

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 512

S. P. 149

In Senate, February 4, 1975

On Motion of Senator Speers of Kennebec referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Reeves of Kennebec.

Cosponsors: Senator Cummings of Penobscot, Senator Cianchette of Somerset and Senator Gahagan of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish the Public's Right to Know Governmental Business
and to Repeal Statutory Authority for Executive Sessions.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 1 MRSA, § 402-A is enacted to read:

§ 402-A. Public notice

1. Public notice. Public notice shall be given for regular public proceedings of any state, county, municipal or quasi-municipal body, including, but not limited to, those bodies listed in paragraphs A through F of this section. Public notice for all public proceedings, except regular public proceedings, shall be given no later than 48 hours before the public proceedings of any state, county, municipal or quasi-municipal body, including, but not limited to, the bodies listed in paragraphs A through F of this section.

A. Departments, agencies, commissions and advisory boards of the legislative, executive and judicial branches of State Government;

B. All regional planning agencies and districts, and all councils of government;

C. All governing boards, advisory bodies and commissions of each county;

D. Multi-community service districts and all special school districts including all multi-community school districts, water districts and sewer districts;

E. All governing bodies, advisory bodies and commissions of each municipality; and

F. All submunicipal groups or bodies utilizing any state, county or municipal revenues.

2. Form of public notice.

A. For all public proceedings of bodies and agencies described in subsection 1 that are held regularly throughout a calendar year, the regular day, time and place of such proceedings shall be published once at the beginning of a calendar year in the state paper and in a newspaper of general circulation in the county in which the body is to meet.

B. Public notice of the time and place of all public proceedings of state, regional and county bodies, except regular public proceedings, shall be published both in the state paper and in a paper of general circulation in the county in which the body is to meet at least 48 hours before the body is to meet.

C. Public notice of the time and place of all public proceedings that are not regular public proceedings of all bodies specified in subsection 1, paragraphs C through F, which hold such public proceedings in a municipality of 2,500 persons or less shall consist of one notice posted at least 48 hours in advance of that public proceeding in a conspicuous place at the principal office of that body, or if no such office exists, at the building in which the public proceeding is to be held. Agenda for all public proceedings, those that are regular and those that are not regular, shall be posted at least 48 hours in advance of those public proceedings in a conspicuous place at the principal office of that body, or if no such office exists, at the building in which the public proceeding is to be held.

D. Public notice of the time and place of all public proceedings that are not regular of any body specified in subsection 1, paragraphs C through F which holds a public proceeding in a municipality of more than 2,500 persons shall be posted at least 48 hours in advance of that public proceeding in a conspicuous place at the principal office of that body, or if no such office exists, at the building in which the public proceeding is to be held and at least 3 other prominent places within the boundaries comprising the governmental or quasi-governmental unit, or within boundaries comprising governmental or quasi-governmental unit for which planning is being done or which is being advised. Agenda for all public proceedings, those that are regular and those that are not regular, shall be posted at least 48 hours in advance of those public proceedings in a conspicuous place at the principal office of that body, or if no such office exists, at the building in which the public proceeding is to be held and in at least 3 other prominent places within the boundaries comprising the governmental unit, or within the boundaries comprising the governmental or quasi-governmental unit for which planning is being done or which is advised.

E. Written notice of the time, place and agenda of any public proceeding of any body covered by subsection 1 shall be given at least 48 hours in

advance of the public proceeding of that body to a newspaper of general circulation in the county where the public proceeding is to be held, and to any other news media which are appropriate, in order to enable the media to attend that public proceeding if desired for the purpose of providing news coverage. This notice may be by postcard or by any other appropriate written method.

Sec. 2. 1 MRSA, § 404 is repealed.

Sec. 3. 1 MRSA, § 404-B is enacted to read:

§ 404-B. Proceedings to be public

1. Proceedings to be public. All public proceedings of the legislative, executive or judicial branches of State Government, including their committees, specially assigned task forces, study groups, commissions and advisory bodies, the Legislative Council, and all public proceedings of any regional, county, municipal, quasi-municipal, submunicipal or district body, including their committees, specially assigned task forces, study groups, commissions and advisory bodies shall be open to the public and no session shall be closed, nor shall executive sessions be held, except as provided in subsection 2. All papers, reports and records are hereby established as public record, except those specifically exempted by statute.

2. Exceptions. An executive session may be called by a $\frac{2}{3}$ vote of the constituent members of such bodies or agencies. This vote shall be taken while the public proceeding is open to the public and the votes, yes and no, of each member present at the public proceeding on the question of holding an executive session shall be recorded by the name of each member. The record of this vote shall be available to the public. An executive session may be held for the following purposes only:

A. Discussion of the character, as opposed to the professional competence, or of the physical or mental health of a single individual provided that such individual may require that such discussion be held at an open public proceeding and provided that nothing in this paragraph shall permit a public proceeding closed to the public for discussion of the appointment of a person to a public body;

B. Discussion of matters concerning collective bargaining or litigation, when an open public proceeding would have a detrimental effect on the bargaining or litigating position of the public body;

C. Investigative proceedings regarding allegations of criminal misconduct; and

D. Discussion regarding the deployment of security personnel or devices.

3. Certain judicial proceedings excepted. This section shall not apply to judicial proceedings, but shall apply to a court or other judicial body while it is exercising rule-making authority or while it is deliberating or deciding upon the issuance of administrative orders.

Sec. 4. 1 MRSA, § 405-A is enacted to read:

§ 405-A. Minutes

1. Minutes required. All public bodies shall keep written minutes of all their public proceedings. Such public proceedings shall include, but need not be limited to:

- A. The date, time and place of the public proceeding;
- B. The members of the public body recorded as either present or absent;
- C. The substance of all matters proposed, discussed or decided, and at the request of any member, a record by individual member, of any votes taken; and
- D. Any other information that any member of the public body requests be included or reflected in the minutes.

2. Minutes to be available. The minutes shall be public records and shall be available within a reasonable time after the public proceeding, except when such disclosure would be inconsistent with section 404-B or any other statute.

Sec. 5. 1 MRSA, § 406-A is enacted to read:

§ 406-A. Voidability, enforcement and criminal penalties

1. Voidability. Any action taken in violation of this subchapter shall be voidable by the Superior Court. A suit to void any final action must be commenced within 90 days of this action.

2. Enforcement.

A. The Attorney General and the district attorneys of competent jurisdiction shall enforce the provisions of this subchapter;

B. Any person denied the rights conferred by this subchapter may commence a suit in the Superior Court of the county in which the public body ordinarily meets, or in which the plaintiff resides, for the purpose of requiring compliance with or preventing violations of this subchapter or to determine the applicability of this subchapter to discussions or decisions of the public body. The court may order payment of attorney fees and court costs to a successful plaintiff in a suit brought under this section.

3. Criminal penalties. A violation of any of the provisions of this subchapter or the wrongful exclusion of any person or persons from any public proceeding for which provision is made shall be punishable by a fine of not more than \$500 or by imprisonment for a term of not more than one year. Nothing contained in this subchapter shall be construed as abridging the right of any citizen or citizens to appeal to a court of this State for the enforcement of the rights provided for in this subchapter.

Sec. 6. 1 MRSA, § 407 is enacted to read:

§ 407. Specific statutory exceptions

Nothing contained in this subchapter shall affect the power of any public body as defined in section 404-B to hold executive sessions or to send out

public notice under a certain procedure when there are exceptions to the requirements of this subchapter specifically set forth by statute.

STATEMENT OF FACT

This Act repeals the statutory authority which allows bodies to hold executive sessions in certain cases. It also establishes the public right to know the business of the Legislature. Further, it provides for public notice of all public proceedings, along with the form of that notice, for requirement of minutes of all public proceedings, for agenda for all public proceedings to be either posted or provided to the press and for new approaches to enforcement.