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No. 420

H.P. 292

House of Representatives, February 14, 2013

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Records Exceptions**

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

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 22 MRSA §1696-D**, as amended by PL 1999, c. 57, Pt. B, §3, is further
3 amended to read:

4 **§1696-D. Response to requests**

5 When requested under this subchapter, the director shall provide, ~~at a minimum, the~~
6 ~~identity of~~ information about chemical substances in use or present at a specific location,
7 ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means~~
8 ~~any confidential formula, pattern, process, device, information or compilation of~~
9 ~~information, including chemical name, that is used in any employer's business that gives~~
10 ~~the employer an opportunity to obtain any advantage over competitors who do not know~~
11 ~~or use it. The director may provide information on~~ must include the identity of the
12 chemical substance, the chronic and acute health hazards posed by the substance,
13 potential routes of exposure, emergency procedures and other subjects as appropriate.
14 The director shall report in writing annually by January 1st to the joint standing
15 committee of the Legislature having jurisdiction over human resources on the number and
16 type of requests received and on the director's response to these requests.

17 ~~In the case of a request for information from a municipality or individual concerning~~
18 ~~chemicals in use or present at a specific site, the director shall be required to provide~~
19 ~~information pursuant to this Act only if the specific site is within a 50-mile radius of the~~
20 ~~municipality or within a 50-mile radius of a residence of the individual requesting the~~
21 ~~information.~~

22 **Sec. 2. 22 MRSA §1696-E**, as enacted by PL 1985, c. 494, §2, is amended to
23 read:

24 **§1696-E. Cooperation with state agencies**

25 The director may obtain, upon request, information from and the assistance of the
26 Bureau of Labor Standards, Department of Environmental Protection, Bureau of
27 Pesticides Control and other state agencies as appropriate in the conduct of investigations
28 under this chapter. ~~Information obtained under this section shall be subject to the trade~~
29 ~~secret provisions governing the agencies supplying the information.~~

30 **Sec. 3. 22 MRSA §1696-F**, as amended by PL 1999, c. 57, Pt. B, §4, is further
31 amended to read:

32 **§1696-F. Provision of information**

33 ~~A person may withhold the identity of a specific toxic or hazardous substance, if the~~
34 ~~substance is a trade secret. For purposes of this section, "trade secret" means any~~
35 ~~confidential formula, pattern, process, device, information or compilation of information,~~
36 ~~including chemical name, that is used in any employer's business that gives the employer~~
37 ~~an opportunity to obtain any advantage over competitors who do not know or use it. All~~
38 ~~other~~ information about a toxic or hazardous substance, including its identity, routes of
39 exposure, effects of exposure, type and degree of hazard and emergency treatment and

1 response procedures, must be provided if requested by the Director of the Bureau of
2 Health ~~and is considered a public record.~~ All information about a toxic or hazardous
3 substance is a public record.

4 **Sec. 4. 26 MRSA §3**, as amended by PL 2011, c. 655, Pt. DD, §10 and affected by
5 §24, is repealed and the following enacted in its place:

6 **§3. Confidentiality of records**

7 **1. Confidential records.** Except as provided in subsections 2 and 3, all information
8 and reports received by the director or the director's authorized agents under this Title are
9 confidential for purposes of Title 1, section 402, subsection 3, paragraph A.

10 **2. Exceptions.** Information and reports pertaining to final bureau action taken under
11 the authority of this Title are public records for the purposes of Title 1, chapter 13,
12 subchapter 1.

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

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

19 B. Information and records pertaining to the workforce, employment patterns, wage
20 rates, poverty and low-income patterns, economically distressed communities and
21 regions and other similar information and data to the Department of Economic and
22 Community Development and to the Governor's Office of Policy and Management
23 for the purposes of analysis and evaluation, measuring and monitoring poverty and
24 economic and social conditions throughout the State and promoting economic
25 development.

26 **Sec. 5. 26 MRSA §934, last ¶**, as enacted by PL 1985, c. 294, §§2 and 3, is
27 amended to read:

28 The board shall hear all interested persons who come before it, advise the respective
29 parties what ought to be done by either or both to adjust the controversy; and ~~shall~~ make a
30 confidential written report to the Governor and the Executive Director of the Maine
31 Labor Relations Board. The Governor or executive director ~~may~~ shall make the report
32 public if, after 15 days from the date of its receipt, the parties have not resolved the
33 controversy and the public interest would be served by publication. In addition, either the
34 Governor or the executive director may refer the report and recommendations of the
35 board to the Attorney General or other department for appropriate action when it appears
36 that any of the laws of this State may have been violated.

37 **Sec. 6. 29-A MRSA §152, sub-§3**, as enacted by PL 1993, c. 683, Pt. A, §2 and
38 affected by Pt. B, §5, is amended to read:

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

7 **Sec. 7. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by §37,
8 is repealed.

9 **Sec. 8. 29-A MRSA §517, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2 and
10 affected by Pt. B, §5, is amended to read:

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

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

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

21 **6. Mercury reduction plans.** An air emission source emitting mercury in excess of
22 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except
23 as provided in subsection 7, the mercury reduction plan must be submitted to the
24 department no later than September 1, 2008. The mercury reduction plan must contain:

25 A. Identification, characterization and accounting of the mercury used or released at
26 the emission source; and

27 B. Identification, analysis and evaluation of any appropriate technologies,
28 procedures, processes, equipment or production changes that may be utilized by the
29 emission source to reduce the amount of mercury used or released by that emission
30 source, including a financial analysis of the costs and benefits of reducing the amount
31 of mercury used or released.

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

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

1 committee of the Legislature having jurisdiction over natural resources matters is
2 authorized to report out to the 126th Legislature a bill relating to the evaluation and the
3 updated report.

4 **Sec. 10. 38 MRSA §585-C, sub-§2, ¶D**, as affected by PL 1989, c. 890, Pt. A,
5 §40 and amended by Pt. B, §160, is repealed.

6 **Sec. 11. 38 MRSA §1310-B, sub-§2**, as repealed and replaced by PL 2011, c.
7 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

8 **2. Hazardous waste information and information on mercury-added products**
9 **and electronic devices and mercury reduction plans; chemicals.** Information relating
10 to hazardous waste submitted to the department under this subchapter, information
11 relating to mercury-added products submitted to the department under chapter 16-B,
12 information relating to electronic devices submitted to the department under section 1610,
13 subsection 6-A, ~~information relating to mercury reduction plans submitted to the~~
14 ~~department under section 585-B, subsection 6~~, information related to priority toxic
15 chemicals submitted to the department under chapter 27 or information related to
16 products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to
17 the department under section 1609 may be designated by the person submitting it as being
18 only for the confidential use of the department, its agents and employees, the Department
19 of Agriculture, Conservation and Forestry and the Department of Health and Human
20 Services and their agents and employees, other agencies of State Government, as
21 authorized by the Governor, employees of the United States Environmental Protection
22 Agency and the Attorney General and, for waste information, employees of the
23 municipality in which the waste is located. The designation must be clearly indicated on
24 each page or other portion of information. The commissioner shall establish procedures
25 to ensure that information so designated is segregated from public records of the
26 department. The department's public records must include the indication that information
27 so designated has been submitted to the department, giving the name of the person
28 submitting the information and the general nature of the information. Upon a request for
29 information, the scope of which includes information so designated, the commissioner
30 shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall
31 demonstrate to the satisfaction of the department that the designated information should
32 not be disclosed because the information is a trade secret or production, commercial or
33 financial information, the disclosure of which would impair the competitive position of
34 the submitter and would make available information not otherwise publicly available.
35 Unless such a demonstration is made, the information must be disclosed and becomes a
36 public record. The department may grant or deny disclosure for the whole or any part of
37 the designated information requested and within 15 days shall give written notice of the
38 decision to the submitter and the person requesting the designated information. A person
39 aggrieved by a decision of the department may appeal only to the Superior Court in
40 accordance with the provisions of section 346. All information provided by the
41 department to the municipality under this subsection is confidential and not a public
42 record under Title 1, chapter 13. In the event a request for such information is submitted
43 to the municipality, the municipality shall submit that request to the commissioner to be
44 processed by the department as provided in this subsection.

1 **SUMMARY**

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

5 It clarifies that all the information provided upon request to the Director of the
6 Bureau of Health within the Department of Health and Human Services about toxic or
7 hazardous substances in use or present at a specific location is public. It requires the
8 director to release the information that is public upon request to any requester, and it
9 repeals the requirement that the requester reside within 50 miles of the specific location.

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

13 It requires that a report of the State Board of Arbitration and Conciliation in a labor
14 dispute must be released 15 days after its receipt by the Governor and the Executive
15 Director of the Maine Labor Relations Board if the conciliation process is not successful.

16 It repeals language authorizing the Secretary of State to adopt rules relating to
17 maintenance and use of data processing files concerning motor vehicles as the
18 confidentiality of personal information is already protected under federal law.

19 It repeals a provision relating to the Secretary of State's motor vehicle information
20 technology system because the confidentiality of the system is already addressed in
21 another provision of law.

22 It removes language regarding confidentiality of records for unmarked law
23 enforcement vehicles that is redundant with another section of law.

24 It repeals language making mercury reduction plans for air emission sources emitting
25 mercury confidential.

26 It repeals language making hazardous air pollutant emissions inventory reports
27 confidential.