

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 878, L.D. 1235)
2 FIRST REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 1618

8 H.P. 1122

House of Representatives, May 29, 1985

9 Reported by Report B from the Committee on Human Resources and
10 printed under Joint Rule 2. Original bill sponsored by Representative Melendy
11 of Rockland. Cosponsored by Senator Najarian of Cumberland, Senator
Carpenter of Aroostook and Representative Willey of Hampden.

EDWIN H. PERT, Clerk

12
13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FIVE
17

18 AN ACT to Require the Proceedings of Boards
19 of Directors of Nonprofit Hospitals to
20 be Open to the Public.
21

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

24 Sec. 1. 1 MRSA §401, as repealed and replaced by
25 PL 1975, c. 758, is amended by adding after the first
26 paragraph a new paragraph to read:

27 The Legislature further finds and declares that
28 hospitals owned or operated by nonprofit corpora-
29 tions, nonprofit associations or local governmental
30 units are relied on by the citizens of this State for
31 services essential to their health and well being.
32 The Legislature further finds and declares that pub-
33 lic funds from various sources and by various means
34 contribute significantly to the revenues and opera-
35 tions of that institution. Therefore, it is in the
36 best interest of the people of this State for all

1 proceedings of the boards of directors or other gov-
2 erning bodies of those hospitals to be conducted in
3 an open and public manner so that the people can re-
4 main informed of the decisions and decision-making
5 processes affecting the health services on which they
6 so vitally depend and which they help support through
7 tax exemptions, public funding and other means.

8 Sec. 2. 1 MRSA §402, sub-§2, as amended by PL
9 1977, c. 164, §1, is further amended to read:

10 2. Public proceedings. The term "public proceed-
11 ings" as used in this subchapter shall mean the
12 transactions of any functions affecting any or all
13 citizens of the State by any of the following:

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

16 B. Any board or commission of any state agency
17 or authority, the Board of Trustees of the Uni-
18 versity of Maine and any of its committees and
19 subcommittees, the administrative council of the
20 University of Maine, the Board of Trustees of the
21 Maine Maritime Academy and any of its committees
22 and subcommittees; ~~and~~

23 C. Any board, commission, agency or authority of
24 any county, municipality, school district or any
25 other political or administrative subdivision;
26 and

27 D. Any board of directors or other governing
28 body of any hospital owned or operated by a non-
29 profit corporation or nonprofit association.

30 Sec. 3. 1 MRSA §402, sub-§3, as amended by PL
31 1977, c. 696, §9, is further amended to read:

32 3. Public records. The term "public records"
33 shall mean any written, printed or graphic matter or
34 any mechanical or electronic data compilation from
35 which information can be obtained, directly or after
36 translation into a form susceptible of visual or au-
37 ral comprehension, that is in the possession or cus-
38 tody of an agency or public official of this State or
39 any of its political subdivisions and has been re-

1 ceived or prepared for use in connection with the
2 transaction of public or governmental business or
3 contains information relating to the transaction of
4 public or governmental business, except:

5 A. Records that have been designated confiden-
6 tial by statute;

7 B. Records that would be within the scope of a
8 privilege against discovery or use as evidence
9 recognized by the courts of this State in civil
10 or criminal trials if the records or inspection
11 thereof were sought in the course of a court pro-
12 ceeding;

13 C. Records, working papers and interoffice and
14 intraoffice memoranda used or maintained by any
15 Legislator, legislative agency or legislative em-
16 ployee to prepare proposed Senate or House papers
17 or reports for consideration by the Legislature
18 or any of its committees during the biennium in
19 which the proposal or report is prepared;

20 D. Material prepared for and used specifically
21 and exclusively in preparation for negotiations,
22 including the development of bargaining proposals
23 to be made and the analysis of proposals re-
24 ceived, by a public employer in collective bar-
25 gaining with its employees and their designated
26 representatives; and

27 E. Records, working papers, interoffice and in-
28 traoffice memoranda used by or prepared for fac-
29 ulty and administrative committees of the Maine
30 Maritime Academy and the University of Maine. The
31 provisions of this paragraph do not apply to the
32 boards of trustees, the committees and subcommit-
33 tees of those boards, and the administrative
34 council of the University of Maine, which are re-
35 ferred to in section 402, subsection 2, paragraph
36 B.

37 Public records shall not include records, working pa-
38 pers, interoffice and intraoffice memoranda or other
39 documents of a hospital owned or operated by a non-
40 profit corporation or nonprofit association or of the
41 boards of directors or other governing bodies of

1 those hospitals. Public records include records or
2 minutes of the public proceedings of those boards of
3 directors or other governing bodies.

4 Sec. 4. 1 MRSA §405, sub-§6, ¶A, as enacted by
5 PL 1975, c. 758, is amended to read:

6 A. Discussion or consideration of the employ-
7 ment, appointment, assignment, duties, promotion,
8 demotion, compensation, evaluation, disciplining,
9 resignation or dismissal of public officials, ap-
10 pointees or employees of the body or agency or in
11 the case of hospitals, physicians and other pro-
12 fessional staff otherwise associated with the
13 hospital, or the investigation or hearing of
14 charges or complaints against persons subject to
15 the following conditions:

16 (1) An executive session may be held only
17 if public discussion could be reasonably ex-
18 pected to cause damage to the reputation or
19 the individual's right to privacy would be
20 violated;

21 (2) Any person charged or investigated
22 shall be permitted to be present at an exec-
23 utive session if he so desires;

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

29 (4) Any person bringing charges, complaints
30 or allegations of misconduct against the in-
31 dividual under discussion shall be permitted
32 to be present-;

33 Sec. 5. 1 MRSA §405, sub-§6, ¶F, as enacted by
34 PL 1975, c. 758, is amended to read:

35 F. Discussions of information contained in
36 records made, maintained or received by a body or
37 agency when access by the general public to those
38 records is prohibited by statute-; and

1 Sec. 6. 1 MRSA §405, sub-§6, ¶G is enacted to
2 read:

3 G. Discussion or consideration by a hospital,
4 subject to this chapter of the operating budget,
5 capital expenditure plans or plans for new or ex-
6 expanded services if disclosure of those matters
7 provide an unfair competitive advantage to other
8 health care providers in direct competition with
9 that hospital.

10 Sec. 7. 1 MRSA §408, as enacted by PL 1975, c.
11 758, is amended to read:

12 §408. Public records available for public inspection

13 Except as otherwise provided by statute, every
14 person shall have the right to inspect and copy any
15 public record during the regular business hours of
16 the custodian or location of such record; provided
17 that, whenever inspection cannot be accomplished
18 without translation of mechanical or electronic data
19 compilations into some other form, the person desir-
20 ing inspection may be required to pay the State or
21 hospital in advance the cost of translation and both
22 translation and inspection may be scheduled to occur
23 at such time as will not delay or inconvenience the
24 regular activities of the body or agency or official
25 or other person having custody of the record sought
26 and provided further that the cost of copying any
27 public record to comply with this section shall be
28 paid by the person requesting the copy.

29 Sec. 8. 1 MRSA §409, sub-§§1 and 2, as enacted
30 by PL 1975, c. 758, are amended to read:

31 1. Records. If any body or agency or official or
32 other person, who has custody or control of any pub-
33 lic record, shall refuse permission to so inspect or
34 copy or abstract a public record, this denial shall
35 be made by the body or agency or official or other
36 person in writing, stating the reason for the denial,
37 within 10 days of the request for inspection by any
38 person. Any person aggrieved by denial may appeal
39 therefrom, within 10 days of the receipt of the writ-
40 ten notice of denial, to any Superior Court within
41 the State. If a court, after a trial de novo, deter-

1 mines such denial was not for just and proper cause,
2 it shall enter an order for disclosure. Appeals
3 shall be privileged in respect to their assignment
4 for trial over all other actions except writs of ha-
5 beas corpus and actions brought by the State against
6 individuals.

7 2. Actions. If any body or agency approves any
8 ordinances, orders, rules, resolutions, regulations,
9 contracts, appointments or other official action in
10 an executive session, this action shall be illegal
11 and the officials or other persons responsible shall
12 be subject to the penalties hereinafter provided.
13 Upon learning of any such action, any person may ap-
14 peal to any Superior Court in the State. If a court,
15 after a trial de novo, determines this action was
16 taken illegally in an executive session, it shall en-
17 ter an order providing for the action to be null and
18 void. Appeals shall be privileged in respect to
19 their assignment for trial over all other actions ex-
20 cept writs of habeas corpus or actions brought by the
21 State against individuals.

22 STATEMENT OF FACT

23 This new draft makes changes in the right to know
24 law to conform it to the proposed bill to avoid ambi-
25 guity. In addition to making the proceedings of
26 boards of directors of nonprofit hospitals open to
27 the public, the new draft also:

28 1. Makes it clear that no hospital or board
29 records are required to be made public, except min-
30 utes of the public meetings of the board;

31 2. Adds language to ensure that peer review or
32 other sensitive discussions involving physicians or
33 other professionals who are not employed by, but are
34 professionally associated with, a hospital is given
35 the same confidentiality as employees of the hospi-
36 tal; and

37 3. Allows executive sessions for any matters
38 concerning budget, capital expenditure plans or new
39 or expanded services in cases where disclosure of

1 that information would provide an unfair competitive
2 advantage to other health care providers.

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