

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 466

H.P. 341

House of Representatives, February 1, 2005

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

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. Attorney's fees and litigation expenses**

8 In an action to enforce this subchapter, the court may award
10 reasonable attorney's fees and litigation expenses reasonably
12 incurred to the wholly prevailing party if the court determines
14 that the failure to comply with the law was committed in bad
16 faith or that the request for access or the enforcement action
18 was frivolous, vexatious or without merit.

20 This section applies to actions for enforcement of this
22 subchapter filed on or after September 1, 2007.

24 **SUMMARY**

26 This bill is the recommendation of the majority of the
28 Committee to Study Compliance with Maine's Freedom of Access Laws.

30 This bill applies to actions filed in court to enforce
32 access to public proceedings and records under the Maine freedom
34 of access laws. It gives the court discretion to award
36 attorney's fees and litigation expenses to either party when
38 certain circumstances exist. First, the party must wholly
40 prevail, meaning a negotiated settlement of providing partial
42 access or copies of some of the records requested will not make
44 either the plaintiff or the defendant eligible for the award of
46 attorney's fees and litigation expenses. Second, the failure to
comply with the law and the denial of access must have been
committed in bad faith. Being unsure whether a requested record
is a public record is not sufficient to rise to the level of bad
faith nor would a legitimate, but mistaken, belief that the
record requested is confidential. Similarly, for a defendant to
be awarded attorney's fees and litigation expenses, the request
for access to proceedings or records, or bringing an action in
court in order to compel access, must have been frivolous,
vexatious or without merit. A legitimate belief in the right to
attend a meeting or inspect or copy a record would not give rise
to an award. Using the freedom of access laws and the
enforcement procedures to harass and inconvenience an agency or
public official could give rise to such an award. Attorney's
fees and litigation expenses must be reasonable.

48 This bill applies to actions filed in court on or after
September 1, 2007. This is consistent with the recommendations
of the Committee to Study Compliance with Maine's Freedom of

2 Access Laws in assessing the volume and severity of violations of
Maine's freedom of access laws and the need to provide the
opportunity for attorney's fees to encourage compliance.