

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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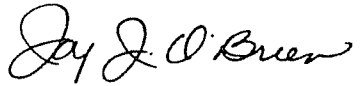
Legislative Document

No. 1277

S.P. 479

In Senate, April 24, 1989

Reference to the Committee on State and Local Government suggested and ordered printed.

  
JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator GAUVREAU of Androscoggin.  
Cosponsored by Representative LISNIK of Presque Isle.

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STATE OF MAINE

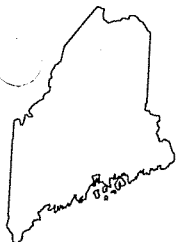
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

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An Act to Protect the State's Ownership of Public Records.

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1 **Be it enacted by the People of the State of Maine as follows:**

3 **5 MRSA §95-A** is enacted to read:

5 **§95-A. Protection and recovery of public records**

7 **1. Notice and demand of return.** Whenever the State  
9 Archivist has reasonable grounds to believe that documents or  
11 records belonging to the State or any agency of the State or to  
13 which the State or its agencies have a lawful right of possession  
15 are in the possession of the person or entity not authorized by  
17 the State Archivist, other lawful custodian or by law to possess  
19 those documents or records, the State Archivist may issue a  
21 written notice and demand to that person or entity for the  
23 immediate return of the documents or records. The notice and  
25 demand shall be sent by certified or registered mail, return  
27 receipt requested. The notice and demand shall identify the  
29 documents or records claimed to belong to the State with  
reasonable specificity. Upon receipt of the notice and demand,  
the person or entity in the possession of documents or records  
claimed to belong to the State shall not destroy, alter,  
transfer, convey or otherwise alienate those documents or records  
unless authorized in writing by the State Archivist or by an  
order issued by a court of competent jurisdiction. The notice  
and demand shall specifically inform that any transfer,  
conveyance or other alienation of the documents or records after  
receipt of the notice and demand shall constitute a Class E crime  
in violation of section 97.

31 **2. Petition; hearing.** Following the issuance of a notice  
33 and demand in accordance with subsection 1, the State Archivist,  
35 with the assistance of the Attorney General, may petition the  
37 Superior Court of Kennebec County or the Superior Court in the  
39 county in which documents or records are located, for the return  
41 of state documents or records that are in the possession of a  
43 person or entity not authorized by the State Archivist, other  
45 lawful custodian or by law to possess those documents or  
47 records. After hearing, the court shall order the state  
49 documents or records to be delivered to the State Archivist, or  
51 other custodian designated by the State Archivist, upon a finding  
that the materials in question are state documents or records and  
that the documents or records are in the possession of a person  
or entity not authorized by the State Archivist, other lawful  
custodian or provision of law to possess the documents or  
records. The court may issue all orders necessary to protect  
state documents or records from destruction, alteration,  
transfer, conveyance or alienation by the person or entity in  
possession of the materials and may also order the person or  
entity in possession of the material to surrender the documents  
or records into the custody of the State Archivist pending the  
court's decision on the petition.

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3. Presumption. In any proceeding pursuant to subsection 2, there shall be a rebuttable presumption that documents or records that were once in the custody of the State were not lawfully alienated from that custody.

**STATEMENT OF FACT**

This bill will give the State Archivist authority to recover documents or records that are property of the State, but that are not in the possession of the State. The bill further allows the State Archivist to freeze a sale or transfer of records that appear to be state property and to seek appropriate judicial relief.

Recent losses of historical documents from the National Archives and the Library of Congress have underscored the need for security and legal protection for the records of the United States. In this State, public documents have been found "on the auction block" after having been in private hands for many years.

In all of these cases, the State's right to maintain its public documents have been put at risk. In addition to security, which is primarily an administrative responsibility, appropriate legal provisions must be in place to ensure the clear authority of the State over its records, to ease the recovery process, and to discourage those who would seek to profit by the unauthorized possession of these records.