

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2002

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Legislative Document

No. 1869

S.P. 665

In Senate, December 14, 2001

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**An Act Regarding Protective Orders in Public Utilities Commission Proceedings.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 14, 2001. Referred to the Committee on Utilities and Energy and ordered printed pursuant to Joint Rule 308.2

A handwritten signature in cursive script that reads "Pamela L. Cahill".

PAMELA L. CAHILL  
Secretary of the Senate

Presented by Senator McALEVEY of York.

Cosponsored by Representatives: SHERMAN of Hodgdon, SNOWE-MELLO of Poland.

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

2  
4       **Sec. 1. 35-A MRSA §1311-A, sub-§1, ¶¶C to F**, as enacted by PL 1997, c. 691, §5 and affected by §10, are amended to read:

6       C. The party requesting a protective order bears the burden  
8       of demonstrating the need for protection. ~~The commission~~  
10       ~~may partially and temporarily grant a request for a~~  
12       ~~protective order, consistent with the provisions of~~  
14       ~~paragraph D, to expedite the release of confidential~~  
16       ~~information to certain parties, but the party seeking~~  
18       ~~protection bears the burden of demonstrating that release of~~  
20       ~~the information to other parties should be restricted. The~~  
22       ~~party requesting a protective order may ask the commission~~  
24       ~~to determine whether any party or its representatives have~~  
26       ~~financial interests or other conflicts that make the release~~  
28       ~~of confidential information to that party harmful to the~~  
30       ~~public interest. The commission may require parties and~~  
32       ~~their representatives seeking access to confidential~~  
34       ~~information to disclose any financial interests they have~~  
36       ~~that may be affected by the case at hand or other cases~~  
38       ~~currently before the commission. The commission may also~~  
40       ~~ask parties and their representatives seeking confidential~~  
42       ~~information to disclose a list of all affiliated interests~~  
44       ~~who have an interest in the case at hand or other cases~~  
46       ~~currently before the commission. Information provided to~~  
48       ~~the commission under this paragraph is confidential and may~~  
50       ~~be viewed by the commission, the commission's staff and the~~  
      ~~Public Advocate. The commission may not issue a final order~~  
      ~~prohibiting or restricting access to a party without notice~~  
      ~~and an opportunity to be heard.~~

34       D. If the commission issues a protective order that denies  
36       a party access to information, the commission ~~shall~~ may, at  
38       the commission's sole discretion, provide the information to  
40       the party's attorney, if any, subject only to the  
42       restriction that the attorney use the information solely for  
44       the purpose of the proceeding and not disclose the  
46       information to others, ~~except that~~ or any other restriction  
48       that the commission considers appropriate. In addition:

42               (1) The commission ~~may~~ shall deny an attorney access to  
44               information relating to bids if the attorney represents  
46               a party that made a competing bid; and

46               (2) The commission may impose further limitations if  
48               the commission finds that an attorney has a direct,  
50               personal and substantial financial interest that could  
      be benefited by access to the information to the  
      detriment of the party that provided the information.

2 Unless--the--commission--finds--that--the--conditions--of  
subparagraphs--1--or--2--are--met,--the The obligations of  
4 attorneys under the ethical rules, including the obligation  
to decline representation in certain cases, the authority of  
6 the commission to discipline attorneys who appear before the  
commission, including the authority, under section 1502, to  
8 punish for contempt persons who fail to comply with a  
protective order, and the commission's ability to recommend  
10 sanctions by other bodies, including the discipline of  
attorneys by the courts and the Board of Overseers of the  
12 Bar, ~~is sufficient security to permit the attorney to have  
access to information in order to represent a party before  
14 the commission~~ remain in effect when an attorney is granted  
access to information under a protective order.

16  
E. The commission may prohibit or restrict the disclosure  
18 of information under protective order to a party's  
independent consultant ~~only for compelling reasons and to  
20 the least extent necessary, except that the commission~~ may  
require that the any information be used only for the  
22 purposes of the proceeding in which it is disclosed and may  
prohibit disclosure of the information by the independent  
24 consultant to others.

26 F. Notwithstanding any other provision of this subsection:

28 (1) The commission may deny all ~~parties~~ any party,  
including the commission and its staff, access to  
30 information if the commission finds that the potential  
for harm from disclosure of the information outweighs  
32 its probative value in the proceeding; and

34 (2) The commission may deny an attorney access to  
information under protective order if the commission  
36 finds that the attorney's request for access to the  
information is not made in good faith or that the  
38 attorney will not respect the terms of the protective  
order.

40 **Sec. 2. 35-A MRS §1311-A, sub-§2, ¶¶D and E,** as enacted by  
42 PL 1997, c. 691, §5 and affected by §10, are amended to read:

44 D. The commission shall render a decision on the appeal  
brought pursuant to this subsection within 7 14 business  
46 days of the filing of the appeal.

48 E. Notwithstanding subsection 1, the commission may impose  
limits on the disclosure of information beyond the limits  
50 imposed by the protective order issued in accordance with

2 subsection 1 only if the commission finds that potential for  
3 damage resulting from disclosure of the information in  
4 accordance with the protective order clearly exceeds the  
5 probative value of the information in the proceeding.

6

### 7 SUMMARY

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9 This bill changes the criteria for the issuance of  
10 protective orders in Public Utilities Commission proceedings. It  
11 repeals some of the changes that were made in 1998 that made  
12 confidential information available to more people and closes  
13 loopholes in the law that allowed such information to be  
14 available to parties with multiple interests. The bill also  
15 allows the Public Utilities Commission to determine the financial  
16 interests of the parties seeking access to confidential  
17 information in order to protect consumers and competitors from  
18 the inappropriate release or use of that information.