

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

New Draft of: H. P. 1891, L. D. 2071

(New Title)

FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2316

H. P. 2226

House of Representatives, March 22, 1976

Reported by Mr. Carey from the Committee on Legal Affairs and printed under Joint Rules No. 18.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Revise and Clarify the Freedom of Access Law.

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

1 MRSA c. 13, sub-c. I, as amended, is repealed and the following enacted in place thereof:

CHAPTER 13

PUBLIC RECORDS AND PROCEEDINGS

SUBCHAPTER I

FREEDOM OF ACCESS

§ 401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

§ 402. Definitions

1. **Conditional approval.** Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

2. **Public proceedings.** The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following; hereafter in this subchapter called "agency":

A. The Legislature of Maine and its committees and subcommittees;

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine and the Board of Trustees of the Maine Maritime Academy; and

C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision.

3. **Public records.** 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:

A. Records that have been designated confidential by statute;

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;

C. Records, working papers 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 in which the proposal or report is prepared; and

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives.

§ 403. Meetings to be open to public

Except as otherwise specifically provided by statute or by section 405, all public proceedings shall be open to the public, all persons shall be permitted to attend any meetings of these bodies or agencies and any minutes of the

meetings as are required by law shall be promptly recorded and open to public inspection.

§ 404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

§ 405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

1. Not to defeat purposes of subchapter. These sessions shall not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions.

3. Procedure for calling of executive sessions. Executive sessions may be called only by a public, recorded vote of $\frac{3}{5}$ of the members, present and voting, of such bodies or agencies.

4. Motion contents. A motion to go into executive session shall indicate the precise nature of the business of the executive session.

5. Matters not contained in motion prohibited. No other matters may be considered in that particular executive session.

6. Permitted deliberation. Deliberations may be conducted in executive sessions on the following matters and no others:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause undue damage to the reputation of the individual's right to privacy would be violated;

(2) Any person charged, investigated or otherwise under discussion shall be permitted to be present at an executive session if he so desires;

(3) Any person charged, investigated or otherwise under discussion may request in writing that the investigation or hearing of charges or complaints against him be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion shall be permitted to be present.

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, provided that:

(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire.

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency.

D. Negotiations between the representatives of a public employer and public employees may be closed to the public provided both parties agree to conduct negotiations in closed sessions. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators may be held in an executive session.

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's counsel to his client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute.

§ 406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, whenever these proceedings deal with expenditure of public funds, taxation or policy. This notice shall be given in ample time to allow public attendance. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

§ 407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy

thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to appraise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

§ 408. Minutes and records available for public inspection

Every person shall, during the regular business or meeting hours of all such bodies or agencies, have the right to inspect all public records, including any minutes of meetings of such bodies or agencies and to make memoranda abstracts or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute.

§ 409. Appeals

1. Records. If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

§ 410. Violations

A violation of any of this subchapter or the wrongful exclusion of any person or persons from any meetings for which provision is made, or the wrongful denial of inspection or copying of any public record for which provision is made is a Class E crime. 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.