

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2290

H.P. 1627

House of Representatives, February 4, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representative JOSEPH of Waterville, Senator BERUBE of Androscoggin
and Senator GAUVREAU of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Open State Government to Public View.

(AFTER DEADLINE)



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

2
3 **Sec. 1. 1 MRSA §402, sub-§1-A** is enacted to read:

4 **1-A. Legislative subcommittee.** "Legislative subcommittee"
6 means any 3 or more Legislators from a committee conducting
7 legislative business.

8
9 **Sec. 2. 1 MRSA §402, sub-§3, ¶C**, as amended by PL 1977, c.
10 696, §9, is further amended to read:

12 C. Receives Legislative papers and reports until signed and
13 publicly distributed in accordance with legislative rules,
14 and records, working papers, drafts and interoffice and
15 intraoffice memoranda used or maintained by any Legislator,
16 legislative agency or legislative employee to prepare
17 proposed Senate or House papers or reports for consideration
18 by the Legislature or any of its committees during the
19 biennium legislative session or sessions in which the
20 proposal or report is prepared or considered;

21 **Sec. 3. 1 MRSA §402, sub-§3, ¶G**, as amended by PL 1991, c.
22 448, §1, is further amended to read:

23 G. ~~Materials related to the development of positions on~~
24 ~~legislation or materials~~ that are related to insurance or
25 insurance-like protection or services which that are in the
26 possession of an association, the membership of which is
27 composed exclusively of one or more political or
28 administrative subdivisions of the State; of boards,
29 commissions, agencies or authorities of any such
30 subdivisions; or of any combination of any of these entities;

31 **Sec. 4. 1 MRSA §405, sub-§6, ¶A**, as repealed and replaced by
32 PL 1987, c. 769, Pt. A, §1, is amended to read:

33 A. Discussion or consideration of the employment,
34 appointment, assignment, duties, promotion, demotion,
35 compensation, evaluation, disciplining, resignation or
36 dismissal of an individual or group of public officials,
37 appointees or employees of the body or agency or the
38 investigation or hearing of charges or complaints against a
39 person or persons subject to the following conditions:

40 (1) An executive session may be held only if public
41 discussion could be reasonably expected to cause damage
42 to the reputation or the individual's right to privacy
43 would be violated;

2 (2) Any person charged-~~or-investigated-shall-be~~ who is
3 the subject of the deliberation is permitted to be
4 present at an executive session if he that person so
5 desires;

6 (3) Any person charged-~~or--investigated~~ who is the
7 subject of the deliberation may request in writing that
8 the investigation or hearing of charges or complaints
9 against him that person be conducted in open session. A
10 request, if made to the agency, must be honored; and

11 (4) Any person bringing charges, complaints or
12 allegations of misconduct against the individual under
13 discussion shall-be is permitted to be present.

14 This paragraph does not apply to discussion of a budget or
15 budget proposal;

16 **Sec. 5. 1 MRSA §410**, as repealed and replaced by PL 1987, c.
17 477, §6, is repealed and the following enacted in its place:

18 **§410. Violations**

19 A state government agency or local government entity whose
20 officers or employees violate this subchapter is liable for a
21 civil violation for which a forfeiture of not more than \$500 may
22 be adjudged, unless the violation is based on the officer's or
23 employee's reasonable and good faith belief that this subchapter
24 provides a basis for the action or decision in question. A
25 governmental officer or employee who intentionally releases or
26 obtains information exempt from disclosure under section 402 who
27 is not otherwise entitled to that information commits a Class E
28 crime.

29 **Sec. 6. 5 MRSA §7070, sub-§1, ¶A**, as enacted by PL 1989, c.
30 402, §1, is amended to read:

31 A. Notwithstanding any confidentiality provision other than
32 this subsection, applications, resumes and letters and notes
33 of reference, other than those letters and notes of
34 reference expressly submitted in confidence, pertaining to
35 the any applicant hired are public records after--the
36 applicant-is-hired.

37 **Sec. 7. 5 MRSA §7070, sub-§2, ¶E**, as amended by PL 1991, c.
38 229, §1, is further amended to read:

39 E. Complaints, charges or accusations of misconduct,
40 replies to those complaints, charges or accusations and any

2 other information or materials that may result in
disciplinary action. If disciplinary action is taken, the
4 final written decision relating to that action is no longer
confidential after the decision is completed.

6 ~~For purposes of this paragraph, "final written decision"~~
means:

8
10 (1) ~~The final written administrative decision that is
not appealed pursuant to a grievance arbitration
procedure; or~~

12
14 (2) ~~If the final written administrative decision is
appealed to arbitration, the final written decision of
a neutral arbitrator.~~

16
18 ~~A final written administrative decision that is appealed to
arbitration is no longer confidential 120 days after a
20 written request for the decision is made to the employer if
the final written decision of the neutral arbitrator is not
22 issued and released before the expiration of the 120 days;~~

24 **Sec. 8. 30-A MRS §503, sub-§1, ¶B**, as amended by PL 1991, c.
229, §2, is further amended to read:

26 B. County records containing the following:

28 (1) Medical information of any kind, including
information pertaining to the diagnosis or treatment of
30 mental or emotional disorders;

32 (2) Performance evaluations and personal references
submitted in confidence;

34 (3) Information pertaining to the creditworthiness of
36 a named employee;

38 (4) Information pertaining to the personal history,
general character or conduct of members of an
40 employee's immediate family; and

42 (5) Complaints, charges or accusations of misconduct,
replies to those complaints, charges or accusations and
44 any other information or materials that may result in
disciplinary action. If disciplinary action is taken,
46 the final written decision relating to that action is
no longer confidential after the decision is completed.
48 ; and

2 For--purposes--of--this--subparagraph,--"final--written
decision"--means:

4 (a)---The--final--written--administrative--decision
6 that--is--not--appealed--pursuant--to--a--grievance
arbitration--procedure;--or

8 (b)---If--the--final--written--administrative--decision
10 is--appealed--to--arbitration,--the--final--written
decision--of--a--neutral--arbitrator.

12 A--final--written--administrative--decision--that--is
14 appealed--to--arbitration--is--no--longer--confidential--120
days--after--a--written--request--for--the--decision--is--made
16 to--the--employer--if--the--final--written--decision--of--the
neutral--arbitrator--is--not--issued--and--released--before
18 the--expiration--of--the--120--days;--and

20 **Sec. 9. 30-A MRSA §2702, sub-§1, ¶B,** as amended by PL 1991, c.
229, §3, is further amended to read:

22 B. Municipal records pertaining to an identifiable employee
24 and containing the following:

26 (1) Medical information of any kind, including
information pertaining to diagnosis or treatment of
28 mental or emotional disorders;

30 (2) Performance evaluations and personal references
submitted in confidence;

32 (3) Information pertaining to the creditworthiness of
34 a named employee;

36 (4) Information pertaining to the personal history,
general character or conduct of members of an
38 employee's immediate family; and

40 (5) Complaints, charges or accusations of misconduct,
42 replies to those complaints, charges or accusations and
any other information or materials that may result in
44 disciplinary action. If disciplinary action is taken,
the final written decision relating to that action is
46 no longer confidential after the decision is
completed. The decision must state the conduct or
48 other facts on the basis of which disciplinary action
is being imposed and the conclusions of the acting
authority as to the reasons for that action; and

2 For--purposes--of--this--subparagraph,--"final--written
decision"--means:

4 (a)---The--final--written--administrative--decision
6 that--is--not--appealed--pursuant--to--a--grievance
arbitration-procedure;-or

8 (b)---If--the--final--written--administrative--decision
10 is--appealed--to--arbitration,--the--final--written
decision-of-a-neutral-arbitrator.

12 A--final--written--administrative--decision--that--is
14 appealed--to--arbitration--is--no--longer--confidential--120
16 days--after--a--written--request--for--the--decision--is--made
18 to--the--employer--if--the--final--written--decision--of--the
neutral--arbitrator--is--not--issued--and--released--before
the--expiration--of--the--120--days;-and

20 STATEMENT OF FACT

22 This bill ensures full accountability of governmental
24 actions by broadening the scope of public access laws. It
26 defines those legislative subcommittees that are subject to the
open meeting provisions, clarifies when legislative documents
28 lose their confidentiality protections, and opens legislative
files to the public at the end of each legislative session. The
30 bill also lowers the culpable state of mind that applies to the
penalty for governmental officials who violate the public access
32 laws and imposes a penalty on governmental officials who
knowingly release or obtain confidential documents they are not
34 entitled to have. The bill also opens certain government
personnel records to public view, including employment
applications and written decisions resolving disciplinary
complaints.