

DRAFT

Right to Know Advisory Committee  
Legislative Subcommittee  
December 19, 2007  
(Draft) Meeting Summary

Present:

Chris Spruce, Chair  
Shenna Bellows  
Karla Black  
Linda Pistner  
Harry Pringle

| Absent:

Suzanne Goucher  
Mal Leary

Staff:

Colleen McCarthy Reid  
Peggy Reinsch

Chris Spruce, Chair of the Legislative Subcommittee, called the meeting to order at 9:13 a.m.

Public Records Exceptions

The legislative subcommittee took up the tabled public records exceptions for which the members had requested additional information. Four of the existing exceptions are located in Title 7 (agriculture statutes), and one is in Title 4 concerning Judicial Branch complaints. Ted Glessner, the State Court Administrator and a member of the Advisory Committee presented his information to the full Advisory Committee later in the morning.

- 7 MRSA §1052, concerning genetically engineered plants and seeds  
Ned Porter, Deputy Commissioner of Agriculture, responded in writing to the subcommittee's request for additional information. His response noted that the Department is not in possession of the records and it is not clear that even during an investigation the Department would be able to do anything more than inspect the list. Shenna Bellows has spoken to Russell Libby of the Maine Organic Farmers and Gardeners Association, who informed her that issues related to genetically engineered seeds and food are important to the public right now. LD 1650, An Act To Amend the Laws Concerning Genetically Engineered Plants and Seeds, has been carried over by the Agriculture, Conservation and Forestry Committee. Ms. Bellows stated that she does not believe that the current law is an acceptable exception. Mr. Spruce mentioned that it is not clear what is being protected, since the records are not in the hands of the Department. Karla Black acknowledged that she is reluctant to support repeal or amendment without more relevant background information, and proposed that, because of the heightened public interest, the subcommittee recommend that the Judiciary Committee review the proposal and collect comments in a public forum. Mr. Spruce agreed, and reiterated that the Agriculture, Conservation and Forestry Committee be consulted.

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Subcommittee recommendation: Refer 7 MRSA §1052 to the Judiciary Committee for public comment and review, and consultation with the Agriculture, Conservation and Forestry Committee.

- 7 MRSA §4204 and §4205 concerning nutrient management plans

The subcommittee had questioned whether the exceptions in section 4204 and section 4205 are necessary because section 20 provides broad authority for the Commissioner of Agriculture to provide confidentiality protection to information provided to the Department for which confidentiality is requested. Mr. Porter contacted the Attorney General's office, and the Assistant Attorney General who works with the Department of Agriculture believes that section 20 does apply, but that it is within the Commissioner's discretion to designate the information as confidential. Mr. Porter indicated that the Nutrient Management Board may have useful comments for the committee, and suggested that the subcommittee request input from that board. Ms. Bellows noted the public safety interest in dealing with waste and manure, and the risk to water contamination it raises. Mr. Spruce suggested that this is another area in which the Judiciary Committee could benefit from more information from all the interested parties before making a decision.

Subcommittee recommendation: Refer 7 MRSA §4204 and §4205 to the Judiciary Committee for public comment and review, and consultation with the Agriculture, Conservation and Forestry Committee.

- 7 MRSA §607 concerning information held or requested by the Board of Pesticides Control Henry Jennings, Direct of the Board of Pesticides Control, responded to the subcommittee's request for additional information about 7 MRSA section 607. Subsection 5-A provides that the information covered by subsection 3 (pesticide formulas), subsection 4 (test results) and subsection 5 (additional information requested by the Department) is confidential. Ms. Bellows had discussed the pesticide confidentiality provisions with Mr. Libby of the Maine Organic Farmers and Gardeners Association, and provided that pesticide formulas are treated as secret all around the world, so she dropped her objection to keeping subsection 3 information confidential. She also accepted subsection 5 information as appropriately protected. Ms. Bellows recommended that subsection 4, which refers to test results provided to the Department at the Department's request, should be struck from the confidentiality designated in subsection 5-A. Mr. Spruce stated that he fully understood her concerns but was uncomfortable taking that step without additional input. Ms. Bellows stressed that if the Advisory Committee is to be an effective watchdog of the public's right to know, some exceptions must be reviewed in greater depth in order to serve the public interest. Without taking anything away from the Agriculture, Conservation and Forestry Committee, she asserted that in principle the Advisory Committee cannot simply rely on a legislative committee to have the same perspective and reach the same conclusions.

Subcommittee recommendation: Refer 7 MRSA §607, subsection 5-A to the Judiciary Committee for public comment from all stakeholders on all sides and review, and consultation with the Agriculture, Conservation and Forestry Committee. In addition, two members support recommending amended language (deleting the reference to subsection 4 in subsection 5-A) to the Judiciary Committee.

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The subcommittee then worked through the language drafted by staff to address the language changes supported by the subcommittee at the December 12th meeting. The subcommittee discussed at length the confidentiality provisions to apply to OPEGA, with Ms. Bellows objecting to the broader formulation of confidentiality for all work papers. The subcommittee agreed to submit the proposed amended language as descriptive of the substance of the concerns about the current law, leaving the Judiciary Committee to weigh the public and political interests in developing final language. The subcommittee finally recommended changes to the following statutes.

- 1 MRSA §402, sub-§3, ¶O (personal contact information)
- 3 MRSA §997 (OPEGA)
- 4 MRSA §809 (AG investigations of unauthorized practice of law)
- 5 MRSA §7070 (state employee and applicant records)
- 5 MRSA §15321 (Maine Technology Centers)
- 7 MRSA §607 (Board of Pesticides Control - minority recommends amendment)
- 7 MRSA §2992-A (Maine Dairy Promotion Board)
- 7 MRSA §2998-B (Maine Dairy and Nutrition Council)

The subcommittee reviewed the existing public records exceptions that should be reviewed by the Judiciary Committee, and agreed to recommend submitting all of the provisions, with comment.

- 1 MRSA §402, sub-§3, ¶B (general exception for privileged records)
- 1 MRSA §402, sub-§3, ¶N (Social Security numbers)
- 5 MRSA §1545 (outstanding unpaid checks issued by the State)
- 5 MRSA §1976 (records created or stored on State Government computer system - suggested language, but not agreed to)
- 5 MRSA §22009 (Baxter Compensation Authority claimant information)
- 7 MRSA §607 (Board of Pesticides Control, test information)
- 7 MRSA §1052 (genetically engineered food and seeds)
- 7 MRSA §4204 and §4205 (nutrient management plans)

### LD 1881

The legislative subcommittee agreed to discuss during the Advisory Committee meeting the issues raised by the latest draft of legislation on government responses to public records requests.

The subcommittee meeting was adjourned at 10:12 a.m.

Prepared by Peggy Reinsch and Colleen McCarthy Reid