

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)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 98

6
7 H.P. 78

House of Representatives, January 17, 1985

8 Submitted by the Joint Standing Committee on State Government
9 pursuant to Joint Rule 19. Approved by Legislative Council April 25, 1984.

10 Reported by Representative Gwadosky from the Committee on State
Government and printed under Joint Rule 19.

EDWIN H. PERT, Clerk

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT Defining the Right of State Employees
18 to Testify Before Legislative
19 Committees.
20

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

23 5 MRSA c. 2 is enacted to read:

24 CHAPTER 2

25 TESTIMONY PROVIDED BY STATE EMPLOYEES

26 TO LEGISLATIVE COMMITTEES

27 §21. Definitions

28 As used in this chapter, unless the context oth-
29 erwise indicates, the following terms have the fol-
30 lowing meanings.

1 1. Legislative committee. "Legislative committee"
2 means a joint standing committee of the Legislature,
3 a joint select committee of the Legislature, a
4 task force, commission or council or any other committee
5 established by the Legislature and composed
6 wholly or partly of Legislators for the purpose of
7 conducting legislative business.

8 2. Nonpartisan staff. "Nonpartisan staff" means
9 the directors and staffs of the Office of Legislative
10 Assistants, the Legislative Finance Office, the Legislative
11 Research Office, the Legislative Information
12 Office and the Office of the Legislative Administrative
13 Director.

14 3. Own time. "Own time" means an employee's vacation
15 or personal time, earned as a condition of employment.
16

17 4. State employee. "State employee" means any
18 employee subject to chapters 51 to 57 or chapter 71,
19 except nonpartisan staff of the Legislature.

20 5. Supervisor. "Supervisor" means a commissioner,
21 bureau chief, director, manager or any other person who
22 oversees or supervises state employees in
23 their employment.

24 §22. Right to provide testimony.

25 Every state employee has the right to represent
26 himself and testify before a legislative committee on
27 his own time. No state employee who complies with
28 this chapter may be denied the right to testify before
29 a legislative committee.

30 §23. Discharge of, threats to or discrimination
31 against, state employees for testimony presented to legislative committees
32

33 A supervisor shall not discharge, threaten or
34 otherwise discriminate against a state employee regarding
35 the employee's compensation, terms, conditions, location or
36 privileges of employment because the employee, in compliance
37 with this chapter, testified before or provides information to a
38 legislative committee.
39

1 §24. Presentation of testimony and information

2 1. Type of information. This chapter protects
3 any state employee who, in compliance with this chap-
4 ter, presents testimony or information relating to
5 departments or agencies of State Government and which
6 testimony or information pertains to:

7 A. Successes, failures or problems of current
8 programs;

9 B. Advantages, disadvantages or other relevant
10 information about proposed programs; and

11 C. The means of improving existing programs and
12 alternatives to existing programs.

13 §25. Exclusion of testimony and information from
14 protection

15 1. Liability of state employees. This chapter
16 does not authorize the presentation to a legislative
17 committee or protect any state employee who presents
18 to a legislative committee the following:

19 A. Slander and libel; and

20 B. Statements relating to the personal style of
21 supervisors, unless this information is requested
22 by a Legislator.

23 §26. Nonpartisan legislative staff

24 Nonpartisan staff of the Legislature shall be
25 subject to the policies and rules of the Legislative
26 Council as these policies and rules relate to testi-
27 fying or providing information to legislative commit-
28 tees.

29 §27. Representatives of agencies and departments

30 1. Department testimony and information. Noth-
31 ing in this chapter may be construed to prohibit a
32 state employee from testifying before or present in-
33 formation to a legislative committee as a representa-
34 tive of a department or agency of State Government
35 and who has been authorized by the commissioner or

1 director of that department or agency to act in this
2 capacity.

3 2. Misrepresentations of state employees. Any
4 state employee who represents himself as a spokesman
5 or representative of a department or agency without
6 the authorization of the commissioner or director of
7 that organization shall not be protected by the pro-
8 visions of this chapter and shall be subject to the
9 penalty in subsection 3.

10 3. Penalty. Any person who violates this sec-
11 tion is guilty of a Class E crime.

12 §28. Civil actions for injunctive relief or other
13 remedies

14 A state employee who alleges a violation of his
15 rights under this chapter and who has first made a
16 reasonable effort to maintain or restore his rights
17 through any grievance procedure or similar process
18 which may be available at his place of employment may
19 bring a civil action, including an action for injunc-
20 tive relief, within 90 days after the occurrence of
21 that alleged violation or, if a grievance procedure
22 or similar process is used, within 60 days after the
23 grievance procedure or similar process terminates
24 without resolution. The action may be brought in the
25 Superior Court for the county where the alleged vio-
26 lation occurred, the county where the complainant re-
27 sides or the county where the person against whom the
28 civil complaint is filed resides.

29 An employee shall establish each and every ele-
30 ment of his case by a preponderance of the evidence.

31 §29. Remedies ordered by court

32 A court, in rendering a judgment in an action
33 brought pursuant to this chapter, may order rein-
34 statement of this employee, the payment of back
35 wages, full reinstatement of fringe benefits and se-
36 niority rights or any combination of these remedies.
37 A court may also award the prevailing party all or a
38 portion of the costs of litigation, including reason-
39 able attorneys' fees and witness fees, if the court
40 determines that the award is appropriate.

1 §30. Penalties for violations

2 A person who violates sections 22, 23 and 24 is
3 liable for a civil fine of \$10 for each day of
4 willful violation, which shall not be suspended.
5 Any civil fine imposed under this section shall be
6 submitted to the Treasurer of State for deposit to
7 the General Fund.

8 §31. Collective bargaining rights

9 This chapter shall not be construed to diminish
10 or impair the rights of a person under any collective
11 bargaining agreement.

12 §32. Jury trial; common-law rights

13 Any action brought under this chapter may be
14 heard by a jury. Nothing in this chapter may be con-
15 strued to derogate any common-law rights of an em-
16 ployee.

17 §33. Office of Personnel to inform supervisors and
18 state employees

19 The Commissioner of Personnel is responsible for
20 informing supervisors and state employees about the
21 provisions of this chapter. The Commissioner of Per-
22 sonnel, at a minimum, shall distribute a sufficient
23 number of copies of this chapter, which shall be
24 visibly posted in all state buildings, in order to
25 notify the greatest possible number of state employ-
26 ees about the provisions in this chapter.

27 The Commissioner of Personnel shall use the nec-
28 essary means to instruct all supervisory personnel
29 about the provisions in this chapter.

1

STATEMENT OF FACT

2

3

4

5

6

7

The purpose of this bill is to provide protection from discrimination by supervisors for state employees who provide legislative committees with information about department programs. This bill prohibits supervisors from discriminating against state employees who provide information about:

8

9

1. Successes, failures and problems of existing programs;

10

11

2. Advantages and disadvantages of proposed programs;

12

3. Means of improving existing programs; and

13

4. Alternatives to existing programs.

14

15

16

17

18

19

20

21

22

23

24

The Joint Standing Committee on State Government found that there is no written or formal policy relating to state employees who testify on their own time before legislative committees. The "Whistleblowers" Protection Act does not protect state employees who voluntarily testify before legislative committees, and the Constitution of Maine and the Constitution of the United States do not provide categorical or definitive protection. Each case must be analyzed individually to determine the degree of protection provided by the Constitution of Maine.

25

26

27

28

29

This bill provides remedies for state employees who suffer discriminatory acts in violation of the provisions in the bill. A state employee may bring a civil action, including injunctive relief, within 90 days following the alleged violation.

30

31

32

The Office of Personnel is required to distribute copies of the policy throughout State Government and to inform supervisors about the policy.

33

0596121884