

**NATHAN M. CARLOW**  
STATE REPRESENTATIVE

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002  
(207) 287-1440  
(207) 287-1440 (FAX)



**Maine State Legislature**  
AUGUSTA, MAINE 04333-0002

TESTIMONY BEFORE THE  
JOINT STANDING COMMITTEE ON  
JUDICIARY

**-- IN SUPPORT --**

LD 1399 (HP 921) AN ACT TO ALLOW ACTION AGAINST A PERSON  
VIOLATING THE CONFIDENTIALITY OF AN EXECUTIVE SESSION OF A  
PUBLIC BODY OR AGENCY

April 11, 2025

Thank you, Madam Chairwoman, and honorable colleagues.

I am Nathan Carlow, I hail from the town of Buxton, Maine, and I am pleased to represent the people of Buxton and Hollis, Maine, in the Maine State Legislature.

I want to thank the committee for considering my testimony virtually this afternoon.

Today, I am before the committee to present L.D. 1399, *An Act to Allow Action Against a Person Violating the Confidentiality of an Executive Session of a Public Body or Agency*.

I want to affirm that transparency in government is more than a guiding principle, it is the very cornerstone of American and Maine politics. The public has a fundamental right to know how decisions are made, how policies are formed, and how elected leaders conduct the people's business. Open government fosters trust, invites accountability, and strengthens civic engagement.

That said, Title 1 of the Maine Revised Statutes specifies circumstances in which confidentiality is not only appropriate but essential. Executive sessions – whether to discuss legal matters, personnel and hiring decisions, or public safety concerns – serve an important and legitimate function within public institutions. These sessions are not meant to obscure; they are meant to allow for frank, responsible, and limited discussion in matters where premature or unauthorized disclosure could cause harm or compromise the integrity of the decision-making process.

The bill before you preserves the fundamental tenets of the Freedom of Access Act, and recognizes the dangers in disclosing confidential information to unauthorized third parties. It offers a narrowly tailored remedy for instances where the confidentiality of an executive session has been violated. Specifically, it allows a public body or agency to act on complaints alleging the unauthorized disclosure or improper use of confidential information by conducting a thorough investigation and then an adjudicatory proceeding to decide what action to take, if any.

This is not intended to be punitive, but a practical safeguard – one that respects due process and preserves the ability of public bodies to conduct sensitive deliberations responsibly. Importantly, it does not curtail public access to information that should rightfully be disclosed. Rather, it addresses a very specific and consequential breach: the unauthorized disclosure of confidential discussions held under lawful protections.

The statute governing executive sessions is already clear in its intent to protect the confidentiality of executive sessions. What is lacking, however, is any meaningful mechanism for enforcement when a violation occurs. Under current law, even in cases where a person willfully discloses confidential executive session material – undermining trust, breaching duty, and harming individuals and institutions – public bodies have little recourse.

I spoke with a school superintendent at the Maine School Management Conference held in 2023, and I asked him about this very issue. He told me that when he suspected a school board member of abusing confidential information, the only thing he could do in response was to withhold further confidential communications with the entire school board – even information which was directly relevant to questions then under consideration.

The question central to the committee's decision on this bill is whether or not attendance at an executive session is a right granted *ex officio*, or is it a privilege which may be forfeited by repeated, malicious, or egregious misconduct.

I argue the latter and urge the committee to do so likewise.

Thank you, Madam Chairwoman.

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