

Right to Know Advisory Committee  
November 29, 2012  
Meeting Summary

Convened 1:10 p.m., Room 438, State House, Augusta

Present:

Sen. David Hastings  
Rep. Joan Nass  
Perry Antone  
Shenna Bellows  
Joe Brown  
Richard Flewelling  
AJ Higgins  
Bill Logan  
Judy Meyer  
Kelly Morgan  
Mike Cianchette  
Mal Leary  
Harry Pringle

Absent:

Linda Pistner  
Mary Ann Lynch

Staff:

Curtis Bentley  
Colleen McCarthy Reid  
Peggy Reinsch

**Introductions**

Senator Hastings called the meeting to order and asked all the members to introduce themselves.

**Discussion of Public Records Exception Subcommittee Recommendations; Public-private partnership projects**

Shenna Bellows reviewed the background of the subcommittee's discussion on to what extent documents associated with public-private partnership projects should be open to the public. Ms. Bellows restated the minority view of the subcommittee that the confidentiality provision regarding these projects should be repealed entirely. Perry Antone restated the majority view of the subcommittee that there should be no changes to the law because trade secrets and business ideas need to be protected as preliminary proposals go through the process.

During discussions, some committee members felt the public did not have adequate time to review proposals because once the Maine Department of Transportation (MDOT) determines a private entity meets certain standards its proposal is turned into a bill for submission to the Legislature. Others stressed that the importance of public-private projects

and cautioned that the Advisory Committee should not propose anything that might deter private entities from participating in those projects.

Bruce Van Note, Deputy Commissioner, Maine Department of Transportation, expressed concern that if the confidentiality provision is repealed no private entity would submit a proposal for consideration because information in the proposal would be available to its competitors. Similarly, opening proposals up sooner to the public would likely discourage private entities from submitting proposals to MDOT. He also stated that MDOT was involved in drafting the confidentiality provision of the law and in its review in front of the Joint Standing Committee on the Judiciary before it was passed by the Legislature. Mr. Van Note said current law strikes a good balance between protecting proprietary information and the public's interest in an open process. He stated the MDOT's role is up-front on technical and engineering concerns and whether a proposal should go forward is for the Legislature to decide.

It was proffered that the public interest would be better served by making the information public before a proposal becomes a bill so that other entities can compete for the project. Mr. Van Note responded that he was confident competitors would make themselves known to the Legislature and the legislative process would work things out.

Ms. Bellows made a motion that was seconded by Mr. Higgins to accept the subcommittee's minority report to repeal the provision that makes information provided to MDOT confidential until the project proposal is complete. While there was some support on the committee for the motion others felt an outright repeal of the confidentiality provision went too far and would deter private parties from participating the process.

The motion failed 5 to 8 with members voting as follows. Ms. Bellows, Mr. Higgins, Mr. Leary, Ms. Meyer and Ms. Morgan voted in favor of the motion and Mr. Antone, Mr. Brown, Mr. Cianchette, Mr. Flewelling, Sen. Hastings, Mr. Logan, Rep. Nass and Mr. Pringle voted in opposition to the motion.

Mr. Pringle made a motion to add a provision to the law that would require MDOT to give notice of the project at least 30 days prior to introducing a bill to the Legislature. During discussion on the motion, the point was raised that as a practical matter this may already be occurring but suggesting a specific time period would ensure some "breathing room" to give the public an opportunity to comment on the agreement before it goes to the Legislature. Some members suggested increasing the waiting period to 60 days because 30 days may not allow enough time. Others thought 60 days was going too far because the public would have an additional chance to comment when the bill proposing the agreement is given a public hearing before the appropriate legislative committee.

Mr. Van Note said this is a policy matter for the Legislature to work out but he did not feel the proposed 30 day waiting period would negatively affect public-private partnerships.

The motion passed on a 7 to 6 vote as follows. Ms. Bellows, Mr. Flewelling, Mr. Leary, Sen. Hastings, Ms. Meyer, Ms. Morgan and Mr. Pringle voted in favor of the motion and Mr. Antone, Mr. Brown, Mr. Cianchette, Mr. Higgins, Mr. Logan and Rep. Nass voted in opposition to the motion. Mr. Antone, Mr. Brown, Mr. Cianchette, Mr. Logan and Rep.

Nass stated that they supported making no changes to the law. Shenna Bellows stated that she preferred to repeal the entire confidentiality provision.

### **Annual Report**

The Advisory Committee reviewed the draft annual report and made a number of clarifying changes to the draft. The Advisory Committee directed staff to send the final version of the report to committee members by December 4 for a final review.

### **Future Meetings**

The Advisory Committee did not assign another meeting date for 2012. Senator Hasting adjourned the meeting at 2:43 p.m.

Respectfully submitted,  
Peggy Reinsch, Colleen McCarthy Reid and Curtis Bentley