

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

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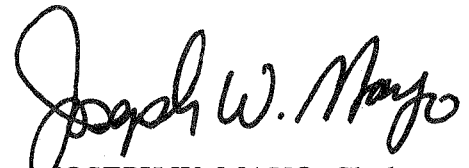
House of Representatives, March 20, 1997

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### An Act to Amend the Freedom of Access Laws.

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.  
Cosponsored by Senator PINGREE of Knox and  
Representatives: BAGLEY of Machias, BAKER of Bangor, DUNLAP of Old Town, JONES  
of Bar Harbor, LaVERDIERE of Wilton, O'NEIL of Saco, PLOWMAN of Hampden,  
WATSON of Farmingdale.

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

2  
3       **Sec. 1. 1 MRSA §405**, as amended by PL 1987, c. 769, Pt. A,  
4 §1, is further amended to read:

6       **§405. Executive sessions**

8       Those bodies or agencies falling within this subchapter may  
9 hold executive sessions subject to the following conditions.

10       **1. Not to defeat purposes of subchapter.** These sessions  
11 shall may not be used to defeat the purposes of this subchapter  
12 as stated in section 401.

14       **2. Final approval of certain items prohibited.** ~~Ne~~  
15 ~~ordinances~~ Ordinances, orders, rules, resolutions, regulations,  
16 contracts, appointments or other official actions shall may not  
17 be finally approved at executive sessions.

20       **3. Procedure for calling of executive sessions.** Executive  
21 sessions may be called only by a public, recorded vote of 3/5 of  
22 the members, present and voting, of such bodies or agencies.

24       **4. Motion contents.** A motion to go into executive session  
25 shall must indicate the precise nature of the business of the  
26 executive session, and state the specific language under  
27 subsection 6 as the foundation for the executive session.

28       **5. Matters not contained in motion prohibited.** ~~No--other~~  
29 Other matters may not be considered in that particular executive  
30 session.

32       **6. Permitted deliberation.** Deliberations may be conducted  
33 in executive sessions on the following matters and no others:

36       A. Discussion or consideration of the employment,  
37 ~~appointment,---assignment,~~ duties, promotion, demotion,  
38 compensation, evaluation, disciplining, resignation or  
39 dismissal of an individual or group of ~~public--officials,~~  
40 ~~appointees--or~~ employees of the body or agency or the  
41 investigation or hearing of charges or complaints against a  
42 person or persons, except a member of the board or that  
43 agency subject to the following conditions:

44               (1) An executive session may be held only if public  
45 discussion could be reasonably expected to cause damage  
46 to the reputation or the individual's right to privacy  
47 would be violated;

50               (2) Any A person charged or investigated shall ~~be~~ is

2 permitted to be present at an executive session if he  
se that person desires;

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

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

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

16 B. Discussion or consideration by a school board of  
18 suspension or expulsion of a public school student or a  
student at a private school, the cost of whose education is  
20 paid from public funds, ~~provided-that~~ as long as:

22 (1) The student and legal counsel and, if the student  
be is a minor, the student's parents or legal guardians  
24 shall-be are permitted to be present at an executive  
session if the student, parents or guardians so desire.  
26 ;

28 C. Discussion or consideration of the condition,  
acquisition or the use of real or personal property  
30 permanently attached to real property or interests therein  
to real property or disposition of publicly held property or  
32 economic development only if premature disclosures of the  
information would prejudice the competitive or bargaining  
34 position of the body or agency;

36 D. ~~Negotiations--between--the--representatives--of--a--public~~  
~~employer--and--public--employees--may--be--open--to--the--public~~  
38 ~~provided--both--parties--agree--to--conduct--negotiations--in--open~~  
~~sessions.~~ Discussion of labor contracts and proposals and  
40 meetings between a public agency and its negotiators may be  
held in an executive session. Negotiations between the  
42 representatives of a public employer and public employees  
may be open to the public provided both parties agree to  
44 conduct negotiations in open sessions;

46 E. Consultations between a body or agency and its attorney  
concerning the legal rights and duties of the body or  
48 agency, pending or contemplated litigation, settlement  
offers and matters where when the duties of the public  
50 body's counsel to ~~his~~ the counsel's client pursuant to the

code of professional responsibility clearly conflict with  
this subchapter or where when premature general public  
knowledge would clearly place the State, municipality or  
other public agency or person at a substantial disadvantage.  
;

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

G. Discussions or consideration of property tax abatement  
applications filed with a municipality under Title 36,  
section 841, subsection 2.

Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is  
repealed and the following enacted in its place:

**§406. Public notice and minutes**

1. Public notice. Public notice of the time, place, date  
and agenda of topics likely to be discussed must be given for all  
public proceedings as defined in section 402, if these  
proceedings are a meeting of a body or agency consisting of 3 or  
more persons. This notice of all nonemergency meetings must be  
given in ample time to allow public attendance, but at least 48  
hours prior to the meeting, must be disseminated in a manner  
reasonably calculated to notify the general public in the  
jurisdiction served by the body or agency concerned and must be  
posted in 2 appropriate public places, including the town office,  
city hall or where the municipal or county officers regularly  
hold their meetings. In the event of an emergency meeting, local  
representatives of the media must be notified of the meeting,  
whenever practical, the notification to include time and  
location, by the same or faster means used to notify the members  
of the agency conducting the public proceeding.

2. Minutes. Minutes of all public proceedings and  
executive sessions must be recorded by a member of the board or  
agency or the member's designee. These minutes must include, the  
names of the members present, names of persons appearing before  
the agency or body, the text of any motion made, the vote on such  
motion and a brief description of the subject matter discussed.  
Minutes of emergency meetings must identify clearly the reason  
for that emergency meeting. The minutes of all public  
proceedings become available for public inspection within 6 days  
of the public meeting.

Minutes of executive sessions must be available for public  
inspection within 72 hours of the meeting, unless by recorded

2 vote of 2/3 of the members present, it is determined that  
4 disclosure of the minutes would adversely affect the reputation  
6 of any person other than a member of the body or agency or render  
8 the proposed action ineffective. If those circumstances occur,  
10 the minutes may be withheld until, in the opinion of a majority  
12 of the members, the circumstances no longer apply. Minutes of  
14 executive sessions must include the names of the members present,  
16 names of persons appearing before the agency or body and a brief  
18 description of the subject matter discussed.

20 **Sec. 3. 1 MRSA §407**, as enacted by PL 1975, c. 758, is  
22 amended to read:

24 **§407. Decisions**

26 **1. Conditional approval or denial.** Every agency shall make  
28 a written record of every decision involving the conditional  
30 approval or denial of an application, license, certificate or any  
32 other type of permit within 5 days of that decision. The agency  
34 shall set forth in the record the reason or reasons for its  
36 decision and make finding of the fact, in writing, sufficient to  
38 appraise the applicant and any interested member of the public of  
40 the basis for the decision. A written record or a copy thereof  
42 shall of the record must be kept by the agency and made available  
44 to any interested member of the public who may wish to review it.

46 **2. Dismissal or refusal to renew contract.** Every agency  
48 shall make a written record of every decision involving the  
50 dismissal or the refusal to renew the contract of any public  
official, employee or appointee within 5 days of that decision.  
The agency shall, except in case of probationary employees, set  
forth in the record the reason or reasons for its decision and  
make findings of fact, in writing, sufficient to appraise the  
individual concerned and any interested member of the public of  
the basis for the decision. A written record or a copy thereof  
shall of the record must be kept by the agency and made available  
to any interested member of the public who may wish to review it.

42 **SUMMARY**

44 This bill requires the motion for an executive session to  
46 include the specific language of the Maine Revised Statutes,  
48 Title 1, section 405, subsection 6 that is relied upon as the  
50 foundation for the executive session. This bill also requires  
boards or agencies to hold discussions in regular sessions to  
discuss the employment, duties, promotion, demotion,  
compensation, evaluation, disciplining, resignation or dismissal  
of those individuals who are either elected or appointed. This  
bill also requires notice of all public proceedings to include

2 the day, time, place and agenda of topics likely to be discussed  
and to be posted in 2 public places in the municipality. This  
4 bill also requires that minutes of all public proceedings be kept  
and available for public inspection. It establishes a mechanism  
6 to make minutes of executive sessions also available for public  
inspection when the circumstances requiring the executive session  
no longer apply. Finally, this bill sets a time limit when the  
8 written record of the denial or approval of an application,  
license, certificate or any other permit and of the dismissal or  
10 refusal to renew a contract of any public official, employee or  
appointee must be available for public inspection.