

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**

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

**Sec. 1. 1 MRSA §412** is enacted to read:

### **§ 412. Public records and proceedings training for certain elected officials**

**1. Training required.** Beginning January 1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 90th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on January 1, 2008, the training required by this section must be completed by April 1, 2008.

**2. Minimum requirements.** The training course under subsection 1 must be developed by the Public Access Ombudsman, established pursuant to Title 5, section 200-I, in conjunction with the advisory committee. The training must be provided to elected officials through a central publicly accessible website at no cost. The training must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

**3. Certification of completion.** Upon completion of the training course under subsection 1, the elected official shall send an electronic notification to the Public Access Ombudsman, established pursuant to Title 5, section 200-I, attesting to the fact that the training has been completed. The Public Access Ombudsman shall maintain a record of those elected officials who have completed the training required by this section and make that record available to the public in accordance with the requirements of this chapter.

**4. Application.** This section applies to:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature; and

D. An elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or legislative powers.

**Sec. 2. 5 MRSA §200-I** is enacted to read:

**§ 200-I. Public Access Division; Public Access Ombudsman**

**1. Public Access Division; Public Access Ombudsman.** There is created, within the Department of the Attorney General, the Public Access Division to assist in compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney General shall appoint the Public Access Ombudsman, referred to in this section as "the ombudsman," to administer the division.

**2. Duties.** The ombudsman shall:

A. Prepare and make available interpretive and educational materials and programs concerning the State's freedom of access laws in cooperation with the Right To Know Advisory Committee, established under Title 1, section 411. The ombudsman, in conjunction with the Right To Know Advisory Committee, shall develop the training required by Title 1, section 412;

B. Respond to informal inquiries made by the public and public agencies and officials concerning the State's freedom of access laws;

C. Respond to and work to resolve complaints made by the public and public agencies and officials concerning the State's freedom of access laws;

D. Furnish, upon request, advisory opinions regarding the interpretation of and compliance with the State's freedom of access laws to any person or public agency or official in an expeditious manner. The ombudsman may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under Title 1, chapter 13. Advisory opinions must be publicly available after distribution to the requestor or requestors and the parties involved; and

E. Make recommendations concerning ways to improve public access to public records and proceedings.

**3. Assistance.** The ombudsman may request from any public agency or official such assistance, services and information as will enable the ombudsman to effectively carry out the responsibilities of this section.

**4. Confidentiality.** The ombudsman may access records that a public agency or official believes are confidential in order to make a determination whether the records may be released to the public. Records that would be confidential if they were in the possession or custody of a public agency or official are confidential if those records are in the possession of the ombudsman. The ombudsman shall maintain the confidentiality of confidential records and information provided to the ombudsman.

**5. Report.** Beginning in 2008, the ombudsman shall submit a report not later than March 15th of each year to the Legislature and the Right To Know Advisory Committee, established under Title 1, section 411, concerning the activities of the ombudsman for the previous year. The report must include the following information:

- A. The total number of inquiries and complaints received;
- B. The number of inquiries and complaints received respectively from the public, the media and public agencies or officials;
- C. The number of complaints received concerning respectively public records and public meetings;
- D. The number of complaints received concerning respectively:
  - (1) State agencies;
  - (2) County agencies;
  - (3) Regional agencies;
  - (4) Municipal agencies;
  - (5) School administrative units; and
  - (6) Other public entities;
- E. The number of inquiries and complaints that were resolved;
- F. The total number of written advisory opinions issued and pending; and
- G. Recommendations concerning ways to improve public access to public records and proceedings.

## SUMMARY

This bill consists of the legislative recommendations of the Right To Know Advisory Committee.

This bill requires certain elected officials to complete a training course on the State's freedom of access laws within 90 days of taking elected office beginning January 1, 2008. The bill requires that the Public Access Ombudsman, in conjunction with the Right To Know Advisory Committee, develop a training course of less than 2 hours using the State's publicly accessible website to be available at no cost to the elected official. The bill also requires that elected officials send electronic notification to the ombudsman upon completion of the training and further requires the ombudsman to make a record of those elected officials who have completed the training available to the public.

This bill establishes the Public Access Division and the Public Access Ombudsman within the Department of the Attorney General. The ombudsman is required to provide information and educational materials and programs to the public, as well as to public agencies and officials, in cooperation with the Right To Know Advisory Committee. The ombudsman will respond to informal inquiries, resolve freedom of access complaints when possible and issue advisory opinions concerning the State's freedom of access laws. The ombudsman is not permitted to issue an advisory opinion on an issue that is the subject of a lawsuit filed under the freedom of access laws. The ombudsman must make the advisory opinions available to the public once they are distributed to the persons requesting the advisory opinion and the parties involved. The ombudsman is required to make recommendations concerning ways to improve public access to public records and public proceedings.

The ombudsman may request the assistance of any public agency or official in carrying out these responsibilities. The ombudsman may access records that a public agency or official believes are confidential in order to determine whether the records may be released to the public. Records that would be confidential if they were in the possession or custody of a public agency or official are confidential if those records are in the possession of the ombudsman. The ombudsman shall maintain the confidentiality of confidential records and information provided to the ombudsman.

Beginning in March 2008, the ombudsman is required to report annually to the Legislature and the Right To Know Advisory Committee regarding the ombudsman's activities and the inquiries and complaints received. The report must also include recommendations concerning ways to improve public access to public records and proceedings.