

MAINE STATE LEGISLATURE

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Legislative Document

No. 301

H.P. 226

House of Representatives, January 19, 2005

An Act To Implement the Recommendations of the Committee To Study Compliance with Maine's Freedom of Access Laws

Reported by Representative KOFFMAN of Bar Harbor for the Committee to Study Compliance with Maine's Freedom of Access Laws pursuant to Public Law 2003, chapter 709, section 8.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

4 **Sec. 1. 1 MRSA §411** is enacted to read:

6 **§411. Freedom of Access Advisory Committee**

8 **1. Advisory committee established.** The Freedom of Access
10 Advisory Committee, referred to in this section as "the
12 committee," is established to serve as a resource for ensuring
compliance with this subchapter and upholding the integrity of
the purposes underlying this subchapter as it applies to all
public entities in the conduct of the public's business.

14 **2. Membership.** The committee consists of the following 13
16 members:

18 A. One Senator, appointed by the President of the Senate;

20 B. One member of the House of Representatives, appointed by
the Speaker of the House;

22 C. One representative of municipal interests, appointed by
24 the Governor;

26 D. One representative of county or regional interests,
appointed by the President of the Senate;

28 E. One representative of school interests, appointed by the
30 Governor;

32 F. One representative of law enforcement interests,
appointed by the President of the Senate;

34 G. One representative of the interests of State Government,
36 appointed by the Governor;

38 H. One representative of a statewide coalition of advocates
of freedom of access, appointed by the Speaker of the House;

40 I. One representative of newspaper and other press
42 interests, appointed by the President of the Senate;

44 J. One representative of broadcasting interests, appointed
by the Speaker of the House;

46 K. One representative of the public, appointed by the
48 Speaker of the House;

50 L. The Attorney General or the Attorney General's designee;
and

2 M. The committee shall invite the Chief Justice of the
4 Supreme Judicial Court to designate a member of the judicial
 branch to serve as a member of the committee.

6 3. Terms of appointment. The terms of appointment are as
8 follows.

10 A. Terms of appointment for gubernatorial appointments and
 appointments by the President of the Senate and the Speaker
12 of the House, other than legislative appointments, are for
 terms of 3 years.

14 B. Terms of appointment for Legislators are for the
 legislative terms of office of the persons appointed.

16 C. Members may serve beyond their designated terms until
18 their successors are appointed.

20 4. First meeting; chair. The Executive Director of the
22 Legislative Council shall call the first meeting of the committee
 as soon as funding permits. At the first meeting, the committee
24 shall select a chair from among its members and may select a new
 chair annually.

26 5. Meetings. The committee may meet as often as necessary
28 but, if funding permits, shall meet at least quarterly. A
 meeting may be called by the chair or by any 4 members.

30 6. Duties and powers. The committee:

32 A. Shall oversee the review of exceptions to public records
 under subchapter 1-A, ensuring that the schedule for review
34 is maintained, that proposed exceptions are subject to the
 review process and that the criteria for review are
36 appropriately applied;

38 B. Shall review the public's access to public proceedings
 and records;

40 C. Shall review information provided by the Public Access
42 Ombudsman appointed pursuant to Title 5, section 200-I
 concerning complaints about lack of access and frivolous
44 requests for access;

46 D. Shall make recommendations to the Governor, the
 Legislature, the Chief Justice of the Supreme Judicial Court
48 and local and regional governmental entities for changes in
 law and practice that are appropriate to maintain the

2 integrity of the freedom of access laws and their underlying
3 principles;

4 E. Shall serve as an adviser to the Legislature when
5 legislation affecting public access is considered;

6 F. May conduct public hearings, conferences, workshops and
7 other meetings to obtain information about, discuss,
8 publicize the needs of and consider solutions to problems
9 concerning access to public proceedings and records;

10 G. May submit legislation to the Legislature at the start
11 of each legislative session; and

12 I. May undertake other activities consistent with its
13 responsibilities.

14 7. Funding. The committee is authorized to seek, accept
15 and expend outside sources of funding to carry out the
16 committee's activities.

17 8. Reimbursement for expenses. Members are entitled to
18 reimbursement for actual and necessary expenses related to travel
19 to and from committee meetings when the expenses are approved by
20 the chair and submitted to the Executive Director of the
21 Legislative Council.

22 9. No compensation. The members of the committee receive
23 no compensation for their services.

24 10. Staffing. Upon approval of the Legislative Council,
25 the Office of Policy and Legal Analysis shall provide necessary
26 staffing services to the committee. In addition, the committee
27 may contract for administrative, professional and clerical
28 services if funding permits.

29 11. Report. By January 15, 2006 and at least annually
30 thereafter, the committee shall report to the Governor, the
31 Legislative Council, the joint standing committee of the
32 Legislature having jurisdiction over judiciary matters and the
33 Chief Justice of the Supreme Judicial Court about the state of
34 the freedom of access laws and the public's access to public
35 proceedings and records.

36 Sec. 2. 3 MRSA §163-A. sub-§7. as enacted by PL 1985, c. 501,
37 Pt. B, §5, is amended to read:

38 7. Committee assistance. To provide assistance with
39 research, analysis and, bill drafting assistance-~~for~~ and review
40 of exceptions to public records to joint standing or select
41 committees.

2 committees, including, but not limited to, the ~~Joint Standing~~
3 ~~Committee on Appropriations and Financial Affairs, the Joint~~
4 ~~Standing Committee on Audit and Program Review~~ joint standing
5 committee of the Legislature having jurisdiction over
6 appropriations and financial matters and other legislative
7 agencies;

8 Sec. 3. 5 MRSA §200-I is enacted to read:

10 **§200-I. Public Access Ombudsman**

12 **1. Public Access Ombudsman.** The Attorney General shall
13 appoint a Public Access Ombudsman, referred to in this section as
14 "the ombudsman," within the Department of the Attorney General
15 to assist in compliance with the freedom of access laws in Title
16 1, chapter 13.

18 **2. Duties.** The ombudsman shall:

20 A. Prepare interpretive and educational materials and
21 programs concerning the freedom of access laws in
22 cooperation with the Freedom of Access Advisory Committee
23 established in Title 1, section 411;

24 B. Make available to elected or appointed public officials
25 the freedom of access laws and educational materials
26 concerning the freedom of access laws;

28 C. Respond to inquiries made by the public and public
29 agencies and officials concerning the freedom of access laws;

32 D. Respond to and work to resolve complaints made by the
33 public and public agencies and officials concerning the
34 freedom of access laws;

36 E. Furnish, upon request, guidelines and other appropriate
37 information regarding the freedom of access laws to any
38 person or public agency or official in an expeditious
39 manner; and

42 F. Make recommendations to the Legislature and the Freedom
43 of Access Advisory Committee concerning ways to improve
44 public access to public records and proceedings.

46 **3. Assistance.** The ombudsman may request from any public
47 agency or official assistance, services and information to enable
48 the ombudsman to effectively carry out the responsibilities
49 described in this section. Every public agency and official
50 shall cooperate with the ombudsman and provide the assistance,
services or information.

2 4. Report. Beginning in 2006 and annually thereafter, the
3 ombudsman shall submit a report no later than March 15h to the
4 Legislature and to the Freedom of Access Advisory Committee
5 established in Title 1, section 411 concerning the activities of
6 the ombudsman for the previous calendar year. The report must
7 include the following information:

8 A. The total number of inquiries and complaints received;

9 B. The number of inquiries and complaints received from
10 each of the following:

11 (1) The public;

12 (2) The media; and

13 (3) Public agencies and officials;

14 C. The number of complaints received concerning each of the
15 following:

16 (1) Public records; and

17 (2) Public meetings;

18 D. The number of inquiries and complaints that were
19 resolved and how they were resolved; and

20 E. The number of complaints received about each of the
21 following:

22 (1) State agencies;

23 (2) County agencies;

24 (3) Regional agencies;

25 (4) Municipal agencies;

26 (5) School administrative units; and

27 (6) Other public entities.

28 Sec. 4. 5 MRSA §12004-J.sub-§14 is enacted to read:

29 14. Freedom of Expenses 1 MRSA
30 Freedom of Access Only §411
31 Access Advisory
32 Committee

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SUMMARY

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6 This is a unanimous recommendation of the Committee to Study
8 Compliance with Maine's Freedom of Access Laws. It establishes
10 the Freedom of Access Advisory Committee to maintain the
12 integrity of Maine's freedom of access laws. The committee's
14 duties include providing oversight of the review of exceptions to
16 public records and ensuring that the schedule for review is
18 maintained, that proposed exceptions are subject to the review
20 process and that the criteria for review are appropriately
applied. The committee shall also review the public's ability to
access public proceedings and records, receive information from
the Public Access Ombudsman concerning complaints about lack of
access and frivolous requests for access, make recommendations
for changes in law and practice that are appropriate to maintain
the integrity of Maine's freedom of access laws and the
underlying principles and advise the Legislature when legislation
affecting public access is considered.

22 The committee may conduct public hearings, conferences,
24 workshops and other meetings to obtain information about,
26 discuss, publicize the needs of and consider solutions to
28 problems concerning access to public proceedings and records and
30 may also submit legislation to the Legislature at the start of
32 each legislative session. The Office of Policy and Legal
34 Analysis shall provide staff support to the committee, and
annually by January 15th the committee shall report to the
Governor, the Legislative Council and the Chief Justice of the
Supreme Judicial Court about the state of Maine's freedom of
access laws and the public's access to public proceedings and
records.

36 The bill establishes the Public Access Ombudsman within the
38 Department of the Attorney General. The ombudsman provides
40 information and educational materials to the public and public
42 agencies and officials. The ombudsman will respond to inquiries,
44 resolve freedom of access complaints when possible and issue
46 guidelines concerning Maine's freedom of access laws. The
ombudsman will work with the Freedom of Access Advisory Committee
to provide interpretive and educational materials and programs.
The ombudsman will make recommendations to the Legislature and
the Freedom of Access Advisory Committee concerning ways to
improve public access to public records and public proceedings.

48 The ombudsman may request the assistance of any public
50 agency or official in carrying out these responsibilities.
Public agencies and officials shall cooperate with and provide
assistance to the ombudsman.

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Beginning March 2006, the ombudsman will report annually to the Legislature and the Freedom of Access Advisory Committee regarding the ombudsman's activities and the inquiries and complaints received.

The bill also establishes legislative staff services for the legislative committees that are required to conduct the review of exceptions to public records laws.