

MAINE STATE LEGISLATURE

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(New Draft of S.P. 384, L.D. 1161)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1849

S.P. 628

In Senate, June 12, 1987

Reported by Senator Brannigan of Cumberland for the
Committee on Judiciary and printed under Joint Rule 2.
Original Bill sponsored by Senator Gauvreau of Androscoggin.
Cosponsored by: Representative Paradis of Augusta,
Representative Ellsworth, Senator Black of Cumberland.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 **AN ACT to Clarify the Freedom of Access Law.**
2

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

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

7 C. Any board, commission, agency or authority of
8 any county, municipality, school district or any
9 regional or other political or administrative
10 subdivision.

11 **Sec. 2.** 1 MRSA §405, sub-§6, ¶A is amended to
12 read:

1 A. Discussion or consideration of the employ-
2 ment, appointment, assignment, duties, promotion,
3 demotion, compensation, evaluation, disciplining,
4 resignation or dismissal of an individual or
5 group of public officials, appointees or employ-
6 ees of the body or agency or the investigation or
7 hearing of charges or complaints against a person
8 or persons subject to the following conditions:

9 (1) An executive session may be held only
10 if public discussion could be reasonably ex-
11 pected to cause damage to the reputation or
12 the individual's right to privacy would be
13 violated;

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

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

22 (4) Any person bringing charges, complaints
23 or allegations of misconduct against the in-
24 dividual under discussion shall be permitted
25 to be present.

26 This subsection paragraph does not apply to dis-
27 cussion of a budget or budget proposal;

28 **Sec. 3.** 1 MRSA §405, sub-§6, ¶C, as enacted by
29 PL 1975, c. 758, is amended to read:

30 C. Discussion or consideration of the condition,
31 acquisition or the use of real or personal prop-
32 erty permanently attached to real property or in-
33 terests therein or disposition of publicly held
34 property or economic development only if prema-
35 ture disclosures of the information would preju-
36 dice the competitive or bargaining position of
37 the body or agency;

38 **Sec. 4.** 1 MRSA §406, as repealed and replaced by
39 PL 1975, c. 758, is amended to read:

1 §406. Public notice

2 Public notice shall be given for all public pro-
3 ceedings as defined in section 402, if these proceed-
4 ings are a meeting of a body or agency consisting of
5 3 or more persons ~~and the body or agency will deal~~
6 ~~with the expenditure of public funds or taxation, or~~
7 ~~will adopt policy at the meeting.~~ This notice shall
8 be given in ample time to allow public attendance and
9 shall be disseminated in a manner reasonably calcu-
10 lated to notify the general public in the jurisdic-
11 tion served by the body or agency concerned. In the
12 event of an emergency meeting, local representatives
13 of the media shall be notified of the meeting, when-
14 ever practical, the notification to include time and
15 location, by the same or faster means used to notify
16 the members of the agency conducting the public pro-
17 ceeding.

18 **Sec. 5. 1 MRSA §409, sub-§1, as enacted by PL**
19 **1975, c. 758, is amended to read:**

20 1. Records. If any body or agency or official,
21 who has custody or control of any public record,
22 shall refuse permission to so inspect or copy or ab-
23 stract a public record, this denial shall be made by
24 the body or agency or official in writing, stating
25 the reason for the denial, within ±0 5 working days
26 of the request for inspection by any person. Any per-
27 son aggrieved by denial may appeal therefrom, within
28 ±0 5 working days of the receipt of the written no-
29 tice of denial, to any Superior Court within the
30 State. If a court, after a trial de novo, determines
31 such denial was not for just and proper cause, it
32 shall enter an order for disclosure. Appeals shall
33 be privileged in respect to their assignment for tri-
34 al over all other actions except writs of habeas cor-
35 pus and actions brought by the State against individ-
36 uals.

37 **Sec. 6. 1 MRSA §410, as enacted by PL 1975, c.**
38 **758, is repealed and the following enacted in its**
39 **place:**

40 §410. Violations

1 For every willful violation of this subchapter,
2 the state government agency or local government enti-
3 ty whose officer or employee committed the violation
4 shall be liable for a civil violation for which a
5 forfeiture of not more than \$500 may be adjudged.

6 STATEMENT OF FACT

7 This new draft includes boards, commissions,
8 agencies and authorities of regional political or ad-
9 ministrative subdivisions in the definition of "pub-
10 lic proceedings." It also makes it clear that discus-
11 sions of a budget or budget proposal may not occur in
12 executive session.

13 The new draft deletes from the original bill its
14 proposal to repeal the requirement for an official to
15 place in writing, within 10 days of the request, his
16 reason for denying a request to inspect a public
17 record. The new draft does change the time require-
18 ment from 10 days in which to present this written
19 statement to 5 working days. The time period for ap-
20 pealing a denial to inspect, currently 10 days from
21 receipt of the written denial, is also reduced to 5
22 working days.

23 The original bill proposed permitting the court
24 to award attorneys fees for a prevailing party in an
25 appeal under the freedom of access law. The new draft
26 deletes this proposal.

27 The new draft makes a willful violation of the
28 freedom of access law a civil violation for which no
29 more than \$500 may be forfeited. The governmental en-
30 tity whose office or employee committed the violation
31 must pay the forfeiture. Current law makes such a vi-
32 olation a Class E crime.

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