

LD 753 An Act To Increase Transparency in the Legislature by Removing Certain Freedom of Access Act Exemptions

To: Members, Joint Standing Committee on State and Local Government

From: Lynne Caswell, Esq., Legislative Analyst

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electronic file <http://legislature.maine.gov/ctl/SLG/04-07-2021?panel=0&time=1&sortdir=0&sortby=2>**SUMMARY**

The Freedom of Access Act currently provides that all records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees are not considered public records during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over. This bill removes that provision.

The bill retains the provision in current law that exempts from the definition of "public records" legislative papers and reports until signed and publicly distributed.

TESTIMONY¹**Sponsor:** Representative Connor

- Elected officials owe greatest degree of transparency to the public

Proponents: Maine Press Association by Judith Meyer; Ken Capron

- Transparency is critical to public access

Opponents: none**NFNA:** none**INFORMATION / POTENTIAL ISSUES****A. OTHER STATES TREATMENT OF LEGISLATIVE MATERIALS**

In 2005, NCSL produced a document on the confidentiality policies for state legislature.² That document identified 36 states with some form of confidentiality policy or statute applicable to legislative materials. (See Attachment A)

¹ The section is not intended to reflect all comments and may include unintentionally errors.

² https://www.ncsl.org/documents/lss/Confidentiality_Policies.pdf

B. HISTORY OF §402, SUB-§3, ¶C³

1975 Enactment - The portion of §402, sub-§3, ¶C that this bill seeks to repeal was originally enacted in 1975 as P.L. 1975, ch. 623.⁴

§ 402-A. Public records defined

The term “public records” shall mean any written, printed or graphic matter, or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business, or contains information relating to the transaction of public or governmental business, **except:**

1. Records designated confidential. Records that have been designated confidential by statute.

2. Records within the scope of privilege against discovery. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials, if the records or inspection thereof were sought in the course of a court proceeding.

3. **Legislative records and reports. Records, working papers, interoffice and intraoffice memoranda used or maintained by any legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which such proposal or report is prepared.**

This language was not that originally proposed by the committee. The original provision did not exempt materials created in the legislative process.

3. Intraoffice memoranda and working notes of public official.

Intraoffice memoranda and working notes and papers of a public official, except public officials involved in the legislative process, that are not the sole public record of action, or of any information considered in taking action, on any matter committed to the discretion of that official.

³ A full history of Maine’s Right to Know Laws is available at <https://www.maine.gov/legis/lawlib/ldl/righttoknow/index.html>

⁴ http://ldc.mainelegislature.org/Open/Laws/1975/1975_PL_c623.pdf

This original language was discussed on the Senate Floor on June 24, 1974 when Senator Collins from Knox said:

“The very last provision was changed so that the confidentiality of inter-intraoffice memoranda would not include public officials involved in the legislative process. This would mean that in the future, for example, if you file a bill for drafting, that it is not secret and confidential until you extract it from the files. It is a public record. I think that should be brought to your attention.”

On June 25th, the House and Senate debated the language that was finally enacted which exempted legislative materials from FOAA during the session. (See Attachments B and C, respectively, for House and Senate debates).

1991 Amendment - The next change to this section of law occurred in 1992 when the legislature considered LD 2290. This bill, enacted as P.L. 1991 ch. LD 753, amended §402, sub-§3, ¶C as follows:

Sec. 2. 1 MRSA §402, sub-§3, ¶C, as amended by PL 1977, c. 696, §9, is further amended to read:

C. Records Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium legislative session or sessions in which the proposal or report is papers or reports are prepared or considered or to which the paper or report is carried over;

See title page for effective date.

The discussion of this bill did not address these changes.

C. RIGHT TO KNOW ADVISORY COMMITTEE (1 MRSA §411)

The RTKAC is required to review existing public records exceptions in a continuous cycle. The public records exception in Title 1, §402, sub-§3, ¶ C were reviewed in 2007 and in 2017. The full RTKAC voted to make no changes to paragraph C in both years.

The Committee’s duties also include:

1. making recommendations for changes in the statutes to improve the laws;
2. making recommendations on best practices to maintain the integrity of the freedom of access laws and their underlying principles; and

3. serving as an adviser to the Legislature when legislation affecting public access is considered

D. WHAT DOES THE REMAINING LANGUAGE MEAN AND HOW WILL IT IMPACT OPERATION OF THE LEGISLATURE?

“Legislative papers and reports until signed and publicly distributed in accordance with legislative rules”

E. FOAA PROCESS, 1 MRSA CH. 13

OAG Public Access Ombudsman, Brenda Kielty, Esq.

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.



Confidentiality Policies (Attorney-Client Privilege)

A request for information on confidentiality policies was posted to the electronic discussion group of the Legal Services Staff Section in April 2005. Where possible, I have included statutory information we have found since that date.

Alabama

One trial court has applied the Public Records Law to the following legislative officers: *Clerk of the State House and Secretary of the State Senate*: Remote access telephone assignment records. *Birmingham News Co. v. Swift*, CV 88-1390 G (Cir. Ct. of Montgomery County, Ala., Aug. 31, 1988).

Other statutory exclusions.

15. Government

- a. *Code of Ethics*: A complaint filed pursuant to this chapter and all other information and documents. Alabama Code §§ 36-25-1(7), -4(b) (Supp. 1996) (confidential records).
- b. *Governor*: All reports, advice, counsel, or recommendations of the governor's councillor. Alabama Code § 36-13-13(b) (1991) (confidential records).
- c. *Legislative reference service*: All requests for assistance and the contents thereof, any communications regarding such requests, any materials related to such requests, and any work product related to or arising from such request, *until waived in whole or in part*. Alabama Code § 29-7-6(c)(1) (1998) (confidential records); *see also Bassett v. Newton*, 658 So. 2d 398 (Ala. 1995) (when constitutionally required notice of intent to pass general law applying to only one municipality was given, information concerning the bill and its contents were released and the statutory confidentiality of a legislator's request for assistance from LRS in drafting the bill was waived) (§ 29-7-6 was revised after this decision was released to limit the holding of the case.).

Alabama Statute

Section 29-7-6

Powers and duties; requests for assistance; state agencies and departments to submit reports.

(a) The Director of the Legislative Reference Service shall have all of the following powers and duties:

- (1) To respond to questions concerning the organization and administration of state government or the operation of constitutional or statutory law.
- (2) To render assistance in the drafting of bills and amendments to bills.
- (3) To make studies and reports on problems of state and local government in Alabama, either upon request or on his or her own initiative.
- (4) To conduct a continuous analysis of the scope, effect, and methods of federal, state, and local government operations in Alabama and make those recommendations to the Legislative Council as he or she determines to be appropriate.
- (5) To prepare, when directed by the Legislature, a compilation or code of the statutes of Alabama.

(6) To act as Code Commissioner in determining the content of the code and any supplements thereto and to prepare an annual codification bill to adopt changes to the code enacted at prior sessions of the Legislature.

(7) To enter into a printing contract on behalf of the State of Alabama, when approved and directed by the Legislative Council, to publish the official code of the statutes of Alabama.

(8) To perform any other tasks related to service to the Legislature of Alabama as may be required by the Legislative Council.

(b) Requests for assistance under subdivisions (1) and (3) of subsection (a) shall be prepared only for a member of the Legislature or the Lieutenant Governor, or a person authorized by a member of the Legislature or the Lieutenant Governor. Requests for assistance under subdivision (2) of subsection (a) shall be prepared only for a member of the Legislature, the Lieutenant Governor, or the Governor, or a person authorized by a member of the Legislature, the Lieutenant Governor, or the Governor. A request for assistance made by a member of the Legislative Council or a person authorized by a member of the Legislative Council shall be given priority over any other request. A request for assistance made by a member of the Legislature or a person authorized by a member of the Legislature shall be given priority over any other requests other than by members of the Legislative Council. The director may respond to other requests for assistance, including, but not limited to, requests from other state governments, as he or she determines to be in the best interests of the state.

(c)(1) Communications concerning a request for assistance between the director and each officer and employee of the Legislative Reference Service and an individual authorized by this section to make a request for assistance shall be privileged and confidential. When responding to a request for assistance, the director and each officer and employee of the Legislative Reference Service shall maintain this privilege. All requests for assistance and the contents thereof, including, but not limited to, the fact a request was made, any materials related to the request, and any work product related to or arising from the request, shall be confidential and privileged until this privilege is waived. The privilege is waived when the Legislative Reference Service receives instructions to release the material from the member of the Legislature in whose name the request for assistance was made, or the Lieutenant Governor for a request for assistance made in the name of the Lieutenant Governor, or the Governor for a request for assistance made in the name of the Governor.

(2) The introduction of a bill prepared by the Legislative Reference Service is a waiver of the privilege imposed by this subsection only with respect to the contents of the bill.

(3) The advertising of a local bill by synopsis or in a form less than in its entirety is not, in and of itself, a waiver of the privilege for the purposes of this subsection.

(d) In order that the purposes of this chapter shall be best served, each department and agency of State of Alabama government shall furnish to the Legislative Reference Service copies of all monthly, quarterly, annual, biennial, quadrennial, and other regular reports which it is required by law to prepare for other agents or officials of the state government and copies of all printed publications that it issues. Each department or agency of State of Alabama government shall comply with requests for supplementary reports made by the Legislative Reference Service and approved by the Legislative Council. Each department and agency of State of Alabama government shall make its internal records available to the Legislative Reference Service upon request.

(Acts 1945, No. 152, p. 190, §2; Acts 1949, No. 427, p. 609; Acts 1993, No. 93-618, p. 1020, §1; Acts 1995, No. 95-567, p. 1185, §1.)

Alaska (manual)

NEUTRALITY AND CONFIDENTIALITY

In the performance of its duties, the division of legal and research services assists all members of the legislature in a neutral capacity. As required by AS 24.20.050, "members of the professional staff shall maintain the integrity of the (legislative) council's functions and services . . . by refraining from joining or supporting any partisan or political organization, faction, or activity that would tend to undermine the essential nonpartisan nature of their functions and services." In addition to this nonpartisanship in the public arena, the staff is neutral with regard to the policies involved in legislative work requests. A work request is processed without regard to the political leanings of its requester.

As with neutrality, confidentiality in relation to work requests is required by statute. (See AS 24.20.100) The division staff treats all work requests as confidential unless the legislator requesting the work directs or permits disclosure to others.

Arkansas (manual)

1.1 BUREAU DRAFTING OF GENERAL LEGISLATION.

(a) NONPARTISAN SERVICE.

The legal staff of the Bureau of Legislative Research prepares legislation for members of both the House of Representatives and the Senate. The Bureau serves the members of the General Assembly on a nonpartisan basis. Bureau attorneys provide advice to the legislators but it is not their role to be an advocate for or against an idea or a bill.

(b) CONFIDENTIALITY.

Members of the General Assembly have a right to confidentiality in their working papers and correspondence. The drafting staff must protect the member's right to confidentiality. The drafting staff must not release a draft without permission of the lead sponsor or, if a sponsor's name has not been added to the bill, the member who made the draft request. The drafter assigned to the legislation should avoid consulting persons outside the Bureau unless the member has authorized the staff attorney to do so.

California (manual)

The law provides that "[n]either the Legislative Counsel nor any employee of the bureau shall oppose or urge legislation." This requirement of nonpartisanship, together with the confidentiality assured by the attorney-client relationship, enable the Office of Legislative Counsel to provide legal services, including the preparation of legislation, to each of the 120 Members of the Legislature and the Governor without regard to partisan political considerations.

California Statute (excerpts)

6275. It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

6276. Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

6276.28. Legislative Counsel records, subdivision (m), Section 6254, Government Code.

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

Colorado - http://www.state.co.us/gov_dir/leg_dir/olls/HTML/attorney_client_relationship.htm

We have a statute requiring our staff to maintain confidentiality of bills and amendments.

Bill requests and amendments are confidential prior to their introduction and can not be disclosed without the member's consent. This section is 2-3-505, C.R.S.

2-3-505. Requests for drafting bills and amendments - confidential nature thereof - lobbying for bills.

Statute text

(1) All requests made to the office for the drafting of bills or amendments thereto shall be submitted, either in writing or orally, by the legislator or by the governor or the governor's representative making the request, with a general statement respecting the policies and purposes which the person making the request desires the bill or amendment to accomplish. The office shall draft each bill or amendment to conform to the purposes so stated or to supplementary instructions of the person making the original request.

(2) (a) Prior to the introduction of a bill or amendment in the general assembly, no employee of the office shall reveal to any person outside the office the contents or nature of such bill or amendment, except with the consent of the person making the request. Nothing in this section shall prohibit the disclosure to the staff of any legislative service agency of such information concerning bills or amendments prior to introduction as is necessary to expedite the preparation of fiscal notes, as provided by the rules of the general assembly, but such staff shall not reveal the contents or nature of such bills or amendments to any other person without the consent of the person making the request.

(b) All documents prepared or assembled in response to a request for a bill or amendment, other than the introduced version of a bill or amendment that was in fact introduced, shall be considered work product, as defined in section 24-72-202 (6.5), C.R.S.

(c) (l) The final version of all documents prepared or assembled by the office for a member of the general assembly but not in response to a request for a bill or amendment and not containing legal analysis or expressing a legal opinion or conclusion shall not be considered work product as defined in section 24-72-202 (6.5), C.R.S. Except as otherwise provided in paragraph (e) of this subsection (2), the final version of such documents shall be a public record. These documents include, but are not limited to:

(A) Comparisons of existing law with the provisions of any bill or amendment, comparisons of any bills or amendments with other bills or amendments, comparisons of different versions of bills or amendments, and comparisons of the laws of this state with laws of other jurisdictions;

(B) Compilations of existing public information, statistics, or data;

(C) Compilations or explanations of general areas or bodies of law, legislative history, or legislative policy.

(II) Prior to delivery of the final version of such a document to the member who requested it, no employee of the office shall reveal to any person outside the office the contents or nature of the document, except with the consent of the member making the request.

(d) If a member of the general assembly requests a legal opinion or document from the office that is the same as or substantially similar to a legal opinion or document previously requested by another member, the office may produce an identical or substantially similar legal opinion or document for the second member. The office shall not disclose the identity of any member who made a previous request.

(e) A member may request that the final version of a document that would otherwise become a public record in accordance with paragraph (c) of this subsection (2) remain work product.

(3) No employee of the office shall lobby, personally or in any other manner, directly or indirectly, for or against any pending legislation before the general assembly.

Source: L. 68: R&RE, p. 141, § 178. C.R.S. 1963: § 63-3-5. L. 88: Entire section amended, p. 308, § 11, effective May 23. L. 96: Entire section amended, p. 1479, § 2, effective June 1. L. 97: (2) amended, p. 1103, § 1, effective August 6.

Florida

Unless the legislature promulgates a contrary legislative rule, the public records law applies to records made or received in connection with official business by legislators. *See* Op. Att'y Gen. Fla. 75-282 (1975) (in the absence of a House or Senate rule to the contrary, Chapter 119 applies to legislative records); Op. Att'y Gen. Fla. 72-416 (1972) (the Legislature may provide by rule for the confidentiality of a report of a special master appointed by the Senate to conduct a suspension hearing until such time as the Senate meets to debate the suspension).

In addition, various statutory exemptions apply to legislative records. *See* Fla. Stat. sec. 15.07 (1995) (exempting the journal of the executive session of the Senate from disclosure except upon order of the Senate itself or some court of competent jurisdiction); Fla. Stat. sec. 11.26(1)(2) (1995) (legislative employees forbidden from revealing the contents of any requests for services made by member of legislature).

FL Statute

11.0431 Legislative records; intent of legislation; exemption from public disclosure.--

(1) It is the policy of the Legislature that every person has the right to inspect and copy records of the Senate and the House of Representatives received in connection with the official business of the Legislature as provided for by the constitution of this state. To that end, public records shall be open to personal inspection and copying at reasonable times except when specific public necessity justifies that public records be exempt from such inspection and copying.

(2) The following public records are exempt from inspection and copying:

(a) Records, or information contained therein, held by the legislative branch of government which, if held by an agency as defined in s. 119.011, or any other unit of government, would be confidential or exempt from the provisions of s. 119.07(1), or otherwise exempt from public disclosure, and records or information of the same type held by the Legislature.

(b) A formal complaint about a member or officer of the Legislature or about a lobbyist and the records relating to the complaint, until the complaint is dismissed, a determination as to probable cause has been made, a determination that there are sufficient grounds for review has been made and no probable cause panel is to be appointed, or the respondent has requested in writing that the President of the Senate or the Speaker of the House of Representatives make public the complaint or other records relating to the complaint, whichever occurs first.

- (c) A legislatively produced draft, and a legislative request for a draft, of a bill, resolution, memorial, or legislative rule, and an amendment thereto, which is not provided to any person other than the member or members who requested the draft, an employee of the Legislature, a member of the Legislature who is a supervisor of the legislative employee, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.
- (d) A draft of a bill analysis or fiscal note until the bill analysis or fiscal note is provided to a person other than an employee of the Legislature, a contract employee or consultant retained by the Legislature, or an officer of the Legislature.
- (e) A draft, and a request for a draft, of a reapportionment plan or redistricting plan and an amendment thereto. Any supporting documents associated with such plan or amendment until a bill implementing the plan, or the amendment, is filed.
- (f) Records prepared for or used in executive sessions of the Senate until 10 years after the date on which the executive session was held.
- (g) Portions of records of former legislative investigating committees whose records are sealed or confidential as of June 30, 1993, which may reveal the identity of any witness, any person who was a subject of the inquiry, or any person referred to in testimony, documents, or evidence retained in the committee's records; however, this exemption does not apply to a member of the committee, its staff, or any public official who was not a subject of the inquiry.
- (h) Requests by members for an advisory opinion concerning the application of the rules of either house pertaining to ethics, unless the member requesting the opinion authorizes in writing the release of such information. All advisory opinions shall be open to inspection except that the identity of the member shall not be disclosed in the opinion unless the member requesting the opinion authorizes in writing the release of such information.
- (i) Portions of correspondence held by the legislative branch which, if disclosed, would reveal: information otherwise exempt from disclosure by law; an individual's medical treatment, history, or condition; the identity or location of an individual if there is a substantial likelihood that releasing such information would jeopardize the health or safety of that individual; or information regarding physical abuse, child abuse, spouse abuse, or abuse of the elderly.
- (3) Any record created prior to July 1, 1993, which was not available to the public from the house, commission, committee, or office of the legislative branch that created the record, is exempt from inspection and copying until July 1, 1993. Prior to July 1, 1993, the presiding officer of each house shall determine which records held by that house should remain exempt from inspection and copying. The presiding officers of both houses shall jointly determine which records held by joint committees should remain exempt from inspection and copying. No later than July 1, 1993, the presiding officers shall publish a list of records that remain exempt from inspection and copying.
- (4) For purposes of this section, "public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by the legislative branch.
- (5) Nothing herein shall be construed to limit the authority of each house of the Legislature to adopt rules pursuant to Art. I, s. 24 of the State Constitution.

History.--s. 1, ch. 93-405.

11.26 Legislative employees; employment restrictions.--No employee of the Legislature shall:

- (1) Subject to the provisions of s. [11.0431](#) reveal to any person outside the area of the employee's direct responsibility the contents or nature of any request for services made by any member of the Legislature, except with the consent of the member making such request.
- (2) Give legal advice on any subject to any person, firm, or corporation, except members or staff of the Legislature.

(3) No full-time legislative employee shall be otherwise employed, except with the written permission of the presiding officer of the house by which he or she is employed. Employees of joint committees must have the permission of the presiding officers of both houses.

History.--s. 11, ch. 25369, 1949; s. 19, ch. 68-35; s. 26, ch. 69-52; s. 1, ch. 75-208; s. 2, ch. 93-405; s. 15, ch. 95-147; s. 19, ch. 96-318.

Georgia

We don't have a written policy on this in Georgia, but we treat all communications between the requesting member and the staff person as confidential. Even the fact that a bill or amendment has been drafted cannot be released to anyone, even leadership, if the sponsor has not "dropped" (made public) the bill.

Georgia Statute (excerpts)

50-18-72.

(a) Public disclosure shall not be required for records that are:

(8) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, provided that this exception shall not have any application with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly.

Hawaii Statutes (excerpts)

[§23G-4] Prohibitions. Neither the director nor any employee of the bureau shall reveal to any person outside of the bureau the contents of matters of any request or statement for services except upon request of the person making the request or statement. [L 1972, c 171, pt of §2]

Idaho Code

Idaho Statutes

9-340F. RECORDS EXEMPT FROM DISCLOSURE -- DRAFT LEGISLATION AND SUPPORTING MATERIALS, TAX COMMISSION, PETROLEUM CLEAN WATER TRUST FUND. The following records are exempt from disclosure:

(1) Records consisting of draft legislation and documents specifically related to such draft legislation or research requests submitted to the legislative services office by a member of the Idaho legislature for the purpose of placing such draft legislation into a form suitable for introduction as official proposed legislation of the legislature of the state of Idaho, unless the individual legislator having submitted or requested such records or research agrees to waive the provisions of confidentiality provided by this subsection.

(2) All papers, physical and electronic records and correspondence or other supporting materials comprising the work papers in the possession of the legislative services office or the director of legislative performance evaluations prior to release of the related final audit and all other records or materials in the possession of the legislative services office or the director of legislative performance evaluations that would otherwise be confidential or exempt from disclosure.

(3) Records consisting of draft congressional and legislative redistricting plans and documents specifically related to such draft redistricting plans or research requests submitted to the commission staff by a member of the commission for reapportionment for the purpose of placing such draft redistricting plan into form suitable for presentation to the full membership of the commission, unless the individual commission member having submitted or requested such plans or research agrees to waive the provisions of confidentiality provided by this subsection.

(4) Records that identify the method by which the Idaho state tax commission selects tax returns for audit review.

(5) Underwriting and claims records of the Idaho petroleum clean water trust fund obtained pursuant to section 41-4905, 41-4909, 41-4911A, 41-4912 or 41-4912A, Idaho Code. Provided however, that this subsection shall not prevent the Idaho petroleum clean water trust fund's submittal to the Idaho department of environmental quality, or other regulatory agencies

of information necessary to satisfy an insured's corrective action requirement under applicable federal or state standards in the event of a release into the environment from a petroleum storage tank; and provided further that nothing in this subsection shall prevent the Idaho petroleum clean water trust fund from providing auditing, reporting, or actuarial information as otherwise required of it pursuant to section 41-4919, 41-4925A, 41-4928, 41-4930, 41-4932, 41-4937 or 41-4938, Idaho Code.

Illinois Statute (excerpts)

(5 ILCS 140/7) (from Ch. 116, par. 207)

(Text of Section from P.A. 94-280)

Sec. 7. Exemptions.

(1) The following shall be exempt from inspection and copying:

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

Indiana

Unless covered by a specific exemption, all records of legislative bodies are subject to the Act. Ind. Code § 5-14-3-2. However, in a bizarre decision, the Indiana Supreme Court has held that separation of powers considerations prevent the courts from enforcing the access statutes against the Indiana General Assembly. *State ex rel. Masariu v. Marion Superior Court No.1*, 621 N.E.2d 1097 (Ind. 1993).

[Exemptions to the open records statute—see Ind. Code §§ 5-14-3-4(b)(1)-(18)]

(xiii) The work product of the Legislative Services Agency under personnel rules approved by the Legislative Council.

(xiv) The work product of individual members and the partisan staffs of the General Assembly.

Indiana Statute (excerpts)

IC 5-14-3-4

Records excepted from disclosure requirements; names and addresses; time limitations; destruction of records

Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

As added by P.L.19-1983, SEC.6. Amended by P.L.57-1983, SEC.1; P.L.34-1984, SEC.2; P.L.54-1985, SEC.3; P.L.50-1986, SEC.2; P.L.20-1988, SEC.12; P.L.11-1990, SEC.111; P.L.1-1991, SEC.38; P.L.10-1991, SEC.9; P.L.50-1991, SEC.1; P.L.49-1991, SEC.1; P.L.1-1992, SEC.11; P.L.2-1993, SEC.50; P.L.58-1993, SEC.4; P.L.190-1999, SEC.2; P.L.37-2000, SEC.2; P.L.271-2001, SEC.1; P.L.201-2001, SEC.1; P.L.1-2002, SEC.17; P.L.173-2003, SEC.5; P.L.261-2003, SEC.7; P.L.208-2003, SEC.1; P.L.200-2003, SEC.3; P.L.210-2005, SEC.1; P.L.1-2006, SEC.102; P.L.101-2006, SEC.4; P.L.2-2007, SEC.101; P.L.172-2007, SEC.1; P.L.179-2007, SEC.9; P.L.3-2008, SEC.29; P.L.51-2008, SEC.2; P.L.98-2008, SEC.4; P.L.120-2008, SEC.2; P.L.94-2010, SEC.1; P.L.170-2011, SEC.1.

Iowa

Iowa has an extensive confidentiality policy that begins at the bill request stage. A bill can be requested "confidentially". That means that neither the name of the legislator nor the title of the bill request is made public until/unless the legislator decides to introduce it (only a bill number appears on the public print-out of all requested bills). (Bills can also be requested on a non-confidential basis.) Bills requested on a confidential basis are not archived in the usual sense, if they were never introduced. They will be destroyed after a certain number of years (possibly five years). Whether or not a bill is requested on a confidential basis, communications between the drafter and the legislator (or other requestor, since departments and the governor can request bills, too) are confidential. All contents of the bill file are confidential, unless the requestor approves the release of those documents. Even if someone calls, and knows that a certain bill is imminent, the bill cannot be discussed, unless authorized to do so by the requestor. Staff cannot confirm or deny the existence of a bill or amendment request. Therefore, staff cannot reveal the nature of bill or amendment draft to legislative leadership and cannot tell a floor manager of a bill how many amendments have been requested.

Some legal battles have occurred on what can/must be released to the public. There was a lawsuit a couple of years ago seeking the phone records of legislators. The court eventually declined to compel production, in part because it would risk violating confidential communications between legislators and counsel. Basically, unless a document is released according to the policy referenced above, or is generally a document produced for the public, staff probably wouldn't make it available to the public. Staff does not produce analyses of legislation.

Kansas

2. Discussion of each exemption.

t. Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed. K.S.A. 45-221(a)(20).

u. Records of a public agency having legislative powers pertaining to proposed legislation. K.S.A. 45-221(a)(21).

v. Records of a public agency having legislative powers, which pertain to research prepared for one or more members of such agency. K.S.A. 45-221(a)(22).

Kansas Statute

45-221 (Excerpts)

Chapter 45.--PUBLIC RECORDS, DOCUMENTS AND INFORMATION

Article 2.--RECORDS OPEN TO PUBLIC

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open. [See Revisor's Note] (a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court to restrict or prohibit disclosure.

(2) Records which are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure.

(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.

(5) Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law.

(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.

(7) Library, archive and museum materials contributed by private persons, to the extent of any limitations imposed as conditions of the contribution.

(8) Information which would reveal the identity of an individual who lawfully makes a donation to a public agency, if anonymity of the donor is a condition of the donation.

(20) Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.

(21) Records of a public agency having legislative powers, which records pertain to proposed legislation or amendments to proposed legislation, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(22) Records of a public agency having legislative powers, which records pertain to research prepared for one or more members of such agency, except that this exemption shall not apply when such records are:

(A) Publicly cited or identified in an open meeting or in an agenda of an open meeting; or

(B) distributed to a majority of a quorum of any body which has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain.

(25) Records which represent and constitute the work product of an attorney.

History: L. 1984, ch. 187, § 7; L. 1984, ch. 282, § 4; L. 1986, ch. 193, § 1; L. 1987, ch. 176, § 4; L. 1989, ch. 154, § 1; L. 1991, ch. 149, § 12; L. 1994, ch. 107, § 8; L. 1995, ch. 44, § 1; L. 1995, ch. 257, § 6; L. 1996, ch. 256, § 15; L. 1997, ch. 126, § 44; L. 1997, ch. 181, § 15; L. 2000, ch. 156, § 3; L. 2001, ch. 211, § 13; L. 2002, ch. 178, § 1; L. 2003, ch. 109, § 22; L. 2004, ch. 171, § 30; July 1.

Kentucky

Confidentiality and nondisclosure by legislative staff is required under several sections of the Kentucky Revised Statutes and thus, written nondisclosure agreements are usually unnecessary. Employees of the Legislative Research Commission and General Assembly are instead educated on the laws pertaining to nondisclosure of legislative communications and informed of the reasons that confidentiality is so necessary in the legislative arena.

The provisions set forth below ensure that any work done on behalf of a member of the General Assembly is kept private until such time as that legislator discloses or authorizes the disclosure of the matter.

KRS 7.120 (3) states:

The Commission shall keep in its office an accurate and complete record of all legislation enacted by the General Assembly and shall study same for the purpose of determining the intention and the effect thereof. The Commission shall advise and assist the members of the General Assembly in the preparation and revision of legislation and matters connected therewith.

When preparing and revising legislation for members of the General Assembly, the Commission shall maintain the confidentiality of each item of legislation which it is requested to prepare, and of the fact that the request has been made, until the member or members of the General Assembly having made the request shall introduce the legislation at a regular or extraordinary session of the General Assembly or shall in writing authorize its publication by the Commission. The Commission shall, when requested by the General Assembly or either house thereof, report to the General Assembly on bills introduced, calling attention to their effect on existing legislation and to any deficiencies in their form. (Emphasis added).

KRS 7.117, enacted in 2004, requires confidentiality of communications surrounding requests for legislative drafting on the part of legislators, staff, and former legislators and staff:

(1) A member of the General Assembly is immune from disclosing in a civil or criminal court proceeding, or in an administrative or legislative proceeding, any communication:

(a) Made by the member of the General Assembly to a member of the staff of the Legislative Research Commission, or to a member of the staff of the General Assembly, with regard to a request for legislative drafting of bills or resolutions or amendments thereto or to any information surrounding such a request; or

(b) Received from a member of the staff of the Legislative Research Commission, or from a member of the staff of the General Assembly, with regard to a request for legislative drafting of bills or resolutions or amendments thereto or to any information surrounding such a request.

(2) A member of the staff of the Legislative Research Commission or a member of the staff of the General Assembly is immune from disclosing in a civil or criminal court proceeding, or in an administrative or legislative proceeding, any communications:

(a) Made to him or her by a member of the General Assembly with regard to a request for legislative drafting of bills or resolutions or amendments thereto or to any information surrounding such a request; or

(b) Made to a member of the General Assembly with regard to a request for legislative drafting of bills or resolutions or amendments thereto or to any information surrounding such a request.

(3) This section shall not apply to a criminal court proceeding in which a member of the General Assembly, a member of the staff of the Legislative Research Commission, or a member of the staff of the General Assembly is the subject of the proceeding, and a subpoena has been issued for the communication or related information.

(4) The communications referenced in this section or documents related thereto are not subject to subpoena, deposition, writ of mandamus, interrogatory, or other disclosure.

(5) Any order or subpoena purporting to compel testimony or the production of evidence which is prohibited under this section shall be unenforceable.

(6) This section applies to a former legislator or former member of the staff of the Legislative Research Commission or General Assembly only with regard to communications made or received while a member of the General Assembly or member of the staff of the Legislative Research Commission or General Assembly. For purposes of this section, legislative interns, paid or unpaid, are considered to be members of the staff of the Legislative Research Commission or General Assembly, as applicable. (Emphasis added).

In addition, **KRS 7.119**, also enacted in 2004, states that "Requests for records or other documents in the custody of the Legislative Research Commission or the General Assembly shall be directed to the director of the Legislative Research Commission," and sets forth the procedures for such requests and for appealing a determination by the director.

Of further note, **KRS 6.734**, prohibits intentional disclosure of confidential information by a legislator for his or her own economic benefit::

A legislator shall not intentionally disclose or use confidential information acquired in the course of his official duties, if the primary purpose of the disclosure is to further his own economic interest or that of another person. Information shall be deemed confidential if it is not subject to public disclosure pursuant to the Kentucky Open Records Act, KRS 61.872 to 61.884, at the time of its disclosure or use. Violation of this section is a Class D felony

Louisiana

Legislative bodies are covered by the statute. La. Rev. Stat. Ann. § 44.1. *See Times-Picayune v. Johnson*, 645 So. 2d 1174 (La. App. 4th Cir. 1994), *writ denied*, 651 So. 2d 260 (La. 1995) (individual legislators are "custodians" of nomination forms for legislative scholarships to private university). In *Copsey v. Baer*, 593 So. 2d 685 (La. App. 1st Cir. 1991), *writ denied*, 594 So. 2d 876 (La. 1992), however, the court held that the legislative work files related to two bills from prior sessions of the Louisiana legislature were privileged from public records disclosure under the legislative privileges and immunities clause of the Louisiana Constitution, Article III, § 8. The court found that the "demand for legislative files in this case calls for an inquiry into the motivations behind the preparation and introduction of legislative instruments into the Louisiana Legislature...." *Id.* at 689.

La. Rev. Stat. Ann. § 44:2.

§2. Records involved in legislative investigations

Subject to the proviso set forth in Sub-section B of R.S. 44:3, the provisions of this Chapter shall not apply to any records, writings, accounts, letters, letter books, photographs or copies thereof, in the custody or control of any attorney or counsel whose duties or functions are performed by or under the authority of the legislature and which concern or hold relation to any case, cause, charge or investigation being conducted by or through the legislature, until after the case, cause, charge or investigation has been finally disposed of.

After final disposition, the records, writings, accounts, letters, letter books, photographs or copies thereof, are public records and subject to the provisions of this Chapter.

Maine

Maine Manual

Section 4. Legislative confidentiality

Under the freedom of access provisions contained in the Maine Revised Statutes (see Title 1, section 402, subsection 3, paragraph C), legislative bill requests and related working papers are exempt from disclosure during the legislative session or sessions in which the papers are prepared or considered or to which the papers are carried over.

The Joint Rules, however, specify that the names of sponsors and the titles of requests for bills and resolves submitted by Legislators or by departments, agencies or commissions become public information on the cloture date. Under the Joint Rules, titles of requests for bills and resolves submitted by the Governor are considered public information upon filing unless the Governor has directed that a particular title remain confidential until the bill or resolve is printed.

The Legislative Council has adopted a comprehensive policy on legislative confidentiality, which provides, among other things, that:

- Legislative staff may prepare or change drafts of bills or amendments only for Legislators or others who have authority to introduce legislation;
- Drafts may be released only to the sponsor and persons that the sponsor has specifically designated; and
- Except for the title and name of the sponsor, any information concerning a bill request is completely confidential, unless a Legislator has expressly waived confidentiality, for all or a part of the request, except that nonpartisan staff may share confidential information with one another when necessary in accordance with their office policies.

Maine Statutes (excerpts)

Title 1: GENERAL PROVISIONS

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS (HEADING: PL 1975, c. 758 (rpr))

Subchapter 1: FREEDOM OF ACCESS (HEADING: PL 1975, c. 758 (rpr))

§402. Definitions

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute; [1975, c. 758 (new).]

B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding; [1975, c. 758 (new).]

C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over; [1991, c. 773, §2 (amd).]

Maine – Legislative Rule

JOINT Rule No.: 207

Title: Disclosure and Departments Bills

Text:

1. Legislator and Department Bills. The names of sponsors and the titles of requests for bills and resolves submitted by legislators or by departments, agencies or commissions become public information on the cloture date, and a list of titles and sponsors must be published as soon as practicable after cloture. The names of sponsors and the titles of requests for bills and resolves submitted after cloture are public information when transmitted to the Legislative Council pursuant to Joint Rule 205. The names of sponsors and the titles of requests for bills and resolves submitted for a special session are public information when transmitted to the Legislative Council. 2. Governor Bills. The titles of requests for bills and resolves submitted by the Governor are considered public information upon filing. The Governor may direct that the title of a particular bill or resolve remain confidential until that bill or resolve is printed.

Maryland

Maryland Manual

(H) Confidentiality of Files

Requests by lobbyists and the general public for copies of adopted amendments should be referred to the information counter in the Legislative Services Building. Copies of proposed floor and committee amendments **not yet offered are to remain confidential** unless the sponsor agrees to their release or until after they have been offered for consideration in committee or on the floor.

Maryland Statutes (excerpts)

§ 2-1226. Confidentiality.

- (a) *In general.*- Except as provided in § 2-1225 of this subtitle and subsection (b) of this section, information that an employee of the Office of **Legislative** Audits obtains during an audit or review:
- (1) is confidential; and
 - (2) may not be disclosed except to another employee of the Office of **Legislative** Audits.
- (b) *Exceptions.*- The **Legislative** Auditor may authorize the disclosure of information obtained during an audit or review only to the following:
- (1) another employee of the Department, with the approval of the Executive Director;
 - (2) federal, State, or local officials, or their auditors, who provide evidence to the **Legislative** Auditor that they are performing investigations, studies, or audits related to that same audit or review and who provide justification for the specific information requested; or
 - (3) the Joint Audit Committee, if necessary to assist the Committee in reviewing a report issued by the **Legislative** Auditor.
- (c) *Identity.*- Except as provided in § 2-1225 of this subtitle, if information that an employee obtains during an audit or review also is confidential under another law, the employee or the **Legislative** Auditor may not include in a report or otherwise use the information in any manner that discloses the identity of any person who is the subject of the confidential information. [An. Code 1957, art. 40, § 61B; 1984, ch. 284, § 1; 1991, ch. 474; 1992, ch. 598; 1997, ch. 635, § 2; ch. 636, § 2; 2004, chs. 241, 242.]

Massachusetts

The Legislature does not use confidentiality agreements, because our state conflict of interest law makes it illegal for a public employee (specifically including legislative staff) to "knowingly, or with reason to know . . .

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority; [or]

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest." Mass. Gen. Laws c. 268A, sec. 23(c): <http://www.mass.gov/legis/laws/mgl/268a-23.htm>. Violation is punishable by administrative action by the employee's superior (id. sec. 23(e)) or by civil fine of up to \$2,000 by the State Ethics Commission. M.G.L. c. 268B, sec. 4(j)(3).

House Rule 16A(6) and **Senate Rule 10** also contain similar prohibitions against misuse of confidential information. Violation of these provisions is also punishable by administrative action, up to and including dismissal.

Massachusetts Statutes

Chapter 268A: Section 23 Supplemental provisions; standards of conduct

Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county, and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

(2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

(3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

(1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;

(2) improperly disclose materials or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than \$50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

Michigan

Legislative documents are subject to the Freedom of Information Act (FOIA). Attorneys maintain attorney-client confidentiality with each of legislative "clients", that is, each member of the Michigan Legislature. Public documents subject to the attorney-client privilege are exempt from FOIA. All of the documents sent to staff by legislators when requesting the drafting of legislation and all of the documents staff produces for legislators are confidential. Once a legislator introduces a bill, amendment, or substitute bill, it becomes public information. Staff does not share client information or work product with anyone outside a legislator's office without the legislator's permission. Staff is also required to maintain confidentiality of legislative documents and information under the Legislative Council Act, which is the enabling statute for our Legislative Service Bureau.

The attorneys in the Legal Division of the Michigan Legislative Service Bureau maintain the attorney/client privilege with each legislative client (38 Senate members and 110 House members). Also, the enabling act requires all divisions within the LSB to keep all information received from members confidential until it is "published". The specific cite is section 109 of the Legislative Council Act, 1986 PA 268, MCL 4.1109.

LEGISLATIVE COUNCIL ACT (EXCERPT)

Act 268 of 1986

4.1109 Employees not to urge or oppose legislation; duties of employees; recommendation of legislation by director; confidentiality.

Sec. 109.

An employee of the bureau shall not urge or oppose legislation, but upon request shall aid and assist the members of the legislature by advising as to bills and resolutions and by furnishing to them the fullest information upon all matters within the scope of the bureau relating to their public duties. However, the director may recommend legislation to the legislative council or the law revision commission. An employee of the bureau shall not reveal to any person outside the bureau the contents or nature of any matter not yet published without the consent of the person bringing the matter before the bureau. A substitute recommended by a committee, an amendment recommended by a committee, or a conference report shall be considered published when received by the clerk of the house of representatives or secretary of the senate or both, as is appropriate. The clerk of the house of representatives or the secretary of the senate, as is appropriate, shall notify the bureau upon receipt of a substitute, an amendment recommended by a committee, or a conference committee report.

History: 1986, Act 268, Imd. Eff. Dec. 19, 1986

Mississippi

Legislative Rule

CONFIDENTIALITY

141. (1) No employee of the Senate shall reveal to any person outside his department the contents or nature of any request for services made by any member of the Senate except with the written consent of the person making such request.

(2) All confidential communications between members of the Senate and staff attorneys are protected by an attorney-client privilege.

New Jersey

New Jersey Statute

47:1A-1 Legislative findings, declarations.

1. The Legislature finds and declares it to be the public policy of this State that:

government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded by P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented, shall be construed in favor of the public's right of access;

all government records shall be subject to public access unless exempt from such access by: P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented; any other statute; resolution of either or both houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules

of Court; any federal law, federal regulation, or federal order;

a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained in P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

L.1963,c.73,s.1; amended 2001, c.404, s.1.

47:1A-1.1 Definitions.

1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

"Government record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof. The terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.

A government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) as amended and supplemented:

information received by a member of the Legislature from a constituent or information held by a member of the Legislature concerning a constituent, including but not limited to information in written form or contained in any e-mail or computer data base, or in any telephone record whatsoever, unless it is information the constituent is required by law to transmit;

any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Legislature in the course of the member's official duties, except that this provision shall not apply to an otherwise publicly-accessible report which is required by law to be submitted to the Legislature or its members;

any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;

"Constituent" means any State resident or other person communicating with a member of the Legislature.

"Member of the Legislature" means any person elected or selected to serve in the New Jersey Senate or General Assembly.

L.1995,c.23,s.1; amended 2001, c.404, s.2; 2005, c.170.

New Mexico

New Mexico Manual

. Legislative Council Service Confidentiality and Neutrality .

In addition to the other constitutional and statutory provisions, the legislative council service drafter must be familiar with Chapter 2 NMSA 1978, which covers the legislative branch. Of special import are the confidentiality and neutrality provisions of Section 2-3-13 NMSA 1978: Neither the director nor any employee of the council service shall reveal to any person outside of the service the contents or nature of any request or statement for service, except with the consent of the person making such request or statement.

They shall not urge or oppose any legislation, nor give to any member of the legislature advice concerning the economic or social effect of any bill or proposed bill except upon the request of such member.

Unless authorized by the requester, the *fact* of a request is as confidential as the *content* of the request, which includes the name of the requester and the particulars of the request. The drafter should discuss confidentiality with the requester to determine what degree of confidentiality is to be maintained on the file. The requester may want strict confidentiality or may allow a range of options from discussing the request in general terms while withholding the requester's name to full disclosure. It is the requester's choice, and that choice must be marked on the green sheet in the 202 file.

Confidentiality must be zealously maintained by *all* legislative council service staff. To avoid a breach, support staff should assume all files are strictly confidential unless specifically notified otherwise by the drafter.

New Mexico Statute (excerpt)

2-3-13. [Services; confidential nature.]

Neither the director nor any employee of the council service shall reveal to any person outside of the service the contents or nature of any request or statement for service, except with the consent of the person making such request or statement. They shall not urge or oppose any legislation, nor give to any member of the legislature advice concerning the economic or social effect of any bill or proposed bill except upon the request of such member.

North Carolina Statutes

Article 17.

Confidentiality of Legislative Communications.

§ 120-129. Definitions.

As used in this article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, ss. 1-3; 2006-264, s. 29(i); 2009-129, s. 1; 2010-96, s. 20; 2010-169, s. 24(a).)

§ 120-130. Drafting and information requests to legislative employees.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) Any supporting documents submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting or information requests or supporting documents are not "public records" as defined by G.S. 132-1. (1983, c. 900, s. 1.)

§ 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

- (1) Bill or resolution and it has been introduced;
- (2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;
- (3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or
- (4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 4; 1993 (Reg. Sess., 1994), c. 570, s. 9.)

§ 120-131.1. Requests from legislative employees for assistance in the preparation of fiscal notes.

(a) A request, including any accompanying documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee of his or her agency shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any accompanying documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any accompanying documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee of his or her agency may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section may be grounds for disciplinary action. (1995, c. 324, s. 8.1(a); c. 507, s. 8.2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2008-196, s. 1(b).)

§ 120-132. Testimony by legislative employees.

(a) Except as provided in subsections (b) and (c) of this section, no present or former legislative employee may disclose any information that the individual, while employed or retained by the State, may have acquired:

- (1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;
- (2) On the floor of either house of the General Assembly, in any office of a legislator, or at any other location of the State legislative buildings and grounds as defined in G.S. 120-32.1(d);
- (3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.
- (b) A present or former legislative employee may disclose information acquired under subsection (a) of this section that would be reflected in the official public record or was otherwise publicly disseminated.
- (c) Subject to G.S. 120-9, G.S. 120-133, and the common law of legislative privilege and legislative immunity, the presiding judge may compel disclosure of information acquired under subsection (a) of this section if in the judge's opinion, the disclosure is necessary to a proper administration of justice. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 5; 2010-169, s. 24(b).)

§ 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law. (1983, c. 900, s. 1; 1995, c. 20, s. 13.)

§ 120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of employees, for referral to the academic institution for appropriate discipline in the case of law student externs, and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 6; 2009-129, s. 2.)

§§ 120-135 through 120-139. Reserved for future codification purposes.

North Dakota

Testimony or other evidence adduced at legislative investigating hearings closed to the public, unless authorized by a majority of the committees N.D.C.C. § 54-03.2-12(7).

All information of a defamatory or highly prejudicial nature received by or for a legislative committee conducting an investigation, unless the information was received at a hearing (but see #9), a majority of the committee authorizes public release, or its use is required for judicial purposes. N.D.C.C. § 54-03.2-12(8).

The following records, regardless of form or characteristic of or relating to the Legislative Counsel, the legislative assembly, the House of Representatives, the Senate, or a member of the legislative assembly: records of a purely personal or private nature, records that are attorney work product or are attorney-client communication, records that reveal the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental entity determining the proper use of telephone service, records of telephone usage which identify the parties or list the telephone numbers of the parties involved, except records distributed at open meetings. N.D.C.C. § 44-04-18.6.

North Dakota Statute

44-04-18.6. Access to legislative records and information. The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a record of a purely personal or private nature, a record that is attorney work product or is attorney-client communication, a record that reveals the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental

entity determining the proper use of telephone service, a record of telephone Page No. 8 usage which identifies the parties or lists the telephone numbers of the parties involved. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

Ohio

The language of the statute is broad enough to encompass all legislative bodies. The Ohio Supreme Court has not yet applied the statute to Ohio's General Assembly. The court's recognition that the constitutional doctrine of separation of powers may inhibit the statute's application could mean that separation of powers bars the statute from applying to certain internal records of state legislators. *See State, ex rel. Plain Dealer Publishing Co. v. City of Cleveland*, 99 Ohio St. 3d 1, 661 N.E.2d 187 (1996).

In the meantime, the General Assembly has immunized certain classes of its internal legislative records from the Public Records Act, specifically records that are not filed with the clerk of the General Assembly and arise out of the relationship between legislative staff and a member of the General Assembly. Ohio Rev. Code § 101.30.

Ohio Statute (excerpts)

§ 101.30. Confidential relationship among legislative and general assembly staffs; status of documents as public records.

(A) As used in this section:

(1) "Legislative document" includes, but is not limited to, all of the following:

(a) A working paper, work product, correspondence, preliminary draft, note, proposed bill or resolution, proposed amendment to a bill or resolution, analysis, opinion, memorandum, or other document in whatever form or format prepared by legislative staff for a member of the general assembly or for general assembly staff;

(b) Any document or material in whatever form or format provided by a member of the general assembly or general assembly staff to legislative staff that requests, or that provides information or materials to assist in, the preparation of any of the items described in division (A)(1)(a) of this section;

(c) Any summary of a bill or resolution or of an amendment to a bill or resolution in whatever form or format that is prepared by or in the possession of a member of the general assembly or general assembly staff, if the summary is prepared before the bill, resolution, or amendment is filed for introduction or presented at a committee hearing or floor session, as applicable.

(2) "Legislative staff" means the staff of the legislative service commission, legislative budget office of the legislative service commission, or any other legislative agency included in the legislative service commission budget group.

(3) "General assembly staff" means an officer or employee of either house of the general assembly who acts on behalf of a member of the general assembly or on behalf of a committee or either house of the general assembly.

(B) Legislative staff shall maintain a confidential relationship with each member of the general assembly, and with each member of the general assembly staff, with respect to communications between the member of the general assembly or general assembly staff and legislative staff. Except as otherwise provided in this division and division (C) of this section, a legislative document arising out of this confidential relationship is not a public record for purposes of section 149.43 of the Revised Code. When it is in the public interest and with the consent of the commission, the director of the commission may release to the public any legislative document in the possession of the commission staff arising out of a confidential relationship with a former member of the general assembly or former member of the general assembly staff who is not available to make the legislative document a public record as provided in division (C) of this section because of death or disability, whom the director is unable to contact for that purpose, or who fails to respond to the director after the director has made a reasonable number of attempts to make such contact.

(C) (1) A legislative document is a public record for purposes of section 149.43 of the Revised Code if it is an analysis, synopsis, fiscal note, or local impact statement prepared by legislative staff that is required to be prepared by law, or by a rule of either house of the general assembly, for the benefit of the members of either or both of those houses or any legislative committee and if it has been presented to those members.

(2) A legislative document is a public record for purposes of section 149.43 of the Revised Code if a member of the general assembly for whom legislative staff prepared the legislative document does any of the following:

(a) Files it for introduction with the clerk of the senate or the clerk of the house of representatives, if it is a bill or resolution;

(b) Presents it at a committee hearing or floor session, if it is an amendment to a bill or resolution or is a substitute bill or resolution;

(c) Releases it, or authorizes general assembly staff or legislative staff to release it, to the public.

HISTORY: 148 v H 283. Eff 9-29-99

§ 101.301. Application of attorney-client privilege to party caucuses

(A) As used in this section, "caucus" means all of the members of the house of representatives, or all of the members of the senate, who are members of the same political party.

(B) Notwithstanding any contrary provision of section 2317.021 [2317.02.1] of the Revised Code, the members of the general assembly who are members of a caucus, and the officers and employees of the general assembly who either serve that caucus or serve the members of the general assembly who are members of that caucus, are clients, for purposes of the attorney-client testimonial privilege specified in division (A) of section 2317.02 of the Revised Code and for purposes of any other statutory or common law attorney-client privilege recognized in this state, of the employee of the house of representatives or senate who serves as the legal counsel for that caucus.

HISTORY: 148 v H 283. Eff 9-29-99

Oregon

Oregon Legislative Rules

SENATE Rule No.: 13.11

Title: Confidentiality; Consolidation of Requests

Text:

(1) A member may designate that a request for measure drafting services be treated as confidential in accordance with ORS 173.230. Requests from a committee may not be treated confidentially. (2) Whenever a request is made for measure drafting services, Legislative Counsel shall inform the requester of all nonconfidential requests for similar measures and attempt to consolidate all such requests in one measure. Legislative Counsel shall also inform requesters of confidential drafts when similar but nonconfidential requests are made. This will be done in order to determine whether the requester wishes to consolidate the confidential request with similar but nonconfidential requests.

SENATE Rule No.: 213.30

Title: Confidentiality; Consolidation of Requests

Text:

(1) A requester may designate that a request for a Legislative Counsel draft be considered confidential in accordance with ORS 173.230. Requests from a legislative committee shall not be treated confidentially. (2) When a request is made for measure drafting services, Legislative Counsel shall inform the requester of all nonconfidential requests of a similar nature previously submitted. An attempt shall be made to consolidate all such requests in one measure.

Rhode Island

Exemption (K): Preliminary drafts, notes, impressions, memoranda, working papers and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public. *R.I. Gen. Laws § 38-2-2(4)(i)(K)*.

Rhode Island Statute (excerpts)

§ 38-2-2 Definitions. – As used in this chapter:

(1) "Agency" or "public body" shall mean any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof; including, but not limited to, any department, division, agency, commission, board, office, bureau, authority, any school, fire, or water district, or other agency of Rhode Island state or local government which exercises governmental functions, any authority as defined in § 42-35-1(b), or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency.

(2) "Chief administrative officer" means the highest authority of the public body as defined in subsection (a) of this section.

(3) "Public business" means any matter over which the public body has supervision, control, jurisdiction, or advisory power.

(4) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic

mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities) or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. For the purposes of this chapter, the following records shall not be deemed public:

(J) Any minutes of a meeting of a public body which are not required to be disclosed pursuant to chapter 46 of title 42.

(K) Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public.

(L) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment or promotion, or academic examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(M) Correspondence of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities.

(O) All tax returns.

(P) All investigatory records of public bodies, with the exception of law enforcement agencies, pertaining to possible violations of statute, rule, or regulation other than records of final actions taken provided that all records prior to formal notification of violations or noncompliance shall not be deemed to be public.

(Q) Records of individual test scores on professional certification and licensing examinations; provided, however, that a person shall have the right to review the results of his or her examination.

(R) Requests for advisory opinions until such time as the public body issues its opinion.

(S) Records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court.

Rhode Island Legislative Rule

SENATE Rule No.: 9.5

Title: Confidentiality of Drafting

Text:

At the request of any senator or senate attorney to the director of the legislative council, an entry into the word processing system may be made confidential so that the entry shall be accessible only to the senator or senate attorney making such request or his or her designee. An entry may be a bill, letter, memorandum or any other document.

South Carolina

"Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs" are exempt from disclosure, but the exemption is not to be construed to limit public access to "source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information ... and not specifically exempted by any other provisions." S.C. Code Ann. (1991) § 30-4-40(a)(1).

South Carolina Statute (excerpts)

SECTION 30-4-40. Matters exempt from disclosure.

(a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships.

(8) Memoranda, correspondence, and working papers in the possession of individual members of the General Assembly or their immediate staffs; however, nothing herein may be construed as limiting or restricting public access to source documents or records, factual data or summaries of factual data, papers, minutes, or reports otherwise considered to be public information under the provisions of this chapter and not specifically exempted by any other provisions of this chapter.

Tennessee

We have also adopted office policies on confidentiality for our nonlawyer staff. The general rule is that everything is confidential unless the member gives consent to release.

Tennessee Statute (excerpt)

3-12-105. Records are public - Exceptions.

(a) All books, papers, records, and correspondence of the office of legal services pertaining to its work shall be kept in the office of legal services and all such materials are public records except: (1) Intraoffice memoranda made by the director of the office of legal services or the director's staff; and (2) Work papers and correspondence with any person receiving service from the office of legal services. (b) Such papers and correspondence may become public records whenever the director of the office of legal services or the general assembly shall so order.

History

[Acts 1977, ch. 89, § 9; T.C.A., § 3-1205.]

3-12-106. Relationships with members of general assembly. Statute text (a) The director of the office of legal services and the director's legal staff shall maintain the attorney-client relationship with each member of the general assembly with respect to communications between the member and the attorney, except as otherwise provided by the rules of either house of the general assembly. (b) All materials arising out of this relationship including, but not limited to, proposed bills and amendments, analyses, opinions, and memoranda prepared by an attorney are not public records nor subject to the provisions of title 10, chapter 7, part 5, except as otherwise provided by the rules of either house of the general assembly or when released by the member for whom the material was prepared. History [Acts 1977, ch. 89, § 10; T.C.A., § 3-1206.]

Texas

Confidentiality Policy

Under Section 323.017, Government Code, communications between a member of the legislature or the lieutenant governor and a council employee that relate to a request by the official for information, advice, or opinions from a council employee are confidential, and

information, advice, and opinions given privately by a council employee to a member of the legislature, or the lieutenant governor, acting in the person's official capacity, are confidential.

In addition, Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct generally prohibits a lawyer from knowingly revealing to another person confidential information of a client, including confidential communications between the client and the lawyer made for the purpose of facilitating the rendition of professional legal services to the client. Since the work of the lawyers and other staff employed by the council is confidential, the council staff will not disclose the fact that a member of the legislature or the lieutenant governor has made a particular request for draft legislation or provide any other

information about the request to any other person, including other members of the legislature, without the express permission of the person for whom the draft is being prepared. After a draft becomes an introduced bill or resolution, the council staff will answer questions concerning the bill or resolution only to the extent that the answers do not disclose confidential information concerning the bill or resolution.

Duplicate Draft Requests

Frequently, a member of the legislature requests the council to prepare a draft that is identical to a request previously made by another member. Treatment of duplicate requests is guided by three basic principles:

- Each member is entitled to have the council prepare a draft on any subject.
- Each member is entitled to have requests kept confidential.
- The legislature is best served by avoiding duplication of work to the extent practicable.

If a member makes a request that is identical to a request previously made by a member of the same house, the drafter will inform the second requestor of the previous request and offer to assist in getting the two requestors working cooperatively on the same draft. To

preserve confidentiality, the identity of the first requestor is not revealed at that time. Rather, the drafter will request permission of the second requestor to reveal the second requestor's identity to the first requestor. If the second requestor consents, the drafter will communicate with the first requestor to see if the first requestor is willing to work cooperatively with the identified second requestor.

If the second requestor declines to have his or her identity revealed to the first requestor or if the first requestor declines to work cooperatively, each requestor will have individual drafts prepared.

Identical requests are prepared for members of different houses or for members of the same house who have declined to work cooperatively. The drafts prepared for each requesting member will carry the same council unique number in the lower left corner of the document. The documents are usually delivered to the members in the order in which the requests were received.

Texas Statute

§ 323.017(0). CONFIDENTIAL COMMUNICATIONS. Communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor and an assistant or employee of the council that relate to a request by the official for information, advice, or opinions from an assistant or employee of the council are confidential. Information, advice, and opinions given privately by an assistant or employee of the council to a member of the legislature, or the lieutenant governor, acting in the person's official capacity, are confidential. However, the member or lieutenant governor may choose to disclose all or a part of the communications, information, advice, or opinions to which this section applies, and such a disclosure does not violate the law of this state.

Added by Acts 1987, 70th Leg., ch. 1053, § 2, eff. June 20, 1987. Renumbered from § 323.016 by Acts 1989, 71st Leg., ch. 2, § 16.01(25), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, § 9.002, eff. Sept. 1, 2001.

Utah

Utah Statute

63G-2-703

(1) The Legislature and its staff offices shall designate and classify records in accordance with Sections 63G-2-301 through 63G-2-305 as public, private, controlled, or protected.

(2) (a) The Legislature and its staff offices are not subject to Section 63G-2-203 or to Part 4, Appeals, 5, State Records Committee, or 6, Collection of Information and Accuracy of Records.

(b) The Legislature is subject to only the following sections in Part 9, Archives and Records Service: Sections 63A-12-102, 63A-12-106, and 63G-2-310.

(3) The Legislature, through the Legislative Management Committee:

(a) shall establish policies to handle requests for classification, designation, fees, access, denials, segregation, appeals, management, retention, and amendment of records; and

(b) may establish an appellate board to hear appeals from denials of access.

(4) Policies shall include reasonable times for responding to access requests consistent with the provisions of Part 2, Access

to Records, fees, and reasonable time limits for appeals.

(5) Upon request, the state archivist shall:

(a) assist with and advise concerning the establishment of a records management program in the Legislature; and

(b) as required by the Legislature, provide program services similar to those available to the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Part 1, Archives and Records Service.

Renumbered and Amended by Chapter 382, 2008 General Session

63-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

Amended by Chapter 18, 2011 General Session

Amended by Chapter 46, 2011 General Session

Amended by Chapter 55, 2011 General Session

Amended by Chapter 80, 2011 General Session

Amended by Chapter 151, 2011 General Session

Amended by Chapter 161, 2011 General Session

Vermont

Vermont Statute

Statutory provision 2 V.S.A. 404(c) - all requests are confidential

c) All requests for legal assistance, information and advice and all information received in connection with research or drafting shall be confidential unless the party requesting or giving the information designates in the request that it is not confidential. Transcripts and minutes of committee meetings, including written testimony submitted to the committee, bills or amendments which have been released or approved for printing or introduction and material appearing in the journals or calendars of either house are official documents and shall not be confidential under this subsection. (Added 1971, No. 204 (Adj. Sess.), § 4, eff. March 31, 1972; amended

Virginia

Virginia Statute

§ 30-28.18. (Effective October 1, 2005) Requests for drafting bills or resolutions; bills to conform to request; public access.

A. All requests for the drafting of bills or resolutions by the Division shall be submitted in person, in writing, or by voice transmission. Each request shall contain a general statement respecting the policies and purposes that the requester desires incorporated in and accomplished by the bill. All written requests shall be signed by the person submitting them. Neither the Director nor any employee of the Division shall reveal to any person outside of the Division, except to the Division of Legislative Automated Systems in fulfilling its duties as provided in § 30-34.14, the contents or nature of any request or statements except with the consent of the person signing such request. Exceptions to this general rule are as follows:

1. When the Director or an employee receives a request that is substantially the same as one previously received, he may, unless specifically directed not to do so by the person first submitting such request, so inform the person submitting the similar request;
2. Unless specifically directed otherwise, the Director or employee may reveal the nature of a request when seeking information from anyone to assist in drafting the bill; and
3. Copies of all floor substitute bills, conference committee reports, and substitute bills accompanying a conference committee report shall be placed in a secure electronic file immediately following the final drafting of the legislation and may be accessed by either the Clerk of the House of Delegates or the Clerk of the Senate or their employee designees after such legislation is offered for introduction in either house.

Bills drafted by the Division shall conform to the statements submitted with the request or any supplementary instructions submitted by the person who originally made the request.

B. All legislative drafting requests and accompanying documents shall be maintained by the Division as permanent records. Each of these separate files shall be considered the property of the requester and no one other than members of the Division staff shall have access to any such file without the specific approval of the requester. However, on the effective date of legislation drafted for the 1989 Session or thereafter, the file for a bill that was enacted, including any amendments in the nature of a substitute or conference reports that were offered for consideration shall become public property.

C. All legislative drafting requests from the Governor, a Governor's Secretary, the Lieutenant Governor, the Attorney General, or the head of any judicial, legislative, or independent agency shall be submitted to the Division on or before the same deadline applicable to members of the General Assembly for submitting legislative drafting requests for legislation to be prefiled to the Division, as established by the procedural resolution adopted by the General Assembly, or in default thereof, as adopted by the Joint Rules Committee. Requests from the Governor may also be submitted in accordance with the procedures established by the Rules Committees of the House of Delegates and the Senate for the conduct of business during a legislative session.

(1966, c. 676; 1976, c. 112; 1988, c. 214; 1989, cc. 412, 512; 2001, cc. 568, 584; 2002, c. 2; 2005, c. 839.)

Washington

RCW 40.14.180

Legislative records — Construction — Confidentiality of bill drafting records.

The provisions of RCW 40.14.010 and 40.14.100 through 40.14.180 shall not be construed as repealing or modifying any other acts or parts of acts authorizing the retention or destruction of public records nor shall RCW 40.14.010 and 40.14.100 through 40.14.180 affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library nor shall it affect the confidentiality of the bill drafting records of the code reviser's office.

March 13, 1998

Advisory Opinion 1998 - No. 1

Confidential bill drafts

QUESTION

The Board has received the following question regarding confidentiality of bill and amendment drafting, paraphrased for brevity: "would it be a violation of the ethics law if a staff person informed his or her staff administrative supervisor, the committee chair, or caucus leadership about a specific drafting request that the requesting member has not approved for circulation to the general public?"

Would the answer be different if the staff person is asked for the confidential information by a supervisor, chair or member of legislative leadership, or if the staff person is an attorney?

OPINION

Unauthorized disclosure of the substance of a confidential drafting request or the identity of the requester is a violation of the State Ethics Act. Disclosure of otherwise confidential drafting requests is permissible to persons entitled by law or formal written legislative policy to receive information about confidential drafting requests. Limited disclosure to co-workers and administrative supervisors is permissible, subject to the limitations set forth in this opinion.

ANALYSIS

Unauthorized disclosure of confidential information by a legislator or legislative employee is a violation of the State Ethics Act. The relevant portions of the statute are:

RCW 42.52.010(6) Definitions "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

RCW 42.52.050(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

A. DRAFTING REQUESTS ARE CONFIDENTIAL.

It is apparent from the legislative and public records statutes that bill and amendment language in draft form is not "available to the general public on request." The definition of public record in RCW 42.17.010(36) incorporates all "legislative records" as defined by RCW 40.14.100.

That statute defines amendments which have been submitted to a committee or subcommittee as public records, but excludes bills on the basis that they are otherwise available. Clearly that reference is only to bills which have been printed and are available generally, not bills in draft form.

This interpretation is supported by RCW 42.17.310(1)(i), which exempts from public disclosure "preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action." Therefore, bill and amendment drafts are confidential until such drafts have been approved by the requester for circulation to the general public, or submitted by the requester for committee or floor consideration

B. AUTHORIZATION TO DISCLOSE CONFIDENTIAL INFORMATION

Although drafting requests and bill and amendment drafts and other staff work related to the drafting request are confidential, RCW 42.52.050(3) permits disclosure to any person "entitled or authorized to receive the information." There are three categories of persons who fall within this provision.

(1) Persons designated by law or official policy. Disclosure of confidential drafting requests is authorized to any persons or categories of persons specifically designated by law.

Disclosure would also be permissible to persons designated by formal written rules or policies of the House of Representatives, Senate, or legislative agencies. No such statutes, rules or policies have been discovered by, or cited to, the Board in this opinion request.

(2) Administrative supervisors. To respond to the question asked in this opinion, the Board must determine whether the staff person's administrative supervisor, committee chair, or members of legislative leadership are entitled or authorized persons. The Board recognizes that for proper supervision and workload decisions, it is necessary for administrative supervisors to be aware of the activities of the employees under their supervision. Additionally, it may be necessary for employees to consult with supervisors regarding a confidential drafting request. Administrative supervisors are thus considered entitled or authorized persons, but only to the extent necessary to accomplish these limited purposes.

The Board finds that these considerations do not apply to the relationship between legislators and staff. Furthermore, it appears that the purpose of requiring confidentiality about legislative proposals is to encourage unlimited exploration of public policy ideas. Therefore, it is not appropriate to extend this authorization for supervisor disclosure to chairs, members of legislative leadership, or other legislators, unless authorization for disclosure to these legislators has been specifically granted by formal written policy.

(3) Other persons needed to effectively perform the task. Employees may also find it necessary to disclose some aspects of a confidential drafting requests to co-workers within their work group in order to provide a thorough and accurate draft. In these cases, the drafter should disclose only the information necessary to obtain the needed assistance, and only to those co-workers with relevant expertise.

When confidential information regarding a drafting request is disclosed as permitted under (2) or (3) above, the duty to maintain confidentiality extends to the recipient of the information, who is subject to the same confidentiality requirements as the party who originally received the confidential drafting request.

On occasion it may be necessary for the drafter to seek additional sources of information outside the legislature. The drafter does not violate the confidentiality requirements by conducting general research. If it is necessary for the drafter to disclose the fact that he or she is working on a confidential drafting request, the identity of the requester, or the objectives of the request, the drafter must first seek permission from the requester to disclose such information.

C. ATTORNEY DRAFTERS.

The opinion request also asks whether the confidentiality duty is different for a legislative

employee who is an attorney. The Board does not believe that the State Ethics Act establishes confidentiality requirements for attorneys drafting bills and amendments that are any different than those specified for other legislative employees. In any case, such requirements would be established and enforced by the Washington State Supreme Court and the State Bar Association rather than the Board.

Wisconsin

Wisconsin Statutes on Legislative Confidentiality

Wisconsin has several general provisions requiring legislative staff to adhere to observe and comply with the confidential nature of their work. See below:

13.92 Legislative reference bureau. There is created a bureau to be known as the "Legislative Reference Bureau," headed by the chief of legislative reference bureau. The legislative reference bureau shall be strictly nonpartisan and shall at all times observe the confidential nature of the reference or drafting requests received by it.

13.92(1)(c)

(c) *Drafting records; when confidential.* While the legislature remains in session the drafting section shall maintain the files for all drafting requests received during such session, but after final adjournment the drafting records to legislation introduced shall be turned over to the reference section under par. (a) 3. Records of drafting requests which did not result in legislation introduced shall remain confidential at all times and may be maintained by the drafting section in such form as will facilitate its operations.

13.91 Legislative council staff. There is created a bureau known as the "Legislative Council Staff", headed by a director. The legislative council staff shall be strictly nonpartisan and shall at all times observe the confidential nature of the research and drafting requests received by it. The legislative council staff may call upon any state department, agency or officer, or any agency of any political subdivision, for such facilities and data as are available and such departments and agencies shall cooperate with the legislative council staff to the fullest possible extent.

13.95

13.95 Legislative fiscal bureau. There is created a bureau to be known as the "Legislative Fiscal Bureau" headed by a director. The fiscal bureau shall be strictly nonpartisan and shall at all times observe the confidential nature of the research requests received by it; however, with the prior approval of the requester in each instance, the bureau may duplicate the results of its research for distribution. Subject to s. 230.35 (4) (a) and (f), the director or the director's designated employees shall at all times, with or without notice, have access to all state agencies the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority, and to any books, records, or other documents maintained by such agencies or authorities and relating to their expenditures, revenues, operations, and structure.

Wyoming

Wyoming manual

4. CONFIDENTIALITY OF BILL DRAFTS.

- (a) Except as provided in subsection (c) below, the LSO treats bill drafting requests as confidential and the contents of proposed legislation will not be divulged to anyone without the specific consent of the sponsor or until a sponsor approval form for the bill is signed and returned.
- (b) Due to this rule of confidentiality, legislators may occasionally experience one of the following types of administrative delays:
- (i) *Scenario 1:* A legislator requests a bill draft which impacts a state agency. LSO staff calls the agency for information and advises that an unnamed legislator is working on a bill draft. The agency wants to know the legislator's name in order to make direct contact. LSO staff declines disclosure at that time but agrees to

contact the legislator to request permission to disclose the legislator's name. LSO staff calls the legislator, then advises the agency.

- (ii) *Scenario 2:* A legislator requests a bill draft and then advises a constituent or other interested party to contact the LSO for a copy. The interested party calls the LSO and is advised of the confidentiality rules and that the staff cannot even confirm whether a bill draft request has been submitted to LSO by that particular legislator. The interested party then must call the legislator and request that the legislator call the LSO directly and authorize release of the draft. To avoid this delay, call LSO directly when you wish to authorize release of a bill draft to a member of the public.

- (c) Disclosure of draft request to subsequent requesting legislator. It is extremely common for more than one legislator to request a bill draft on the same topic. Furthermore, in most cases legislators requesting the same draft are willing to cosponsor a bill rather than proceeding with separate identical bills. To facilitate this process, the Management Council has approved the following procedures:

If you contact LSO and request a bill draft, your name will be disclosed to a subsequent legislator requesting the same bill draft UNLESS you specifically request that your name not be disclosed. Note that this exception to the normal rule of confidentiality applies only to subsequent legislators requesting a similar bill and disclosure will not be made to the general public.

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

STATE OF MAINE

Volume II

May 21, 1975 to July 2, 1975

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KENNEBEC JOURNAL
AUGUSTA, MAINE

Mr. JENSEN: Mr. Speaker, that being the case, it would seem to me to be extremely irresponsible to pass a budget without passing the money to go along with it in its final form.

Thereupon, the Bill was passed to be engrossed as amended by Senate Amendment "A" in concurrence.

The following Enactors appearing on Supplement No. 4 were taken up out of order by unanimous consent:

An Act Concerning the Office of Energy Resources (S. P. 549) (L. D. 1913) (C. "A" S-285, S. "B" S-301, S. "D" S-363)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House necessary, a total was taken. 107 voted in favor of same and 5 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act Relating to Compensation and Benefits under the State Classified Service (H. P. 406) (L. D. 495) (S. "A" S-366 to C. "A" H-153)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters acted upon in concurrence and all matters requiring Senate concurrence were ordered sent forthwith to the Senate.

(Off Record Remarks)

On the disagreeing action of the two branches of the Legislature on Resolution, Proposing an Amendment to the Constitution to Abolish the Executive Council and Reassign its Constitutional Powers to the Governor (H. P. 16) (L. D. 24) the Speaker appointed the following Conferees on the part of the House:

Messrs. TIERNEY of Durham
CARPENTER of Houlton
Mrs. SNOWE of Auburn

The following paper appearing on Supplement No. 5 was taken up out of order by unanimous consent:

Bill "An Act to Correct Errors and Inconsistencies in the Public Laws" (S. P. 480) (L. D. 1760) which was passed to be engrossed as amended by Committee Amendment "A" (S-351) as amended by Senate Amendments "A" (S-355), "B" (S-362), "E" (S-361), "F" (S-365), and House Amendments "B" (H-823), "C" (H-828), "E" (H-830), "F" (H-834), "G" (H-835) thereto and Senate Amendments "C" (S-356) and "A" (S-352), and House Amendments "A" (H-814), "B" (H-821), "C" (H-831), "D" (H-832) and "E" (H-836) in the House on June 24.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" as amended by Senate Amendments "A", "B", "E", "F" and "H" (S-369) and by House Amendments "B", "C" and "G" thereto and Senate Amendments "A", "C", "E" (S-368), "G" (S-371) and "F" (S-370) and House Amendments "A", "B", "C", "D" and "E" in non-concurrence.

In the House: On motion of Mr. Gauthier of Sanford the House voted to recede from passage to be engrossed.

Senate Amendment "H" to Committee Amendment "A" (S-369) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. LaPointe.

Mr. LaPOINTE: Mr. Speaker and Members of the House: Could a member of the Judiciary Committee please explain this amendment?

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker and Members of the House: I move the indefinite postponement of Senate Amendment "H" and would speak to my motion in an effort to answer Representative LaPointe's question.

Senate Amendment "H" is a duplicate of sorts to House Amendment "F" that was adopted yesterday by this Body. It appears that there was some error, typographically, in terms of House Amendment "F" and in conflict, in part, with a Senate Amendment that was likewise adopted and, therefore, by virtue of a conference between the sponsors of the two particular amendments it was agreed that Senate Amendment "H" would be presented and that the two previous amendments would be deleted. This particular section which has been placed as an amendment to the Errors and Inconsistencies Bill bothers me, personally, quite a bit I am afraid. The arguments for this particular piece of legislation, if you will, and it is just that, is that we, as a body, or this legislature has expressed its intent that we hold legislative papers in confidence and confidentiality by virtue of a vote taken earlier in the session on a joint order presented by myself. That constitutes a sufficient cause, if you will, to amount to an error and inconsistency in the law, ladies and gentlemen, there is no law and, therefore, we must put it in the law if we are to preserve the position that was taken by the legislature or specifically by this body on my particular joint order.

I might add that I also was vocal enough to suggest that I had intent to bring suit against the Legislative Research Office because there is no law on the books that says those records are confidential and that I felt that I would prevail. If we pass this legislation, there isn't any question about it, I will lose. Whether I do or I don't and frankly, I don't find that very important other than for the fact that legislative records and reports I find are very difficult, very hard to understand what it is we, as legislators, as elected public officials, claim that we must keep our papers confident in the state of confidentiality that we would prevent the general public from being aware of what they might be if they chose to do so. That to me, rings so and true of what I consider a public official to be.

We were elected Representatives and Senators, if you will, chosen by the people to represent their interests in a public capacity and when we were elected we gave up a certain privilege, if you will, and that privilege was a luxury of remaining private citizens to the extent of our legislative capacities here. It seems to me that if any one of my constituents so chooses to come up here and go through the legislative research office, looking at my papers, I have absolutely nothing to hide.

I can't conceive of anyone else here having anything they should hide. The minute I find that we have got to pass a law that suggests that we are going to put on the books that they do not do that, then I

seriously question just what it is in there or out there that must be hidden. I suspect there really is nothing but it does cause a certain amount of stigma, suspicion or what have you to say that we have got to pass a law in order to prevent the general public from viewing our public activities, this refers to public records in the sense that it is our working papers, if you will.

I can only reiterate that the Errors and Inconsistencies Bill is supposed to be for just that purpose. It is to take care of those errors or inconsistencies as a result of legislation which is in conflict, one with another, or where there is any particular date that is inserted as a part of an act and it is no longer appropriate, as for example, the criminal code will go into effect as of March 1, 1976 and during the next legislative session, it is no longer necessary to refer to that statutorily and may be deleted. For the most part the Errors and Inconsistencies Bill has been taken care of along those lines. There are some amendments that do not do that. This one, in particular, is one that does not do that. This, in fact, passes a new law and I sincerely hope that you will defeat it on my motion for indefinite postponement.

The SPEAKER: The Chair recognizes the gentleman from Durham, Mr. Tierney.

Mr. TIERNEY: Mr. Speaker, Ladies and Gentlemen of the House: I will reply to the gentleman from South Portland, Mr. Perkins, although I know he feels very strongly about this issue. I think the House should be made aware of some of the questions at hand.

First of all, the only reason that Senate Amendment "H" is back to us is because it is word for word my House Amendment "F" yesterday, it was due to a technicality which the gentleman from Bangor, Mr. McKernan, noticed yesterday that there are some problems with numbering and I had an amendment prepared and this guy in the Senate had the amendment prepared and they both went on and they are inconsistent. The only way to make them consistent was to put on a new amendment, that is technically why it is here.

Number two, the question of whether or not this is a substantial change in the present law: The only reason this entire question was brought to my attention was that the very good gentleman from South Portland, Mr. Perkins, from his position on the Judiciary Committee had written into this new section, Section 1 of the Errors and Inconsistencies Law an exception to the exception which would, in a sense, open up so that he could bring his suit after the session was over to open up the legislative files.

So, I just think that what we are trying to do here, and all this amendment does is to preserve the status quo as to preserve the confidentiality of our records in the legislative research office, an issue that this House has directly addressed when it, by a substantial margin, defeated the order presented earlier by the good gentleman from South Portland.

Now, with the technicalities out of the way, I would like to talk to the policy behind this amendment. I have voted for just about every openness in government scheme that has come through here last session and this. Some of them were pretty half baked but I voted for them anyway. I guess, in some sense, I have admitted I was wrong on some of those votes, because what has happened generally through some of our desires to be open has been a factual result of increased power on the

fact of members of the lobby. What this does is say that when you have a file with Dave Silsby, it is your file. Now, no constituent of mine has ever tried to see that file. It is not a question of your constituents driving here to Augusta and asking to see your file. The people who want to see the file are the lobbyists, they want to be able to come in on a Monday morning and say that they want to see Jim Tierney's file to check out all the labor bill and any amendments he might want to put on. They want to come in and look at the file of the gentleman from South Portland and see what he has cooking on any amendments he might want to put in on a Judiciary bill. It is that simple. I don't blame the lobbyists for wanting to know absolutely everything in there. They want to see every letter you receive from a constituent that might end up in that file. It just doesn't make any sense. It seems to me that as I am working out in my own mind what I want for the content of the bill or content of an amendment that that input, the working papers which go into that input deserve to be confidential. When I take that amendment and put it on the floor of this House, then it is for the people and, at that time, of course, I do have nothing to hide. I hope that we do not indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Dover-Foxcroft, Mr. Smith.

Mr. SMITH: Mr. Speaker, Ladies and Gentlemen of the House: I am going to say just one word. I was the original sponsor of the Right to Know Law that went through here and now is being corrected in the Errors and Inconsistencies Act. I want you to know that I think this is a good amendment, it was brought to the attention of those who worked on the Right to Know Law, long after it had been signed by the Governor and it is something that we had not thought of at the time. The argument that it would be the ideal tool for the member of the third House, I think, is a compelling one, and I am sure that files that I put together down in the Research Office of ideas and notions that I might someday turn into a bill, I don't care about lobbyists going through and becoming a public record before I actually am willing to go public with it myself. I think there is a slight danger here that that kind of thing could be misused and I hope that you will not vote today to indefinitely postpone this item.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Perkins.

Mr. PERKINS: Mr. Speaker, Ladies and Gentlemen of the House: Just to review the history of this, a little bit, since it has been brought up. A proposed amendment was presented to the Judiciary Committee dealing with the public records and the definition of public records. I attempted to determine just where it came from and I found the Attorney General's Office was interested in being more specific than the bill that was originally presented by Representative Smith from Dover-Foxcroft. In checking with the Attorney General's Office, I found that the reason that they were more concerned with specifics was that under Section 3 which is now a proposed amendment to Section 3, it originally read inter-office memorandums or working notes of public officials. "Inter-office memorandums or working notes and papers of a public official that are not the sole public record of action or any information considered in

taking action on any matter committed to the discretion of that official." That was an exception to what is a public record. They felt it was very necessary to have that for a couple of reasons. One was, they wanted to prevent defendants from being able to view their working records. The other was that, as you know, the Attorney General's Office gives opinions on occasion as the constitutionality of a given act, the legality of a given bill. These are so-called informal opinions and they don't like to get themselves locked into having to show this to the general public or being committed to it, is what it amounts to. That is the reason that they proposed this amendment to the definition of public records and had they left it alone, I wouldn't have had any cause of alarm. Unfortunately, when they chose to do it this way, I went down there and they agreed that it was substantive matter, it was not a procedural matter, it was a substantive matter. I said, I will tell you one thing, I am going to ask to kill; the whole bill, call it an omnibus bill if you want, it is an omnibus bill. I will move to indefinitely postpone the whole bill if this thing goes in the way it is at the present time, as presented by you people and they agreed that they didn't like to rock any cages including my own and, therefore, it was amended to make sure that it said, except public officials involved in the legislative process. I agree that was the result of my doing.

Then we had Representative Tierney present his amendment which would have specifically made sure that we were considered one of the exemptions from the public Right to Know Law. Then Senator Clifford decided to delete that whole section 3 because he didn't like the idea that the Attorney General's opinions, they wanted to keep to themselves or their inter-office memos and things of that nature should be open to us. He was concerned the legislature should be aware of what was going on and, therefore, we have Section 3, if we pass the amendment as proposed, completely deleted which takes care of the problem of the Attorney General's Office records are no longer longer being confidential but having replaced it with one even more directly involved with us, as people. That is to say, ladies and gentlemen, no, the Attorney General's Office records are no longer confidential by this, but ours remain so. As far as I am concerned, ours happens to be the only ones that do remain so, if we pass this amendment. I suggest and submit that the general public does not think that way. I hope that we indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: At the time that we debated the original order the gentleman from South Portland, Mr. Perkins, I made the offer to him that he could come and look at my files in the Legislative Research Office any time he chose. Either he is not interested or he is rather slow in getting around to it. To my knowledge, he hasn't come over and looked at them. At the same time, I also made the same offer to the editor of a newspaper in the state who had written an editorial unfavorable to our action. To my knowledge, he has not come and looked at my files in the Legislative Research Office.

I am sure that all of us, if we were asked by our constituents if they're burning with curiosity to find out what was in our files

would be able to make the decision and allow them to look at them. I would even be willing to allow lobbyists to look in my files if they so chose. I can't see that this should be mandated as the argument I made the time this could lead to a politicizing of the Legislative Research Office which we have been very, very careful to keep completely away from all politics. I hope that you will not vote to indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. McKernan.

Mr. McKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief. The thing that bothers me the most, I guess, about this amendment and why I am going to support indefinite postponement is the remarks made at the end of Mr. Perkins speech and that is that we have gone now from one extreme to the other and we are saying that no longer are other public officials inter-office or into our office memo's going to be confidential but we are now going to allow legislative inter-office memo's or working papers to be confidential. I think that we ought to do both or neither. I think that it is inconsistent to say that the legislature should, for some reason, be above other public officials and not be subject to the scrutiny that these public officials are going to be subject to now with their papers not being confidential.

The SPEAKER: The Chair recognizes the gentleman from Cape Elizabeth, Mr. Hewes.

Mr. HEWES: Mr. Speaker, Ladies and Gentlemen of the House: I want to commend the courage of the gentleman from South Portland, Mr. Perkins. I wonder if we are trying to be holier than thou or are we hypocrits? We want openness in government for everybody except ourselves. I don't think that makes sense. If we are going to have openness in government, it should apply to us just as well as everybody else. School boards have to, municipal officials, why are we so select that we can be exempted from this law? We have heard of sunshine laws for years.

The gentleman from Dover-Foxcroft sponsored a bill and worked hard to get it through a lot of debate and was successful. I don't think, that we ought to, now, exempt ourselves even though it is a lobbyist or any other interested citizen. I don't see why interested citizens should be denied the right to look at our records and our memo's and things of that nature.

I certainly hope you will vote to appreciate the Majority Leader who spoke and perhaps this is a lost cause. I hope that you will vote to indefinitely postpone this. If we don't, I don't know if the two-thirds will be there tomorrow or whenever we get around to vote for the final enactment of this bill, which I hope will be tomorrow. This is a matter of substance, the amendment in question was offered June 25, 1975 and I don't think that it ought to pass.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Cote. Lewiston, Mr. Cote.

Mr. COTE: Mr. Speaker, Ladies and Gentlemen of the House: I hope we don't vote to indefinitely postpone this amendment.

I have been put out quite a few times during this session when we, of some committees, had meetings and department heads came in there, not seeking our advice or giving us advice but

telling us what to do. It happened two or three different occasions when I was present and I didn't like it. Even last week, had an order that I wanted drafted, I went to the right source, I went down the next day, the order was not drafted. Then I was told that they had contacted a certain department head and the department head had told him we better go easy on this. I don't think it is a good idea to have this order drafted. That I don't agree with and I think when we get down to Legislative Research or when we go to the Attorney General's Office or anyone else and ask them to give us advice, well and good, but I don't think they should stick their noses where they have no business in, by going to our files and try to have us change our mind or spreading out what we are trying to do here, and as we introduce, whether it is a bill or an order, it becomes public property at that time and that is when it should be recognized by everyone. So, I hope we don't indefinitely postpone this thing.

The SPEAKER: The Chair recognizes the gentleman from York, Mr. Rolde.

Mr. ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I would just simply like to make one comment. I am a little bit disturbed by the implied threat of the gentleman from Cape Elizabeth unless we go along with this, the entire Errors and Inconsistencies Bill will be defeated.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Henderson.

Mr. HENDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I wonder the majority leader or someone else can tell me whether the allegation is accurate that the legislative files are less open than the files of the administration, the bureaucracy? Is it, in fact, true or are these memorandums accepted the same as they are in the executive area?

The SPEAKER: The gentleman from Bangor, Mr. Henderson, poses a question through the Chair to anyone who cares to answer.

The Chair recognizes the gentleman from Dover-Foxcroft, Mr. Smith.

Mr. SMITH: Mr. Speaker Ladies and Gentlemen of the House: I think I am correct in saying the legislative files themselves are as open as any in the state government today. The files that we are talking about are a little bit special, in that, the people that work in the research office are attorneys, they are people that very often members of this House go to almost on an attorney client basis and the policy of that office has been one of attorney-client business, that the advice that they give, the suggestions that they write, the thoughts that they have are with their clients who are the legislators, and many of the things that are said or written in that office have been somewhat privileged on that basis and on that policy. Basically, all this amendment, to the Right to Know Law that so many of us worked so hard to get through this session is to continue that relationship and it is not an unusual relationship in our society. I am sure that you all know that it exists outside the legislature and without further study, I do not mind an amendment of this sort going on to modify that Right to Know Law very slightly. I think it is something that if we are interested in doing, we could do perhaps between now and the special session and modify it at that time, but at this late date in the legislative session, it seems to me, a bit of caution is warranted

and that we could give this matter some thought and perhaps even change it the very first thing in the next session if we consider it wise. I frankly, have not come to the conclusion that that relationship ought to be disturbed without a heck of a lot more thought on my part and I am sure that some of you others feel the same way.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Snow.

Mr. SNOW: Mr. Speaker, Ladies and Gentlemen of the House: If our records, as they exist in the research office, should become as open as the gentleman from South Portland would like, I hope that we all are good spellers, for one thing. I would hate to think of someone looking in there and finding out that we did not know how to spell and see it in someone's column. I hope that none of us ever doodle on our notes, which we give to the research office. I hate to think what might come out if our doodles are looked at. I think very often we use suggestions which we receive from friends and because we are busy people, we use their letters, we turn their letters in, their names are on the letters, their words are there. I have no intention of involving the people who asked me to introduce legislation in this kind of exposure, so, therefore, I hope that you will maintain this amendment.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. McKernan.

Mr. MCKERNAN: Mr. Speaker, Ladies and Gentlemen of the House: In response, I guess there is not an answer to the question of the gentleman from Bangor, Mr. Henderson. I would just like to say that he is, in fact, correct, we are giving ourselves a privilege that we have decided, even though it was in the original committee amendment, that we don't want other public officials to have and that is very clear, if you just want to look at the original subsection 3 and the new subsection 3.

I think one thing Mr. Smith said though is something we should all think about before we vote on this motion and that is, if we don't pass this amendment, we will be leaving things just the way they are and I think that rather than pass it, if we want to study it more, we should go ahead and do it. I think this is not the thing we should go ahead and do right now, to give ourselves the privilege that we don't have now.

The SPEAKER: The pending question is indefinite postponement. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Mr. Higgins of Scarborough requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on the motion of the gentleman from South Portland, Mr. Perkins, that Senate Amendment "H" to Committee Amendment "A" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Ault, Bagley, Berube, Byers, Carpenter, Curtis, DeVane, Dudley, Dyer, Farnham, Gauthier, Henderson, Hewes, Higgins, Hinds, Hutchings, Immonen, Jackson, Kany, Leonard, Lewis,

Littlefield, Lizotte, Lunt, Mackel, McBreairty, McKernan, Morton, Norris, Perkins, S.; Pierce, Silverman, Snowe, Sprowl, Torrey, Twitchell.

NAY — Albert, Bachrach, Berry, G. W.; Berry, P. P.; Birt, Blodgett, Boudreau, Bowie, Burns, Bustin, Call, Carey, Carroll, Carter, Chonko, Churchill, Clark, Conners, Connolly, Cote, Cox, Curran, P.; Curran, R.; Dam, Davies, Doak, Dow, Drigotas, Durgin, Faucher, Fenlason, Finemore, Flanagan, Fraser, Goodwin, H.; Gould, Gray, Greenlaw, Hall, Hennessey, Hobbins, Hunter, Ingegneri, Jensen, Joyce, Kelleher, LaPointe, Laverty, LeBlanc, Lewin, Lovell, Lynch, Mahany, Martin, A.; Martin, R.; Maxwell, McMahon, Miskavage, Mitchell, Mulhern, Nadeau, Najarian, Peakes, Pearson, Pelosi, Peterson, T.; Post, Powell, Quinn, Raymond, Rideout, Rolde, Rollins, Saunders, Shute, Smith, Snow, Spencer, Stubbs, Talbot, Tarr, Teague, Theriault, Tierney, Tozier, Tyndale, Usher, Wagner, Walker, Webber, Wilfong, Winship.

ABSENT — Bennett, Cooney, Farley, Garsoe, Goodwin, K.; Hughes, Jacques, Jalbert, Kauffman, Kelley, Kennedy, Laffin, MacEachern, MacLeod, Mills, Morin, Palmer, Perkins, T.; Peterson, P.; Strout, Susi, Truman.

Yes, 36; No, 92; Absent, 23.

The SPEAKER: Thirty-six having voted in the affirmative and ninety-two in the negative, with twenty-three being absent, the motion does not prevail.

Thereupon, Senate Amendment "H" to Committee Amendment "A" was adopted in concurrence.

The SPEAKER: The pending question now is indefinite postponement of House Amendment "E" to Committee Amendment "A" in concurrence.

The Chair recognizes the gentleman from South Berwick, Mr. Goodwin.

Mr. GOODWIN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is mine, I put it in last night to take out a section that was put in the Errors and Inconsistencies that I thought was a substantial change. Since that time, I have been able to do some work on this. I have found that the section that was put in the Errors and Inconsistency is not going to create a lot of difficult problems, in fact, a lot of people do want that, it is not that bad an idea perhaps. It is still a substantial change. I am not going to fight this, I am going to go along with it, but I do want the people in this House to know that this is a substantial change, a particular bill that is going in in the Errors and Inconsistencies. I do not like the procedure but at this point in time I am not going into a big hassle between two branches or anything on this. I just think that everybody in here should be aware of what is happening.

Thereupon, House Amendment "E" to Committee Amendment "A" was indefinitely postponed in concurrence.

House Amendment "F" to Committee Amendment "A" was indefinitely postponed in concurrence.

Senate Amendment "E" (S-368) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Winthrop, Mr. Bagley.

Mr. BAGLEY: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to make any motion or anything, I don't want to prolong this thing, but I do want to call your attention to the fact that in Section 24B of this particular amendment, the number of signers on a petition for nomination for House of Representatives is increased from 25 to 75, or not more

than, and it is increased from 50 to 150. Now, to my mind that is certainly a substantive change and it seems to me that that isn't part of an inconsistency or an error, but I am certainly not going to prolong this. If anybody can't get 75 signatures, they probably shouldn't be running anyway, so the idea is all right, but I just wanted to call that to your attention.

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Shute.

Mr. SHUTE: Mr. Speaker, I would like to pose a question to the Chair. Senate Amendment "E" seems to be a copy of Senate Amendment "B", which was a copy of House Amendment "A", which were indefinitely postponed. Could I have a ruling if this is proper to reintroduce this amendment at this time?

The SPEAKER: The Chair would announce that the Chair understands, from what the gentleman has shown me prior to the session and during the recess, that Senate Amendment "E" is different from the amendment that was defeated and, therefore, the Chair would rule that the amendment is germane.

The gentleman may proceed.

Mr. SHUTE: Mr. Speaker, Ladies and Gentlemen of the House: My only objection to Senate Amendment "E" is in the first section of the bill under party designation. In this section of the bill, it adds to the Election Laws requirement that in order to form under a political party, you must first conform with Chapters 11 and 13 of the Election Law proceedings. That causes some difficulty in forming a party because in the Election Laws, Chapters 11 and 13, if you read this section, it says, Call to the Caucus. It says, "The caucus may be called by a Chairman or a majority of the members of the municipal committee of a political party." First of all, you haven't formed a party, so you can't have members of a party call a caucus; that is one problem.

You go down into Section 364 and under Challenges of Voters at the party and the Section one under oath, it says, "I swear that I am a registered and enrolled voter in this voting district, that I am a member of the political party holding this caucus and I have not been enrolled in any other political party in the last three months." You can't be a member of that political party because your party hasn't organized in any election laws, there is no procedure for which you can organize a political party so, therefore, you are left without any third party or any opportunity for a third party, not that I am for a third party but I think we should be fair in leaving it open if a group of people want to form a third party in the state.

I move for indefinite postponement of this amendment.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Boudreau.

Mrs. BOUDREAU: Mr. Speaker, Ladies and Gentlemen of the House: First, I will ask for the yeas and nays on the indefinite postponement motion.

I will try to answer Mr. Bagley's question first. This increase in signatures was an oversight when we put out L. D. 1404, if you remember, that is the bill that was recalled from the Governor's office, it concerns Independents only. We increased this 3 percent for federal officers. We forgot to include the House and Senate. This brings back into line with the law that has already signed.

To get back to Mr. Shute, Chapters 11 and 13 are already in our election laws. The only people in the State of Maine who would have enough members to organize a party are Independents, and they are already on the rolls as Independents, so they would have no problem.

Section 24 C and B and E concerns a law that has already been signed that concerns applications for absentee ballots. They are going to be dated in the future. That bill goes into effect 90 days after we adjourn. Many municipalities have elections in the early part of December. In the law that we passed, we said the applications must be ready three months prior to elections. There is no way that those can be ready three months prior to December, so that is why we need this other section. We have extended the deadline to January 1, 1976, so it will not interfere with municipal elections.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker, Ladies and Gentlemen of the House: As I said before, a lot of these elections laws that have been proposed, bills which would produce elections laws, are bad, they are discriminatory and they are not good government. In this amendment here, the indefinite postponement which has been asked, proves it.

Now, the gentleman from Winthrop says that it is nothing for anybody to have to go from 25 signatures to 75. I was told by members of the Election Laws Committee, of which I am a member, that if I run as an Independent next time, instead of having to have a 150 signatures, I would have to have 450. That is considerably more than 75. I say that this is not right and I am surprised at the about face that the Governor has made, because when these election laws started bouncing onto his desk or he was even learning about them, he was opposed but members of the Election Laws Committee and others were able to sell him a bill of goods. So without saying any more, let me assure you that the gentleman from Stockton Springs has made a proper motion and I, too, urge you good people to indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Bridgewater, Mr. Finemore.

Mr. FINEMORE: Mr. Speaker, Ladies and Gentlemen of the House: I said that when this bill started, I wouldn't speak on it and wouldn't present an amendment, which I haven't, but I notice on this amendment it says, by a number of voters equal to at least 75 and not more than 150, multiply it by the number of representatives of which the district is entitled. It looks to me as if it is asking too much for the City of Portland to go out and get 750 signatures, each member of it, or a maximum of 1500. So I think the motion is the proper motion, to indefinitely postpone this amendment.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mr. Farnham.

Mr. FARNHAM: Mr. Speaker, Ladies and Gentlemen of the House: Generally, I am not too much concerned with election laws but this strikes me as being very, very unfair, in that I am in a single member district and, yes, I can get 75 signatures, but if I lived in Portland and wanted to run as an Independent, I have got to pick up 10 times the number of seats and I think it is 50 and that would make 15 or 750 signatures. If I lived in Bangor and

wanted to run as an Independent, I have got to pick up 5 times as many as the person who happens to be enrolled in party, and I think that is pretty cheap cricket to pay the game that way.

The SPEAKER: The Chair recognizes the gentleman from East Millinocket, Mr. Birt.

Mr. BIRT: Mr. Speaker, Ladies and Gentlemen of the House: I will try to explain out and see if I can't clarify this particular point. At the time that 1404 was recalled from the Governor's Office, after some discussion with the people in the Governor's Office, they recommended, as we pointed out and explained to you Thursday, that we went down with the Governor and discussed the whole bill with him in an attempt to clarify with him so we wouldn't run into the veto process. He indicated that he had no objections to people having to file two or three times as many signatures for the people who were running as Independents.

There had been a ruling come down from the Attorney General in which they had researched cases in other states in the United States in which Independents filing signatures, it was perfectly legitimate to have them file extra signatures, it was perfectly legitimate to have them file extra signatures provided that it did not result in discrimination. The reasons for that are that they do not have the cost of primary campaigns which people running in the primary have.

The second reason is, the filing of extra signatures at least gives some indication that they are a serious candidate. A person who files in a party has the backing of the party if he wins, so they are what is to be considered a viable candidate, but in order to eliminate people just running irresponsibly, the filing of extra signatures is considered to be completely proper. These are court decisions.

The other factor that comes into this picture is that in passing 1404, the law stated that they had to simply file a declaration of intention that they were going to run for a particular office on April 1st but they have until 5:00 p.m. on the primary election date in order to file their papers, so it is true that a candidate in Portland might have to file as many as 750 signatures and might have to file up to 1500, or could in between those two figures in order to get on the ballot. They have extra time and there is good reason for them to have to prove that they are a viable candidate.

What is in this particular amendment in Errors and Inconsistencies has been pointed out very well by the gentlelady from Portland, Mrs. Boudreau, it is just to try to verify an oversight when this bill was put together. You have already voted for the bill but it is just to bring it consistent with what the law says.

The SPEAKER: The Chair recognizes the gentleman from Ellsworth, Mr. DeVane.

Mr. DeVANE: Mr. Speaker, Ladies and Gentlemen of the House: In all due respect to Mr. Birt, it is absolutely no accident why this session has seen so many bills on Independent candidacies, it is simply not coincidence. There has been a development that many people in the political parties don't like and they are trying to address it and I think now, as we did in January, it is inappropriate.

I would ask a question to anybody on the Election Laws Committee and in particular to the lady from Portland, if you can tell us when L. D. 1404, was recalled

from the Governor's desk and why was not the inconsistency addressed at that time and not now in this omnibus bill?

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Boudreau.

Mrs. BOUDREAU: Mr. Speaker, I will try to answer his question. The reason is that we just made an error and that is what this bill is for. We forgot the House and Senate candidates, and to reply to Mr. Farnham, candidates living in multiple districts do have to get more signatures anyway. This section, 492, applies to unenrolled voters.

The SPEAKER: The Chair recognizes the gentleman from Rockland, Mr. Gray.

Mr. GRAY: Mr. Speaker, Ladies and Gentlemen of the House: I am a first timer but I have been amazed at the number of bills and amendments that have come before this House to discourage participation in our political system. I can't help but wonder, and maybe you see something that I don't, but are the two major parties really so insecure that we have to legislate to eliminate opposition? Maybe this amendment is lacking a fiscal note. I would suggest that we might add a fiscal note on here so we could purchase a security blanket.

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Shute.

Mr. SHUTE: Mr. Speaker, Ladies and Gentlemen of the House: My real objection to this bill is the first section of the bill under party, and I would like to ask any member of the Election Laws Committee if the present law requires that a party conform with Chapters 11 and 13 under party organization? Secondly, did the Election Laws Committee go over this question in committee and find that it was a rather difficult question to come up with the organization of a party and decided that we would drop this party organization for this year?

The SPEAKER: A roll call has been requested. In order for the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Stockton Springs, Mr. Shute, that Senate Amendment "E" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Berry, G. W.; Berube, Burns, Call, Churchill, Connors, Connolly, Davies, DeVane, Dow, Farnham, Finemore, Gauthier, Gould, Gray, Hall, Henderson, Hewes, Hunter, Immonen, Kany, LaPointe, Leonard, Lewis, Littlefield, Lunt, Mitchell, Peakes, Perkins, S.; Peterson, P.; Post, Quinn, Saunders, Shute, Snowe, Spencer, Sprowl, Strout, Tierney, Torrey, Tozier, Twitchell, Wagner, Wilfong, Winship.

NAY — Albert, Ault, Bachrach, Bennett, Berry, P. P.; Birt, Blodgett, Boudreau, Bustin, Byers, Carey, Carpenter, Carroll, Carter, Chonko, Clark, Cote, Cox, Curran, P.; Curtis, Dam, Doak, Drigotas, Dudley, Durgin, Faucher, Fenlason, Flanagan, Fraser, Goodwin, H.; Greenlaw, Hennessey, Hobbins, Hutchings, Ingegneri, Jackson, Jalbert, Jensen, Joyce, Kelleher, Kelfey, Laverty,

LeBlanc, Lewin, Lizotte, Lynch, MacEachern, Mackel, Mahany, Martin, R.; Maxwell, McBrearty, McKernan, McMahon, Mills, Miskavage, Morton, Mulhern, Nadeau, Najarian, Norris, Pearson, Pelosi, Peterson, T.; Pierce, Powell, Raymond, Rolde, Smith, Snow, Stubbs, Talbot, Tarr, Teague, Theriault, Tyndale, Usher, Webber, The Speaker.

ABSENT — Bagley, Bowie, Cooney, Curran, R.; Dyer, Farley, Garsoe, Goodwin, K.; Higgins, Hinds, Hughes, Jacques, Kauffman, Kennedy, Laffin, Lovell, MacLeod, Martin, A.; Morin, Palmer, Perkins, T.; Rideout, Rollins, Silverman, Susi, Truman, Walker.

Yes, 45; No, 79; Absent, 27.

The SPEAKER: Forty-five having voted in the affirmative and seventy-nine in the negative, with twenty-seven being absent, the motion does not prevail.

Thereupon, Senate Amendment "E" was adopted in concurrence.

Senate Amendment "F" (S-370) was read by the Clerk and adopted in concurrence.

Senate Amendment "G" (S-371) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. LaPointe.

Mr. LAPOINTE: Mr. Speaker, could a member of the Judiciary Committee please explain the amendment?

The SPEAKER: The gentleman from Portland, Mr. LaPointe, has posed a question through the Chair to anyone who may answer if they so desire.

The Chair recognizes the gentleman from Sanford, Mr. Gauthier.

Mr. GAUTHIER: Mr. Speaker, the purpose of this amendment is to authorize the Portland Water District to receive federal waste water treatment money on behalf of industrial and municipal users.

The SPEAKER: The Chair recognizes the gentleman from Standish, Mr. Spencer.

Mr. SPENCER: Mr. Speaker, Ladies and Gentlemen of the House: I have spent a great deal of time on this today and there was a paragraph which was submitted to the committee and left out of the bill as it was reported out of committee and essentially, it is boiler plates that was required by the Environmental Protection Agency to deal with the handling of federal funds.

Thereupon, Senate Amendment "G" was adopted in concurrence.

Mr. Dudley of Enfield offered House Amendment "F" and moved its adoption.

House Amendment "F" (H-840) was read by the Clerk.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker, Ladies and Gentlemen of the House: Briefly, we passed the bill authorizing the Howland Water District and when they come to sell their bonds, they had some problem in this and it merely makes it possible for them to sell their bonds and correct the error in the bill.

Thereupon, House Amendment "F" was adopted.

Mr. Talbot of Portland offered House Amendment "G" and moved its adoption.

House Amendment "G" (H-842) was read by the Clerk and adopted.

Mr. Churchill of Orland offered House Amendment "H" and moved its adoption.

House Amendment "H" (H-843) was read by the Clerk.

The SPEAKER: The Chair recognizes

the gentleman from Kennebunkport, Mr. Tyndale.

Mr. TYNDALE: Mr. Speaker, Ladies and Gentlemen of the House: If I read this amendment correctly, this amendment exempts horse trailers from the certificate of title requirements under motor vehicle law. Would somebody explain that to me?

The SPEAKER: The gentleman from Kennebunkport, Mr. Tyndale, has posed a question through the Chair to anyone who may answer.

The Chair recognizes the gentleman from Orland, Mr. Churchill.

Mr. CHURCHILL: Mr. Speaker, Ladies and Gentlemen of the House: This is something that has haunted me ever since this title law went through. As the present law reads, it reads that all trailers of an unladen weight of more than 1500 pounds must file title of ownership and all these horse trailers seem to have doubled and up to that weight weighs anywhere from 1600, 1700 or over 2000 pounds, roughly 2200 pounds the ones that I have run into trouble with. It seems rather ridiculous, and if you want to go into vehicles, I looked it up in the dictionary and I believe any vehicle includes a wheelbarrow, and if it weighs more than 1500 lbs., you would have to show proof. I couldn't go into exempting all trailers because it would include semi-trailers and all that. This is simply where they haul horses to the horse shows, and it seems rather ridiculous to have to go through the same process you do for automobiles. This is one area that I have talked with our Secretary of State and he couldn't even believe it himself when he first looked it up. I am in hopes that we can correct it to this extent.

Thereupon, House Amendment "H" was adopted.

The Bill passed to be engrossed as amended by Committee Amendment "A" as amended by Senate Amendments "A", "B", "D", "F" and "H" and House Amendments "B", "C" and "G" thereto and by House Amendments "A", "B", "C", "D", "E", "F", "G" and "H" and Senate Amendments "A", "C", "E", "F" and "G" in non-concurrence and sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

The following papers appearing on Supplement No. 6 were taken up out of order by unanimous consent:

Bill "An Act to Permit Individuals to Pay Fines for Minor Traffic Violations without Having to Appear in Court" (H. P. 1452) (L. D. 1725) which was passed to be engrossed as amended by Committee Amendment "A" (H-267) in the House on May 22.

Came from the Senate with the Bill and accompanying papers Indefinitely Postponed in non-concurrence.

In the House: The House voted to recede and concur.

Joint Order Relative to Establishing a Joint Select Committee on School Attendance (H. P. 1772) which was Read and Passed in the House on June 24.

Came from the Senate Indefinitely Postponed in non-concurrence.

In the House: The House voted to recede and concur.

Mr. Tierney of Durham presented the following Joint Order and moved its passage: (H. P. 1775)

WHEREAS, the present recession has

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LEGISLATIVE RECORD

OF THE

*One Hundred and Seventh
Legislature*

OF THE

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is the time to stop it. I am certainly going to vote against the bill and I hope that you would join me.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I would just like to make a couple brief remarks in regards to the problems we are posed with and what has been said about them, and I hope the Senate will pardon me for what is a simple analogy.

I think in a way in the legislature we were faced as the man who had a leak in his roof that was causing his house to rot out and he had no money to deal with the leak. And I think in what we have done we could be criticized for some patchwork, we could be criticized for putting some buckets down to catch the water, from the standpoint that we haven't done enough, and I suppose that there is some legitimacy to the criticism that we pushed our resources as far as we can, maybe further than we would like to. But the alternative, I think, is to let the structure rot out, maybe beyond hope, in the case of what we are talking about here, and in the analogy what would be timbers would be the people in need and the people in our society that we want to help.

I don't think the question of fiscal responsibility is always an easy one for government. It is certainly harder than it is in business, and in business it is sometimes difficult when the only way to make money is to spend money. The question of what is the most fiscally responsible thing to do isn't simple there and it is a lot less simple here.

As a freshman Senator, as a person who came with no ties and really no great friendship or knowledge of any of the people in leadership in this legislature or who served on the Appropriations Committee, I applaud them for the job that they have done in trying to come to grips with a difficult situation, and I can very easily, within the context of the problems we have, vote to override the veto. I think that this legislature has been distinguished by the ability to put issues above personality and by the ability to put the concerns of Maine people above party. I am confident that we will do that this afternoon, and that the vote that is taken here this afternoon will be seen as another step on that path, as nothing more and as nothing less.

The PRESIDENT: The pending question before the Senate is: Shall this bill become a law notwithstanding the objections of the Governor? A vote of "Yes" will be in favor of the Bill; a vote of "No" will be in favor of sustaining the veto of the Governor.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Berry, E.; Cianchette, Clifford, Collins, Conley, Corson, Cummings, Curtis, Cyr, Gahagan, Graffam, Graham, Greeley, Huber, Johnston, Marcotte, McNally, Merrill, Pray, Reeves, Roberts, Speers, Thomas, Trotzky, Wyman, Sewall.

NAYS: Senators Berry, R.; Carbonneau, Danton, Hichens, Jackson, Katz, O'Leary.

Mr. O'Leary of Oxford was granted leave of the Senate to change his vote from "No" to "Yes".

A roll call was had, 27 Senators having voted in the affirmative, and six Senators having voted in the negative, and 27 being more than two-thirds of the membership present, it was the vote of the Senate that

the Bill becomes a law notwithstanding the objections of the Governor.

Sent down for concurrence.

On motion by Mr. Speers of Kennebec, the Senate voted to take from the table the following Specially Assigned matter:

Non-concurrent Matter

Bill, "An Act to Correct Errors and Inconsistencies in the Public Laws." (S. P. 480) (L. D. 1760)

In the Senate June 24, 1975, Passed to be Engrossed as amended by Committee Amendment "A" (S-351) as amended by Senate Amendments "A" (S-355), "B" (S-362), "E" (S-361) and "F" (S-365) Thereto, and Senate Amendments "A" (S-352), "B" (S-353), "C" (S-356) and "D" (S-360).

Comes from the House, Passed to be Engrossed as amended by Committee Amendment "A" as amended by Senate Amendments "A", "B", "E", "F" and House Amendments "B" (H-823), "C" (H-828), "E" (H-830), "F" (H-834), "G" (H-835) Thereto and Senate Amendments "C" and "A", and House Amendments "A" (H-814), "B" (H-821), "C" (H-831), "D" (H-832) and "E" (H-836), in non-concurrence.

Tabled — earlier in today's session by Mr. Collins of Knox.

Pending — Consideration.

On motion by Mr. Collins of Knox, the Senate voted to Recede from its former action whereby the Bill was Passed to be Engrossed.

The same Senator then moved that the Senate Recede from its former action whereby Committee Amendment "A" was Adopted.

The PRESIDENT: The Senator has the floor.

Mr. COLLINS: Mr. President and Members of the Senate: We have a fairly complicated schedule of amendments to go through on this matter. The amendments now before us which were placed on the bill in the other body are listed on our calendars. After the pending question is put, we would then proceed through House Amendment "B", "C", "E", "F" and "G" as offered to the Committee Amendment. If there is any member of the Senate that opposes any of these House Amendments, it will be in order as they are read to indicate your position. We would then propose to offer the Senate Amendments to the Committee Amendment. I understand that there are at least two of those to be offered. We would then proceed with the Bill itself, the amendments placed by the other body, and then come to the new Senate Amendments to the bill itself. I would now ask, Mr. President, to proceed with the pending question.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves that the Senate recede from its action whereby it adopted Committee Amendment "A". Is this the pleasure of the Senate?

The motion prevailed.

Whereupon, House Amendments "B" and "C" to Committee Amendment "A" were Read and Adopted in concurrence.

House Amendment "E" to Committee Amendment "A" was Read and, on motion by Mr. Hichens of York, Indefinitely Postponed in non-concurrence.

House Amendment "F" to Committee Amendment "A" was Read and, on motion by Mr. Collins of Knox, Indefinitely Postponed in non-concurrence.

House Amendment "G" to Committee

Amendment "A" was Read and Adopted in concurrence.

Mr. Clifford of Androscoggin then presented Senate Amendment "A" to Committee Amendment "A" and moved its Adoption.

Senate Amendment "H", Filing No. S-369, to Committee Amendment "A" was Read.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Reeves.

Mr. REEVES: Mr. President, I move the indefinite postponement of Senate Amendment "H" to Committee Amendment "A". This amendment seems inconsistent to me. In L. D. 1035, which I believe this amendment refers to the legislature passed a bill providing for public access to public records. And at the same time we specifically included the legislature itself for the first time, the legislature and its committees, under our right to know law. This amendment seems contrary to our intentions in passing this law. Good government is open government, and the more open the better.

Mr. President, because this is, I believe, a controversial matter and concerns the public's right to know, I ask for a roll call on this amendment.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President and Members of the Senate: Senate Amendment "H" to Committee Amendment "A" does deal with the right to know law. It deals with exceptions to what are deemed to be public records and, therefore, open without restriction to members of the public.

Now, previous amendments to Committee Amendment "A" have gone in the direction of opening up further information that is available to members of the public. For example, under Committee Amendment "A", subsection 1 of section 1, concerning confidential information, this Senate, by an amendment, limited as an exception to the public records confidential information deemed confidential by statute, and struck out other confidential information which would have been deemed confidential by members of the bureaucracy.

We also struck out as an exception to what is deemed a public record interoffice memoranda between the various departments, which could have included opinions of the Attorney General, which I think you will agree with me, and the Senate agreed by adopting that amendment, should be public.

What we are talking about here, I think, is an area that is a little different, and that is working papers, memoranda of members of the legislature down in the Office of Legislative Research. And unless this amendment is adopted, those working papers, those memoranda, would be open to the lobbyists and to everybody and would present an administrative problem to the Office of Legislative Research which would be very substantial.

Now, any time an amendment is printed, it becomes a matter of public record. Any time an amendment comes out and is distributed, it is a matter of public record. But it seems to me that memoranda of the legislators, working papers of the members of the legislature, should be free from people, for example, from the lobby going in and opening up those files in the

Office of Legislative Research. That is what this Senate Amendment "H" to Committee Amendment "A" does. It does not in any way diminish the public's right to see amendments, whether they be printed or just waiting in the legislative office. What we are talking about is working papers, interoffice memoranda of the legislators, and notes that a legislator may have put in those files.

It seems to me if we want a government in which a legislator will feel free to present any amendment he wants, and will feel free to give Legislative Research any material he wants to back up those amendments, that we would vote against the motion to postpone Senate Amendment "H" to Committee Amendment "A". That is what we are talking about. The legislators should feel free to bring in their memoranda, their working papers, their working notes, to help to aid Legislative Research in drafting legislation and drafting amendments, and I think if we vote to postpone Senate Amendment "H" to Committee Amendment "A" that we are working against that freedom in that process. So I hope you would vote against the motion of the good Senator from Kennebec, Senator Reeves, and that we could adopt Senate Amendment "A" to Committee Amendment "A".

This would be consistent with previous action of this legislature. We are talking here about a bill to correct errors and inconsistencies, and this legislature in a previous action defeated a motion, an order, to completely open up the legislative files, so that this amendment is consistent with previous legislative action. And I think it would be consistent with good legislation, legislation free from people snooping, lobbyists snooping, to see what a legislator might have written in his notes when he brought a particular bill or a particular amendment in to Legislative Research to help in drafting that bill or that amendment. Thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question? The pending motion before the Senate is the motion by the Senator from Kennebec, Senator Reeves, that Senate Amendment "H" to Committee Amendment "A" be indefinitely postponed.

A roll call has been requested. In order for the Chair to order a roll call, it requires the expressed consent of one-fifth of those Senators present and voting. Will all those Senators in favor of a roll call please rise in their places until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion by the Senator from Kennebec, Senator Reeves, that Senate Amendment "H" to Committee Amendment "A" be indefinitely postponed. A "Yes" vote will be in favor of indefinite postponement of Senate Amendment "H" to Committee Amendment "A"; a "No" vote will be opposed.

The Secretary will call the roll.

ROLL CALL

YEAS: Senators Collins, Curtis, Gahagan, Graham, Hichens, Katz, McNally, Reeves.

NAYS: Senators Berry, E.; Berry, R.; Carbonneau, Cianchette, Clifford, Conley, Corson, Cummings, Cyr, Danton, Graffam, Greeley, Jackson, Johnston, Marcotte, Merrill, O'Leary, Pray, Roberts, Speers, Thomas, Trozky, Wyman.

ABSENT: Senator Huber.

Mr. Katz of Kennebec was granted leave of the Senate to change his vote from "Yes" to "No".

A roll call was had. Seven Senators having voted in the affirmative, and 24 Senators having voted in the negative, with one Senator being absent, the motion did not prevail.

Thereupon, Senate Amendment "H" to Committee Amendment "A" was Adopted and Committee Amendment "A", as Amended by Senate Amendments "A", "B", "E", "F" and "H" and House Amendments "B", "C" and "G" Thereto, was Adopted in non-concurrence.

House Amendments "A", "B", "C", "D" and "E" were Read and Adopted in concurrence.

On motion by Mr. Collins of Knox, the Senate voted to recede from its former action whereby Senate Amendment "B" was Adopted and, on subsequent motion by the same Senator, Senate Amendment "B" was Indefinitely Postponed.

On further motion by the same Senator, the Senate voted to recede from its former action whereby Senate Amendment "D" was Adopted.

The same Senator then moved that Senate Amendment "D" be Indefinitely Postponed.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, would the Secretary give the filing number of Senate Amendment "D"?

The SECRETARY: S-360.

Mr. CONLEY: Mr. President, that is my amendment and I congratulate the Senator from Knox.

The PRESIDENT: Is it now the pleasure of the Senate that Senate Amendment "D" be indefinitely postponed?

The motion prevailed.

Mr. Corson of Somerset then presented Senate Amendment "E" and moved its Adoption.

Senate Amendment "E", Filing No. S-368, was Read and Adopted.

Mr. Merrill of Cumberland then presented Senate Amendment "G" and moved its Adoption.

Senate Amendment "G", Filing No. S-371, was Read and Adopted.

Mr. Clifford of Androscoggin then presented Senate Amendment "F" and moved its Adoption.

Senate Amendment "F", Filing No. S-370, was Read.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President, it just appears to me that the Judiciary Committee is offering all kinds of amendments on this errors and inconsistency bill, and the question in my mind is to whether or not the committee ever met.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed a question through the Chair which any member on the Judiciary Committee may answer if he so desires.

The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President, in that regard, I just got a note from somebody saying they weren't completely clear as to what was going on here. I really think it is pretty simple as to what is happening, and if anybody has any questions they can address them to the Senator from Knox, Senator Collins.

The PRESIDENT: The Chair recognizes

the Senator from Androscoggin, Senator Clifford.

Mr. CLIFFORD: Mr. President, I think the members of the Judiciary Committee are just letting the members of the Senate know that they know the phonetic alphabet.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "F"?

The motion prevailed.

The Chair recognizes the Senator from Knox, Senator Collins.

Mr. COLLINS: Mr. President, as far as the Judiciary Committee knows, this is all amendments that are forthcoming to this bill and I would ask now that it be passed to be engrossed.

The PRESIDENT: The Senator from Knox, Senator Collins, now moves that this bill be passed to be engrossed in non-concurrence. Is this the pleasure of the Senate?

The motion prevailed.

Thereupon, under suspension of the rules, sent down forthwith for concurrence.

The PRESIDENT: Is it now the pleasure of the Senate, under suspension of the rules, that L. D. 1937, the veto message, be sent forthwith to the House?

It is a vote.

On motion by Mr. Speers of Kennebec, Recessed until the sound of the bell.

After Recess

Called to order by the President.

Papers from the House

Out of order and under suspension of the rules, the Senate voted to take up the following:

Joint Order

WHEREAS, the State Legislature believes that there is a need to evaluate the several programs of the Maine Housing Authority in order to assure that maximum effectiveness in program administration is obtained in meeting housing needs for Maine people including the elderly and those of low income; and

WHEREAS, legislation dealing directly with the duties and powers of the Maine Housing Authority, such as L. D. 660, L. D. 723 and L. D. 1002, has been enacted or is presently being considered; and

WHEREAS, there has been question of the effect of such legislation on the present and future housing needs of the people of the State of Maine as well as on the credit rating of the State of Maine; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Council through the Joint Standing Committee on Performance Audit conduct the necessary review and consideration of the Maine Housing Authority to determine the need or desirability for altering, adding to or deleting from existing statutory provisions the Maine Housing Authority's powers to meet housing needs in this State; and be it further

ORDERED, that the Legislative Council report the result of its findings together with any suggested recommendations and any necessary implementing legislation to the next special or regular session of the Legislature; and be it further

ORDERED, upon passage in concurrence, that suitable copies of this Order be transmitted forthwith to said agency as notice of this directive. (H. P. 1773)

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME VII

SECOND REGULAR SESSION

Senate

March 10, 1992 to March 31, 1992

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November 19, 1992

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HOUSE AND SENATE LEGISLATIVE SENTIMENTS

December 5, 1990 to December 1, 1992

Senator GAUVREAU of Androscoggin was granted unanimous consent to address the Senate off the Record.

Senator PEARSON of Penobscot was granted unanimous consent to address the Senate off the Record.

Senator GAUVREAU of Androscoggin was granted unanimous consent to address the Senate off the Record.

Senator PEARSON of Penobscot was granted unanimous consent to address the Senate off the Record.

Off Record Remarks

On motion by Senator PEARSON of Penobscot, the Senate RECONSIDERED its action whereby it PASSED TO BE ENACTED:

An Act to Open State Government to Public View
H.P. 1622 L.D. 2290
(C "A" H-1111)

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Thank you Mr. President. Ladies and Gentlemen of the Senate. Because we are going to be affected by this on a daily basis, I think it ought to be clear from the very beginning as to how this affects each and every one of us in several different circumstances. One I would like to know on the record if casual conversations are excluded from this Law. I expect that will be answered on the record. I would also like to know, if in any given committee, the Republicans could have a caucus and Democrats could have a caucus to fashion their philosophy to discuss among themselves common ground, I would like to know if that is excluded from the Law? I am sure that I can't anticipate every circumstance that might occur in conversations in the House and the Senate but I would like to know at least those two basic things for the record so I will know exactly how we can conduct ourselves. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. L.D. 2290 was submitted to the Committee on Judiciary as legislation sponsored by Speaker Martin which was introduced largely as an aftermath of the concerns voiced by the Press and others in the private sector last summer and fall as a result of the lengthy debate and discussions we had on the issue of Workers' Compensation during the State shutdown. Concerns were expressed that Legislators should be conducting Legislative business in public and not in private meetings. The Committee on Judiciary has recommended that any Legislative meetings be held in public and any subcommittees of Committees be also open to access to the public. Our proposed Bill defines a Legislative subcommittee as three or more Legislators from a Legislative Committee appointed for the purpose of conducting Legislative business on behalf of the Committee. Therefore, a caucus of

members of a party would not fall within that definition because the Chairs of the Committee would not appoint democrats or republicans to caucus or meet on behalf of the committee. Furthermore, casual conversations between Legislators would not fall within the meaning of this language because the Committee Chairs would have to actually appoint the subcommittee to work on behalf of the Committee. Casual conversations by Legislators during lunch or work would not fall within the meaning of this language. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. I apologize because I am coming in half way through the debate on this issue. I did look at the Legislation and would like to have further clarification if I may. As a member of Leadership, I am sometimes asked by the Republicans on the Appropriations Committee to meet with them to discuss strategy or discuss differences we may have as Republicans on a particular issue. Often times we meet in the little Cabinet room off the Appropriations Committee. While I think it is important to open government up to people, I think the strategy meetings are vitally important to the way we do business in this Legislature. Granted things in the last year things have not worked as well as they should have but I still think to take away the opportunity to meet as we do to discuss differences privately is very important. I would hope this Legislature would not interfere with that ability. If that question has been answered on the record, I do apologize. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. As I understand the question posed by the good Senator from Sagadahoc, Senator Cahill, relating to discussion between members of her caucus and the administration, that would clearly fall outside the definition of a Legislative subcommittee because that meeting would not be a Legislative subcommittee as defined in this Bill. The Chairs of the Appropriations and Financial Affairs Committee would not have appointed the republicans to meet with the Governor's team on financial matters. It would only be if Chairs had actually appointed a bi-partisan subcommittee which was to conduct work on a particular area. If there were three or more Legislators in that subcommittee then this Bill would apply. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator CAHILL: Thank you Mr. President. Ladies and Gentlemen of the Senate. I have a further question through the Chair. If the four Republican members on the Appropriations Committee got together to discuss appropriations matters outside of the Appropriations Committee, what would the status of that meeting be? Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President. Ladies and Gentlemen of the Senate. I appreciate the spirit in which the question is being raised by our colleague from Sagadahoc, Senator Cahill. In fact, the Committee on Judiciary spent considerable time discussing this very possibility. It was argued that that meeting would not be subject to public review.

It is very clearly a caucus when members of a particular party meet to discuss strategy. It would fall outside the definition of this amendment. This only deals with a Legislative subcommittee and that committee must be appointed by the Chairs of the Committee of Jurisdiction to conduct business on behalf of the committee. Members of a party choosing to meet to discuss strategy or tactics would fall outside this definition. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Cahill.

Senator **CAHILL:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I apologize to you all but this is a huge departure from the way we have done business in this Legislature in the past. Maybe it is for the better but I think it needs to be clarified and crystal clear in each of our minds. What in the good Senator from Androscoggin, Senator Gauvreau's opinion would happen if Senator Brannigan of Cumberland, Senator Foster of Hancock, and the two House Chair and lead people, what would happen if they got together to discuss their strategy for going before the full Appropriations Committee? Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Senator **CONLEY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I think we would have a budget. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I suspect that in further response to the further inquiry by the Senator from Sagadahoc, Senator Cahill, if the meeting was casual or spontaneous then it would certainly be outside this Bill. In the event that the Chairs of the Committee had specifically assigned members of the Appropriations and Financial Affairs Committee to meet on a certain area of the budget then I think that would fall within the definition of this language. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I agree with Senator Cahill, this is important. We have to know exactly how we are operating here. I am not Chair of Appropriations as you know but I can remember at times I would say to one of the democrats on my committee "go down and talk to the leads on the Republican party on this issue because you know more about it than we do and come back to talk to us about it." Representative Carroll or someone would go down and talk to them. I appointed him, in effect. I remember an instance that we agreed that he was the guy that ought to go because he knows. We appointed him and he goes down to talk about some issue. Would that fall within the language? Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As I understand the question, if the Chairs of the Appropriations Committee had asked one of the members of their party to confer with members of the other party to see whether a certain proposal would have some acceptance, it seems to me quite unlikely that would fall within the definition of this language. It would be more of a casual circumstance rather than actually convening a particular subcommittee for the

purpose of actually conducting Legislative business which would be engaging in formal workshop or preparing Legislation. It seems to me that at first blush that type of circumstance would fall outside this language. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator **PEARSON:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I really do appreciate the Senator from Androscoggin, Senator Gauvreau because there are going to be instances. If we hadn't had this conversation here today people would be wondering for a long time and they would have nothing to refer back to as a guide on which to operate. Although it may be boring and time consuming it is a very important conversation. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Hancock, Senator Foster.

Senator **FOSTER:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I'll be up front and tell you what happens in Appropriations a lot of the time. We have two Leads and we have two Chairmen. Very often we meet and find out what the schedule is going to be and what the problems are. That is very important because there aren't enough hours in the day to have thirteen people talking all the time. In fact we got out at 10:00 last night. I would suggest to you that under this piece of Legislation we probably can't do that. I wonder if you agree? Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator **GAUVREAU:** Thank you Mr. President. Ladies and Gentlemen of the Senate. Unfortunately, I can't imbue my remarks with that degree of certitude which would answer every question because we have to apply the Law with the facts as we find them. I would think that if it were a matter of practice of the Committee to have two members of each party meet for purposes of scheduling and this was a formal procedure, I think that would fall within Legislative business because that was a custom of practice in that particular committee. If, on the other hand, the two Republicans met with two Democrats to float a trial balloon note that would not fall within this definition. A lot depends upon how we define Legislative business. The members of the Committee on Judiciary believe that actual workshops on particular Bills was what we had in mind. As you recall last summer we had a mega committee of the Banking and Insurance Committee and the Labor Committee and a few adhoc players of which I was one. The Governor's Office would say they had ten issues in controversy and we would then assign subcommittees to work on the issues. Clearly those subcommittees would be conducting Legislative business because they were discussing policy matters. It seems to me that casual discussions would probably fall outside the ambit of this language. Hopefully I have addressed some of the concerns of the Senator from Hancock, Senator Foster. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. It seems to me what the committee has tried to do and has done well is that right now the Right to Know Law says if any group who are big enough to make final decisions than

it is public. This could put our caucus at risk. What you have done is narrowed that down to say that if any group meets to do business of that committee is three or more then they are open to public scrutiny. That is the issue, not trial balloons, not sounding things out and not trying to work things here and there. The official business that is being carried out by the committee is the record that is being developed here by this discussion. We would rather do our business in public. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Dutremble.

Senator **DUTREMBLE:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I would also like to add my remarks on this issue. I always thought the reason the Speaker brought this proposal and people supported it was because of what happened last year. In fact, there was a situation where we had these meetings and people came out and said they said something and other people said they did not say that. We would then go through this big argument on who said what. I don't have the same concerns that are shared by many people in this Body. Whatever is said in private should be good enough to say in public. If you are willing to fight for something in private you should be willing to fight for it in public also. I don't share the same concern about being able to break down into groups. Legislation as crafted would not prevent that from happening regardless. The only thing is whether or not the public would also be invited. I maintain if you feel strongly enough about something to fight for it in private you should be able to do it in public also. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator **KANY:** Thank you Mr. President. Ladies and Gentlemen of the Senate. As one who participated in some of those private meetings, I wanted to put on record I thought it was a bad idea to hold meetings in private then and I think it is a bad idea now. I strongly support what the Committee is offering. Thank you.

Which was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Create the Fort Kent Utilities District" (Emergency)

H.P. 1736 L.D. 2424

Tabled - March 18, 1992, by Senator **CLEVELAND** of Androscoggin.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence

(Committee on **UTILITIES** suggested and **ORDERED PRINTED**.)

(In Senate, March 18, 1992, **READ A SECOND TIME**.)

(In House, March 17, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Amend the Laws Governing Construction of Utility Lines" (Emergency)

H.P. 1726 L.D. 2417

Tabled - March 18, 1992, by Senator **CLARK** of Cumberland.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence

(Committee on **UTILITIES** suggested and **ORDERED PRINTED**.)

(In Senate, March 17, 1992, **PASSED TO BE ENGROSSED**, without reference to a Committee, in concurrence. Subsequently, **RECONSIDERED PASSAGE TO BE ENGROSSED**.)

(In House, March 12, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)

On motion by Senator **VOSE** of Washington, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee, in concurrence.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Certify Nonprofessionals Working in Chiropractic Offices"

S.P. 959 L.D. 2428

Tabled - March 18, 1992, by Senator **BALDACCI** of Penobscot.

Pending - **PASSAGE TO BE ENGROSSED**, without reference to a Committee

(Committee on **BUSINESS LEGISLATION** suggested and **ORDERED PRINTED**.)

(In Senate, March 18, 1992, **READ A SECOND TIME**.)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, without reference to a Committee.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

SENATE REPORT - from the Committee on **AGRICULTURE** on Bill "An Act to Expand the Membership of the Animal Welfare Board"

S.P. 696 L.D. 1861

Report - **Ought to Pass as Amended by Committee Amendment "A" (5-639)**.

Tabled - March 18, 1992, by Senator **CLARK** of Cumberland.

Pending - **ACCEPTANCE** of Committee Report

(In Senate, March 18, 1992, Report **READ**.)

On motion by Senator **CLARK** of Cumberland, Tabled until Later in Today's Session, pending **ACCEPTANCE** of Committee Report.

The Chair laid before the Senate the Tabled and Specially Assigned matter:

Bill "An Act to Extend the Appraisal License Effective Date" (Emergency)

H.P. 1734 L.D. 2422

Tabled - March 18, 1992, by Senator **BALDACCI** of Penobscot.

Pending - **REFERENCE**

(Committee on **BUSINESS LEGISLATION** suggested and **ORDERED PRINTED**.)

(In House, March 17, 1992, under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, without reference to a Committee.)