



Maine Freedom of Information Coalition

Sen. Carney, Rep. Kuhn, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am here today on behalf of the Maine Freedom of Information Coalition, on whose board I serve as president, against LD 1399, An Act to Allow Action Against a Person Violating the Confidentiality of an Executive Session of a Public Body or Agency.

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Maine's Freedom of Access Act is quite clear on the requirement for confidentiality in an executive session, both for discussion and documents, and perhaps there *should* be hard penalties for violating confidentiality specific to executive sessions, but the MFOIC does not believe banning violators from attending sessions or withholding access to information is the solution.

Civil penalties for violation of any section of FOAA already exist in Maine law, under Title 1, Chapter 13, §410 – which would include violating the confidentiality of an executive session – starting with a \$500 fine for the first violation and increasing to \$1,000 and then to \$2,000 for subsequent violations within specific time periods. This penalty tier is specifically designed to discourage serial violators by targeting pocketbooks.

Under the language before you, if a hearing were to take place and a 2/3 vote of the members present were to find a violation has occurred, the offender would be banned from participating in future executive sessions and be denied access to confidential information on specific topics, past or future.

What the means is that, when the body convenes in public session to vote on an issue that first came before it in an executive session – for instance, suspension of a student, voting whether to uphold a complaint against a public employee, a decision on whether to acquire property or to approve a labor contract, voting on whether to pursue a lawsuit and more – a person who would have been barred from attending executive sessions or having access to any confidential materials discussed during the session would be expected to vote on these important issues without fine details or full context of matters discussed by other members of the board in executive session.

Imagine expecting a school board member to vote on the expulsion of a student without hearing accusations against and defense of the student. Or of voting on a labor contract without having heard the negotiations that brought the contract forward, or weighing in on a settlement offer stemming from active litigation without knowing what concessions or agreements may have been made. It would require the public official – the violator – to vote from a position of ignorance of the facts of critical matters as discussed in executive session, which goes against the public good.

For a couple of decades now the Right to Know Advisory Committee, on which I serve, has examined – nearly on an annual basis – penalties for FOAA violations, often at the request of the Judiciary Committee.

The MFOIC recommends that this bill be forwarded to RTK for research and consideration, and that RTK be asked to bring a recommendation back to Judiciary next year.

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The **Maine Freedom of Information Coalition** is a broad coalition of public access advocates who strive to educate Maine citizens and legislators about the rights and responsibilities of citizens in accessing information so they may participate more fully in our democracy. MFOIC supports open access to government information, supports those who exercise their rights to access government information under Maine's Freedom of Access Act, and periodically conducts audits of government agency practices in making government information available according to the spirit and letter of FOAA.