

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1998

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Legislative Document

No. 2112

S.P. 785

In Senate, January 20, 1998

**An Act Creating the InforME Public Information Act to Ensure Access  
to Electronic Public Records.**

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Submitted by the Secretary of State and the Department of Administrative and Financial Services pursuant to Joint Rule 204.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by President LAWRENCE of York.

Cosponsored by Speaker MITCHELL of Vassalboro and

Senators: GOLDTHWAIT of Hancock, TREAT of Kennebec, Representatives: BUMPS of China, CARLETON of Wells, ROWE of Portland, THOMPSON of Naples, TRUE of Fryeburg.

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

Sec. 1. 1 MRSA c. 14 is enacted to read:

**CHAPTER 14**

**ELECTRONIC ACCESS TO PUBLIC INFORMATION**

**§531. Short title**

This chapter may be known and cited as the "InforME Public Information Access Act."

**§532. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the InforME Board established in section 534.

2. Data custodian. "Data custodian" means any branch, agency or instrumentality of State Government or any agency or instrumentality of a political subdivision of the State that gathers, stores or generates public information.

3. InforME. "InforME" means the system through which the State electronically provides public information, access to public information and premium services to individuals, businesses and other entities.

3. Network manager. "Network manager" means the person under contract to carry out the duties described in section 535.

4. Premium services. "Premium services" means InforME services that are available only to subscribers. Premium services include, but are not limited to, the enhancement of information that is otherwise available through InforME for the statutory fee or at no charge.

5. Public information. "Public information" means any information that is:

A. Stored, gathered or generated in digitized form by a data custodian; and

B. Either:

(1) A public record under section 402, subsection 3; or

2                   (2) Otherwise expressly authorized to be released as  
3                   specified by law.

4                   6. Subscriber. "Subscriber" means a person who, in  
5                   exchange for a fee established under section 534, subsection 5,  
6                   paragraph F, receives premium services.

7                   7. User association. "User association" means an  
8                   association:

9                   A. Whose membership is identifiable by regular payment of  
10                   association dues and regularly maintained membership lists;

11                   B. That is registered with the State or is a Maine  
12                   corporation; and

13                   C. That exists for the purpose of advancing the common  
14                   occupation or profession of its membership.

15                   §533. InforME established; purposes

16                   Information Resource of Maine, referred to as "InforME," is  
17                   established with the following purposes:

18                   1. Electronic gateway. To serve as a self-supporting and  
19                   cost-effective electronic gateway to provide and enhance access  
20                   to the State's public information for individuals, businesses and  
21                   other entities;

22                   2. Rational, standardized, comprehensive services. To  
23                   provide rational, standardized and comprehensive services by  
24                   enabling universal continuous access to accurate, current public  
25                   information that may be searched to suit the user's own  
26                   purposes. These services include, at a minimum, providing  
27                   standardized access to customized databases, data custodians'  
28                   databases and links to other information sources;

29                   3. Electronic transactions. To conduct electronic  
30                   transactions;

31                   4. Allow focus on agency core mission. To allow each state  
32                   agency to focus on its core mission by authorizing InforME to  
33                   disseminate electronically the public information within the  
34                   custody of that agency;

35                   5. Constantly improve access and utility. To constantly  
36                   improve access to and the utility of the public information  
37                   available through InforME by exploring and, where appropriate,  
38                   implementing ways to;

39

2           A. Expand the amount and kind of public information  
3           available free of charge;

4           B. Increase the utility of the public information provided  
5           and the form in which it is provided;

6           C. Expand the base of users who access the public  
7           information; and

8           D. Improve individual and business access to public  
9           information through improvements in technology;

10           6. Accuracy of information. To provide opportunities for  
11           individuals, businesses and other entities to review public  
12           information for accuracy and to indicate to the data custodian  
13           when corrections may be appropriate;

14           7. Information conduit. To provide a mechanism for the  
15           authorized transfer of nonpublic information;

16           8. Private-public partnerships and interagency  
17           cooperation. To promote opportunities for private-public  
18           partnerships and interagency cooperation; and

19           9. Innovative uses of information. To provide  
20           opportunities for innovative uses of public information.

21           **§534. InforME Board**

22           1. Membership. The InforME Board, as established in Title  
23           5, section 12004-G, subsection 30-A, consists of 13 voting  
24           members and 2 nonvoting, advisory members as follows:

25           A. The Secretary of State or the Secretary of State's  
26           designee;

27           B. Three members who are chief executive officers of  
28           agencies of the executive branch that are major data  
29           custodians, who are appointed by the Governor and who serve  
30           at the pleasure of the Governor, or their designees;

31           C. A representative of each of the following:

32                   (1) The University of Maine System, appointed by the  
33                   chancellor;

34                   (2) A statewide association of municipalities,  
35                   appointed by the Governor from nominations made by the  
36                   association's governing body;

2           (3) Nonprofit or user organizations advancing  
citizens' rights of access to information, appointed by  
the Governor; and

4           (4) A statewide association of public librarians,  
appointed by the Governor from nominations made by the  
association's governing body.

8           The term for members appointed pursuant to this paragraph is  
3 years;

12          D. Three members from user associations of a statewide  
character appointed by the Governor. After the initial  
appointments, the Governor shall appoint user association  
members from a list of not less than 6 user association  
representatives compiled by the board. No 2 members  
appointed pursuant to this paragraph may represent the same  
user association. The terms for the members appointed  
pursuant to this paragraph are for a period of 3 years,  
except initially, when terms are for one, 2 and 3 years  
respectively;

22          E. The Director of the Bureau of Information Services  
within the Department of Administrative and Financial  
Services or the director's designee;

26          F. The State Librarian or the State Librarian's designee;

28          G. A representative of the membership or staff of the  
Judicial Department, appointed by the Chief Justice of the  
Supreme Judicial Court, who serves as a nonvoting member; and

32          H. The chief executive officer or designee of the private  
entity under contract as the network manager who serves as a  
nonvoting member.

36          A member who designates another person to serve on the board as  
that member's designee shall provide written notice to the board  
staff of the name and title of the designee.

40          Appointing authorities shall make their appointments and provide  
written notice of the appointments to the board staff no later  
than September 1, 1998.

44                 2. Board chair. The Governor shall annually appoint one  
member of the board as chair.

48                 3. Staff. The Department of Administrative and Financial  
Services, Bureau of Information Services shall provide staff to  
the board.

2           4. Quorum: action. Seven voting members of the board  
3           constitute a quorum. The affirmative vote of 7 members is  
4           necessary for any action taken by the board. A vacancy in the  
5           membership of the board does not impair the right of a quorum to  
6           exercise all the powers and perform the duties of the board. The  
7           board may use video conferencing and other technologies to  
8           conduct its business, but is not exempt from chapter 13,  
9           subchapter I.

10           5. Duties. The board shall:

11           A. Carry out the purposes of InforME as provided in section  
12           533;

13           B. Approve the criteria and specifications for a network  
14           manager and its duties developed by the Director of the  
15           Bureau of Information Services within the Department of  
16           Administrative and Financial Services;

17           C. Approve the contract with the network manager;

18           D. Establish InforME policies and performance criteria and  
19           review and approve strategic plans submitted by the network  
20           manager;

21           E. Assess the performance of the network manager;

22           F. Approve premium services offered;

23           G. Review revenue and expenditures and approve premium  
24           services fees and fee schedules to be levied by the network  
25           manager. The board may establish fee schedules that include  
26           no charge for designated services for one or more specified  
27           classes of users.

28                   (1) Fees must be sufficient to maintain, develop,  
29                   operate and expand InforME on a continuing basis.

30                   (2) Fees for premium services must be reasonable but  
31                   sufficient to support the maximum amount of information  
32                   and services provided at no charge.

33                   (3) Fees must be sufficient to ensure that, to the  
34                   extent possible, data custodians do not suffer loss of  
35                   revenues from sources that are approved or authorized  
36                   by law due to the operations of InforME.

37                   (4) Fees must be sufficient to ensure that data  
38                   custodians are reimbursed for the actual costs of  
39                   providing data to InforME.

2                   (5) Fees must be sufficient to meet the expenses of  
3                   the board;

4  
5                   H. Develop and implement a mechanism to resolve disputes  
6                   involving the network manager and data custodians, users or  
7                   subscribers;

8  
9                   I. Approve interagency agreements that affect premium  
10                   services;

11                   J. Approve service level agreements between data custodians  
12                   and the network manager, except that, agreements between the  
13                   legislative or judicial branches and the network manager do  
14                   not require approval; and

15                   K. Adopt rules pursuant to the Maine Administrative  
16                   Procedure Act to carry out this chapter. Rules adopted  
17                   pursuant to this paragraph are routine technical rules as  
18                   defined in Title 5, chapter 375, subchapter II-A.

19                   6. Meetings. The board shall meet at the call of the chair  
20                   but not less than quarterly.

21                   7. Compensation. Board members are entitled to  
22                   compensation pursuant to Title 5, chapter 379.

23                   **§535. InforME network manager; contract terms and duties**

24                   1. Criteria and specifications; contract terms. The  
25                   Director of the Bureau of Information Services within the  
26                   Department of Administrative and Financial Services, in  
27                   consultation with the board, shall develop criteria and  
28                   specifications for a network manager and its duties. The  
29                   director shall develop and release a request for proposal to  
30                   solicit bids from private entities to serve as the network  
31                   manager. The director shall develop the terms and conditions of  
32                   the contract, which must include at least the following:

33                   A. Perpetual licensing to the board of software and other  
34                   intellectual property developed by the network manager for  
35                   use by InforME; and

36                   B. Procedures ensuring that executive branch and  
37                   semiautonomous state agencies comply with the standards and  
38                   policies adopted by the Information Services Policy Board.

39                   2. Network manager duties. The network manager shall:



- 2           A. Serve as an agent of the State in carrying out the  
3           purposes of InforME;
- 4           B. Direct and supervise the day-to-day operations and  
5           expansion of InforME, including the initial phase of  
6           operations necessary to make InforME operational;
- 8           C. Attend meetings of the board;
- 10          D. Deposit and disburse funds as directed by the board and  
11          service level agreements;
- 12          E. Keep a record of all operations of InforME and maintain  
13          and be a custodian of all financial and operation records,  
14          documents and papers filed with InforME. The records of  
15          InforME are the property of the board, not the network  
16          manager;
- 18          F. Develop charges for the services provided to  
19          subscribers, which must meet the provisions of section 534,  
20          subsection 5, paragraph F;
- 22          G. Develop and regularly update, in cooperation with the  
23          data custodians, a draft strategic plan for InforME for  
24          presentation to the board. The draft must include proposed  
25          measurable performance criteria;
- 28          H. Report to the board on a periodic basis concerning  
29          potential new data and services and related redacting issues;
- 30          I. Seek advice from the general public, subscribers,  
31          professional associations, academic groups and institutions  
32          and individuals with knowledge of and interest in areas of  
33          networking, electronic mail, public information access,  
34          gateway services, add-on services and electronic filing of  
35          information; and
- 38          J. Ensure that confidential information is not disclosed by  
39          the network manager without the express authorization of the  
40          data custodian.

42           3. Powers. The network manager may:

- 44           A. Negotiate and enter into contracts for professional  
45           consulting, research and other services; and
- 46           B. Have access to confidential information if it is  
47           necessary to carry out the duties of the network manager or  
48           the purposes of InforME. The network manager is subject to  
49           the same limitations and penalties as a data custodian  
50

2 concerning the use and disclosure of confidential  
3 information.

4 **§536. Network manager and data custodian responsibilities**

6 1. Voluntary cooperation. All data custodians may  
7 voluntarily cooperate with the network manager in providing  
8 public information, access to public information and assistance  
9 as may be requested for achieving InforME's purposes.

10 2. Duplication of premium services. Executive branch and  
11 semiautonomous state agencies may not provide services that  
12 duplicate premium services offered by InforME except as  
13 authorized by the board.

14 3. Service level agreements. Services and information to  
15 be provided by a data custodian are governed by service level  
16 agreements between the network manager and the data custodian.

17 4. Data custodian responsibilities. Data custodians are  
18 responsible for:

19 A. Ensuring that the public information is accurate,  
20 complete and current;

21 B. Updating the source data bases following verification of  
22 suggested corrections that users send to InforME;

23 C. Identifying how and from whom the information was  
24 acquired by the data custodian; and

25 D. Providing reasonable safeguards to protect  
26 confidentiality to the level required by law.

27 5. InforME network manager responsibilities. The network  
28 manager is responsible for:

29 A. Transmitting or providing access to public information;

30 B. Providing reasonable safeguards to protect  
31 confidentiality to the level required by law; and

32 C. Providing notices and disclaimers that include at least  
33 the following:

34 (1) How to address concerns if the public information  
35 appears to be inaccurate; and

36 (2) That InforME assumes no role for monitoring the  
37 information content to determine if it is accurate,  
38 complete or current.

2           6. Redacting data. When developing new systems, a data  
custodian shall consult with the network manager regarding  
4           current practices for efficiently redacting data.

6           7. Disclaimer. If the network manager provides public  
information that is stored, gathered or generated by the  
8           legislative branch, then the network manager shall include the  
following disclaimer:

10                   This data was compiled from information made public by the  
12                   legislative branch.

14           The disclaimer is not required if the information is prepared  
pursuant to a contract between the network manager and the  
16           Legislative Council.

18           §537. Financial requirements

20           1. Funding. InforME is self-supporting. General Fund or  
other state funds may not be used for start-up costs. Revenue is  
22           generated through fees or surcharges on premium services paid by  
subscribers and from money, goods or in-kind services donated or  
24           awarded from non-General Fund sources to carry out the purposes  
of this Act.

26                   2. Fiscal year. InforME's fiscal year begins July 1st and  
28           ends on June 30th of the next year.

30           3. Annual audit. The network manager shall submit to the  
Commissioner of Administrative and Financial Services within 120  
32           days after the close of InforME's fiscal year InforME's annual  
financial report and audit certified by an independent certified  
34           public accountant, who may be the accountant or a member of the  
firm of accountants who regularly audit the books and accounts of  
36           the network manager, selected by the network manager. The audit  
information forwarded by the network manager to the commissioner  
38           must include but is not limited to the audited financial  
statements, auditor opinions, reports on internal control,  
40           findings and recommendations and management letters. InforME is  
subject to any further audit and review determined necessary by  
42           the Governor or the Legislative Council after furnishing  
reasonable notice to the network manager.

44           §538. Copyrights, licensing restrictions and confidentiality

46                   1. Information. The information developed by the network  
48           manager for InforME and public information made available through  
InforME is owned by the public, and copyright or licensing

2 restrictions may not be fixed to this information by the board,  
the network manager or data custodians.

4 2. Custody of network manager. The fact that information  
is in the custody of the network manager does not by itself make  
6 that information a public record.

8 3. Subscriber records. Records that contain information  
relating to the identity of a subscriber relative to the  
10 subscriber's use of InforME services are confidential. Those  
records may only be released with the express written permission  
12 of the subscriber involved or pursuant to a court order.

14 **Sec. 2. 5 MRSA §1886, sub-§6-A is enacted to read:**

16 6-A. InforME responsibilities. The director shall serve as  
the contracting authority under Title 1, chapter 14, and shall  
18 provide staff to the InforME board established in Title 1,  
chapter 14.

20 **Sec. 3. 5 MRSA §12004-G, sub-§30-A is enacted to read:**

22 30-A. InforME Legislative 1 MRSA  
24 Public Board Per Diem \$534  
Information and Expenses  
26 for Voting  
28 Members

30  
32 **SUMMARY**

34 This bill creates a new state system to provide electronic  
36 access to public information. The system is named the  
38 Information Resource of Maine and known as "InforME." The main  
40 purpose of InforME is to ensure freedom of access to the State's  
42 public records that are stored in electronic form. InforME makes  
44 that access as easy as possible by maintaining a single internet  
46 site, an "electronic gateway," to which individuals, businesses  
48 and other entities can turn to retrieve that information.  
50 InforME is administered by a public-private partnership that is  
self-supporting, requiring no General Fund appropriations.  
InforME has the capability to provide access to all public  
information in electronic form within the custody of all state  
agencies and instrumentalities, including the judicial and  
legislative branches, as well as, providing opportunities for  
other public entities and nonprofit organizations, such as  
municipalities and libraries and schools, to make their public  
records available through the same site.

2 InforME is governed by a board that is made up of major  
State data custodians and public and private users of public  
information.

4  
6 The term "public information" is defined to include  
information that is a public record under the Freedom of Access  
laws. It also includes information that does not fall into the  
8 category of public record but which is otherwise expressly  
authorized to be released as specified in law. An example is  
10 drivers' records that the Department of the Secretary of State is  
authorized by law to share electronically with insurance  
12 providers. The release of the information must be as specified  
in the law, and disclosure to anyone else is prohibited.

14