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

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

PART A

Sec. A-1. 22 MRSA c. 271, sub-c. 2, as amended, is repealed.

Sec. A-2. 26 MRSA §3, as amended by PL 2011, c. 655, Pt. DD, §10 and affected by §24, is repealed and the following enacted in its place:

§ 3. Confidentiality of records

1. Confidential records. Except as provided in subsections 2 and 3, all information and reports received by the director or the director's authorized agents under this Title are confidential.

2. Exceptions. Reports of final bureau action taken under the authority of this Title are public records for the purposes of Title 1, chapter 13, subchapter 1.

3. Authorized disclosure. The director shall make or authorize any disclosure of information of the following types or under the following circumstances with the understanding that the confidentiality of the information will be maintained:

A. Information and reports disclosed to other government agencies if the director believes that the information will serve to further the protection of the public or assist in the enforcement of local, state and federal laws; and

B. Information and records pertaining to the work force, employment patterns, wage rates, poverty and low-income patterns, economically distressed communities and regions and other similar information and data disclosed to the Department of Economic and Community Development and to the Governor's Office of Policy and Management for the purposes of analysis and evaluation, for the purposes of measuring and monitoring poverty and economic and social conditions throughout the State and to promote economic development.

Sec. A-3. 26 MRSA §934, last ¶, as enacted by PL 1985, c. 294, §§2 and 3, is amended to read:

The board shall hear all interested persons who come before it, advise the respective parties what ought to be done by either or both to adjust the controversy, and shall make a confidential written report to the Governor and the Executive Director of the Maine Labor Relations Board. The Governor or executive director ~~may~~shall make the report public if, after 15 days from the date of its receipt, the parties have not resolved the controversy and the public interest would be served by publication. In addition, either

the Governor or the executive director may refer the report and recommendations of the board to the Attorney General or other department for appropriate action when it appears that any of the laws of this State may have been violated.

Sec. A-4. 29-A MRSA §152, sub-§3, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

3. Central computer system. Notwithstanding any other provisions of law, purchase and maintain a central computer system for purposes of administering this Title and conducting departmental operations. All other uses must be approved by the Secretary of State. ~~The Secretary of State shall adopt rules regarding the maintenance and use of data processing information files required to be kept confidential and shall distinguish those files from files available to the public;~~

Sec. A-5. 29-A MRSA §257, as enacted by PL 2003, c. 434, §6 and affected by §37, is repealed.

Sec. A-6. 29-A MRSA §517, sub-§4, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

4. Unmarked law enforcement vehicles. An unmarked motor vehicle used primarily for law enforcement purposes, when authorized by the Secretary of State and upon approval from the appropriate requesting authority, is exempt from displaying a special registration plate. Records for all unmarked vehicle registrations are confidential.

~~Upon receipt of a written request by an appropriate criminal justice official showing cause that it is in the best interest of public safety, the Secretary of State may determine that records of a nongovernment vehicle may be held confidential for a specific period of time, which may not exceed the expiration of the current registration.~~

Sec. A-7. 35-A MRSA §8703, sub-§5, as enacted by PL 1989, c. 851, §7, is amended to read:

5. Confidentiality. ~~Relay service communications must be~~The providers of telecommunications relay services must keep relay service communications confidential.

Sec. A-8. 38 MRSA §414, sub-§6, as amended by PL 1997, c. 794, Pt. A, §20, is further amended to read:

6. Confidentiality of records. Any records, reports or information obtained under this subchapter is available to the public, except that upon a showing satisfactory to the department by any person that any records, reports or information, or particular part of any record, report or information, other than the names and addresses of applicants, license applications, licenses and effluent data, to which the department has access under this subchapter would, if made public, divulge methods or processes that are entitled to protection as trade secrets as defined in Title 10, section 1542, subsection 4, these records, reports or information must be confidential and not available for public inspection or examination. Any records, reports or information may be disclosed to employees or authorized representatives of the State or the United States concerned with carrying out this subchapter or any applicable federal law, and to any

party to a hearing held under this section on terms the commissioner may prescribe in order to protect these confidential records, reports and information, as long as this disclosure is material and relevant to any issue under consideration by the department.

Sec. A-9. 38 MRSA §585-B, sub-§6, as amended by PL 2009, c. 535, §2, is further amended to read:

6. Mercury reduction plans. An air emission source emitting mercury in excess of 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except as provided in subsection 7, the mercury reduction plan must be submitted to the department no later than September 1, 2008. The mercury reduction plan must contain:

- A. Identification, characterization and accounting of the mercury used or released at the emission source; and
- B. Identification, analysis and evaluation of any appropriate technologies, procedures, processes, equipment or production changes that may be utilized by the emission source to reduce the amount of mercury used or released by that emission source, including a financial analysis of the costs and benefits of reducing the amount of mercury used or released.

~~The department may keep information submitted to the department under this subsection confidential as provided under section 1310-B.~~

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over natural resources matters no later than March 1, 2009 summarizing the mercury emissions and mercury reduction potential from those emission sources subject to this subsection. In addition, the department shall include an evaluation of the appropriateness of the 25-pound mercury standard established in subsection 5. The evaluation must address, but is not limited to, the technological feasibility, cost and schedule of achieving the standards established in subsection 5. The department shall submit an updated report to the committee by March 1, 2013. The joint standing committee of the Legislature having jurisdiction over natural resources matters is authorized to report out to the 126th Legislature a bill relating to the evaluation and the updated report.

Sec. A-10. 38 MRSA §585-C, sub-§2, ¶D, as affected by PL 1989, c. 890, Pt. A, §40 and amended by Pt. B, §160, is repealed.

Sec. A-11. 38 MRSA §1310-B, sub-§2, as repealed and replaced by PL 2011, c. 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

2. Hazardous waste information and information on mercury-added products and electronic devices; chemicals. Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, ~~information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6~~, information related to priority toxic chemicals submitted

to the department under chapter 27 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Conservation and Forestry and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste 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 person submitting the information 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 only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such 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 subsection.

PART B

Sec. B-1. 1 MRSA §411, sub-§2, ¶¶L and M, as enacted by PL 2005, c. 631, §1, are amended to read:

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

M. The Attorney General or the Attorney General's designee; and

Sec. B-2. 1 MRSA §411, sub-§2, ¶N is enacted to read:

N. One member, appointed by the Governor, with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including audio and Internet conferencing; databases for records management and reporting; and information technology system development and support.

PART C

Sec. C-1. 5 MRSA §200-I, sub-§5, as enacted by PL 2007, c. 603, §1, is amended to read:

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

- 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.

PART D

Sec. D-1. 1 MRSA §408-A, as amended by PL 2013, c. 350, §§1 and 2, is further amended to read:

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

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

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

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

A. A request need not be made in person or in writing.

B. The body, agency or official shall mail the copy upon request.

3. Acknowledgment; clarification; time estimate; cost estimate. The body, agency or official having custody or control of a public record shall acknowledge receipt of a request made according to this section within 5 working days of receiving the request ~~and~~. The body, agency or official may request clarification concerning which public record or public records are being requested. Within a reasonable time of receiving the request, the body, agency or official shall provide a good faith, nonbinding estimate of the time within which the body, agency or official will comply with the request, as well as a cost estimate as provided in subsection 9. The body, agency or official shall make a good faith effort to fully respond to the request within the estimated time. For purposes of this subsection, the date a request is received is the date a sufficient description of the public record is received by the body, agency or official.

4. Refusals; denials. If a ~~body or an~~ body, agency or official having custody or control of any public record refuses permission to inspect or copy ~~or abstract~~ a public record, the ~~body or~~ body, agency or official shall provide written notice of the denial, stating the reason for the denial, within 5 working days of the receipt of the request for inspection or copying. Failure to ~~comply with~~ provide the notice required by this subsection within 10 working days of the receipt of the request is considered ~~failure~~ a denial to allow inspection or copying and is subject to appeal as provided in section 409.

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

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

7. Electronically stored public records. ~~An~~ body, agency or official having custody or control of a public record subject to a request under this section shall provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record

is stored, at the requester's option, except that the body, agency or official is not required to provide access to an electronically stored public record as a computer file if the body, agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

A. If in order to provide access to an electronically stored public record the body, agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format for inspection or copying, the body, agency or official may charge a fee to cover the cost of conversion as provided in subsection 8.

B. This subsection does not require ~~ana~~ body, agency or official to provide a requester with access to a computer terminal.

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

A. The body, agency or official may charge a reasonable fee to cover the cost of copying.

B. The body, agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. The body, agency or official may charge for the actual cost to convert a public record into a form susceptible of visual or aural comprehension or into a usable format.

D. ~~An~~ A body, agency or official may not charge for inspection unless the public record cannot be inspected without being compiled or converted, in which case paragraph B or C applies.

E. The body, agency or official may charge for the actual mailing costs to mail a copy of a record.

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

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

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

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

A. The requester is indigent; or

B. The body, agency or official considers release of the public record requested to be in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. D-2. 1 MRSA §409, sub-§1, as repealed and replaced by PL 2013, c. 350, §3, is amended to read:

1. Records. Any person aggrieved by a ~~refusal or denial to inspect or copy a record or the failure to allow the inspection or copying of a record~~ under section 408-A may appeal the ~~refusal, denial or failure~~ within 30 calendar days of the receipt of the written notice of ~~refusal, denial or failure~~ or 40 days from the date of the request if no written notice is provided under section 408-A, subsection 4 to any the Superior Court within the State as a trial de novo for the county in which the person resides or in which the body, agency or official maintains an office to which the person made the request. The body, agency or official shall file an answer within 14 calendar days of service of the appeal. If a court, after a ~~trial de novo review and taking testimony and other evidence it determines necessary,~~ determines such ~~refusal, denial or failure~~ was not for just and proper cause, the court shall enter an order for disclosure. Appeals may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

SUMMARY

This bill implements recommendations from the Right To Know Advisory Committee.

Part A implements the recommendations of the Right To Know Advisory Committee relating to existing public records exceptions in the Maine Revised Statutes, Titles 22, 26, 29-A, 35-A and 38. The legislation does the following.

It repeals the Community Right-to-Know Act, a program within the Department of Health and Human Services intended to provide disclosure of information about hazardous substances in the community. The program has never been implemented.

It makes clear that reports of final bureau action are public records, removing the language in current law that gives the Director of the Bureau of Labor Standards within the Department of Labor the discretion to release reports.

It amends the laws governing reports of the State Board of Arbitration and Conciliation in a labor dispute. The bill makes clear that a report must be released 15 days after its receipt by the Governor and the Executive Director of the Maine Labor Relations Board if the conciliation process is not successful.

It strikes language authorizing the Secretary of State to adopt rules relating to maintenance and use of data processing files concerning motor vehicles as the confidentiality of personal information is already protected under the federal Driver's Privacy Protection Act of 1994.

It repeals a provision relating to the Secretary of State's motor vehicle information technology system because the confidentiality of the system is already addressed in the Maine Revised Statutes, Title 1, section 402, subsection 3, paragraph M.

It removes language that is redundant with another section of law concerning nongovernment vehicle registrations in the Maine Revised Statutes, Title 29-A, section 253.

It clarifies that it is the responsibility of the providers of telecommunications relay services to keep relay service communications confidential.

It adds a cross-reference to the definition of "trade secret" in the law governing waste discharge licenses.

It strikes language allowing mercury reduction plans for air emission sources emitting mercury to be designated as confidential.

It repeals language allowing hazardous air pollutant emissions inventory reports to be designated as confidential.

Part B adds one additional member to the Right To Know Advisory Committee, appointed by the Governor. The new position will bring information technology expertise to the committee.

Current law requires the Public Access Ombudsman to submit an annual report to the Right To Know Advisory Committee and the Legislature by March 15th of each year. Part C changes the reporting date to January 15th of each year, which is the same date by which the Right To Know Advisory Committee is required to submit its annual report.

Part D amends the Freedom of Access Act to clarify that the date of receipt of a request to copy or inspect a public record is the date a sufficient description of the public record is received by the body, agency or official.

Current law requires a body, agency or official to provide, within 5 days of the receipt of a request to inspect or copy a public record, a written notice that the request is denied. Part D clarifies that refusing to allow inspection or copying is considered a denial, as is the failure, within 10 days of the receipt of a request, to provide a written notice that the request is denied.

Part D amends the Freedom of Access Act with regard to appeals of denials of requests to inspect or copy public records. Under current law, a person whose request has been denied may appeal the denial to any Superior Court within 30 calendar days of receipt of the written notice of denial. The bill provides that if no written notice of denial is provided, the requester may file an appeal within 40 calendar days of the request in the Superior Court for the county where the requester resides or where the body, agency or official maintains an office to which the request was made. Current law requires the agency or official to file an answer within 14 calendar days. This bill clarifies that the body, agency or official must file an answer within 14 calendar days of service of the appeal. This bill provides that the court does not have to convene a trial, but must conduct a de novo review and take testimony and other evidence it determines necessary, and if it determines that the denial was not for just and proper cause, the court is required to enter an order for disclosure.