

# MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 878, L.D. 1235)  
2 (New Title)  
3 FIRST REGULAR SESSION  
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE  
6

7 Legislative Document

No. 1619

8  
9 H.P. 1123

House of Representatives, May 29, 1985

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

EDWIN H. PERT, Clerk

13  
14 STATE OF MAINE  
15

16 IN THE YEAR OF OUR LORD  
17 NINETEEN HUNDRED AND EIGHTY-FIVE  
18

19 AN ACT to Require the Proceedings of Boards  
20 of Directors of Nonprofit  
21 Organizations to be Open to the  
22 Public.  
23

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

26 Sec. 1. 1 MRSA §401, as repealed and replaced by  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

29 The Legislature further finds and declares that public  
30 funds from various sources and by various means  
31 contribute significantly to the revenues and opera-  
32 tions of nonprofit organizations. Therefore, it is  
33 in the best interest of the people of this State for  
34 all proceedings of the boards of directors or other  
35 governing bodies of those entities to be conducted in  
36 an open and public manner so that the people can re-

1 main informed of the decisions and decision-making  
2 processes affecting the citizens and which they help  
3 support through tax exemptions, public funding and  
4 other means.

5       Sec. 2. 1 MRSA §402, sub-§2, as amended by PL  
6 1977, c. 164, §1, is further amended to read:

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

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

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

20       C. Any board, commission, agency or authority of  
21 any county, municipality, school district or any  
22 other political or administrative subdivision;  
23 and

24       D. Any board of directors or other governing  
25 body of the following nonprofit bodies:

26               (1) Any hospital owned or operated by a  
27 nonprofit corporation or nonprofit associa-  
28 tion;

29               (2) Organizations which are exempt from  
30 federal income tax under the United States  
31 Internal Revenue Code of 1954, Section  
32 501(c) (3), as amended;

33               (3) Health care facilities as defined in  
34 the Maine Certificate of Need Act, Title 22,  
35 section 303, subsection 7;

36               (4) Any other organization subject to cer-  
37 tificate of need regulation for major medi-

1                   cal equipment;

2                   (5) Any organization exempt from real prop-  
3                   erty taxation under Title 36, section 652;  
4                   and

5                   (6) Any organization who receives more than  
6                   25% of his or its revenues from State Gov-  
7                   ernment or Federal Government.

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

10                   3. Public records. The term "public records"  
11 shall mean any written, printed or graphic matter or  
12 any mechanical or electronic data compilation from  
13 which information can be obtained, directly or after  
14 translation into a form susceptible of visual or au-  
15 ral comprehension, that is in the possession or cus-  
16 tody of an agency or public official of this State or  
17 any of its political subdivisions and has been re-  
18 ceived or prepared for use in connection with the  
19 transaction of public or governmental business or  
20 contains information relating to the transaction of  
21 public or governmental business, except:

22                   A. Records that have been designated confiden-  
23                   tial by statute;

24                   B. Records that would be within the scope of a  
25                   privilege against discovery or use as evidence  
26                   recognized by the courts of this State in civil  
27                   or criminal trials if the records or inspection  
28                   thereof were sought in the course of a court pro-  
29                   ceeding;

30                   C. Records, working papers and interoffice and  
31                   intraoffice memoranda used or maintained by any  
32                   Legislator, legislative agency or legislative em-  
33                   ployee to prepare proposed Senate or House papers  
34                   or reports for consideration by the Legislature  
35                   or any of its committees during the biennium in  
36                   which the proposal or report is prepared;

37                   D. Material prepared for and used specifically  
38                   and exclusively in preparation for negotiations,  
39                   including the development of bargaining proposals

1 to be made and the analysis of proposals re-  
2 ceived, by a public employer in collective bar-  
3 gaining with its employees and their designated  
4 representatives; and

5 E. Records, working papers, interoffice and in-  
6 traoffice memoranda used by or prepared for fac-  
7 ulty and administrative committees of the Maine  
8 Maritime Academy and the University of Maine. The  
9 provisions of this paragraph do not apply to the  
10 boards of trustees, the committees and subcommit-  
11 tees of those boards, and the administrative  
12 council of the University of Maine, which are re-  
13 ferred to in section 402, subsection 2, paragraph  
14 B.

15 Public records shall not include records, working pa-  
16 pers, interoffice and intraoffice memoranda or other  
17 documents of a hospital owned or operated by a non-  
18 profit corporation or nonprofit association or of the  
19 boards of directors or other governing bodies of  
20 those hospitals. Public records include records or  
21 minutes of the public proceedings of those boards of  
22 directors or other governing bodies.

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

25 A. Discussion or consideration of the employ-  
26 ment, appointment, assignment, duties, promotion,  
27 demotion, compensation, evaluation, disciplining,  
28 resignation or dismissal of public officials, ap-  
29 pointees or employees of the body or agency or in  
30 the case of hospitals, physicians and other pro-  
31 fessional staff otherwise associated with the  
32 hospital, or the investigation or hearing of  
33 charges or complaints against persons subject to  
34 the following conditions:

35 (1) An executive session may be held only  
36 if public discussion could be reasonably ex-  
37 pected to cause damage to the reputation or  
38 the individual's right to privacy would be  
39 violated;

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

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

6 (4) Any person bringing charges, complaints  
7 or allegations of misconduct against the in-  
8 dividual under discussion shall be permitted  
9 to be present;.

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

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

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

18 G. Discussion or consideration by a hospital or  
19 health care facility subject to this chapter, of  
20 the operating budget, capital expenditure plans  
21 or plans for new or expanded services if disclo-  
22 sure of those matters provide an unfair competi-  
23 tive advantage to other health care providers in  
24 direct competition with that organization.

25 Sec. 7. 1 MRSA §408, as enacted by PL 1975, c.  
26 758, is amended to read:

27 §408. Public records available for public inspection

28 Except as otherwise provided by statute, every  
29 person shall have the right to inspect and copy any  
30 public record during the regular business hours of  
31 the custodian or location of such record; provided  
32 that, whenever inspection cannot be accomplished  
33 without translation of mechanical or electronic data  
34 compilations into some other form, the person desir-  
35 ing inspection may be required to pay the State or  
36 other body in advance the cost of translation and  
37 both translation and inspection may be scheduled to  
38 occur at such time as will not delay or inconvenience  
39 the regular activities of the body or agency or offi-

1 cial or other person having custody of the record  
2 sought and provided further that the cost of copying  
3 any public record to comply with this section shall  
4 be paid by the person requesting the copy.

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

7 1. Records. If any body or agency or official or  
8 other person, who has custody or control of any pub-  
9 lic record, shall refuse permission to so inspect or  
10 copy or abstract a public record, this denial shall  
11 be made by the body or agency or official or other  
12 person in writing, stating the reason for the denial,  
13 within 10 days of the request for inspection by any  
14 person. Any person aggrieved by denial may appeal  
15 therefrom, within 10 days of the receipt of the writ-  
16 ten notice of denial, to any Superior Court within  
17 the State. If a court, after a trial de novo, deter-  
18 mines such denial was not for just and proper cause,  
19 it shall enter an order for disclosure. Appeals  
20 shall be privileged in respect to their assignment  
21 for trial over all other actions except writs of ha-  
22 beas corpus and actions brought by the State against  
23 individuals.

24 2. Actions. If any body or agency approves any  
25 ordinances, orders, rules, resolutions, regulations,  
26 contracts, appointments or other official action in  
27 an executive session, this action shall be illegal  
28 and the officials or other persons responsible shall  
29 be subject to the penalties hereinafter provided.  
30 Upon learning of any such action, any person may ap-  
31 peal to any Superior Court in the State. If a court,  
32 after a trial de novo, determines this action was  
33 taken illegally in an executive session, it shall enter  
34 an order providing for the action to be null and  
35 void. Appeals shall be privileged in respect to  
36 their assignment for trial over all other actions ex-  
37 cept writs of habeas corpus or actions brought by the  
38 State against individuals.

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STATEMENT OF FACT

2           This new draft makes changes in the right to know  
3 law to conform it to the proposed bill to avoid ambi-  
4 guity. In addition to making the proceedings of  
5 boards of directors of nonprofit hospitals open to  
6 the public, the new draft also:

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

10           2. Adds language to ensure that peer review or  
11 other sensitive discussions involving physicians or  
12 other professionals who are not employed by, but are  
13 professionally associated with, a hospital is given  
14 the same confidentiality as employees of the hospi-  
15 tal; and

16           3. Allows executive sessions for any matters  
17 concerning budget, capital expenditure plans or new  
18 or expanded services in cases where disclosure of  
19 that information would provide an unfair competitive  
20 advantage to other health care providers.

21           This new draft also addresses these constitution-  
22 al concerns over violation of the equal protection  
23 clause of the 14th amendment of the United States  
24 Constitution. The concern is that the original bill  
25 treats hospitals different from other nonprofit orga-  
26 nizations without a rational distinction.

27           To limit these constitutional concerns, this new  
28 draft adds the following entities to the Maine free-  
29 dom of access law:

30           1. Any nonprofit organization exempt from feder-  
31 al income taxation;

32           2. Any health care facility governed by certifi-  
33 cate of need, including home health agencies, skilled  
34 nursing facilities, intermediate care facilities, re-  
35 habilitation facilities, ambulatory surgical facili-  
36 ties and health maintenance organizations;

37           3. Any person subject to certificate of need for  
38 major medical equipment;



1           4. Others exempt from real property tax under  
2 state law, including charitable and benevolent orga-  
3 nizations and literary and scientific institutions.  
4 Examples of these organizations are church convents,  
5 universities and lodges; and

6           5. All others who receive more than 25% of their  
7 funding from State Government or Federal Government.

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