

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1969

6
7 S.P. 784

In Senate, February 4, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

Reference to the Committee on Utilities suggested and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by President Pray of Penobscot.

Cosponsored by Representative Vose of Eastport, Representative Paradis
11 of Old Town and Representative Hayden of Brunswick.

12 STATE OF MAINE
13

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

17 AN ACT to Protect the Confidentiality of
18 Certain Utility Employee Records.
19

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

22 35 MRSA §309-A is enacted to read:

23 §309-A. Utility personnel records

24 1. Confidential. The following records of pub-
25 lic utilities are confidential and except as other-
26 wise provided in subsection 3, are excluded from the
27 books, accounts, papers, records, memoranda, docu-
28 ments and information otherwise available to the com-
29 mission under this Title and shall not be open to
30 public inspection:

31 A. Working papers, research materials, records
32 and the examinations prepared for and used spe-
33 cifically in the examination or evaluation of ap-
34 plicants for positions with a public utility;

1 B. Records containing the following:

2 (1) Medical information of any kind, in-
3 cluding information pertaining to diagnosis
4 or treatment of mental or emotional disor-
5 ders;

6 (2) Performance evaluations and personal
7 references;

8 (3) Information pertaining to the credit
9 worthiness of a named employee;

10 (4) Information pertaining to the personal
11 history, general character or conduct of
12 members of an employee's immediate family;
13 or

14 (5) Complaints, charges or accusations of
15 misconduct, replies to those complaints,
16 charges or accusations or any other informa-
17 tion or materials that may result in disci-
18 plinary action; or

19 C. Other information to which access by the gen-
20 eral public is prohibited by law.

21 2. Compliance. Failure or refusal by any public
22 utility or any officer, agent or attorney of any pub-
23 lic utility to comply with any order, data request or
24 subpoena calling for the production of those records
25 other than an order issued pursuant to subsection 3,
26 shall not serve as the basis for any civil or crimi-
27 nal fine, penalty or forfeiture.

28 3. In camera inspection. Upon request by the
29 commission staff, the Public Advocate or intervenor
30 in a matter before the commission or upon the commis-
31 sions own motion and for good cause shown, the com-
32 mission may order a public utility to produce for in
33 camera inspection by the commission or hearing exam-
34 iner the records designated confidential under sub-
35 section 1. The employee whose records are the sub-
36 ject of such a request shall be notified by the com-
37 mission of such a request and shall be given the op-
38 portunity to be heard before an order to produce is
39 issued. If the commission or hearing examiner deter-

1 mines after in camera inspection that a record is
2 reasonably relevant to the matter before it and that
3 production of the record is not unjust or unlawful
4 and that the materiality of the record outweighs any
5 harm to the employee from its disclosure, the commis-
6 sion or hearing examiner may order that the record be
7 made a part of the discovery or evident aspects of
8 the proceedings, subject to such terms and conditions
9 as are just, due consideration being given to the
10 privacy interests of the employee involved.

11 STATEMENT OF FACT

12 This bill amends the Maine Revised Statutes, Ti-
13 tle 35 by providing that the personnel files of util-
14 ity employees shall be confidential except under cer-
15 tain limited circumstances. Title 35 currently pro-
16 vides that the Public Utilities Commission may in-
17 spect all "books, accounts, papers, records and memo-
18 randa" of a public utility and may allow public dis-
19 closure of any records provided to the commission.
20 As a result, normally confidential employee personal
21 information, including medical information, salary
22 history, disciplinary notices and performance evalua-
23 tions may become a matter of public record and in-
24 spection without notification of the utility employee
25 involved and without opportunity for the employee to
26 appeal release of the information to the Public Util-
27 ities Commission or to the public. The personnel
28 records of state employees, on the other hand, are
29 clearly protected from public disclosure and provided
30 confidentiality under Title 5, section 554. Private
31 sector employees in nonregulated companies are also
32 protected against public disclosure of their person-
33 nel information without the benefit of due process.
34 This bill does not prevent the Public Utilities Com-
35 mission from obtaining information it deems relevant
36 to a utility proceeding before it, but does provide
37 added protection to the privacy interests of the em-
38 ployee involved, including the opportunity to be no-
39 tified when the commission requests this information
40 and opportunity to be heard before the information is
41 released.

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