA §15689-B, sub-§7,** as amended by PL 2007, c. 539, Pt. C, §13, is further amended to read:

**7. Required data; subsidy payments withheld.** A school administrative unit shall provide the commissioner with information that the commissioner requests to carry out the purposes of this chapter, according to time schedules that the commissioner establishes. For the purposes of the Maine Statewide Longitudinal Data System established pursuant to section 6005, the commissioner may require a school administrative unit to collect and report individual student social security numbers. The commissioner may withhold monthly subsidy payments from a school administrative unit when information is not filed in the specified format and with specific content and within the specified time schedules. If the school administrative unit files the information in the specified format, the Department of Education department shall include the payment of the withheld subsidy in the next regularly scheduled monthly subsidy payment.

**Sec. 3. Administrative letter.** The Commissioner of Education shall send an administrative letter to superintendents, principals and school counselors regarding the establishment of the Maine Statewide Longitudinal Data System pursuant to the Maine Revised Statutes, Title 20-A, section 6005. The letter must provide school officials with information regarding the requirements of this Act, including suggested language to be included in the annual notice to parents required under the Family Educational Rights and Privacy Act of 1974. The suggested language for parental notification must include an explanation of a parent's right that the child's social security number is not required as a condition of enrollment and that the child's social security number may not be used for the purposes of the Maine Statewide Longitudinal Data System unless the parent provides prior written consent.

Effective September 12, 2009

# CHILDREN'S EDUCATIONAL RECORDS AND PRIVACY

## A STUDY OF ELEMENTARY AND SECONDARY SCHOOL STATE REPORTING SYSTEMS

October 28, 2009



CENTER on  
LAW and  
INFORMATION  
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## FORDHAM CENTER ON LAW AND INFORMATION POLICY

### CHILDREN'S EDUCATIONAL RECORDS AND PRIVACY: A STUDY OF ELEMENTARY AND SECONDARY SCHOOL STATE REPORTING SYSTEMS

#### EXECUTIVE SUMMARY

Among state departments of education there has been a growing trend to establish statewide longitudinal databases of all K-12 children within a state in order to track students' progress and change over time. This trend is accompanied by a movement to create uniform data collection systems so that each state's student data systems are interoperable with one another. These two trends raised privacy concerns that we examine in this study. First, we were concerned with the way states were ensuring the privacy of their K-12 students. Specifically, our goal was to investigate what type of data was being collected and whether children were protected legally and technically from data misuse, improper data release, and data breaches. Second, we were concerned with the ease with which individual interoperable state data systems could potentially be combined to create a national database of all K-12 children.

We reviewed publicly available information from all 50 states and found that privacy protections for the longitudinal databases were lacking in the majority of states. We found that most states collected information in excess of what is needed for the reporting requirements of the No Child Left Behind Act and what appeared needed to evaluate overall school progress. The majority of longitudinal databases that we examined held detailed information about each child in what appeared to be non-anonymous student records. Typically, the information collected included directory, demographic, disciplinary, academic, health, and family information. Some striking examples are that at least 32% of the states warehouse children's social security numbers, at least 22% of the states record children's pregnancies, at least 46% of the states track mental health, illness, and jail sentences as part of the children's educational records, and almost all states with known programs collect family wealth indicators.

We found that, given the detailed and sensitive nature of the information collected, the databases generally had weak privacy protections. Often the flow of information from the local educational agency to the state department of education was not in compliance with the privacy requirements of the Family Educational Rights and Privacy Act. One state, New Jersey, even diverts special education medicaid funding to pay for an out-of-state contractor to warehouse data, including medical test results. Many states do not have clear access and use rules regarding the longitudinal database and over 80% of the states apparently fail to have data retention policies and are thus likely to hold student information indefinitely. Several states, like Montana, outsource the data warehouse without any protections for privacy in the vendor contract.

From our review, we were able to formulate several critical recommendations that we believe will increase the privacy, transparency, and accountability of these longitudinal databases:

- 1) Data at the state level should be anonymized through the use of dual database architectures;
- 2) Third party processors of educational records should have comprehensive agreements that explicitly address privacy obligations;

- 3) The collection of information by the state should be minimized and specifically tied to an articulated audit or evaluation purpose;
- 4) Clear data retention policies should be instituted and made mandatory;
- 5) Access and permissible use policies should be well articulated and specific in nature;
- 6) Audit logs of access to and use of the state databases should be maintained as a guard against unauthorized data processing;
- 7) Information about the database, its security, and its use should be readily available and verifiable.
- 8) States should have a Chief Privacy Officer in the department of education who assures that privacy protections are implemented for any educational record database and who publicly reports privacy impact assessments for database programs, proposals, and vendor contracts.

Provided to RTKAC  
12/1/09 Meeting



## State of Maine

Office of Information Technology  
Department of Administrative and Financial Services

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### Memorandum

To: Right to Know Committee  
From: Richard B. Thompson, CIO  
Date: December 1, 2009  
Re: Transparency on Maine.gov

The State is in possession of a huge amount of information. The information is collected and organized to support the delivery of state programs and services, and generally resides within the internal systems that support it. It has historically been viewed by program managers as ancillary to the services it supports without aforethought to its intrinsic value as public information. Indeed it is organized and formatted to support those services over any other end and while vast amounts of it are public in nature it is frequently mixed with data not appropriate for public consumption.

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Public data frequently...

- Resides on internal systems.
  - Has proprietary formatting.
  - Is mixed with non-public data.
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With a few notable exceptions<sup>1</sup> the State deals with formal requests for this information on an ad hoc basis. Without the benefit of anticipation, each event, even repeat requests, are frequently treated as customized information delivery service requests. The results are often expensive and inconsistent. We are seeing more frequent, larger and more sophisticated requests for information. Given the public's increasing appreciation and appetite for State held data.

Two recent actions in Maine have demonstrated the advantage and challenges to making more data public as a strategic initiative. ARRA stimulus funding requires specific reporting to meet particular Federal standards. Over \$250,000 from stimulus funding will be spent to complete the necessary interfaces and data collection systems to meet those requirements. While much of this investment is transferable, there will be additional cost if a definitive schedule and data composition is required immediately. Contracts, purchase orders will be next to be added to the ARRA site and within a few months, available going forward for new or amended contracts. General expense information is more difficult to post when by transaction. ARRA funding has been used for relatively narrow purposes and as such can be easily segregated from other transactions. Some expenditures by the State are for various programs of social

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<sup>1</sup> For example Data requests handled under the InforME Statute.



services or others that cannot be made public individually. The effort to create extracts that redact this information requires study and resources are currently not available.

INFORME, the Board that manages Maine's portal has worked with its service provider to establish a data share web presence where raw data of various types can be posted by agency custodians and made available for view with simple tools. This is voluntary at this time, but many agencies are posting or planning to post data. It is time to consider a more proactive approach towards serving the public's interest in state held data.

### ***Public data in other states***

Many states have ongoing transparency initiatives. Most appear to be highly crafted "open check book" presentations rather than open data publication programs<sup>2</sup>. Over the last year several states (similar to Maine's data share described above and hosted at [www.maine.gov/data](http://www.maine.gov/data)) have created public data repositories<sup>3</sup> based on the assumption that program data, in addition to fiscal data, is of interest to the public and should be presumptively placed before them. While these efforts represent positive movement it should be noted that the data that makes it to these repositories is limited to those types of data sets that are naturally bereft of sensitive information and are absolutely uncontroversial. To some extent these efforts can be described as attempt to organize data already published or likely to be published. Given that independent funding for these efforts is scarce the data published here in addition to being limited is also prone to becoming stale over time. Other states that have active efforts to create central repositories for publishing data include Massachusetts<sup>4</sup>, California<sup>5</sup> and Utah<sup>6</sup>.

### ***A Proactive Approach***

Planning a proactive and thoughtful approach to publishing public information in lieu of handling data requests requires that we take steps to fully understand the data on hand, its value, and its risks, the public's expectations for its availability and the effort it takes to provide it. One affordable strategy would be to require all new systems or systems being

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<sup>2</sup> <http://sunshinereview.org>

<sup>3</sup> 8 Open Government Data Principles from NASCIO **A Call to Action for State Government: Guidance for Opening the Doors to State Data** (September 2009)

1. **Complete** - All public data are made available. Public data are data that are not subject to valid privacy, security or privilege limitations.
2. **Primary** - Data are collected at the source, with the finest possible level of granularity, not in aggregate or modified forms.
3. **Timely** - Data are made available as quickly as necessary to preserve the value of the data.
4. **Accessible** - Data are available to the widest range of users for the widest range of purposes.
5. **Machine processable** - Data are reasonably structured to allow automated processing.
6. **Non-discriminatory** - Data are available to anyone, with no requirement of registration.
7. **Non-proprietary** - Data are available in a format over which no entity has exclusive control.
8. **License-free** - Data are not subject to any copyright, patent, trademark or trade secret regulation. Reasonable privacy, security and privilege restrictions may be allowed.

<sup>4</sup> <https://wiki.state.ma.us/confluence/display/data>

<sup>5</sup> <http://www.california.gov/data/>

<sup>6</sup> <http://www.utah.gov/data/>



significantly update or modified to undergo analysis and to plan public posting of all non-protected data. While this would potentially increase the cost of a system or modification to some degree, it is by far the most efficient mechanism to create a lasting system to provide information on line. Once in place, this should be considered an acceptable response to a data request for this information. A similar strategy might be used as a response to the first request or a data set, but usually the time to respond prevents a planful implementation strategy for a long term solution.

At a minimum the effort would involve the following for any area of state government deemed likely to possess data of interest to the public:

- Identify and catalog public information needed to support existing and prospective programs. Pay particular attention to those records for which there is evidence of public interest.
- Where possible take measures to segregate public from non-public information and integrate this separation as a part of normal operations.
- The establishment of technical data standards that avoid locked proprietary formats.
- When segregation is not practical, or when in its native state it is in a proprietary format, develop views that present the data in a way that is appropriate for public consumption.
- Make available catalogs and indexes of published data and data views.
- Where practical integrate these considerations into the acquisition of new systems.

### **Benefits of a Proactive Approach**

- Avoiding reactive efforts to locate and condition data for public consumption.
- Avoiding redoing data mining efforts for similar but different requests.
- Redaction of sensitive information can be handled as a function of systems design rather than as a manual undertaking.
- Allowing program staff to stay focused on mission oriented efforts.
- Improving the understanding of program staff of the implications and obligations in public data collection and retention.
- Improving the quality of second hand published data since an authorized definitive version is available for reference.
- Encouraging public engagement and independent exploitation of public data.<sup>7</sup>

### **Risks**

- Iterative approach is slow, funding is limited
- As access to public data is increased:

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<sup>7</sup> For examples of programmatic elaborations on public data feeds see <http://www.massdotdevelopersconference09.com/visualization>.





- Presumptions held by the public about the privacy of their government transactions will be tested.
- Statutory protections may be found to be inadequate with application of modern indexing and matching algorithms.
- The added effort to address data concerns may inhibit new program startups.
- Resources may be expended on publishing data no one is interested in



Right to Know Advisory Committee  
Legislative Subcommittee Discussion Draft---Changes highlighted  
Guidance on the Use of Email or Other Electronic Communication by Elected Officials

**Proposed New FAQ to be added to website:**

**Can members of a body communicate with one another by email outside of a public proceeding?**

There is no legal prohibition against email communication between members of a public body outside of a public proceeding. However, email communication among a quorum of the members of a body used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.



Provided to RTKAC  
12/1/09

12/1/09

**Rep. Stacy Dostie Proposed Legislation**

**LR 2130 An Act to Further Regulate the Communications of Members of Public Bodies**

**Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

**1-B. Electronic mail.** "Electronic mail" means a communication sent or delivered by transmission over the Internet.

**Sec. 2. 1 MRSA §402, sub-§1-C** is enacted to read:

**1-C. Group electronic mail.** "Group electronic mail" means electronic mail sent to more than one person by means of a single transmission. "Group electronic mail" does not include an identical communication sent by a series of individual transmissions to individual recipients.

**Sec. 3. 1 MRSA §402, sub-§5** is enacted to read:

**5. Substantive matter.** "Substantive matter" means a matter of policy or substance as opposed to a matter of form or procedure. "Substantive matter" does not include administrative issues such as the scheduling of meetings, the dissemination of studies or reports or the development of agendas.

**Sec. 4. 1 MRSA §413** is enacted to read:

**§413. Prohibited communications**

**1. Group electronic mail to other members.** A member of a body described in section 402, subsection 2, paragraphs A to G may not knowingly send a group electronic mail to a majority of the members of the body regarding a substantive matter.

**2. Communicate majority agreement.** A member of a body described in section 402, subsection 2, paragraphs A to G may not directly or through an intermediary communicate that a majority of the body is in agreement regarding a substantive matter to a person who is not a member of the body and/or who has an interest in the matter, unless the agreement was previously reached at a public proceeding.

**Please Add the Following in the appropriate places... (reword as needed)**

All electronic communications between any members of a body containing information relating to a substantive matter are regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

Electronic communication pertaining to a substantive matter by members of a body shall be printed and disclosed to the public at the next public meeting prior to the vote of the body on the substantive matter.

**SUMMARY**

This bill amends the law governing access to public records and proceedings. This bill:

1. Provides definitions of "electronic mail," "group electronic mail" and "substantive matter";
2. Prohibits a member of a public body from knowingly sending a group electronic mail to a majority of the members of that body regarding substantive matter; and
3. Prohibits a member of a public body from directly or through an intermediary communicating that a majority of that body is in agreement regarding a substantive matter to interested persons who are not members of the body.



**Existing Public Records Exceptions Subject to review by 2010**

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

**Reflects Actions Taken by Public Records Exception Subcommittee at Sept. 9<sup>th</sup>; Oct. 13<sup>th</sup> and Nov. 17<sup>th</sup> Meetings**

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
2	10	945-J	Title 10, section 945-J, relating to the Maine International Trade Center	<ul style="list-style-type: none"> <li>Maine International Trade Center (Board of Directors?)</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	AMEND 3-0 vote
3	10	975-A	Title 10, section 975-A, subsections 2 and 3, relating to the Finance Authority of Maine	<ul style="list-style-type: none"> <li>Finance Authority of Maine</li> </ul>	<ul style="list-style-type: none"> <li>Regularly applied; 3 denials for info per year; used to go into executive session; CHANGE: CLARIFY THAT APPLIES TO PERSONALLY IDENTIFIABLE INFORMATION OF MAINE CONSUMERS</li> </ul>	AMEND 3-0 vote
12	12	550-B	Title 12, section 550-B, subsection 6, relating to water well information collected by the Department of Conservation, Bureau of Geology and Natural Areas	<ul style="list-style-type: none"> <li>Department of Conservation, Maine Geological Survey</li> </ul>	<ul style="list-style-type: none"> <li>No FOA requests; exception cited few times per year</li> <li>No changes</li> </ul>	AMEND 3-0 vote
12.2	12	549-B	Title 12, section 549-B, subsection 5, paragraph D, relating to investigatory and exploratory work reported under a mining permit to the Bureau of Geology and Natural areas  "shall not constitute records available for public inspection or disclosure"	<ul style="list-style-type: none"> <li>Department of Conservation, Maine Geological Survey</li> </ul>	<ul style="list-style-type: none"> <li>Never invoked bring claims process (2 claims pending); no changes</li> </ul>	AMEND 3-0 vote

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

### Reflects Actions Taken by Public Records Exception Subcommittee at Sept. 9<sup>th</sup>; Oct. 13<sup>th</sup> and Nov. 17<sup>th</sup> Meetings

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
19	6173	1	Title 12, section 6173, subsection 1, relating to marine resources statistics	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>Approx. 6 requests per month, approx. 2 must be modified to not release confidential data; no changes</li> </ul>	ACCEPTED; no change 2-1 Vote
21.1	6445		Title 12, section 6445, relating to logbooks for lobster harvesters  "disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173"	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	ACCEPTED; no change 2-1 Vote
22	6455	1-A	Title 12, section 6455, subsection 1-A, relating to market studies and promotional plans of the Lobster Promotion Council	<ul style="list-style-type: none"> <li>Lobster Promotion Council</li> </ul>	<ul style="list-style-type: none"> <li>Administered infrequently; no changes</li> </ul>	AMEND 3-0 vote
22.1	6749-S	1	Title 12, section 6749-S, subsection 1 relating to log book for sea urchin buyers and processors  "disclosure of any data collected under this section is subject to the confidentiality provisions of section 6173"	<ul style="list-style-type: none"> <li>Department of Marine Resources</li> </ul>	<ul style="list-style-type: none"> <li>No FOA denials; no changes</li> </ul>	ACCEPTED; no change 2-1 Vote
25	8869	13	Title 12, section 8869, subsection 13, relating to forest policy experimental areas	<ul style="list-style-type: none"> <li>Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>No requests; no changes</li> </ul>	AMEND 2-1 vote



## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

### Reflects Actions Taken by Public Records Exception Subcommittee at Sept. 9<sup>th</sup>; Oct. 13<sup>th</sup> and Nov. 17<sup>th</sup> Meetings

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
27	8884	3	Title 12, section 8884, subsection 3, relating to landowner and wood processor reporting requirements concerning volume information	<ul style="list-style-type: none"> <li>• Department of Conservation, Bureau of Forestry</li> </ul>	<ul style="list-style-type: none"> <li>• No requests; no change</li> </ul>	ACCEPTED; no change 2-1 Vote
32	1254-A	7	Title 14, section 1254-A, subsection 7, relating to names of prospective jurors and contents of juror qualification forms	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	DIVIDED 2-2 vote 2 voting NO CHANGE ; 2 voting AMEND

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

### Reflects Actions Taken by Public Records Exception Subcommittee at Sept. 9<sup>th</sup>, Oct. 13<sup>th</sup> and Nov. 17<sup>th</sup> Meetings

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
33	1254-A	8	Title 14, section 1254-A, subsection 8, relating to names of jury pool during the period of service of jurors and prospective jurors	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests made at every jury term; seldom allow access absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	<p>DIVIDED</p> <p>2-2 vote</p> <p>2 voting NO CHANGE ; 2 voting AMEND</p>
34	1254-B	2	Title 14, section 1254-B, subsection 2, relating to juror selection records and information	<ul style="list-style-type: none"> <li>• Judicial Branch</li> <li>• Attorney General</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine State Bar Association</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• JB: requests frequently made but seldom granted absent compelling need; no changes</li> <li>• AG: if any changes, make consistent with SJC's Standing Order for Limited Access to Juror Information dated 08/25/06</li> </ul>	<p>DIVIDED</p> <p>2-2 vote</p> <p>2 voting NO CHANGE ; 2 voting AMEND</p>

## Existing Public Records Exceptions Subject to review by 2010

Remaining provisions as of June 29, 2009

Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A, 21-A

### Reflects Actions Taken by Public Records Exception Subcommittee at Sept. 9<sup>th</sup>; Oct. 13<sup>th</sup> and Nov. 17<sup>th</sup> Meetings

Title	Section	Sub-§	Description	Department/Agency	Comments	Subcommittee Action
40	16		Title 16, Chapter 3, Subchapter 8: Criminal History Record Information Act	<ul style="list-style-type: none"> <li>• Attorney General</li> <li>• Department of Public Safety</li> <li>• Maine Prosecutors Association</li> <li>• Maine Association of Criminal Defense Lawyers</li> <li>• Maine Trial Lawyers Association</li> </ul>	<ul style="list-style-type: none"> <li>• DPS: Discussion needed; changes recommended</li> </ul>	HOLD; REFER to CLAC for review
41	16	2 1-A	Title 16, section 614, subsection 2 1-A, relating to personally identifying information of persons who report cruelty to animals to the Department of Agriculture, Food and Rural Resources	<ul style="list-style-type: none"> <li>• Department of Agriculture, Food and Rural Resources</li> </ul>	<ul style="list-style-type: none"> <li>• Requests; no change</li> </ul>	HOLD; REFER to CLAC for review
56	19-A	4	Title 19-A, section 4013, subsection 4, relating to the Domestic Abuse Homicide Review Panel	<ul style="list-style-type: none"> <li>• Attorney General</li> </ul>	<ul style="list-style-type: none"> <li>• Many records otherwise confidential, panel's findings released when final; no changes</li> </ul>	ACCEPTED; no change 4-0 vote
69	20-A	13004 2-A	Title 20-A, section 13004, subsection 2-A, relating to complaint, charges and accusations concerning certification and registration of teachers (amended PL 2007, c. 666)	<ul style="list-style-type: none"> <li>• Department of Education</li> <li>• Maine Education Association</li> </ul>	<ul style="list-style-type: none"> <li>• DOE: On average once a week; CONSIDER CHANGE: AMBIGUOUS AS WRITTEN</li> </ul>	AMEND-reflect PL 2009, c. 331 3-0 vote

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Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
Exception in Title 10, section 945-J (Chart #2)

Sec. 1. 10 MRSA §945-J is amended to read:

**10 §945-J. Confidential records**

The following records and proceedings of the center are confidential and are not open to public inspection for the purposes of Title 1, chapter 13, except as otherwise provided in this section.

**1. Proprietary information; other information.** Information provided to or developed by the center and included in a business or marketing plan is ~~confidential so long as public unless~~ the person to whom the information belongs or pertains requests that it be designated as confidential and the center has determined it contains proprietary information if, when made available, the information would allow a person to obtain a business or competitive advantage over another person or would result in significant detriment to the person to whom the information belongs and when the information is not otherwise available in the public domain. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the center or the person submitting the information and would make available information not otherwise publicly available.

**2. Tax or financial information.** Any financial statement, supporting data or tax return of any person is confidential.

**3. Credit assessment.** Any record obtained by the center that contains an assessment of the credit worthiness, credit rating or financial condition of any person is confidential.

This section does not prohibit the disclosure of information that is otherwise available in the public domain.

Public Records Exceptions Subcommittee  
PROPOSED DISCUSSION DRAFT Based on Nov. 17<sup>th</sup> meeting:  
Exception in Title 10, section 975-A (Chart #3)

Sec. 1. 10 MRSA § 975-A is repealed.

~~§975-A. Disclosure and confidentiality of records~~

~~1. Disclosure required.~~ Notwithstanding subsections 2 and 3 and except as provided in paragraph F, the following shall be made available to any person upon request reasonably describing the records to which access is sought or, if no request is made, in any manner and at any time which the authority may determine:

~~A. After filing of a written application or proposal for financial assistance or property transfer, in form specified by or acceptable to the authority:~~

~~(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;~~

~~(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;~~

~~(3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;~~

~~(4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;~~

~~(5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;~~

~~(6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and~~

~~(7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance;~~

~~B. Any information pursuant to waiver deemed satisfactory by the authority;~~

~~C. Information which, as determined by the authority, has already been made available to the public;~~

~~D. Any information necessary to carry out section 1043 or 1063;~~

~~E. Information necessary to comply with Title 1, section 407, subsection 1;~~

~~F. Information or records specified in a written request signed by the chairmen of a legislative committee shall be provided to the legislative committee. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it;~~

~~G. The annual report of the authority required pursuant to section 974.~~

~~2. Confidential information.~~ The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

~~A. Any record obtained or developed by the authority prior to receipt of a written application or proposal, in form specified by or acceptable to the authority, for financial~~

Public Records Exceptions Subcommittee  
PROPOSED DISCUSSION DRAFT Based on Nov. 17<sup>th</sup> meeting:  
Exception in Title 10, section 975-A (Chart #3)

~~assistance to be provided by or with the assistance of the authority or in connection with a transfer of property to or from the authority. After receipt by the authority of the application or proposal, a record pertaining to the application or proposal shall not be considered confidential unless it meets the requirements of other paragraphs of this subsection;~~

~~B. Any record obtained or developed by the authority which fulfills the following requirements:~~

~~(1) A person, including the authority, to whom the record belongs or pertains has requested that the record be designated confidential; and~~

~~(2) The authority has determined that information in the record gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through authority records, or that access to the information by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the authority, in the case of a person other than the authority, to any person to whom the record belongs or pertains;~~

~~C. Any financial statement or tax return of an individual or any other record obtained or developed by the authority the disclosure of which would constitute an invasion of personal privacy, as determined by the authority;~~

~~D. Any record including any financial statement or tax return obtained or developed by the authority in connection with any monitoring or servicing activity by the authority pertaining to any financial assistance provided or to be provided by or with the assistance of the authority;~~

~~E. Any record obtained or developed by the authority which contains an assessment by a person who is not employed by the authority of the credit worthiness or financial condition of any person or project;~~

~~F. Any financial statement or business and marketing plan in connection with any project receiving or to receive financial assistance from the authority pursuant only to subchapters III or IV, except section 1053, subsection 5, if a person to whom the statement or plan belongs or pertains has requested that the record be designated confidential; and~~

~~G. Any record, including any financial statement, business plan or tax return obtained or developed by the authority in connection with the matching of potential investors with Maine businesses by the authority through its maintenance of a data base or other record keeping system. For purposes of this section, an application by a potential investor shall not be deemed to be an application for financial assistance.~~

~~**3. Wrongful disclosure prohibited; further exceptions.** No member, officer, employee, agent, other representative of the authority or other person may knowingly divulge or disclose records declared confidential by this section, except that the authority may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:~~

~~A. Impersonal, statistical or general information;~~

Public Records Exceptions Subcommittee  
PROPOSED DISCUSSION DRAFT Based on Nov. 17<sup>th</sup> meeting:  
Exception in Title 10, section 975-A (Chart #3)

~~B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;~~

~~C. To a financing institution or credit reporting service;~~

~~D. Information necessary to comply with any federal or state law, including section 979, or rule or with any agreement pertaining to financial assistance;~~

~~E. Information to the extent the authority deems the disclosure necessary to the sale or transfer of revenue obligation securities or to the sale or transfer of bonds of the State;~~

~~F. If necessary to assure collection of any obligation in which it has or may have an interest;~~

~~G. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records declared confidential by this section; and~~

~~H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.~~

~~4. **Records on effective date.** Whether any record in the possession of the authority on the effective date of this section is confidential shall be determined pursuant to this section and not pursuant to the law in effect when the authority or any of its predecessors obtained any such record and any such record shall or may be disclosed or divulged to the extent required or permitted by this section.~~

**Sec. 2. 10 MRSA § 975-B is enacted to read:**

**§ 975-B. Freedom of access; confidentiality of records**

The records of the authority are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the authority that:

(1) A person, including the authority to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and



Public Records Exceptions Subcommittee  
PROPOSED DISCUSSION DRAFT Based on Nov. 17<sup>th</sup> meeting:  
Exception in Title 10, section 975-A (Chart #3)

B. A financial statement or tax return.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. To a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;

E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority.

Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
Exception in Title 12, section 550-B, subsection 6 (Chart #12)

Sec. 1. 12 MRSA § 550-B is amended to read:

**§550-B. Water well information**

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

A. "Well" means any hole constructed by any method for the purpose of extracting water from below the ground.

B.

C. "Well drilling company" means a person, firm, partnership or corporation that owns or otherwise operates any mechanical equipment used to drill, drive or bore water wells.

**2. Exemptions.** Wells for which data reports are already required by any state agency are exempt from the reporting requirements of this chapter.

**3. Water well information documentation.** Completion reports shall be filed according to this subsection.

A. Within 30 days after completion of any well or dry hole, or the enlarging or deepening of an existing well, a well drilling company shall submit a report to the Bureau of Geology and Natural Areas, on forms designed and provided by the Bureau of Geology and Natural Areas. The report must contain information as may be required by the Bureau of Geology and Natural Areas, including, but not limited to, location, construction and well yield.

B. Any well drilling company that has engaged in the construction of water wells, but who has not submitted well completion reports on a timely basis as required by this chapter, is in violation of this chapter.

**4. Compliance with other laws and rules.** Notwithstanding the provisions set forth in this chapter, all wells are to be constructed and maintained in accordance with all other laws and rules in effect.

**5. Penalties.** A well drilling company that violates any standard or provision of this chapter, commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. In addition to other civil remedies, the court may issue an injunction.

**6. Information use.** Information collected by the Bureau of Geology and Natural Areas, Maine Geological Survey under this ~~section~~ chapter is ~~exempt from~~ subject to Title 1, chapter 13, subchapter I unless the well drilling company to whom the information belongs or pertains requests that it be designated as confidential and the bureau has determined it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available. The Bureau of Geology and Natural Areas, Maine Geological Survey shall make information collected under this chapter available to any federal, state or municipal entity or authorized agent of such entity.

Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
Exception in Title 12, section 549-B, sub-§§ 5 and 13 (Chart #12.2)

Sec. 1. 12 MRS § 549-B, sub-§ 5, ¶ D is amended to read:

D. An affidavit of investigatory and exploratory work shall be filed each year with the director of the survey on June 30th. At the time of filing that affidavit, the claimant shall demonstrate to the director that investigatory work has been performed on that claim at a rate of at least \$5 per acre during the year ending June 30th. For claims recorded after April 1st and before June 30th, the first affidavit of investigatory and exploratory work shall be filed on the 2nd June 30th following. All work done shall be described in the affidavit and shall include work which tends to reveal such characteristics of the material sought as length, width, depth, thickness, tonnage and mineral or metal content, or, with respect to nonmetallic minerals, other physical characteristics of the deposit relating directly to the commercial exploitation of the deposit and such other information relating to the exploration work as the director of the survey may require. ~~This information may be shared with other governmental agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408, during the period of time in which the claim is in effect. During the period of time in which the claim is in effect,~~ this information is confidential for the purposes of Title 1, section 402, subsection 3, paragraph A and may not be disclosed, except that the information may be shared with other governmental agencies.

Sec. 2. 12 MRS § 549-B, sub-§ 13 is amended to read:

**13. Annual reports.** Any person with a mining lease engaged in mine development or mining under this subchapter shall, in the month of June following the year the operation was carried on, pay all applicable fees, rentals and royalties and file an annual report with the director of the survey and director of the agency having jurisdiction over the state-owned land setting forth:

- A. The location of the operation;
- B. The quality and grade of mineral products or ores produced;
- C. The amount of royalty which has accrued on material extracted;
- D. The number of persons ordinarily employed at operation below ground and above ground; and
- E. Any other information, relating to the mining lease, mine development or mining, the director of the bureau and the director of the agency having jurisdiction over the state-owned lands may require by regulation.

~~This information may be shared with other government agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408. This information is confidential for the purposes of Title 1, section 402, subsection 3, paragraph A and may not be disclosed, except that the information may be shared with other governmental agencies.~~

Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
Exception in Title 12, section 6455, subsection 1-A (Chart #22)

Sec. 1. 12 MRSA §6455, sub-§ 1-A is amended to read:

**1-A. Council is a public instrumentality.** The council is established as a public instrumentality serving a public purpose. As a public instrumentality:

A. Employees of the council may not be construed to be state employees for any purpose, including the state civil service provisions of Title 5, Part 2 and Title 5, chapter 372 and the state retirement system provisions of Title 5, Part 20;

B. The council may not be construed to be a state agency for any purposes, including the budget, accounts and control, auditing, purchasing or other provisions of Title 5, Part 4; and

C. Notwithstanding any provisions of paragraphs A and B:

(1) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter I, except ~~as provided in subsection 1-B that, by majority vote of the members, the council may designate market studies or promotional plans developed or funded by the council as confidential.~~ The commissioner and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over marine resource matters have access to all material designated confidential by the council;

(2) Except as required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18; and

(3) For the purposes of the Maine Tort Claims Act, the council is a "governmental entity" and its employees are "employees" as those terms are defined in Title 14, section 8102.

Sec. 2. 12 MRSA § 6455, sub-§ 1-B is enacted to read:

**1-B. Market studies and promotional plans; proprietary information.**  
Information provided to or developed by the council and included in a promotional plan or market study is public unless the council determines that it contains proprietary information. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the council or the person submitting the information and would make available information not otherwise publicly available.

Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
Exception in Title 12, section 8869, subsection 13 (Chart #25)

Sec. 1. 12 MRSA § 8869, sub-§ 13 is amended to read:

13. (TEXT EFFECTIVE UNTIL 7/1/12) (TEXT REPEALED 7/1/12)  
**Confidential information.** Information provided to the bureau voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forest policy experimental areas, as created pursuant to section 8003, subsection 3, paragraph Q, is public unless the person to whom the information belongs or pertains requests that it be designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A and the bureau has determined it contains proprietary information For the purposes of this subsection, “proprietary information” means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person submitting the information and would make available information not otherwise publicly available. ~~designated as confidential if the bureau has determined that failure to designate the information as confidential would provide competitors an opportunity to obtain business or competitive advantage over the person to whom the information belongs or pertains or would result in loss or other significant detriment to that person.~~ The bureau, working with the landowner and the panel of technical experts appointed under subsection 3-A, may publish reports as long as those reports do not reveal confidential information. This subsection is repealed July 1, 2012.

Right to Know Advisory Committee  
PROPOSED DRAFT  
Juror confidentiality: Divided report (Chart # 32-34)

Sec. 1. 14 MRSA §1254-A is amended to read:

**§1254-A. Qualification questionnaire; juror selection**

**1. Procedure.** The clerk shall, at times considered reasonable and necessary to promote the efficient operation of the court and the juror selection system, mail a juror qualification form to every prospective juror whose name has been drawn in accordance with section 1253-A. The form must be accompanied by instructions directing the prospective juror to fill out and return the form by mail to the clerk within the time specified. The clerk shall prepare or cause to be prepared a list of the names to whom questionnaires are mailed. The list of questionnaire recipients and the names drawn are confidential and may not be disclosed to any person, except as provided in this chapter.

**2. Content.** The juror qualification form must conform, in form and content, to the qualification form prescribed by the Supreme Judicial Court and must solicit information sufficient to determine the prospective juror's qualification for jury service. The qualification questionnaire may also solicit other information including, but not limited to, education and employment.

**3. Ambiguous or erroneous responses.** If it appears there is an omission, ambiguity or error in a returned form, the clerk may, at the clerk's discretion, contact the prospective juror by telephone to obtain the additional information, clarification or correction.

**4. Failure to complete form; penalty.** A prospective juror who fails to return a completed juror qualification form as instructed may be ordered by the court to appear and show cause why the prospective juror should not be held in contempt for the failure to complete and submit the questionnaire. Notwithstanding Title 17-A, section 4-A, a prospective juror who fails to show good cause for the failure to complete and submit the questionnaire or who without good cause fails to appear pursuant to a court order may be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or by both.

**5. Intentional misrepresentation.** Notwithstanding Title 17-A, section 4-A, a person who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may upon conviction for a violation of this section be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or by both.

**6. Determination of qualification.** The clerk shall determine on the basis of information provided on the juror qualification form, supplemented by other competent evidence when considered necessary to such determination, whether the prospective juror

Right to Know Advisory Committee

PROPOSED DRAFT

Juror confidentiality: Divided report (Chart # 32-34)

is qualified for jury service. This determination must be reflected on the juror qualification form or any other record designated by the court.

**7. Availability of qualification forms.** ~~The A person seeking the names of prospective jurors and the contents of juror qualification forms are confidential and may not be disclosed except as provided in this chapter~~ may file with the court a written request for disclosure of the information. The request must be accompanied by an affidavit stating the basis for the request. The court shall disclose the information unless the court determines in any instance that the information in the interests of justice should be kept confidential or its use limited in whole or in part. ~~The names of prospective jurors and the contents of juror qualification forms may at the discretion of the court be made available to the attorneys and their agents and investigators and the pro se parties at the courthouse for use in the conduct of voir dire examination.~~

**8. During period of service.** ~~During the period of service of jurors and prospective jurors, the names of the members of the jury pool are confidential and may not be disclosed except to the attorneys and their agents and investigators and the pro se parties.~~

**8-A. Jurors.** When jury selection is complete, a person seeking the names of the jurors may file with the court a written request for disclosure of the names of the jurors. The request must be accompanied by an affidavit stating the basis for the request. The court shall disclose the names of the jurors unless the court determines that the information in the interests of justice should be kept confidential or its use limited in whole or part.

**9. Protection of confidentiality.** A person who has access to or receives information or a record designated confidential under this chapter shall maintain the confidentiality of the information or record and use it only for the purposes for which it was released and may not further disclose it except as authorized by the court at the time of the disclosure to that person.

---

Sec. 2. 14 MRSA §1254-B is amended to read:

**§1254-B. Preservation of records**

**1. Records preserved.** The clerk shall cause to be preserved all records and lists compiled and maintained in connection with selection and service of jurors for the length of time ordered by the court.



Right to Know Advisory Committee

PROPOSED DRAFT

Juror confidentiality: Divided report (Chart # 32-34)

**2. Records' confidentiality.** The records and information used in connection with the selection process are confidential and may not be disclosed except as provided in this chapter.

**3. Exceptions to confidentiality.** Once the period of juror service has expired, a person seeking the names of the jurors may file with the court a written request for disclosure of the names of the jurors. The request must be accompanied by an affidavit stating the basis for the request. The court ~~may~~ shall disclose the names of the jurors ~~only if unless~~ the court determines that the ~~disclosure is~~ information in the interests of justice should be kept confidential or its use limited in whole or part. The factors the court may consider in determining if the ~~disclosure~~ keeping the information confidential is in the interests of justice include, but are not limited to, encouraging candid responses from prospective jurors, the safety and privacy interests of prospective jurors and the interests of the media and the public in ensuring that trials are conducted ethically and without bias.

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Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
AMEND TEACHER CONFIDENTIALITY PROVISIONS (Chart #69)

**Sec. 1.**        **20-A MRSA §13004**, sub-§ 2-A, as repealed and replaced by PL 2009, c. 331, is amended to read:

**2-A. Confidentiality.** The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. Except for information designated confidential under section 6101 or section 6103, information designated confidential under paragraph A may be released or used by the department as necessary to:

- (1) Complete its own investigations;
- (2) Provide information to a national association of state directors of teacher education and certification to which the State belongs;
- (3) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;
- (4) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or
- (5) Report child abuse or neglect under Title 22, section 4011-A.

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.

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D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against persons holding certifications are public records:

- (1) Name of the person;
- (2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;
- (3) The relevant dates of the action;

Public Records Exceptions Subcommittee  
DRAFT APPROVED BY SUBCOMMITTEE:  
AMEND TEACHER CONFIDENTIALITY PROVISIONS (Chart #69)

- (4) The type of certification and endorsements held, including relevant dates;
- (5) The schools where the person was or is employed; and
- (6) The dates of employment.

Please note that this draft does not include public release of the reasons for action by the commissioner

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FOR REVIEW 12/1

DRAFT

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SHENNA BELLOWS  
KARLA BLACK  
ROBERT DEVLIN  
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KELLY MORGAN  
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STATE OF MAINE

## RIGHT TO KNOW ADVISORY COMMITTEE

December 1, 2009

John Pelletier, Chair  
Criminal Law Advisory Commission

Re: Criminal History Record Information Act

Dear Mr. Pelletier:

The Right to Know Advisory Committee was established to serve as a resource and advisor about Maine's Freedom of Access Laws. The Advisory Committee consists of 16 members from various constituencies, and we are working to provide training and other resources for public officials to assist them in complying with the laws governing proceedings and records.

One of the underlying premises of Maine's Freedom of Access laws is that records in the hands of public officials and agencies are public records to which the public has a right of access, unless the law provides that certain records should be treated differently. In addition to responsibilities that assist both the public and public officials and agencies, the Advisory Committee is charged with helping the Joint Standing Committee on Judiciary review and evaluate these statutory provisions that except records from the definition of "public record". Pursuant to Title 1, sections 431 - 433, the Judiciary Committee will review public records exceptions in Titles 10, 11, 12, 13, 13-B, 13-C, 14, 15, 16, 17, 17-A, 18-A, 18-B, 19-A, 20-A and 21-A during the 124th Legislature. (The list of exceptions to be reviewed is posted on our website: <http://www.maine.gov/legis/opla/righttoknow.htm>.) The Advisory Committee will be providing background information and advice to the Judiciary Committee with regard to these exceptions.

The Criminal History Record Information Act (CHRIA) prohibits the general dissemination of some criminal history information, and provides for the release of investigative and intelligence information in certain circumstances. The Advisory Committee identified

provisions as requiring review under Title 1, chapter 13, subchapter 1-A, and staff sought comments on the CHRIA from parties who deal with CHRIA on a regular basis. Using the relevant comments received, and the specific comments of Special Assistant Attorney General Charles Leadbetter, staff developed a preliminary redraft of the CHRIA. That preliminary draft has been circulated again, and we have received comments from several interested parties. We appreciate the thoughtfulness of the responses and the proposed revisions. Significant concerns have been raised about provisions that are not directly related to whether information should be shielded from public disclosure, which is our fundamental concern.

Because the basic CHRIA issues identified as needing revision are not within our jurisdiction; at least not initially, we believe that the concerns about definitions and the structure of the Act are better addressed by active participants in the criminal justice process. We think the Criminal Law Advisory Commission is the appropriate entity to carry out the review and revision of the CHRIA.

The Advisory Committee will therefore include as a recommendation in our 2010 report that the Criminal Law Advisory Commission review the Criminal History Record Information Act and suggest appropriate revisions. The Right to Know Advisory Committee is the proper entity to review the confidentiality provisions of any revision, and we would be happy to undertake that task for any redraft that CLAC is able to complete.

We hope that you agree that CLAC is the correct entity to undertake a comprehensive review of the Criminal History Record Information Act. Although we are providing a preliminary draft, we realize that your review of the Act may result in an entirely different approach. Our only request is that the Advisory Committee be given the opportunity to review and comment the public records exceptions contained in the redrafts before the work is completed.

We look forward to working with you. Please contact the Advisory Committee members or our staff if you have any questions.

Sincerely,

Senator Barry Hobbins  
Chair

**DRAFT**

HON. BARRY J. HOBBS, CHA  
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STATE OF MAINE

## RIGHT TO KNOW ADVISORY COMMITTEE

November 30, 2009

Senator Lawrence S. Bliss  
Representative Charles R. Priest  
Joint Standing Committee on Judiciary  
100 State House Station  
Augusta, Maine 04333-0100

Dear Sen. Bliss and Rep. Priest,

In response to concerns raised by members of the Judiciary Committee about the breadth of language in current law used to protect information from individuals and businesses applying for financial or other technical assistance from government entities, I am writing to convey the comments of the Right to Know Advisory Committee. In accordance with the process developed by the Advisory Committee, our Public Records Exception Subcommittee initially held 3 subcommittee meetings to review and discuss this issue. The Public Records Exception Subcommittee then made its recommendation to the full Advisory Committee on December 1, 2009. After discussion of the issues and the subcommittee's recommendations, the Advisory Committee makes the following comments.

The Advisory Committee agrees that it is important to develop and maintain consistency among government entities in the treatment and protection of similar information. After a review of the provisions identified in current law, the Advisory Committee noted that more confidentiality protection is provided for information or records provided to government entities by individuals applying for financial assistance than to information or records provided by businesses. The Advisory Committee believes that it is appropriate to provide greater confidentiality protection for information from individuals. Accordingly, the Advisory Committee has developed two suggested models for statutory language---one relating to the treatment and protection of information submitted by individuals and one relating to the treatment and protection of information submitted by businesses. The attached drafts are intended as templates to provide consistency in the statutory language and to encourage similar treatment for certain records across state and local government and are based on existing confidentiality provisions included in current law.

Because many of the provisions identified in current law have been recently reviewed by the Advisory Committee and the Legislature, the Advisory Committee recommends that the draft model language be used as guidance for the Judiciary Committee in reviewing future proposed exceptions; at this time, the Advisory Committee does not recommend that all of the existing provisions be amended as needed to reflect the models. However, since one of the existing exceptions falls within our current review of

exceptions in Titles 10 through 21-A, the Advisory Committee will recommend that the exception in Title 10, section 975-A relating to the Finance Authority of Maine be amended to be consistent with the model language.

I hope you find the Advisory Committee's templates for model language helpful in your further consideration of proposed public records exceptions. Please contact me or our staff if you have any questions.

Sincerely,

Sen. Barry J. Hobbins  
Chair, Right to Know Advisory Committee

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TITLE 16  
COURT PROCEDURE -- EVIDENCE  
CHAPTER 3  
RECORDS AND OTHER DOCUMENTS  
SUBCHAPTER 8  
CRIMINAL HISTORY RECORD INFORMATION ACT

§611. Definitions

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

1. **Administration of criminal justice.** "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. **Conviction Public criminal history data.** "~~Conviction~~ Public criminal history data" means criminal history record information other than ~~noneconviction~~ nonpublic data.

3. **Criminal history record information.** "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It ~~shall include~~ includes the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of traffic infractions and other civil violations, and does not include juvenile records.

4. **Criminal justice agency.** "Criminal justice agency" means a federal, state, district, county or local government, including tribal government, agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

5. **Disposition.** "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, (not guilty by reason of insanity???) filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it ~~shall include~~ includes the nature of the termination or conclusion of the



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proceedings. If the disposition is that the proceedings have been indefinitely postponed, it shall ~~include~~ includes the reason for that postponement.

**6. Dissemination.** "Dissemination" means the transmission of information by any means, whether including but not limited to, orally, in writing or ~~by electronic means~~ electronically, by or to anyone outside the agency ~~which~~ that maintains the information.

**7. Executive order.** "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

~~**8. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information. (move to new subchapter)~~

**9. ~~Noneonviction~~ Nonpublic data.** "~~Noneonviction~~ nonpublic data" means criminal history record information of the following types:

- A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;
- B. Information disclosing that the police have elected not to refer a matter to a prosecutor;
- C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;
- D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial; (Need more?)
- E. A dismissal;
- F. An acquittal, excepting an acquittal by reason of mental disease or defect (NGRI?); and
- G. Information disclosing that a person has been granted a full and free pardon or amnesty.

**10. Person.** "Person" means an individual, government agency or a corporation, partnership or unincorporated association.



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**11. State.** "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States. (need more??)

**12. Statute.** "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state. (need more??)

**§612. Application**

**1. Criminal justice agencies.** This subchapter ~~shall apply only~~ applies to criminal justice agencies.

**2. Exceptions.** This subchapter ~~shall not apply to criminal history record information~~ does not limit the dissemination of nonpublic data contained in:

- A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;
- C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;
- D. Court or administrative opinions not impounded or otherwise declared confidential;
- E. Records of public administrative or legislative proceedings;
- F. Records of traffic offenses retained at and by the Secretary of State; and
- G. ~~Petitions~~ Petitions for and warrants of pardons, commutations, reprieves and amnesties.

**3. Permissible disclosure.** Nothing in this subchapter ~~shall~~ may be construed to prohibit a criminal justice agency from:

- A. Disclosing to the public ~~criminal history record information~~ nonpublic data related to an offense for which a person is currently within the criminal justice system;
- B. Confirming prior ~~criminal history record information~~ nonpublic data to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided if that the information disclosed is based upon data ~~excluded by~~ described in subsection 2. The disclosing criminal justice agency shall disclose therewith any and all ~~criminal history record information~~ nonpublic data in its possession ~~which~~ that indicates the disposition of the arrest, detention or formal charges; and

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C. Disseminating ~~criminal history record information~~ nonpublic data for purposes of international travel such as issuing visas and granting of citizenship.

**§612-A. Record of Information about persons detained**

**1. Requirement of record.** Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

- A. Identity of the arrested person, including name, age, residence and occupation, if any;
- B. ~~Offenses~~ Crimes charged, including the time, place and nature of the ~~offense~~ crime;
- C. Time and place of arrest; and
- D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.

**2. Time and method of recording.** The ~~record~~ information required to be recorded by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The ~~record~~ information required by this section may be combined with the record required by Title 30-A, section 1505. (needs updating?)

**3. Records Information public.** The ~~record~~ information required to be recorded by this section ~~shall be~~ is a public record, except ~~for records of that information pertaining to the detention of juveniles~~ a juvenile, as defined in Title 15, section 3003, subsection 14, is not a public record unless the juvenile is bound over to be tried as an adult.

**§613. Limitations on dissemination of ~~noneonviction~~ nonpublic data**

Except as provided in section 612, subsections 2 and 3, ~~dissemination of noneonviction a criminal justice agency may disseminate nonpublic data by a criminal justice agency, whether directly or through any intermediary, shall be limited to~~ only the following:

**1. Criminal justice agencies.** Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

**2. Under express authorization.** Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization ~~shall mean~~ means language in the statute, executive order, or court rule, decision or order which specifically speaks of ~~noneonviction~~ nonpublic data or specifically refers to one or more of the types of ~~noneonviction~~ nonpublic data;

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**3. Under specific agreements.** Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall must specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and (note that “administration of criminal justice” does not include victim services)

**4. Research activities.** Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall must specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

**~~§614. Limitation on dissemination of intelligence and investigative information~~**

**~~1. Limitation on dissemination of intelligence and investigative information.~~** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife; or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

- ~~A. Interfere with law enforcement proceedings;~~
- ~~B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;~~
- ~~C. Constitute an unwarranted invasion of personal privacy;~~
- ~~D. Disclose the identity of a confidential source;~~
- ~~E. Disclose confidential information furnished only by the confidential source;~~
- ~~F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;~~
- ~~G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;~~

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H. ~~Endanger the life or physical safety of any individual, including law enforcement personnel;~~

I. ~~Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;~~

J. ~~Disclose information designated confidential by some other statute; or~~

K. ~~Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.~~

**1.A. Limitation on release of identifying information; cruelty to animals.** ~~The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.~~

**2. Exception to this limitation.**

**3. Exceptions.** ~~Nothing in this section precludes dissemination of intelligence and investigative information to:~~

A. ~~Another criminal justice agency;~~

B. ~~A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;~~

C. ~~An accused person or that person's agent or attorney if authorized by:~~

~~(1) The district attorney for the district in which that accused person is to be tried;~~

~~(2) A rule or ruling of a court of this State or of the United States; or~~

~~(3) The Attorney General; or~~

D. ~~A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1.~~  
(move to new subchapter)

**§615. Dissemination of ~~conviction~~ public criminal history data**

Public criminal history data is a public record for the purposes of Title 1, chapter 13.  
~~Conviction~~ Public criminal history data may be disseminated to any person for any purpose.

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**§616. Inquiries required**

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information ~~for noncriminal justice purposes to assure~~ ensure that the most up-to-date disposition data is being used.

**§617. Dissemination to noncriminal justice agencies**

Nonpublic data is not a public record. Criminal history record information ~~Nonpublic data~~ disseminated to a noncriminal justice agency under section 613 shall must be used solely for the purpose of which it was disseminated and shall may not be disseminated further.

**§618. Confirming existence or nonexistence of ~~eriminal history record information~~ nonpublic data**

Except as provided in section 612, subsection 3, paragraph B, ~~no~~ a criminal justice agency shall may not confirm the existence or nonexistence of ~~eriminal history record information~~ nonpublic data to any person or agency that would not be eligible to receive the information itself.

**§619. Unlawful dissemination**

1. **Offense.** A person is guilty of unlawful dissemination if he ~~he~~ the person knowingly disseminates ~~eriminal history information~~ nonpublic data in violation of any of the provisions of this subchapter.

2. **Classification.** Unlawful dissemination is a Class E crime.

**§620. Right to access and review (need to compare with Privacy Act)**

1. **Inspection.** Any person or ~~his~~ the person's attorney may inspect the criminal history record information concerning ~~him~~ that person maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall does not include access to intelligence and investigative information or any other information ~~which~~ that is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be are to insure ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or ~~his~~ the person's attorney with a copy of the criminal

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history record information pertaining to ~~him~~ the person on request and payment of a reasonable fee.

**2. Review.** A person or ~~his~~ the person's attorney may request amendment or correction of criminal justice record information concerning ~~him~~ the person by addressing, either in person or by mail, ~~his~~ the request to the criminal justice agency in which the information is maintained. The request ~~shall~~ must indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

**3. Administrative appeal.** If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, ~~he~~ the head of the agency shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. ~~He~~ The head of the agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement ~~shall~~ must be included, along with, if the agency ~~deems~~ determines it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

**4. Judicial review.** If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

**5. Notification.** When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment

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or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

**6. Right of release.** The provisions of this subchapter shall do not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself that person.

**§621. Information and records of the Attorney General (REPEALED)**

**§622. Application**

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

**§623. ~~Attorney General fees~~**

~~The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.~~

New subchapter:

**SUBCHAPTER 8-A**  
**INTELLIGENCE AND INVESTIGATIVE INFORMATION**

**§625. Definitions**

**1. Criminal justice agency.** (same as subchapter 8)

**2. Intelligence and investigative information.** "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information. (from §611, sub-§8)

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**§626. Limitation on dissemination of intelligence and investigative information** (currently §614)

**1. Application.** This section applies to reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of any of the following:

- A. A local, county or district criminal justice agency;
- B. The Bureau of State Police;
- C. **The Bureau of Capitol Police;**
- D. The Department of the Attorney General;
- E. The Maine Drug Enforcement Agency;
- F. The Office of State Fire Marshal;
- G. The Department of Corrections;
- H. The criminal law enforcement units of the Department of Marine Resources or the Department of Inland Fisheries and Wildlife; or
- I. The Department of Conservation, Division of Forest Protection when the reports or records pertain to arson.

**2. Limitation on dissemination of intelligence and investigative information.** Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of *any of the agencies or units listed in subsection 1* are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

- A. Interfere with law enforcement proceedings;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Constitute an unwarranted invasion of personal privacy;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;



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F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;

H. Endanger the life or physical safety of any individual, including law enforcement personnel;

I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;

J. Disclose information designated confidential by some other statute; or

K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

**3. Limitation on release of identifying information; cruelty to animals.** The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

**4. Exceptions.** Nothing in this section precludes dissemination of intelligence and investigative information to:

A. Another criminal justice agency;

B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;

C. An accused person or that person's agent or attorney if authorized by:

(1) The district attorney for the district in which that accused person is to be tried;

(2) A rule or ruling of a court of this State or of the United States; or

(3) The Attorney General;

D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or

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E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

(1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

(2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

(3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;

(4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

(5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;

(6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;

(7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and

(8) Provide sanctions for any violations of this paragraph.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.

**5. Unlawful dissemination of reports or records that contain intelligence and investigative information.** A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

Right to Know Advisory Committee  
APPROVED BY PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE:  
Standard statutory language relating to confidentiality of information  
submitted to State agencies in applications for technical or financial assistance  
from individuals

§ Freedom of access; confidentiality of records

The records of the *[board, agency, authority, etc.]* are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

**1. Confidential information.** Records containing any information acquired by the *[board, agency, authority, etc.]* or a member, officer, employee or agent of the *[board, agency, authority, etc.]* from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the *[board, agency, authority, etc.]* is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

**2. Wrongful disclosure prohibited.** A member, officer, employee, agent, other representative of the *[board, agency, authority, etc.]* or other person may not knowingly divulge or disclose records declared confidential by this section, except that the *[board, agency, authority, etc.]* may, in its discretion, make or authorize any disclosure of information of the following types or under the following circumstances:

- A. Impersonal, statistical or general information;
- B. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person or in connection with acquiring, maintaining or disposing of property;
- C. To a financial institution or credit reporting service;
- D. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- E. Information to the extent the *[board, agency, authority, etc.]* deems the disclosure necessary to the sale or transfer of its bonds;
- F. If necessary to assure collection of any obligation in which it has or may have an interest;
- G. In any litigation or proceeding in which the *[board, agency, authority, etc.]* has appeared, introduction for the record of any information obtained from records declared confidential by this section; and
- H. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, provided that any such order appears to have first been served on the person to whom confidential information sought pertains or belongs and provided that any such order appears on its face or otherwise to have been issued or made upon lawful authority.

Right to Know Advisory Committee  
APPROVED BY PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE:  
Standard statutory language relating to confidentiality of information  
submitted to State agencies in applications for technical or financial assistance  
from businesses

§. Freedom of access; confidentiality of records

The records of the [board, agency, authority, etc.] are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.] to whom the record belongs or pertains has requested be designated confidential; and

(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A financial statement or tax return.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or records, including information designated confidential under this subsection, specified in the written request. The information or records may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by it and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are not confidential and are public records:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information of the following types or under the following circumstances:

Right to Know Advisory Committee  
APPROVED BY PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE:  
Standard statutory language relating to confidentiality of information  
submitted to State agencies in applications for technical or financial assistance  
from businesses

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. To a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;
- E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as any such order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as any such order appears on its face or otherwise to have been issued or made upon lawful authority.



Provided to RTKAC @ 12/1 Mtg.  
Julie Flynn, Secretary of State's Office

## Central Voter Registration System (CVR) Data Access

### Access to CVR Data

- 21-A MRSA §196, provides that information from the CVR is confidential and may be obtained and used only by election officials in the performance of their duties or under exceptions specified in law; namely, use by individuals to review their own records; use by political parties, candidate and issue campaigns and groups conducting “get-out-the-vote” activities; and use of non-personally identifying statistical data. Section 196 has a sunset date of 9/30/11, which was changed during the First Regular Session of the 124<sup>th</sup> Legislature from 9/30/09.
- Over time, and with several elections of CVR use, the Secretary of State’s Office has experienced some areas where the law has been tighter and more restrictive than need be and in those areas the Secretary of State has sought to open up and expand access.
- In other areas, there have been unintended loopholes that clearly undermine the intent of the Legislature as expressed in different sections of the same statute. In those areas, the Secretary of State has sought to tighten the law to close loopholes.

### Why CVR data should continue to be protected

- Generally, public access to government data is used to enlighten citizens regarding the activities and performance of government. However, the information in the CVR is not government data. It is the individual, personal data of and about Maine’s voters. Making this data public does not shed light on the performance of government; it only sheds light on the activities of voters.
- CVR data doesn’t fit within the traditional considerations of the Right to Know law; rather than being data gathered by a government program, it is personal data on individuals that the State requires people to provide in order to access their right to vote.
- The harm in making the data fully public and generally available is the possible chilling effect on Democracy if voters decline to participate, and remove their names from the voter list rather than have their private data available to any person or data broker for any potential use.
- Conversely, the public interest **is** served by protecting this data, by ensuring that the data cannot be obtained and misused for a fraudulent purpose – e.g. voter fraud, identity theft and fraud. And, voters who provide this data will continue to be confident in registering to vote and participating in the electoral process without fear their personal data will be compromised.
- There are more than 120 active tables in the CVR database which collectively contain approximately 2,000 fields of dynamically updated information (voter information, municipal clerk passwords, audit data, metadata such as date fields, etc.). Therefore, it is simply too confusing and too cumbersome to draft a law that would cover access to all possible combinations of this data; and that could reasonably be administered by election officials and understood by the public. This is the reason that section 196 takes the approach of protecting CVR data generally, and defining specific uses.





124LR2450(01)-1 An Act To Improve Access to Data in the Central Voter Registration System

New bill section/ statutory reference	Existing law	RTK impact	Comment
Sec. 1/ 21-A MRSA §22, sub-§3, ¶B, last sentence is being moved from §196, sub-§10.	§196, sub-§10	None. Same as current law.	The language on disclosure of a protected voter's address to a law enforcement officer or agency is being moved from existing section 196, subsection 10 (which relates only to data from the CVR) and is being placed in section 22, subsection 3, which relates to confidentiality of voter records and documents in paper format. In 2005, this wording was repealed from section 22, subsection 4, and added to section 196 in error.
Sec. 2/ 21-A MRSA §191 is being repealed.		N/A to RTK	This section is being repealed since it provides for <b>implementation of a CVR</b> , which is already completed.
Sec. 3/ 21-A MRSA §192 is being repealed.		N/A to RTK	This section is being repealed since it provides for an advisory committee to assist the Secretary of State <b>with implementation of a CVR</b> , which is already completed.
Sec. 4/ 21-A MRSA §193 is being repealed.		N/A to RTK	This section is being repealed since it provides that the Secretary of State can seek federal funds to <b>develop and implement</b> a CVR, which is already completed.
Sec. 5/ 21-A MRSA §194, is being amended.		N/A to RTK	This section is being amended to remove references to <b>implementation of a CVR</b> from the rules that the Secretary of State may adopt for administration of the CVR.
Sec. 6/ 21-A MRSA §195, is being amended.		N/A to RTK	This section is being amended to remove references to <b>development of a CVR</b> , as well as to remove language that ties the reporting requirement to the original report date for the 121 <sup>st</sup> Legislature.
Sec. 7/ 21-A MRSA §196 is being repealed.			Because of legislative drafting standards, the reorganization of section 196 could not be done as an amendment, instead it had to be done by repeal and replace. This is the repeal section. Included in the repeal is the existing sunset provision (of September 30, 2011) in the last paragraph of section 196.

124LR2450(01)-1 An Act To Improve Access to Data in the Central Voter Registration System

New bill section/ statutory reference	Existing law	RTK impact	Comment
Sec. 8 <b>Generally</b> / 21-A MRSA §196-A is replacement language for §196.	§196	Minor. Mostly the same as current law.	This reorganizes existing section 196, so that issues of access (including restrictions on use and redistribution that were contained in section 196, subsection 7) to data from the CVR are all addressed in a single subsection (subsection 1), with each type of access described in its own paragraph, while issues of fees and responses to requests are kept in separate sections (subsections 2 and 3 respectively). However most of the language in section 196-A is in existing law.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub- §1.	§196, First ¶	Minor. Mostly the same as current law.	The language of this lead-in paragraph to new subsection 1 is being amended for clarification and does not contain significant changes. It retains the existing overarching provision for confidentiality of data from the CVR.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub- §1, ¶A.	§196, sub-§1	Expands access.	This reorganizes current section 196, subsection 1 into a new section 196-A, subsection 1, paragraph A. The new wording provides that an individual voter may obtain at no cost, any information in that voter's record in CVR, rather than specifying a list of information that may be obtained. The section also provides that the Secretary of State may design a report to facilitate providing this information to a voter.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub- §1, ¶B.	§196, sub-§2 (access to data); §196, sub-§7 (restrictions on use and redistribution of data)	Minor. Mostly the same as current law.	This reorganizes current section 196, subsection 2 into a new section 196-A, subsection 1, paragraph B. This section provides the same access to data as currently exists for political parties, and those engaged in campaigns or "get out the vote" efforts, except that access to absentee voter information is being removed from this section and placed in its own paragraph (D) of subsection 1. In addition, the restrictions on use and redistribution of data, which currently are found in section 196, subsection 7, are being added to this new section. The new language provides that the data may not be sold, redistributed or used for purposes that are not directly related to activities of a party, "get out the vote" efforts or activities related to a campaign.

1Z4LR2450(01)-1 An Act To Improve Access to Data in the Central Voter Registration System

New bill section/ statutory reference	Existing law	RTK impact	Comment
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶C.	§312	Minor. Mostly the same as current law.	This new language regarding access to voter information for purposes of conducting the biennial municipal caucuses is being removed from section 312 of the existing law into section 196-A, subsection 1, paragraph C. The access to data is the same as in current law. Section 312 is being amended in section 9 of the bill to remove redundant language and to cross-reference section 196-A.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶D.	§196, sub-§2, last sentence	None. Same as current law.	This language regarding access to absentee voter lists is being removed from section 196, subsection 2 (last sentence) and placed in its own paragraph (D) of the new 196-A, subsection 1. Under the new language, the electronic list of absentee voters will still be available at no cost, but will contain the voter record number of each voter in place of the name and address data that identifies individual voters. This section allows the Secretary of State to make available the statewide electronic list of absentee voters. The printed list will still be available at the municipal level for a per page cost, and still will include the voter name and address information.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶E.	New language	Expands access.	This section expands access to CVR data to governmental or quasi-governmental entities. Such access is not explicitly permitted in the current section 196, although these entities could get the data from municipalities' legacy voter registration systems prior to implementation of the CVR.  **Issue: the proposed language prohibits the use of CVR data for solicitation, but does not define solicitation.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶F.	§196, sub-§3	None. Same as current law.	This language regarding access to CVR data that is statistical in nature or doesn't include information that may be used to identify individual voters is being moved from section 196, subsection 3 to the new section 196-A, subsection 1, ¶F.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶G.	§196, sub-§8	None. Same as current law.	Existing access for law enforcement purposes is retained and clarified, but is being moved from section 196, subsection 8, to its own paragraph (G) in section 196-A, subsection 1.

124LR2450(01)-I An Act To Improve Access to Data in the Central Voter Registration System

New bill section/ statutory reference	Existing law	RTK impact	Comment
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§1, ¶H.	New language	Expands access.	This limited expansion of access to CVR data would allow a person to contact a municipality or the Secretary of State to verify the registration status (active, inactive, pending or cancelled), the enrollment status and the electoral districts for a voter identified by name and municipality.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§2.	§196, sub-§4 (fees generally); §196, sub-§5 (access to data by candidates)	Expands access.	This section retains the current fee structure, but provides that all entities that are entitled to purchase data from the CVR will be able to request and obtain up to 11 free updates (but not more than one per any 30 day*period) during the 12 months subsequent to the purchase of the data. This removes the current difference that exists between the frequency of free updates available to candidates versus other persons authorized to purchase CVR data.
Sec. 8 <b>Specifically</b> / 21-A MRSA §196-A, sub-§3.	§196, sub-§6	None. Same as current law.	This section makes a minor, technical amendment to current language and moves it from existing section 196, subsection 6 and places it in new section 196-A, subsection 3.
Sec. 9/ 21-A MRSA §312 is being amended.	Amend §312 and move some of the language to §196-A, sub-§1, ¶C.	None. Same as current law.	This removes the information specific to creating and providing a caucus list and moves it to its own paragraph (C) in section 196-A, subsection 1, and creates a cross-reference between these two sections.
Sec. 10/ Unallocated language.	N/A	N/A	This section provides a transition period for the receipt of free updates of CVR data to entities that purchased CVR data prior to the effective date of this law.

COPY

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An Act To Improve Access to Data in the Central Voter Registration System

PRESENTED BY: \_\_\_\_\_

(Representative TRINWARD)

TOWN: Waterville

124LR2450(01)-1

Submitted by the Secretary of State pursuant to Joint Rule 204.

PROPOSED SHORT TITLE:  
IMPROVE ACCESS TO DATA IN CENT  
VOTER REGISTRATION SYSTEM  
(Subject to change)



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

2           **Sec. 1. 21-A MRSA §22, sub-§3, ¶B,** as enacted by PL 2005, c. 568, §2, is  
3 amended to read:

4           B. For a voter who submits to the registrar a signed statement that the voter has a  
5 good reason to believe that the physical safety of the voter or a member of the voter's  
6 immediate family residing with the voter would be jeopardized if the voter's  
7 residence address were open to public inspection, that voter's residence address and  
8 mailing address, if the mailing address is the same as or discloses the voter's  
9 residence address, must be kept confidential and must be excluded from public  
10 inspection. The remainder of the information in that voter's record that is designated  
11 as public information in section ~~196~~ 196-A remains a public record and may be made  
12 available to the public according to the use and distribution requirements provided in  
13 that section. The voter's signed statement is also a public record. A voter's address  
14 that is excluded from public inspection under this paragraph may be made available  
15 free of charge to a law enforcement officer or law enforcement agency that makes a  
16 written request to use the information for a bona fide law enforcement purpose or to a  
17 person identified by a court order if directed by that order.

18           **Sec. 2. 21-A MRSA §191,** as amended by PL 2005, c. 364, §6; c. 453, §40; and c.  
19 683, Pt. A, §§31 and 32, is repealed.

20           **Sec. 3. 21-A MRSA §192,** as amended by PL 2005, c. 12, Pt. SS, §21 and c. 453,  
21 §41, is repealed.

22           **Sec. 4. 21-A MRSA §193,** as amended by PL 2005, c. 453, §42, is repealed.

23           **Sec. 5. 21-A MRSA §194,** as amended by PL 2005, c. 453, §43, is further  
24 amended to read:

25           **§194. Rules**

26           The Secretary of State may adopt rules regarding ~~implementation and administration~~  
27 of a central voter registration system to determine the pricing, accessibility and  
28 availability of information contained in the database and the appropriate use and resale of  
29 that information; ~~to establish a plan to implement the system in stages for all municipal~~  
30 ~~jurisdictions; and to identify additional system features or voter information to be~~  
31 included in the system or provide for the confidentiality of certain personal information  
32 or limitations on the use and distribution of that information; ~~and to establish a system to~~  
33 ~~identify duplicate records, including establishment of a voter identification indicator.~~

34           Rules adopted pursuant to this section are major substantive rules as defined in Title  
35 5, chapter 375, subchapter H-A 2-A.

36           **Sec. 6. 21-A MRSA §195,** as amended by PL 2007, c. 397, §1, is further amended  
37 to read:

1           **§195. Report**

2           The Secretary of State shall report annually, by ~~March 1st~~ January 15th, to the joint  
3 standing committee of the Legislature having jurisdiction over voter registration matters  
4 on the administration of the central voter registration system ~~developed pursuant to this~~  
5 ~~subchapter~~. The report may ~~include~~ address issues of public access to the information  
6 from the central voter registration system, taking into consideration the compelling state  
7 interests to prevent voter fraud and the potential disenfranchisement of voters and to  
8 ensure that voters are not discouraged from participating in the voting process. The  
9 report may include suggested legislation necessary to administer the central voter  
10 registration system. The committee may report out legislation regarding the central voter  
11 registration system to the Legislature ~~during the First Regular Session of the 121st~~  
12 Legislature and any subsequent Legislature.

13           **Sec. 7. 21-A MRSA §196**, as amended by PL 2009, c. 370, §§4 and 5, is repealed.

14           **Sec. 8. 21-A MRSA §196-A** is enacted to read:

15           **§196-A. Use and distribution of central voter registration system information**

16           **1. Access to data from the central voter registration system.** For the purposes of  
17 Title 1, section 402, information contained electronically in the central voter registration  
18 system and any information or reports generated by the system are confidential and may  
19 be accessed only by municipal and state election officials for the purposes of election and  
20 voter registration administration, and by others only as provided in this section.

21           A. An individual voter may obtain any information contained in that voter's record  
22 within the central voter registration system either from the registrar in the voter's  
23 municipality of residence or from the Secretary of State. The individual voter  
24 information must be made available to that voter upon request and free of charge. The  
25 Secretary of State may design a report to facilitate providing information to an  
26 individual voter.

27           B. A political party, individual or organization engaged in so-called "get out the  
28 vote" efforts or activities directly related to a campaign may purchase a list or report  
29 of certain voter information from the central voter registration system by making a  
30 request to the Secretary of State or to a registrar if the information requested concerns  
31 voters in that municipality. The Secretary of State or the registrar shall make  
32 available the following voter record information, subject to the fees set forth in  
33 subsection 2: the voter's name, residence address, mailing address, date of birth,  
34 enrollment status, electoral districts, voter status, date of registration, date of change  
35 of the voter record if applicable, voter participation history, voter record number and  
36 any special designations indicating uniformed service voters, overseas voters or  
37 township voters. Any person obtaining, either directly or indirectly, information  
38 from the central voter registration system under this paragraph may not sell, distribute  
39 or use the data for any purpose that is not directly related to activities of a political  
40 party, "get out the vote" efforts or activities directly related to a campaign. This  
41 paragraph does not prohibit political parties, party committees, candidate committees,  
42 political action committees or any other organizations that have purchased



1 information from the central voter registration system from providing access to such  
2 information to their members for purposes directly related to party activities, "get out  
3 the vote" efforts or a campaign. For purposes of this paragraph, "campaign" has the  
4 same meaning as in section 1052, subsection 1.

5 C. The registrar shall make available, in electronic form and free of charge, upon the  
6 request of any person authorized under section 312 to obtain a municipal caucus list,  
7 the following voter record information for each voter in the municipality: the voter's  
8 name, residence address, mailing address, enrollment status, electoral districts, voter  
9 status, voter record number and any special designation indicating whether the voter  
10 is a uniformed service voter, overseas voter or township voter. The Secretary of State  
11 also shall make available the statewide caucus list, in electronic form and free of  
12 charge, to the state committee of each political party.

13 D. A municipal clerk or registrar shall make available to any person upon request  
14 and free of charge an electronic list of voters who requested or were furnished  
15 absentee ballots for their municipality for a specified election. The Secretary of State  
16 may make available free of charge the statewide absentee voter list in electronic  
17 form. The electronic list must include the information provided in section 753-B,  
18 subsection 6, paragraph A, except that the voter's record number must be provided  
19 instead of the voter's name and residence address. In addition, a municipal clerk or  
20 registrar shall make available upon request, subject to the fees set forth in subsection  
21 2, paragraph A, the printed list, created and maintained pursuant to section 753-B, of  
22 voters who requested or were furnished absentee ballots.

23 E. The Secretary of State or a registrar may make available, upon the request of any  
24 other governmental or quasi-governmental entity, certain voter information for that  
25 entity's authorized use only. The following information may be provided in  
26 electronic form and free of charge: the voter's name, residence address, mailing  
27 address, electoral districts, voter status, date of registration or date of change of the  
28 voter record if applicable, voter record number and any special designations  
29 indicating uniformed service voters, overseas voters or township voters. Data made  
30 available under this paragraph may not be used for solicitation or for purposes other  
31 than the governmental or quasi-governmental entity's authorized activities and may  
32 not be redistributed.

33 F. The Secretary of State shall make available to any person upon request and free of  
34 charge the following voter record information in electronic form: either the voter's  
35 first name or last name, but not both names in the same report; year of birth;  
36 enrollment status; electoral districts to include congressional district and county only;  
37 voter status; date of registration or date of change of the voter record if applicable;  
38 date of the last statewide election in which the voter voted; and any special  
39 designations indicating uniformed service voters, overseas voters or township voters.  
40 The Secretary of State or the registrar also may make available to any person upon  
41 request and free of charge any report or statistical information that does not contain  
42 the names, dates of birth, voter record numbers or addresses of individual voters.

43 G. The Secretary of State or a registrar shall make available free of charge any  
44 information pertaining to individual voters, other than participants in the Address  
45 Confidentiality Program established in Title 5, section 90-B, that is contained in the

1 central voter registration system to a law enforcement officer or law enforcement  
2 agency that makes a written request to use the information for a bona fide law  
3 enforcement purpose or to a person identified by a court order if directed by that  
4 order. Information pertaining to individual voters who are Address Confidentiality  
5 Program participants that is contained in the central voter registration system may be  
6 made available for inspection to a law enforcement agency that is authorized by the  
7 Secretary of State pursuant to Title 5, section 90-B to obtain Address Confidentiality  
8 Program information. Data made available under this paragraph may not be used for  
9 purposes other than law enforcement or as directed in the court order.

10 H. When responding to a request about a specific voter registered in a specific  
11 municipality, the registrar of that municipality or the Secretary of State may use  
12 information contained in the central voter registration system to provide the  
13 registration status, enrollment status and electoral districts for that voter.

14 2. Fees. For the purpose of calculating fees pursuant to this section, a record  
15 includes the information on one individual voter. Fees paid to the Secretary of State must  
16 be deposited into a dedicated fund to offset the cost of providing the information and  
17 maintaining the central voter registration system. A municipality may keep the fees paid  
18 to the municipality. The fees for information provided pursuant to this section are as  
19 follows:

20 A. The fee for information provided in printed form is \$1 for the first page and 25¢  
21 per page for all additional pages, except that the fee for additional pages of mailing  
22 labels is 75¢ per page; and

23 B. The fee for information provided in electronic form is based on the number of  
24 records requested. The fee entitles the requestor to receive the initial electronic  
25 report or file and, upon request, up to 11 updates free of charge during the subsequent  
26 12-month period, except that no more than one free update may be requested during  
27 any 30-day period. The fee schedule is as follows:

28 (1) For 900,001 or more voter records, \$2,000;

29 (2) For 600,001 to 900,000 voter records, \$1,500;

30 (3) For 400,001 to 600,000 voter records, \$1,000;

31 (4) For 250,001 to 400,000 voter records, \$750;

32 (5) For 150,001 to 250,000 voter records, \$500;

33 (6) For 100,001 to 150,000 voter records, \$250;

34 (7) For 75,001 to 100,000 voter records, \$200;

35 (8) For 50,001 to 75,000 voter records, \$165;

36 (9) For 35,001 to 50,000 voter records, \$125;

37 (10) For 25,001 to 35,000 voter records, \$75;

38 (11) For 15,001 to 25,000 voter records, \$50;

39 (12) For 7,501 to 15,000 voter records, \$30;

1                   (13) For 1,001 to 7,500 voter records, \$20; or

2                   (14) For 1 to 1,000 voter records, \$10.

3                   3. Response to requests. Municipal clerks, registrars and the Secretary of State's  
4 office shall respond to all requests for information from the central voter registration  
5 system pursuant to this section within 5 business days of receipt of a written request and  
6 upon payment of any applicable fee. A municipal clerk or registrar may provide only  
7 information concerning voters registered within that municipal jurisdiction. The Secretary  
8 of State may design a form to be used for all requests for information or lists from the  
9 central voter registration system.

10                   Sec. 9. 21-A MRSA §312, as amended by PL 2005, c. 453, §45, is further  
11 amended to read:

12                   **§312. Municipal caucus list**

13                   The chair or secretary of the municipal committee or the person or persons calling a  
14 biennial municipal caucus, including any resident voter pursuant to section 311,  
15 subsection 5, may request from the municipal registrar and receive at no charge a  
16 certified copy of a list of voters registered in that municipality a list of registered voters  
17 pursuant to section 196-A, subsection 1 for use by the municipal committee once each  
18 biennial election cycle beginning January 1st in an election year. Upon receipt of a  
19 request, the registrar has 5 business days to prepare and provide the municipal caucus list  
20 to the requester. The municipal caucus list may include only the following information  
21 for each voter: name, residence address, mailing address, enrollment status, electoral  
22 district, voter status as active or inactive, voter record number and any special designation  
23 indicating whether the voter is a uniformed service voter, overseas voter or township  
24 voter.

25                   Sec. 10. Application. This Act does not apply to any requests for information  
26 from the central voter registration system submitted to a municipal registrar or to the  
27 Secretary of State prior to the effective date of this Act, except that any person or entity  
28 that has requested information from the central voter registration system in electronic  
29 form within 12 months prior to the effective date of this Act and that has paid the fees  
30 required under the Maine Revised Statutes, Title 21-A, former section 196, subsection 4  
31 may obtain free monthly updates of the data for the remainder of the 12-month period,  
32 upon request.

33                   **SUMMARY**

34                   This bill repeals several provisions of law relating to the implementation of a central  
35 voter registration system. The bill removes the provision of law that would have repealed  
36 laws governing the use and distribution of central voter registration system information  
37 and clarifies the restrictions on access to data from the central voter registration system,  
38 enhances access to voter data by governmental or quasi-governmental entities for  
39 authorized purposes other than solicitations and improves access to absentee voter data  
40 and statistical data. The bill provides that individuals or entities that purchase voter data  
41 electronically are entitled to receive up to 11 free updates to the data in a one-year period,

1 but not more frequently than one update in any 30-day period. The bill also moves the  
2 provisions of law regarding the biennial municipal caucus list into the section of law  
3 governing access to data from the central voter registration system.

Right to Know Advisory Committee  
REVISED PROPOSED DRAFT  
Limitation on meetings using technology

Changes highlighted

Sec. 1. 1 MRSA §403-A is enacted to read:

**§403-A. Public proceedings via communication means**

**1. Prohibition.** Except as provided in subsections 2 and 3, a body subject to this subchapter may not conduct a public proceeding during which public or governmental business is discussed or transacted through telephonic, video, electronic or other communication means where the members of the body are not physically assembled.

**2. Exception; quorum, notice, participation at remote location.** A body may conduct a public proceeding in which public or governmental business is discussed or transacted through telephonic, video, electronic or other communication means only if:

A. A quorum of the body is physically assembled at one primary or central meeting location; ~~and~~

B. Notice of the public proceeding has been given in accordance with section 406 subsection 6; and

C. The body has given prior authorization for the participation of members of the body through telephonic, video, electronic or other communication means in accordance with the requirements of this subsection; and

~~C D. If the remote locations from which additional members of the body participate through telephonic, video, electronic or other communication means are open to the public, all persons attending the meeting at the remote locations are afforded the same opportunity to address the body as persons attending the primary or central location. If a member of the body participates in a public proceeding from a remote location that is open to the public, any person attending the proceeding at the remote public location has the same opportunity to address the body as persons attending the proceeding at the primary or central meeting location; and~~

E. Any person attending the public proceeding has the same means of access as the body to the participation of a member from a remote location.

**3. Exception; emergency.** A ~~[State?]~~ governmental body may meet by telephonic, video, electronic or other communication means without a quorum physically assembled at one location when:

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REVISED PROPOSED DRAFT  
Limitation on meetings using technology

~~Changes highlighted~~

- 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 governmental body otherwise complies with the provisions of this section.

**4. Annual meeting.** If an authorized body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually where 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 communication means from a remote location.

**5. Notice.** Notice of any public proceedings held pursuant to this section in which the remote locations will be open to the public must be provided at least 3 working days in advance of the date scheduled for the public proceeding. The notice must be in compliance with Title 1, section 406 and must include:

- A. The date, time, place and purpose for the public proceeding;
- B. The locations for the public proceeding;
- C. A telephone number that may be used at remote locations to which the public will have access to notify the primary or central location of any interruption in the telephonic or video broadcast of the public proceeding to the remote locations.

**5 6. Application.** Nothing in this section may be construed to:

- A. Require a body to conduct a public proceeding in which public or governmental business is discussed or transacted through telephonic, video, electronic or other communication means, whether or not the members are physically assembled in one location; or
- B. Prohibit the use of interactive audio or video means to expand public participation.

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REVISED DRAFT – APPROVED 10/21 AS AMENDED  
Record/Minutes of Public Proceedings  
Changes highlighted

Sec. 1. 1 MRSA § 403 is repealed and the following enacted in its place:

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

**1. Open to public.** Except as otherwise provided by statute or by section 405, all public proceedings shall be open to the public, any person shall be permitted to attend any public proceeding and any record or minutes of such proceedings that is required by law shall must be made promptly within a reasonable period of time after the proceeding and shall must be open to public inspection.

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

- A. The date, time and place of the public proceeding;
- B. The members of the body recorded as either present or absent;
- C. The general substance of all matters proposed, discussed or decided; and
- D. A record of all motions and votes taken, by individual members if there is a roll call.

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





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REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

Original draft	Comments
<p><b>Sec. 1. 1 MRSA §402, sub-§3,</b> ¶N is amended to read:</p> <p>N. Social security numbers in the possession of the Department of <del>Inland Fisheries and Wildlife</del> <u>an agency or official</u>. <u>Subchapter 2-A applies to the protection of Social Security numbers in the possession of an agency or official;</u> and</p>	
<p><b>Sec. 2. 1 MRSA §410</b> is amended to read:</p> <p><b>§410. Violations</b></p> <p>For every willful violation of this subchapter <del>or subchapter 2-A</del>, the state government agency or local government entity whose officer or employee committed the violation <del>shall be</del> <u>is</u> liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.</p>	
<p><b>Sec. 3. 1 MRSA c. 13, sub-c. 2-A</b> is enacted to read:</p> <p><b><u>SUBCHAPTER 2-A</u></b> <b><u>PROTECTION OF SOCIAL SECURITY NUMBERS</u></b></p> <p><b><u>§461. Collection and disclosure of Social Security numbers</u></b></p>	

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REVISED PROPOSED DRAFT  
Protection of Social Security Numbers

**1. Collection of Social Security number; prohibition; collection practice.** An agency or official of this State or any of its political subdivisions may not collect an individual's Social Security number unless specifically required by state or federal law or court order. When an agency or official is required to collect an individual's Social Security number, the agency or official shall collect and maintain the Social Security number in manner that facilitates preserving the confidentiality of the Social Security number when it is contained in or associated with an otherwise public record.

- What does "collect" mean?
  - Collect document, and it contains SSN
- Collection of SSN "specifically required" is too narrow
- Phrasing the statute in the negative requires amending other statutes to enable existing government operations to continue. Simpler to declare that all government agencies are authorized to collect in order to positively ID or locate information or to contact a person; the prohibit unauthorized release
- The legislation should allow SSNs to be collected for workers' compensation case tracking purposes and the like, but make it clear that disclosure of SSNs is strictly prohibited.
- Need lead-time
- Many times SSNs are collected because required by a federal agency, but not all of it is in law; federal regulations require the collection, and some collection is required by the federal agency on its own authority
- Cover independent authorities, too?
- Dept. of Audit's work cuts across all State agencies and State and Federal programs; would need court orders or change in statute
- Limit collection to federal or state law or rule or court order, or for criminal justice purposes
- Registries of Deeds are required to file documents that may or may not have SSNs - conflicts with statute that says cannot redact unless specifically

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	<p>requested?</p> <ul style="list-style-type: none"><li>• Change to “authorized” to collect rather than “required” to collect</li><li>• Allow collection “for the purpose of carrying out the agency’s or official’s licensing, examination or investigative responsibilities</li><li>• Include: unless the SSN is required in connection with an application for or administration of a loan or other financial assistance through the agency or official, or is an application to open or the administration of an account under T. 20, c. 417-E</li></ul>
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**2. Nondisclosure of Social Security number.** Except as provided in subsection 3, an agency or official:

<p><u>A. May not disclose an individual’s Social Security number if that Social Security number was collected on or after January 1, 2011; and</u></p>	<ul style="list-style-type: none"><li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li><li>• Is this giving the agency the option?</li></ul>
<p><u>B. May redact or otherwise refuse to disclose an individual’s Social Security number that was collected prior to January 1, 2011.</u></p>	<ul style="list-style-type: none"><li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li><li>• Is the expectation that agencies go back into files and redact SSNs?</li></ul>

**3. Permitted disclosure of Social Security numbers.** An agency or official may disclose the Social Security number of an individual only in the following circumstances.

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 REVISED PROPOSED DRAFT  
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<p><u>A. An agency or official may disclose the Social Security number of an individual when the disclosure is expressly required by state or federal law or a court order.</u></p>	<ul style="list-style-type: none"> <li>• In conflict with Registries of Deeds statute that does not allow altering a document?</li> </ul>
<p><u>B. A state or local law enforcement agency may, for purposes of furthering an investigation, disclose the Social Security number of an individual to any individual, state, local or federal agency or other legal entity.</u></p>	<ul style="list-style-type: none"> <li>• Too narrow - many agencies need information, validation, conduct investigations that are not law enforcement agencies (change to “regulatory agency?”)</li> <li>• Allows disclosure to anyone?</li> <li>• Any way to make this a pilot project to see if it works?</li> <li>• Dept. of Audit must disclose fraud to federal authorities (USGAO standards)</li> <li>• Change “law enforcement agency” to “criminal justice agency”</li> </ul>
<p><u>C. An agency or official may disclose the Social Security number of an individual when the individual expressly consents in writing to the disclosure.</u></p>	<ul style="list-style-type: none"> <li>• Delete “expressly”</li> <li>• Expand to consent to disclosure of non-public personal information</li> <li>• Add new ¶: D. A criminal justice agency may disseminate the SSN of an individual to another criminal justice agency for criminal justice purposes</li> <li>• Add new ¶: D. An agency or official may disclose the SSN of an individual for purposes of carrying out the agency’s or official’s licensing, examination or investigative</li> </ul>

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responsibilities

- Add new ¶: D. An agency or official may disclose the SSN of an individual to a credit reporting agency when permitted to obtain a credit report from, or to report or receive other information to or from a credit reporting agency under the Fair Credit Reporting Act or other applicable law
- Add a new ¶: E. An agency or official may disclose the SSN of an individual in connection with the agency's or officials activities related to the application, processing, servicing, reporting or collecting of a loan under the Federal Family Education Loan Program
- Add a new ¶: F. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with collecting an obligation to such agency, and entitle to have obligation offset from any tax refund
- Add a new ¶: G. An agency or official may disclose the SSN of an individual to the Maine Bureau of Revenue Services in connection with administration of certain benefits under T. 20-A, c. 417-E to verify eligibility
- Add a new ¶: H. An agency or official may disclose the SSN of an individual collected in connection with the opening or administration of an account under T. 20-A, c. 417-E
- Add a new ¶: I. An agency or official may disclose the SSN of an individual in connection with any audits or other

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procedures conducted for the agency related to the agency's financial statements or records of any programs administered by the agency or any benefits awarded by the agency

**4. Compliance.** An agency or official complies with this section if the agency or official either removes or completely and permanently obscures a Social Security number on a public record before disclosing the public record.

- Applies only after 1/1/11?

**5. Notice.** If an agency or official discloses a Social Security number in violation of this section, the agency or official shall provide notice to the person whose Social Security number was disclosed as in Title 10, chapter 210-B.

- Applies only after 1/1/11?
- Do the penalties of Title 10, c. 210-B apply, as well?

Note:

- Federal criminal justice agencies routinely provide SSNs to the State Bureau of Identification when providing criminal history record information regarding individual
- It is standard practice for the Maine Secretary of State's Office, Bureau of Motor Vehicles to provide SSNs to law enforcement agencies when such agencies request a driving history record report regarding any given individual

# The Vermont Statutes Online

## Title 9: Commerce and Trade

### Chapter 62: PROTECTION OF PERSONAL INFORMATION

#### 9 V.S.A. § 2440. Social security number protection

##### § 2440. Social security number protection

(a) This section shall be known as the Social Security Number Protection Act.

(b) Except as provided in subsection (c) of this section, a business may not do any of the following:

(1) Intentionally communicate or otherwise make available to the general public an individual's Social Security number.

(2) Intentionally print or imbed an individual's Social Security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her Social Security number over the internet unless the connection is secure or the Social Security number is encrypted.

(4) Require an individual to use his or her Social Security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

(5) Print an individual's Social Security number on any materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document to be mailed.

(6) Sell, lease, lend, trade, rent, or otherwise intentionally disclose an individual's Social Security number to a third party without written consent to the disclosure from the individual, when the party making the disclosure knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's Social Security number.

(c) Subsection (b) of this section shall not apply:

(1) When a Social Security number is included in an application or in documents related to an enrollment process, or to establish, amend, or terminate an account, contract, or policy; or to confirm the accuracy of the Social Security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. § 1681(b)(2). A Social Security number that is permitted to be mailed under this section may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on an envelope without the envelope having been opened.

(2) To the collection, use, or release of a Social Security number reasonably necessary for administrative purposes or internal verification.

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- (3) To the opening of an account or the provision of or payment for a product or service authorized by an individual.
- (4) To the collection, use, or release of a Social Security number to investigate or prevent fraud; conduct background checks; conduct social or scientific research; collect a debt; obtain a credit report from or furnish data to a consumer reporting agency pursuant to the fair credit reporting act, 15 U.S.C. § 1681, et seq.; undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15; or locate an individual who is missing, is a lost relative, or is due a benefit, such as a pension, insurance, or unclaimed property benefit.
- (5) To a business acting pursuant to a court order, warrant, subpoena, or when otherwise required by law, or in response to a facially valid discovery request pursuant to rules applicable to a court or administrative body that has jurisdiction over the disclosing entity.
- (6) To a business providing the Social Security number to a federal, state, or local government entity, including a law enforcement agency, the department of public safety, and a court, or their agents or assigns.
- (7) To a Social Security number that has been redacted.
- (8)(A) To a business that has used, prior to January 1, 2007, an individual's Social Security number in a manner inconsistent with subsection (b) of this section, which may continue using that individual's Social Security number in that manner on or after January 1, 2007, if all of the following conditions are met:
- (i) The use of the Social Security number is continuous. If the use is stopped for any reason, subsection (b) of this section shall apply.
  - (ii) The individual is provided an annual disclosure that informs the individual that he or she has the right to stop the use of his or her Social Security number in a manner prohibited by subsection (b) of this section.
  - (iii) A written request by an individual to stop the use of his or her Social Security number in a manner prohibited by subsection (b) of this section is implemented within 30 days of the receipt of the request. There shall not be a fee or charge for implementing the request.
  - (iv) The person or entity does not deny services to an individual because the individual makes a written request pursuant to this subsection.
- (B) Nothing in this subdivision (8) is intended to apply to the collection, use or dissemination of Social Security numbers collected prior to January 1, 2007 and exempted from the provisions of subsection (b) of this section pursuant to subdivisions (1) through (7) or (9) and (10) of this subsection.
- (9) To information obtained from a recorded document in the official records of the town clerk or municipality.
- (10) To information obtained from a document filed in the official records of the courts.
- (d) Except as provided in subsection (e) of this section, the state and any state agency, political subdivision of the state, and agent or employee of the state, a state agency, or a political subdivision of the state, may not do any of the following:

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(1) Collect a Social Security number from an individual unless authorized or required by law, state or federal regulation, or grant agreement to do so or unless the collection of the Social Security number or records containing the Social Security number is related to the performance of that agency's duties and responsibilities as prescribed by law.

(2) Fail, when collecting a Social Security number from an individual in a hard copy format, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the Social Security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a Social Security number from an individual, to provide, at the time of or prior to the actual collection of the Social Security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the Social Security number is being collected and used.

(4) Use the Social Security number for any purpose other than the purpose set forth in the statement required under subdivision (3) of this subsection.

(5) Intentionally communicate or otherwise make available to the general public a person's Social Security number.

(6) Intentionally print or imbed an individual's Social Security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's Social Security number over the internet, unless the connection is secure or the Social Security number is encrypted.

(8) Require an individual to use the individual's Social Security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

(9) Print an individual's Social Security number on any materials that are mailed to the individual, unless a state or federal law, regulation, or grant agreement requires that the Social Security number be on the document to be mailed. A Social Security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on an envelope, without the envelope having been opened.

(e) Subsection (d) of this section does not apply to:

(1) Social Security numbers disclosed to another governmental entity or its agents, employees, contractors, grantees, or grantors of a governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers. As used in this subsection, "necessary" means reasonably needed to promote the efficient, accurate, or economical conduct of an entity's duties and responsibilities.

(2) Social Security numbers disclosed pursuant to a court order, warrant, or subpoena, or in response to a facially valid discovery request pursuant to rules applicable to a court or administrative body that has jurisdiction over the disclosing entity.

(3) Social Security numbers disclosed for public health purposes pursuant to and in compliance with requirements of the department of health under Title 18.

(4) The collection, use, or release of a Social Security number reasonably necessary for administrative purposes or internal verification. Internal verification includes the sharing of information for internal verification between and among governmental entities and their agents, employees, contractors, grantees, and grantors.

(5) Social Security numbers that have been redacted.

(6)(A) A state agency or state political subdivision that has used, prior to January 1, 2007, an individual's Social Security number in a manner inconsistent with subsection (d) of this section, which may continue using that individual's Social Security number in that manner on or after January 1, 2007, if all of the following conditions are met:

(i) The use of the Social Security number is continuous. If the use is stopped for any reason, subsection (d) of this section shall apply.

(ii) The individual is provided an annual disclosure that informs the individual that he or she has the right to stop the use of his or her Social Security number in a manner prohibited by subsection (d) of this section.

(iii) A written request by an individual to stop the use of his or her Social Security number in a manner prohibited by subsection (d) of this section is implemented within 30 days of the receipt of the request. There shall not be a fee or charge for implementing the request.

(iv) The state agency or state political subdivision does not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(B) Nothing in this subdivision (e)(6) is intended to apply to the collection, use or dissemination of Social Security numbers collected prior to January 1, 2007 and exempted from the provisions of subsection (d) of this section pursuant to subdivisions (1) through (5) or (7) through (11) of this subsection.

(7) Certified copies of vital records issued by the health department and other authorized officials pursuant to part 6 of Title 18.

(8) A recorded document in the official records of the town clerk or municipality.

(9) A document filed in the official records of the courts.

(10) The collection, use, or dissemination of Social Security numbers by law enforcement agencies and the department of public safety in the execution of their duties and responsibilities.

(11) The collection, use, or release of a Social Security number to investigate or prevent fraud; conduct background checks; conduct social or scientific research; collect a debt; obtain a credit report from or furnish data to a consumer reporting agency pursuant to the fair credit reporting act, 15 U.S.C. § 1681 et seq.; undertake a permissible purpose enumerated under Gramm Leach Bliley, 12 C.F.R. § 216.13-15; or locate an individual who is missing, is a lost relative, or is due a benefit, such as a pension, insurance, or unclaimed property benefit.

(f) Any person has the right to request that a town clerk or clerk of court remove from an image or copy of an official record placed on a town's or court's internet website available to the general public or an internet website available to the general public to display public records by the town clerk or clerk of court, the person's Social Security number, employer taxpayer identification number, driver's license number, state identification number, passport number, checking account

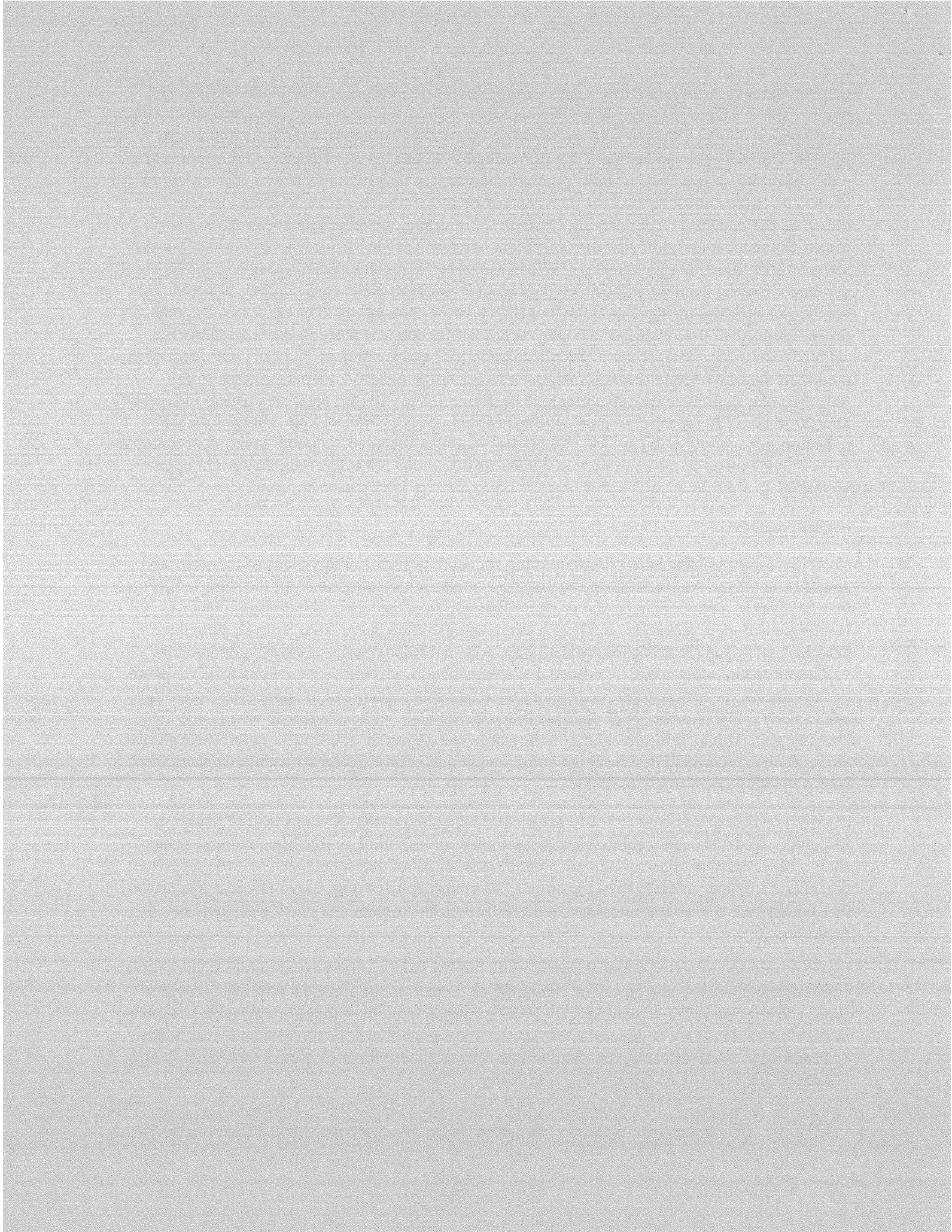
number, savings account number, credit card or debit card number, or personal identification number (PIN) code or passwords contained in that official record. A town clerk or clerk of court is authorized to redact the personal information identified in a request submitted under this section. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the town clerk or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the Social Security number, employer taxpayer identification number, driver's license number, state identification number, passport number, checking account number, savings account number, credit card number, or debit card number, or personal identification number (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the town clerk, the clerk of court, their staff, or upon order of the court. The town clerk or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed \$500.00 for each violation.

(g) Enforcement.

(1) With respect to businesses, the state, state agencies, political subdivisions of the state, and agents or employees of the state, a state agency, or a political subdivision of the state, subject to this subchapter, other than a person or entity licensed or registered with the department of banking, insurance, securities, and health care administration under Title 8 or this title, the attorney general and state's attorney shall have sole and full authority to investigate potential violations of this subchapter, to enforce, prosecute, obtain, and impose remedies for a violation of this subchapter, or any rules made pursuant to this subchapter, and to adopt rules under this subchapter, as the attorney general and state's attorney have under chapter 63 of this title. The attorney general may refer the matter to the state's attorney in an appropriate case. The superior courts shall have jurisdiction over any enforcement matter brought by the attorney general or a state's attorney under this subsection.

(2) With respect to a person or entity licensed or registered with the department of banking, insurance, securities, and health care administration under Title 8 or this title, the department shall have full authority to investigate potential violations of this subchapter, and to prosecute, obtain and impose remedies for a violation of this subchapter or any rules adopted pursuant to this subchapter as the department has under Title 8 or this title, or any other applicable law or regulation.

(3) With respect to the information provided by the Vermont department of public safety and law enforcement agencies, and any agent or employee thereof, to the Vermont attorney general or state's attorney pursuant to subdivision (1) of this subsection, the information provided or made available by the agency or department to the attorney general may be designated by the agency or department as confidential, and shall not be released under the provisions of 1 V.S.A. § 317. (Added 2005, No. 162 (Adj. Sess.), § 1, eff. July 1, 2007.)



124th Second Regular Session Legislation  
Possible FOA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
	306				
2512	0	RESOLVE	PST	ACF	Resolve, Regarding Legislative Review of Portions of Chapter 26: Producer Margins, a Major Substantive Rule of the Maine Milk Commission
2099	0	PUBLIC	LCA	ACF	An Act To Regulate the Transportation of Firewood
2215	0	PUBLIC	DPT	ACF	An Act To Protect Maine Farms and Nurseries
2214	0	PUBLIC	DPT	ACF	An Act To Amend the Animal Welfare Laws
2213	0	PUBLIC	DPT	ACF	An Act To Amend the Definition of "Farmers' Market"
2217	0	PUBLIC	DPT	ACF	An Act Concerning Litigation Brought by the Attorney General To Enforce Provisions of the Forest Practices Laws
2216	0	PUBLIC	DPT	ACF	An Act To Assist the Maine Land Use Regulation Commission in Reviewing Wind Energy Applications
2067	0	PUBLIC	LCA	ACF	An Act To Revise Notification Requirements for Pesticides Applications Using Aircraft or Air-carrier Equipment
2490	0	PUBLIC	LCA	ACF	An Act To Amend the Laws That Provide an Exemption for Agricultural Guard Dogs from Municipal Ordinances Governing Barking Dogs
2072	0	PUBLIC	LCA	ACF	An Act To Strengthen the Laws against Illegal "Puppy Mill" Operators
628				ACF	An Act To Allocate Prospective Federal Funding To Support Maine's Dairy Industry
687				ACF	Resolve, To Authorize the Department of Conservation To Place Priority on Access to Certain Prominent Water Bodies under the Land for Maine's Future Fund
1182				ACF	An Act To Prevent Price Gouging in the Sale of Milk
1238				ACF	An Act Concerning the National Animal Identification System
1239				ACF	An Act To Establish a Revenue Source for the Maine Pesticide Education Fund
2407	0	PUBLIC	DPT	AFA	An Act To Facilitate Recovery Zone Facility Bonds
957				AFA	An Act To Establish a New Method of Determining the State Budget
1387				AFA	An Act To Strengthen Maine's Financial Future in Perpetuity
1481				AFA	An Act To Authorize a General Fund Bond Issue To Fund Energy Efficiency Investments for Maine's Future
2306	0	PUBLIC	LCA	BRED	An Act To Amend the Laws Governing Advanced Practice Registered Nurses
2376	0	PUBLIC	IDP	BRED	An Act To Protect Consumers from Charges after a Free Trial Period
2421	0	PUBLIC	LCA	BRED	An Act To Enhance the Redevelopment of the Brunswick Naval Air Station
2479	0	PUBLIC	LCA	BRED	An Act To Enhance the Small Enterprise Growth Fund
2069	0	PUBLIC	LCA	BRED	An Act To Facilitate an Increase in Sales of Motor Vehicles
2172	0	PUBLIC	LCA	BRED	An Act To Allow the Board of Dental Examiners To Grant Permits to Qualified Individuals To Practice as Dental Residents
2325	0	RESOLVE	LCA	BRED	Resolve, To Ensure Consistency in the Scheduled Expiration of Terms of the Board Members of the Finance Authority of Maine
2324	0	PUBLIC	LCA	BRED	An Act To Provide the Finance Authority of Maine with Flexible Health Care Options

124th Second Regular Session Legislation  
Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2233	0	PUBLIC	DPT	BRED	An Act To Correct Errors in the Laws Relating to Unlicensed Practice and Other Provisions of the Professional and Occupational Licensing Laws
2398	0	PUBLIC	DPT	BRED	An Act To Streamline the Maine Tourism Commission and the Maine State Film Commission
2156	0	PUBLIC	LCA	BRED	An Act To Protect Maine Citizens' Credit
2341	0	PUBLIC	LCA	BRED	An Act To Clarify the Educational Requirements for Eligibility for Examination for Licensure as a Certified Public Accountant
2457	0	PUBLIC	LCA	BRED	An Act To Establish an Office of Administrative Law Judges for Licensing Boards
2054	0	PUBLIC	LCA	BRED	An Act To Clarify the Enforcement Role of the Mixed Martial Arts Authority of Maine
2406	0	PUBLIC	DPT	BRED	An Act To Amend the Laws Governing the Health Professions Loan Program
2092	0	PUBLIC	LCA	BRED	An Act To Protect Minors from Unscrupulous Marketing Practices
2288	0	PUBLIC	LCA	BRED	An Act Regarding the Law Governing Recreational Vehicle Manufacturers, Distributors and Dealers
	91			BRED	An Act To Fund the Maine Downtown Center
	272			BRED	An Act To License Home Building and Improvement Contractors
	1320			BRED	An Act To Ensure the Availability of Alcohol-free Motor Fuels
2355	0	PUBLIC	LCA	CJPS	An Act To Streamline the Renewal Process for a Permit To Carry a Firearm
2417	0	PUBLIC	LCA	CJPS	An Act To Amend the Law Pertaining to Smoke Detectors and Carbon Monoxide Detectors
2453	0	PUBLIC	IDP	CJPS	An Act To Expand the Use of Ignition Interlock Devices
2117	0	RESOLVE	LCA	CJPS	Resolve, To Implement the Recommendations of the Juvenile Justice Task Force
2197	0	PUBLIC	LCA	CJPS	An Act Concerning Statewide Communications Interoperability
2289	0	RESOLVE	LCA	CJPS	Resolve, To Reduce the Use and Abuse of Solitary Confinement
2259	0	PUBLIC	DPT	CJPS	An Act To Improve the Ability of the Commissioner of Corrections To Respond In an Emergency
2258	0	PUBLIC	DPT	CJPS	An Act To Improve the Delivery of Community Corrections Services
2257	0	PUBLIC	DPT	CJPS	An Act To Clarify the Status of Prisoners
2229	0	PUBLIC	DPT	CJPS	An Act To Update Laws Regulating the Maine Emergency Management Agency
2211	0	PUBLIC	LCA	CJPS	An Act Regarding Accidental Death Benefits for Beneficiaries of Deceased Firefighters
2256	0	PUBLIC	DPT	CJPS	An Act Regarding the Transfer of an Offender through the Interstate Compact for Adult Offender Supervision
2200	0	PUBLIC	LCA	CJPS	An Act To Increase the Penalties for Writing Bad Checks
2268	0	PUBLIC	DPT	CJPS	An Act To Update and Clarify Polygraph Examiner and Private Investigator Licensing Laws Administered by the Department of Public Safety
2470	0	PUBLIC	LCA	CJPS	An Act To Change Operating after Suspension to a Civil Violation
	568			CJPS	An Act To Amend the Sex Offender Registration Laws
	791			CJPS	An Act To Prohibit Furnishing a Place for Minors To Use Illegal Drugs
	1139			CJPS	An Act To Require Internet Service Providers To Retain Records

124th Second Regular Session Legislation  
Possible FOA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2351	0	RESOLVE	LCA	EDU	Resolve, To Develop a Model Academic Year Calendar
2404	0	PUBLIC	DPT	EDU	An Act To Align Education Laws with Certain Federal Laws
2403	0	PUBLIC	DPT	EDU	An Act To Align the Duties of School Boards Concerning Student Safety with the Requirements of the Federal Gun-Free Schools Act and To Prohibit the Discharge of Firearms within 500 Feet of Public and Private School Properties
2047	0	PUBLIC	LCA	EDU	An Act To Clarify the State's Initiative Involving the Federal Post-9/11 Veterans Educational Assistance Act of 2008
2095	0	P & S	LCA	EDU	An Act To Authorize Maine Media College To Confer the Degree of Master of Fine Arts
2251	0	PUBLIC	LCA	EDU	An Act To Increase Maine's High School Graduation Rates
2405	0	PUBLIC	DPT	EDU	An Act To Update the Laws Concerning the Maine School of Science and Mathematics
2311	0	PUBLIC	LCA	EDU	An Act To Allow Minor Capital School Improvement Projects To Be Permitted Costs under Essential Programs and Services
2400	0	PUBLIC	DPT	EDU	An Act To Fully Implement School Administrative Unit Reorganization
2443	0	PUBLIC	LCA	EDU	An Act To Require the University of Maine System To Divest and Monetize Certain Telecommunications Service Property and Information Service Property
2463	0	PUBLIC	LCA	EDU	An Act To Implement Recommendations Contained in the Audit of the Maine State Library, Maine Arts Commission, Maine State Museum Commission and Maine Historic Preservation Commission
	160			EDU	An Act To Require the Department of Education To Provide an Accounting of School Subsidy Based on Individual Members in a Regional School Unit or Alternative Organizational Structure
	352			EDU	An Act To Encourage Veterinary Practice in Maine
	470			EDU	An Act To Sustain Nursing Education in Lincoln County
	551			EDU	An Act To Improve the Essential Programs and Services Funding Formula
	570			EDU	An Act To Improve the Laws Governing the Consolidation of School Administrative Units
2379	0	PUBLIC	IDP	HHS	An Act To Make Maine's Laws Consistent with the Federal Family Smoking Prevention and Tobacco Control Act
2480	0	RESOLVE	LCA	HHS	Resolve, To Repeal the Fee Increase for Copies of Vital Records
2436	0	PUBLIC	LCA	HHS	An Act To Ensure Fairness in Penalties for Administrative Errors in the Long-term Care Assessment Process
2038	0	RESOLVE	LCA	HHS	Resolve, To Allow for the Proper Disposal of Medical Supplies
2198	0	RESOLVE	LCA	HHS	Resolve, To Define High-risk Populations for the Purposes of Hospital Surveillance for Methicillin-resistant Staphylococcus Aureus and To Implement Public Law 2009, chapter 346
2301	0	PUBLIC	LCA	HHS	An Act To Prevent the Spread of Eastern Equine Encephalitis

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Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2276	0	PUBLIC	LCA	HHS	An Act To Improve the Availability, Efficiency and Cost of Services for Infants, Young Children and Their Families
2317	0	PUBLIC	DPT	HHS	An Act To Enhance Newborn Blood Spot Screening To Conform to Federal Newborn Screening Standards
2316	0	PUBLIC	DPT	HHS	An Act To Amend the Maine Certificate of Need Act of 2002 Concerning Right of Entry and Investigation
2321	0	PUBLIC	DPT	HHS	An Act To Clarify the Child Abuse or Neglect Substantiation Process
2329	0	PUBLIC	LCA	HHS	An Act Regarding the Maternal and Infant Death Review Panel
2249	0	PUBLIC	LCA	HHS	An Act To Require a Pharmacist To Provide Prior Notification to and Obtain Consent from the Prescribing Physician before Changing from One Formulation or Manufacturer of an Antiepileptic Drug to Another
2402	0	PUBLIC	DPT	HHS	An Act To Amend the Laws Regarding Authority over and Oversight of Certified Nursing Assistant Educational Programs
2399	0	PUBLIC	DPT	HHS	An Act To Amend the Laws Governing the Maine Health Data Processing Center and the Maine Health Data Organization
2322	0	PUBLIC	DPT	HHS	An Act To Update the Laws Affecting the Department of Health and Human Services, Division of Licensing and Regulatory Services
2318	0	PUBLIC	DPT	HHS	An Act To Update the Laws Affecting the Maine Center for Disease Control and Prevention
2212	0	PUBLIC	LCA	HHS	An Act To Create the Children's Wireless Protection Act
2367	0	PUBLIC	LCA	HHS	An Act To Reimburse Pharmacies under the MaineCare Program Based on Wholesale Acquisition Costs
2059	0	PUBLIC	LCA	HHS	An Act To Establish the Silver Alert Program
2437	0	PUBLIC	LCA	HHS	An Act Enabling Expedited Partner Therapy
2319	0	PUBLIC	DPT	HHS	An Act To Amend the Laws Governing the Interstate Compact for the Placement of Children
233				HHS	An Act To Include Independent Practice Dental Hygienists in MaineCare
624				HHS	Resolve, To Implement Certain Recommendations of the Report of the Governor's Task Force on Expanding Access to Oral Health Care for Maine People
637				HHS	An Act To Ensure Services for Adults with Developmental Disabilities
701				HHS	An Act To Fund the Screening and Early Detection Elements of the Statewide Cancer Plan
757				HHS	An Act To Improve the Transparency of Certain Hospitals
821				HHS	An Act To Support Collection and Proper Disposal of Unwanted Drugs
1262				HHS	An Act To Restrict Gifts to Health Care Practitioners from Pharmaceutical and Medical Device Manufacturers
1281				HHS	An Act To Increase the Efficiency and Effectiveness of Licensing Behavioral Health Care Providers
1339				HHS	An Act To Improve Oversight of Pharmaceutical Purchasing



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Possible FOA/confidentiality bills: highlighted

LR	LD	LawType	Authority	Broad Subject	Title
	1360			HHS	An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment
	1364			HHS	An Act To Stimulate the Economy by Expanding Opportunities for Personal Assistance Workers
	1408			HHS	An Act To Establish the Universal Childhood Immunization Program
	1464			HHS	An Act To Amend Licensing, Certification and Registration Requirements for Health Care Providers and Other Facilities
2358	0	RESOLVE	LCA	IFS	Resolve, To Increase the Financial Stability of Low-income Families in Maine
2504	0	PUBLIC	DPT	IFS	An Act To Facilitate Uniformity Regarding Exemption from Registration of Certain Securities Offerings
2094	0	PUBLIC	LCA	IFS	An Act To Expand the Opportunity for Persons To Acquire Health Care Coverage under the State's "Mini-COBRA" Program
2125	0	PUBLIC	LCA	IFS	An Act Concerning the Use of Long-term Antibiotics for the Treatment of Lyme Disease
2277	0	PUBLIC	LCA	IFS	An Act To Create Jobs and Stimulate Economic Development by Making Captive Insurers Eligible for Pine Tree Development Zone Benefits for 10 Years
2232	0	PUBLIC	DPT	IFS	An Act To Make Corrections to the Life Settlement Laws
2231	0	PUBLIC	DPT	IFS	An Act To Amend the Loan Originator Registration Laws
2237	0	PUBLIC	LCA	IFS	An Act To Improve Health Insurance Security
2199	0	PUBLIC	LCA	IFS	An Act To Maintain Compliance of Maine's Insurance Laws with National Standards
2048	0	PUBLIC	LCA	IFS	An Act To Clarify the Application of Certain Statutory Requirements to Foreclosures
2430	0	PUBLIC	LCA	IFS	An Act To Improve Health Insurance Security
2489	0	PUBLIC	LCA	IFS	An Act To Allow a Maine-chartered Financial Institution To Conduct a Savings Promotion Raffle
2492	0	PUBLIC	LCA	IFS	An Act To Adopt a Drug Benefit Equity Law
2167	0	PUBLIC	LCA	IFS	An Act To Increase Consumer Choice Regarding the Purchase of Extended Warranties
	20			IFS	An Act To Require Insurance Companies To Cover the Cost of Prosthetics
	257			IFS	An Act To Establish the Health Technology Clinical Committee
	425			IFS	An Act To Require Private Insurance Coverage for Certain Services for Children with Disabilities
	1059			IFS	Resolve, To Enhance Health Care for Direct Care Workers
	1198			IFS	An Act To Reform Insurance Coverage To Include Diagnosis for Autism Spectrum Disorders
	1365			IFS	An Act To Establish a Single-payer Health Care System
2149	0	PUBLIC	LCA	IFW	An Act To Amend the Current Moose Permit System and Preference Point System in Maine
2394	0	PUBLIC	LCA	IFW	An Act To Allow the Electronic Registration of Big Game Animals

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Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2447	0	PUBLIC	LCA	IFW	An Act To Ensure That Search and Rescue Dogs Are Afforded the Same Access to Public Accommodations as Service Animals
2190	0	PUBLIC	LCA	IFW	An Act To Prohibit the Use of Personal Watercraft on Wilson Pond
2081	0	PUBLIC	LCA	IFW	An Act To Allow Deer Hunting in Owls Head during Firearms Season with Shotguns Only
2291	0	PUBLIC	LCA	IFW	An Act To Increase Payments to Agents Who Provide Tags for Wild Game
2409	0	PUBLIC	DPT	IFW	An Act To Clarify and Amend Laws Pertaining to Licenses Issued by the Department of Inland Fisheries and Wildlife
2408	0	PUBLIC	DPT	IFW	An Act To Amend Certain Provisions of Fish and Wildlife Laws
2354	0	PUBLIC	LCA	IFW	An Act To Amend the Standards by Which Game Wardens May Stop All-terrain Vehicles when Operating on Private Property
2278	0	RESOLVE	LCA	IFW	Resolve, Directing the Department of Inland Fisheries and Wildlife To Adopt Rules Clarifying Fish Stocking Decisions
2298	0	PUBLIC	RSA	JTR	An Act To Improve and Promote Maine's Landlocked Salmon Resources
2375	0	PUBLIC	IDP	JUD	JOINT RESOLUTION MEMORIALIZING THE PRESIDENT OF THE UNITED STATES AND THE UNITED STATES CONGRESS TO FULFILL THE INTENT TO FUND 60% OF THE COSTS OF SPECIAL EDUCATION AND TO END UNFUNDED MANDATES
2378	0	PUBLIC	IDP	JUD	An Act To Promote Opportunity for Workers in the Maine Woods
2452	0	PUBLIC	IDP	JUD	An Act To Make Technical Changes to the Laws Governing the Practice of Law
2049	0	PUBLIC	LCA	JUD	An Act To Amend the Laws Relating to Government Records
2097	0	PUBLIC	LCA	JUD	An Act To Amend the Statute of Limitations under the Maine Human Rights Act
2203	0	PUBLIC	LCA	JUD	An Act To Ensure Rights to Children for Caretaker Relatives
2126	0	PUBLIC	LCA	JUD	An Act To Establish a Policy of Communication and Consultation on Issues Affecting Tribal Communities of the Passamaquoddy Tribe
2124	0	PUBLIC	LCA	JUD	An Act To Remove the Age Limit Governing When a Court Must Consider the Wishes of a Child in a Proceeding for the Termination of Parental Rights
2267	0	PUBLIC	DPT	JUD	An Act To Protect Confidential Consumer Records in Self-service Storage Facilities
2328	0	PUBLIC	LCA	JUD	An Act To Strengthen Protection from Abuse and Protection from Harassment Laws
2377	0	PUBLIC	IDP	JUD	An Act To Protect Information Maintained by Registers of Deeds
2320	0	PUBLIC	DPT	JUD	An Act To Ensure That Substantial State Contracts Receive Adequate Legal Review
2130	0	PUBLIC	LCA	JUD	An Act To Expand Options in the Permanency Plan for Children in Foster Care
2448	0	PUBLIC	IDP	JUD	An Act To Further Regulate the Communications of Members of Public Bodies
2170	0	PUBLIC	LCA	JUD	An Act To Replace the Maine Limited Liability Company Act
2050	0	PUBLIC	PST	JUD	An Act To Amend Laws Relating to Persons Serving as Permanency Guardians
445				JUD	An Act To Correct Errors and Inconsistencies in the Laws of Maine
529				JUD	An Act To Improve Tribal-State Relations
1256				JUD	An Act To Create a Traffic Court
				JUD	An Act To Prohibit Predispute Mandatory Binding Arbitration Clauses in Consumer Contracts

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Possible FOA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
	1289			JUD	An Act To Enact the Uniform Debt Management Services Act
	1378			JUD	An Act To Adopt Portions of the Uniform Mediation Act
2350	0	PUBLIC	LCA	LAB	An Act Relating to the Membership of the Workers' Compensation Board
2369	0	PUBLIC	LCA	LAB	An Act Regarding Maine Public Employees Retirement System Life Insurance Policies
2110	0	PUBLIC	LCA	LAB	An Act To Amend the Unemployment Compensation Laws Regarding Vacation Pay
2087	0	PUBLIC	LCA	LAB	An Act To Protect Maine Workers
2179	0	PUBLIC	LCA	LAB	An Act To Provide Continued Protection of Benefits for Retirees of the Maine Public Employees Retirement System
2127	0	PUBLIC	LCA	LAB	An Act To Ensure Equity in Unemployment Compensation Claims
2315	0	PUBLIC	DPT	LAB	An Act To Make Maine Laws Consistent with Recent Amendments to the United States Trade Act of 1974
2254	0	PUBLIC	LCA	LAB	An Act To Amend the Laws Governing the Knowing Misclassification of Construction Workers
2314	0	PUBLIC	DPT	LAB	An Act To Implement a Maine Unemployment Insurance Work-sharing Program
2134	0	PUBLIC	LCA	LAB	An Act To Prevent the Spread of H1N1
2381	0	PUBLIC	IDP	LAB	An Act To Bring the Laws of the Maine Public Employees Retirement System into Compliance with the Federal Internal Revenue Code
	125			LAB	Resolve, To Establish the Blue Ribbon Commission To Study the Functions and Operations of the Maine Public Employees Retirement System
	192			LAB	An Act To Index the State Minimum Wage to Inflation
	403			LAB	An Act To Increase the Minimum Wage
	934			LAB	An Act To Clarify Public Sector Employee Fair Choice in Collective Bargaining
2416	0	PUBLIC	LCA	LVA	An Act To Clarify the Laws Governing Instant Redeemable Coupons Included with a Spirits Product
2485	0	CON RES	LCA	LVA	RESOLUTION, Proposing an Amendment to the Constitution of Maine To Amend the Requirements Governing Direct Initiatives
2477	0	PUBLIC	LCA	LVA	An Act To Streamline Wine Registration Requirements
2449	0	PUBLIC	IDP	LVA	An Act To Facilitate Voting by Uninformed Service and Overseas Voters
2147	0	PUBLIC	LCA	LVA	An Act To Exempt Certain Mobile Homes from the Radon Testing Requirement
2296	0	PUBLIC	LCA	LVA	An Act Pertaining to Educational Benefits for Veterans and Their Dependents
2310	0	PUBLIC	LCA	LVA	An Act To Strengthen the Ballot Initiative Process
2243	0	RESOLVE	LCA	LVA	Resolve, To Transfer the Ownership of the Bath Armory to the City of Bath
2230	0	PUBLIC	DPT	LVA	An Act To Amend the Rights and Liabilities of the Supervisory Physician of a Physician Assistant
2451	0	PUBLIC	IDP	LVA	An Act To Amend the Election Laws and Other Related Laws
2450	0	PUBLIC	IDP	LVA	An Act To Improve Access to Data in the Central Voter Registration System
2380	0	PUBLIC	IDP	LVA	An Act To Improve Disclosure of Campaign Finance Information and the Operation of the Maine Clean Election Act

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Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2228	0	PUBLIC	DPT	LVA	An Act To Update Department of Defense, Veterans and Emergency Management Laws
2304	0	PUBLIC	LCA	LVA	An Act Regarding Liquor Licenses for Qualified Catering Services
2084	0	PUBLIC	LCA	LVA	An Act To Prevent Predatory Signature Gathering and To Strengthen the Citizen Initiative and People's Veto Process
2039	0	PUBLIC	LCA	LVA	An Act Regarding Mobile Service Bars at Municipal Golf Courses
2192	0	PUBLIC	LCA	LVA	An Act To Amend the Laws Governing the Taste Testing of Alcoholic Beverages
2066	0	PUBLIC	LCA	LVA	An Act To Amend the Laws Governing Taste Testing of Alcoholic Beverages by Retail Licensees
	0			LVA	Joint Order, To Amend the Joint Rules To Require Agreement with the Legislative Code of Ethics
	56			LVA	An Act To Join the Interstate Compact on the National Popular Vote
	833			LVA	An Act To Distribute Funds Received from the Racino in Bangor to the Department of Health and Human Services, Office of Substance Abuse
	1330			LVA	An Act Regarding Gaming by Charitable Organizations
	1345			LVA	RESOLUTION, Proposing an Amendment to the Constitution of Maine To Increase the Required Number of Signatures for a Direct Initiative or a People's Veto and To Limit a Direct Initiative to One Subject
	1420			LVA	An Act To Alter the Distribution of Maine Clean Election Act Funding to gubernatorial candidates
	1421			LVA	An Act To Ensure the Perpetual Care of Maine Veterans' Cemeteries
	1437			LVA	An Act To Permit Video Gaming for Money Conducted by Nonprofit Organizations
2365	0	PUBLIC	LCA	MAR	An Act To Eliminate the 3-trap Limit in the Waters off Hancock County
2227	0	PUBLIC	DPT	MAR	An Act To Clarify the Marine Resources Laws To Provide for the Protection of Public Safety and Welfare
2225	0	PUBLIC	DPT	MAR	An Act To Amend the Lobster Meat Laws and Expand Economic Opportunity for Maine's Lobster Industry
2224	0	PUBLIC	DPT	MAR	An Act To Require That Seafood and Marine Worm Dealers Purchase Only from Licensed Harvesters
2223	0	PUBLIC	DPT	MAR	An Act To Correct Errors and Inconsistencies in Marine Resources Laws
2222	0	PUBLIC	DPT	MAR	An Act To Create a Commercial Pelagic and Anadromous Fishing License and Establish the Pelagic and Anadromous Fisheries Fund
	932			MAR	An Act To Establish Area Management of Maine's Scallop Fishery
	1331			MAR	An Act Regarding Saltwater Recreational Fishing
	1432			MAR	An Act To Create a Saltwater Recreational Fishing Registry
2074	0	RESOLVE	PST	NAT	Resolve, Regarding Legislative Review of Section 16 Activities in Coastal Sand Dunes, a Major Substantive Rule of the Department of Environmental Protection
2432	0	PUBLIC	LCA	NAT	An Act Related to Qualified Waste-to-energy Power
2111	0	PUBLIC	LCA	NAT	An Act To Prevent the Spread of Invasive Plants and Protect Maine's Lakes

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Possible FOA/confidentiality bills highlighted

LR	LD	Law Type	Authority	Broad Subject	Title
2116	0	PUBLIC	LCA	NAT	An Act To Expand Eligibility of Certain Municipal Landfills To Participate in the State's Remediation and Closure Program
2182	0	PUBLIC	LCA	NAT	An Act To Clarify Maine's Phaseout of Polybrominated Diphenyl Ethers
2266	0	PUBLIC	DPT	NAT	An Act Concerning the Establishment of Water Levels
2240	0	PUBLIC	LCA	NAT	An Act To Improve Maine's Air Quality and Reduce Regional Haze at Acadia National Park and Other Federally Designated Class I Areas
2262	0	PUBLIC	DPT	NAT	An Act To Expedite Rulemaking Concerning Agronomic Utilization of Sludge
2261	0	PUBLIC	DPT	NAT	An Act To Establish a Residential Wood Stove Replacement Fund
2112	0	PUBLIC	LCA	NAT	An Act To Amend the Coastal and Lake Watershed Districts Laws To Clarify Municipal Home Rule and Interlocal Cooperation Authority
2265	0	PUBLIC	DPT	NAT	An Act To Close Loopholes in Environmental Laws
2263	0	PUBLIC	DPT	NAT	An Act To Amend Laws Administered by the Department of Environmental Protection
2349	0	PUBLIC	LCA	NAT	An Act To Establish Biofuel and Ultra-low Sulfur Requirements for Number 2 Home Heating Oil
2063	0	PUBLIC	LCA	NAT	An Act To Update and Modernize Maine's Floodplain Mapping for Coastal Communities
2260	0	PUBLIC	DPT	NAT	An Act To Improve Maine's Air Quality and Reduce Regional Haze at Acadia National Park and Other Class I Areas
2264	0	PUBLIC	DPT	NAT	An Act To Improve Water Quality through the Phaseout of Overboard Discharges and the Improvement of the Boat Pump-out Laws
2389	0	PUBLIC	LCA	NAT	An Act To Provide Leadership and Responsible Recycling for Consumer Products
2339	0	PUBLIC	LCA	NAT	An Act To Protect the Environment and Natural Resources of the State by Regulating the Discharge of Certain Substances into the Environment
891				NAT	An Act To Amend the Site Location of Development Laws To Include Consideration of Greenhouse Gas Emissions
956				NAT	RESOLUTION, Proposing an Amendment to the Constitution of Maine To Provide Constitutional Protection to the Funds Generated by the Regional Greenhouse Gas Initiative
1423				NAT	An Act To Improve Toxics Use Reduction and Reduce Energy Costs by Maine Businesses
2075	0	PUBLIC	LCA	SLG	An Act To Authorize Municipal Officers To Resolve Road-naming Disputes
2138	0	PUBLIC	LCA	SLG	An Act Regarding Document Fees at County Registries of Deeds
2169	0	PUBLIC	LCA	SLG	An Act To Amend the Laws Governing the Somerset County Budget Procedure
2193	0	PUBLIC	LCA	SLG	An Act To Restore Longevity Pay
2392	0	PUBLIC	LCA	SLG	An Act To Clarify the Informed Growth Act
2514	0	PUBLIC	PLW	SLG	An Act To Implement the Recommendations of the Initiative To Streamline Government
1022				SLG	An Act To Amend the Laws Governing the Legislative Youth Advisory Council

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Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2471	0	RESOLVE	LCA	TAX	Resolve, To Increase Transparency and Accountability and Assess the Impact of Tax Incentive Programs
2086	0	PUBLIC	LCA	TAX	An Act To Improve Employment Opportunities for Maine Workers in the Forest Industry
2085	0	PUBLIC	LCA	TAX	An Act To Increase Financial Assets of Maine Citizens by Allowing Split Tax Refunds
2135	0	PUBLIC	LCA	TAX	An Act To Improve the Seed Capital Investment Tax Credit Program
2157	0	PUBLIC	LCA	TAX	An Act To Change the Requirements for the Sales Tax Exemption for Snowmobile Trail Grooming Equipment
2300	0	PUBLIC	LCA	TAX	An Act To Modify the Maine Tax Code To Support Renewable Energy
2286	0	PUBLIC	LCA	TAX	An Act To Encourage Extended Stays in Maine Waters
2220	0	PUBLIC	DPT	TAX	An Act To Conform the Maine Tax Laws for 2009 to the United States Internal Revenue Code
2219	0	PUBLIC	DPT	TAX	An Act To Amend the Tax Laws
2253	0	RESOLVE	LCA	TAX	Resolve, To Promote Efficiency and To Streamline Access to the Circuitbreaker Program Application Process
2250	0	PUBLIC	LCA	TAX	An Act To Amend the Law Governing Sales Tax Exemptions for Certain Nonprofit Youth Organizations
2221	0	RESOLVE	DPT	TAX	Resolve, Authorizing the State Tax Assessor To Convey the Interest of the State in Certain Real Estate in the Unorganized Territory
2178	0	PUBLIC	LCA	TAX	An Act To Avoid Unnecessary Removal of Land from the Maine Tree Growth Tax Law Program
2459	0	PUBLIC	LCA	TAX	An Act To Increase the Affordability of Renewable Energy for Homeowners and Small Businesses
2218	0	PUBLIC	DPT	TAX	An Act Concerning Technical Changes to the Tax Laws
2364	0	PUBLIC	LCA	TRA	An Act To Regulate the Use of Traffic Surveillance Cameras
2362	0	PUBLIC	LCA	TRA	An Act To Establish a Committee To Promote General Aviation in the State
2360	0	RESOLVE	LCA	TRA	Resolve, To Authorize the Placement of a Sign at Saddleback Mountain
2418	0	PUBLIC	LCA	TRA	An Act To Amend the Laws Governing the We Support Our Troops Registration Plates
2439	0	PUBLIC	LCA	TRA	An Act To Preserve the "We Support Our Troops" Registration Plate
2035	0	PUBLIC	LCA	TRA	An Act To Impose Service Requirements on Railroads That Receive Funds from the Department of Transportation
2053	0	PUBLIC	LCA	TRA	An Act To Reduce Noise Caused by Motorcycles and Improve Public Health
2096	0	RESOLVE	LCA	TRA	Resolve, To Name a Bridge in North Berwick the North Berwick Veterans Memorial Bridge
2115	0	RESOLVE	LCA	TRA	Resolve, Authorizing the Transfer of State Land to the Natural Resource Education Center of Greenville

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Possible FOA/confidentiality bills highlighted

LR	LD	Law Type	Authority	Broad Subject	Title
2188	0	PUBLIC	LCA	TRA	An Act To Allow the State To Receive Full Funding under the Federal Motor Carrier Safety Assistance Program
2155	0	PUBLIC	LCA	TRA	An Act To Require the Bureau of Motor Vehicles To Accept Certification of Disability from the United States Department of Veterans Affairs
2279	0	PUBLIC	LCA	TRA	An Act To Dedicate Surplus Transportation Funds to Highway Maintenance and Paving
2245	0	RESOLVE	LCA	TRA	Resolve, To Name the New Bridge over Gilman Stream in New Portland the Joshua Bernard Memorial Bridge
2234	0	RESOLVE	LCA	TRA	Resolve, Directing the Department of Transportation To Review the Fiscal Impact on the State of the Closure of the Railroad Track between Madawaska and Millinocket
2208	0	PUBLIC	LCA	TRA	An Act To Establish Emergency Zones on Public Ways To Minimize Accidents
2121	0	PUBLIC	LCA	TRA	An Act To Encourage Tourism by Ensuring the Safety, Accessibility and Availability of Highway Rest Stops and Scenic Overlooks
2334	0	PUBLIC	LCA	TRA	An Act To Reduce Road Noise within Posted Areas
2077	0	RESOLVE	LCA	TRA	Resolve, To Name Route 16/27 in the Town of Stratton the Caleb Dalton Stevens Memorial Highway
2454	0	PUBLIC	IDP	TRA	An Act To Amend the Motor Vehicle Laws
2033	0	P & S	LCA	TRA	An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs
2424	0	PUBLIC	LCA	TRA	An Act To Designate Funds from the Highway Fund to the Highway and Bridge Light Capital Program
2274	0	PUBLIC	LCA	TRA	An Act To Provide for the Safety of Young Maine Athletes
2390	0	P & S	LCA	UTE	An Act To Amend the Charter of the Caribou Utilities District
2478	0	PUBLIC	LCA	UTE	An Act To Enhance Maine's Clean Energy Opportunities
2474	0	PUBLIC	LCA	UTE	An Act To Require That Expedited Wind Energy Development Projects Provide a Tangible Benefit to Maine Ratepayers in the Form of Discounts to Future Electric Rates
2458	0	PUBLIC	LCA	UTE	An Act To Create a Smart Grid Policy in the State
2446	0	P & S	LCA	UTE	An Act To Ensure That Maine's Energy Corridor Policy Does Not Harm Maine's Renewable Power Development
2499	0	PUBLIC	LCA	UTE	An Act To Strengthen the Community-based Renewable Energy Pilot Program
2045	0	PUBLIC	LCA	UTE	An Act To Maintain Internet Access for Maine Citizens and Businesses
2109	0	PUBLIC	LCA	UTE	An Act To Authorize Sanitary Districts To Waive an Automatic Sanitary District Lien Foreclosure
2184	0	P & S	LCA	UTE	An Act To Amend the Charter of the Dexter Utility District
2153	0	PUBLIC	LCA	UTE	An Act To Raise the Indebtedness Limit of the Eagle Lake Water and Sewer District
2082	0	PUBLIC	LCA	UTE	An Act To Require That a Utility Company Notify the Owner of Property prior to Disconnecting Services

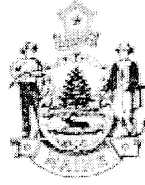
124th Second Regular Session Legislation  
Possible FOIA/confidentiality bills highlighted

LR	LD	LawType	Authority	Broad Subject	Title
2303	0	PUBLIC	LCA	UTE	An Act To Direct the Public Utilities Commission To Adopt Rules To Improve the Safety of Multiunit Rental Dwellings
2293	0	P & S	LCA	UTE	An Act To Amend the Charter of the Corinna Sewer District
2469	0	PUBLIC	IDP	UTE	An Act To Resolve Conflicts in the Laws Governing the Surcharge for the E-9-1-1 System
2468	0	PUBLIC	IDP	UTE	An Act To Reallocate Funds for a Position at the Public Utilities Commission
2467	0	PUBLIC	IDP	UTE	An Act To Create a Position at the Public Utilities Commission
2412	0	PUBLIC	DPT	UTE	An Act To Provide for Equitable Sharing by Service Providers of the Costs of the Public Utilities Commission and the Office of the Public Advocate
2411	0	PUBLIC	DPT	UTE	An Act To Provide More Information to the Public Advocate
2410	0	PUBLIC	DPT	UTE	An Act Concerning Electricity Customers Whose Bills Increase as a Result of the Implementation of Energy Conservation or Energy Efficiency Measures
2204	0	P & S	LCA	UTE	An Act To Create the Lincolnville Sewer District
2370	0	PUBLIC	LCA	UTE	An Act To Amend the Electric Utility Industry Laws as They Relate to Renewable Resources
2255	0	P & S	LCA	UTE	An Act To Amend the Charter of the Buckfield Village Corporation
2346	0	RESOLVE	LCA	UTE	Resolve, To Review Certification Requirements for Installation of Solar Energy Systems
2466	0	PUBLIC	LCA	UTE	An Act To Protect Universal Service
2183	0	PUBLIC	LCA	UTE	An Act To Amend the Laws Governing Noise Limitations on Wind Turbines
2173	0	PUBLIC	LCA	UTE	An Act To Establish a Broadband Policy for Maine
2252	0	PUBLIC	LCA	UTE	An Act To Streamline Collections for Consumer-owned Consolidated Water and Wastewater Utilities
	543			UTE	An Act Concerning the Allocation of Power Generated by GNE, LLC
	1222			UTE	An Act To Promote Geothermal Energy in the State
	1350			UTE	An Act To Establish the Maine Transmission Mitigation Trust Fund
	1430			UTE	An Act To Ensure Electric Capacity To Serve Maine Consumers



FOR REVIEW 12/11

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STATE OF MAINE  
124<sup>TH</sup> LEGISLATURE  
FIRST REGULAR SESSION

Fourth Annual Report  
of the  
RIGHT TO KNOW ADVISORY COMMITTEE

January 2010

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*[Other appendices to be added]*