

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 2111

H.P. 1503

House of Representatives, April 14, 2006

### **An Act To Implement the Recommendations of the Freedom of Access Advisory Committee**

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Reported by Representative SIMPSON of Auburn for the Joint Standing Committee on  
Judiciary pursuant to Resolve 2005, chapter 123.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

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

**§411. Right To Know Advisory Committee**

**1. Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

**2. Membership.** The advisory committee consists of the following members:

**A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate;**

**B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;**

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

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

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

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

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

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

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

**J. One representative of newspaper publishers, appointed by the Speaker of the House;**

2 K. Two representatives of broadcasting interests, one  
3 appointed by the President of the Senate and one appointed  
4 by the Speaker of the House;

5 L. Two representatives of the public, one appointed by the  
6 President of the Senate and one appointed by the Speaker of  
7 the House; and

8 M. The Attorney General or the Attorney General's designee.

9 The advisory committee shall invite the Chief Justice of the  
10 Supreme Judicial Court to designate a member of the judicial  
11 branch to serve as a member of the committee.

12 3. Terms of appointment. The terms of appointment are as  
13 follows.

14 A. Except as provided in paragraph B, members are appointed  
15 for terms of 3 years.

16 B. Members who are Legislators are appointed for the  
17 duration of the legislative terms of office in which they  
18 were appointed.

19 C. Members may serve beyond their designated terms until  
20 their successors are appointed.

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

26 5. Meetings. The advisory committee may meet as often as  
27 necessary but not fewer than 4 times a year. A meeting may be  
28 called by the chair or by any 4 members.

29 6. Duties and powers. The advisory committee:

30 A. Shall provide guidance in ensuring access to public  
31 records and proceedings and help to establish an effective  
32 process to address general compliance issues and respond to  
33 requests for interpretation and clarification of the laws;

34 B. Shall serve as the central source and coordinator of  
35 information about the freedom of access laws and the  
36 people's right to know. The advisory committee shall  
37 provide the basic information about the requirements of the  
38 law and the best practices for agencies and public  
39 officials. The advisory committee shall also provide  
40

2 general information about the freedom of access laws for a  
3 wider and deeper understanding of citizens' rights and their  
4 role in open government. The advisory committee shall  
5 coordinate the education efforts by providing information  
6 about the freedom of access laws and who to contact for  
7 specific inquiries;

8 C. Shall serve as a resource to support the establishment  
9 and maintenance of a central publicly accessible website  
10 that provides the text of the freedom of access laws and  
11 provides specific guidance on how a member of the public can  
12 use the law to be a better informed and active participant  
13 in open government. The website must include the contact  
14 information for agencies, as well as who to contact with  
15 complaints and concerns. The website must also include, or  
16 contain a link to, a list of statutory exceptions to the  
17 public records laws;

18 D. Shall serve as a resource to support training and  
19 education about the freedom of access laws. Although each  
20 agency is responsible for training for the specific records  
21 and meetings pertaining to that agency's mission, the  
22 advisory committee shall provide core resources for the  
23 training, share best practices experiences and support the  
24 establishment and maintenance of online training as well as  
25 written question-and-answer summaries about specific topics;

26 E. Shall serve as a resource for the review committee under  
27 subchapter 1-A in examining public records exceptions in  
28 both existing laws and in proposed legislation;

29 F. Shall examine inconsistencies in statutory language and  
30 may recommend standardized language in the statutes to  
31 clearly delineate what information is not public and the  
32 circumstances under which that information may appropriately  
33 be released;

34 G. May make recommendations for changes in the statutes to  
35 improve the laws and may make recommendations to the  
36 Governor, the Legislature, the Chief Justice of the Supreme  
37 Judicial Court and local and regional governmental entities  
38 with regard to best practices in providing the public access  
39 to records and proceedings and to maintain the integrity of  
40 the freedom of access laws and their underlying principles.  
41 The joint standing committee of the Legislature having  
42 jurisdiction over judiciary matters may report out  
43 legislation based on the advisory committee's  
44 recommendations;

2           H. Shall serve as an adviser to the Legislature when  
3           legislation affecting public access is considered;

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

8           J. Shall review the collection, maintenance and use of  
9           records by agencies and officials to ensure that  
10           confidential records and information are protected and  
11           public records remain accessible to the public; and

12           K. May undertake other activities consistent with its  
13           listed responsibilities.

14           7. Outside funding for advisory committee activities. The  
15           advisory committee may seek outside funds to fund the cost of  
16           public hearings, conferences, workshops, other meetings, other  
17           activities of the advisory committee and educational and training  
18           materials. Contributions to support the work of the advisory  
19           committee may not be accepted from any party having a pecuniary  
20           or other vested interest in the outcome of the matters being  
21           studied. Any person, other than a state agency, desiring to make  
22           a financial or in-kind contribution shall certify to the  
23           Legislative Council that it has no pecuniary or other vested  
24           interest in the outcome of the advisory committee's activities.  
25           Such a certification must be made in the manner prescribed by the  
26           Legislative Council. All contributions are subject to approval  
27           by the Legislative Council. All funds accepted must be forwarded  
28           to the Executive Director of the Legislative Council along with  
29           an accounting record that includes the amount of funds, the date  
30           the funds were received, from whom the funds were received and  
31           the purpose of and any limitation on the use of those funds. The  
32           Executive Director of the Legislative Council shall administer  
33           any funds received by the advisory committee.

34           8. Compensation. Legislative members of the advisory  
35           committee are entitled to receive the legislative per diem, as  
36           defined in Title 3, section 2, and reimbursement for travel and  
37           other necessary expenses for their attendance at authorized  
38           meetings of the advisory committee. Public members not otherwise  
39           compensated by their employers or other entities that they  
40           represent are entitled to receive reimbursement of necessary  
41           expenses and, upon a demonstration of financial hardship, a per  
42           diem equal to the legislative per diem for their attendance at  
43           authorized meetings of the advisory committee.

44           9. Staffing. The Legislative Council shall provide staff  
45           support for the operation of the advisory committee, except that

2 the Legislative Council staff support is not authorized when the  
3 Legislature is in regular or special session. In addition, the  
4 advisory committee may contract for administrative, professional  
5 and clerical services if funding permits.

6 10. Report. By January 15, 2007 and at least annually  
7 thereafter, the advisory committee shall report to the Governor,  
8 the Legislative Council, the joint standing committee of the  
9 Legislature having jurisdiction over judiciary matters and the  
10 Chief Justice of the Supreme Judicial Court about the state of  
11 the freedom of access laws and the public's access to public  
12 proceedings and records.

14 **Sec. 2. 1 MRSA §431, sub-§3 is enacted to read:**

16 3. Advisory committee. "Advisory committee" means the  
17 Right To Know Advisory Committee established in Title 5, section  
18 12004-J, subsection 14 and described in section 411.

20 **Sec. 3. 1 MRSA §432, as enacted by PL 2003, c. 709, §3, is**  
21 **amended to read:**

22 **§432. Exceptions to public records; review**

24  
25 **1. Recommendations.** During the second regular session of  
26 each Legislature, the review committee shall ~~may~~ report out  
27 legislation containing its recommendations concerning the repeal,  
28 modification and continuation of public records exceptions and  
29 any recommendations concerning the exception review process.  
30 Before reporting out legislation, the review committee shall  
31 notify the appropriate committees of jurisdiction concerning  
32 public hearings and work sessions and shall allow members of the  
33 appropriate committees of jurisdiction to participate in work  
34 sessions.

35  
36 **2. Process of evaluation.** According to the schedule in  
37 section ~~434~~ 433, the ~~review~~ advisory committee shall evaluate  
38 each public records exception that is scheduled for review that  
39 biennium. This section does not prohibit the evaluation of a  
40 public record exception by either the advisory committee or the  
41 review committee at a time other than that listed in section  
42 433. The ~~review--committee--shall--use--the~~ following criteria ~~to~~  
43 determine ~~apply in determining~~ whether each exception scheduled  
44 for review should be repealed, modified or remain unchanged:

45 A. Whether a record protected by the exception still needs  
46 to be collected and maintained;

47  
48 B. The value to the agency or official or to the public in  
49 maintaining a record protected by the exception;  
50

- 2 C. Whether federal law requires a record to be confidential;
- 4 D. Whether the exception protects an individual's privacy  
6 interest and, if so, whether that interest substantially  
outweighs the public interest in the disclosure of records;
- 8 E. Whether public disclosure puts a business at a  
10 competitive disadvantage and, if so, whether that business's  
interest substantially outweighs the public interest in the  
12 disclosure of records;
- 14 F. Whether public disclosure compromises the position of a  
public body in negotiations and, if so, whether that public  
16 body's interest substantially outweighs the public interest  
in the disclosure of records;
- 18 G. Whether public disclosure jeopardizes the safety of a  
20 member of the public or the public in general and, if so,  
whether that safety interest substantially outweighs the  
22 public interest in the disclosure of records;
- 24 H. Whether the exception is as narrowly tailored as  
possible; and
- 26 I. Any other criteria that assist the review committee in  
28 determining the value of the exception as compared to the  
public's interest in the record protected by the exception.

30 2-A. Accountability review of agency or official. In  
32 evaluating each public records exception, the advisory committee  
34 shall, in addition to applying the criteria of subsection 2,  
36 determine whether there is a publicly accountable entity that has  
38 authority to review the agency or official that collects,  
maintains or uses the record subject to the exception in order to  
ensure that information collection, maintenance and use are  
consistent with the purpose of the exception and that public  
access to public records is not hindered.

40 2-B. Recommendations to review committee. The advisory  
42 committee shall report its recommendations under this section to  
the review committee no later than the convening of the second  
regular session of each Legislature.

44

46 3. Assistance from committees of jurisdiction. The review  
48 advisory committee shall may seek assistance in evaluating public  
50 records exceptions from the joint standing committees of the  
Legislature having jurisdiction over the subject matter related  
to the exceptions being reviewed. The review advisory committee  
may hold joint public hearings with after notice to the



2 appropriate committees of jurisdiction. ~~The review committee~~  
3 ~~shall notify the appropriate committees of jurisdiction~~  
4 ~~concerning work sessions and shall allow members of the~~  
5 ~~appropriate committees of jurisdiction to participate in work~~  
6 ~~sessions.~~

7 **Sec. 4. 1 MRSA §433, sub-§1**, as enacted by PL 2003, c. 709,  
8 §3, is repealed.

9 **Sec. 5. 1 MRSA §433, sub-§§2 and 3** are enacted to read:

10 **2. Scheduling guidelines.** The advisory committee shall use  
11 the following list as a guideline for scheduling reviews of  
12 public records exceptions.

13 A. Exceptions codified in the following Titles are  
14 scheduled for review in 2008:

15 (1) Title 1;

16 (2) Title 2;

17 (3) Title 3;

18 (4) Title 4;

19 (5) Title 5;

20 (6) Title 6;

21 (7) Title 7;

22 (8) Title 8;

23 (9) Title 9-A; and

24 (10) Title 9-B.

25 B. Exceptions codified in the following Titles are  
26 scheduled for review in 2010:

27 (1) Title 10;

28 (2) Title 11;

29 (3) Title 12;

30 (4) Title 13;

31 (5) Title 13-B;

- 2           (6) Title 13-C;  
4           (7) Title 14;  
6           (8) Title 15;  
8           (9) Title 16;  
10          (10) Title 17;  
12          (11) Title 17-A;  
14          (12) Title 18-A;  
16          (13) Title 18-B;  
18          (14) Title 19-A;  
20          (15) Title 20-A; and  
22          (16) Title 21-A.

24          C. Exceptions codified in the following Titles are  
26          scheduled for review in 2012:

- 28               (1) Title 22;  
30               (2) Title 23;  
32               (3) Title 24;  
34               (4) Title 24-A; and  
36               (5) Title 25.

38          D. Exceptions codified in the following Titles are  
              scheduled for review in 2014:

- 40               (1) Title 26;  
42               (2) Title 27;  
44               (3) Title 28-A;  
46               (4) Title 29-A;  
48               (5) Title 30;  
50               (6) Title 30-A;

- 2                   (7) Title 31;
- 4                   (8) Title 32;
- 6                   (9) Title 33;
- 8                   (10) Title 34-A;
- 10                  (11) Title 34-B;
- 12                  (12) Title 35-A;
- 14                  (13) Title 36;
- 16                  (14) Title 37-B;
- 18                  (15) Title 38; and
- 20                  (16) Title 39-A.

22           **3. Scheduling changes.** The advisory committee may make  
 24 adjustments to the scheduling guidelines provided in subsection 2  
as it determines appropriate and shall notify the review  
 26 committee of such adjustments.

28           **Sec. 6. 1 MRSA §434, sub-§2-A** are enacted to read:

30           **2-A. Accountability review of agency or official.** In  
 32 evaluating each proposed public records exception, the review  
committee shall, in addition to applying the criteria of  
 34 subsection 2, determine whether there is a publicly accountable  
entity that has authority to review the agency or official that  
 36 collects, maintains or uses the record subject to the exception  
in order to ensure that information collection, maintenance and  
use are consistent with the purpose of the exception and that  
 38 public access to public records is not hindered.

40           **Sec. 7. 5 MRSA §12004-J, sub-§14** is enacted to read:

42 <b><u>14.</u></b> <u>Freedom of</u> <u>Access</u>	<u>Right To</u> <u>Know</u> <u>Advisory</u> <u>Committee</u>	<u>Legislative</u> <u>Per Diem</u> <u>and Ex-</u> <u>penses for</u> <u>Legislators</u> <u>and Expenses</u> <u>Only for</u> <u>Certain</u> <u>Members</u>	<u>1 MRSA</u> <u>§411</u>
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whether there is a publicly accountable entity with authority to  
review the activities of the agency or official that collects,  
maintains and uses confidential information.

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**FISCAL NOTE REQUIRED**  
**(See attached)**



# 122nd MAINE LEGISLATURE

LD 2111

LR 3212(01)

## An Act to Implement the Recommendations of the Freedom of Access Advisory Committee

### Fiscal Note for Committee Bill

Committee: Freedom of Access Advisory Committee

Fiscal Note Required: Yes

### Fiscal Note

#### Current Costs - Legislative Study

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$0	\$500	\$0	\$0
<b>Revenue</b>				
Other Special Revenue Funds	\$0	\$500	\$0	\$0

#### Legislative Study

The projected annual costs to fund the ongoing per diem and expenses of the Right To Know Advisory Committee are \$4,040 beginning in fiscal year 2006-07. The Legislature's budget includes \$20,000 in fiscal year 2006-07 for legislative studies and other legislative requests. Whether the amount is sufficient to fund all legislative requests will depend on the number of requests approved by the Legislative Council and the Legislature.

The bill includes an allocation of Other Special Revenue Funds to the Legislature in fiscal year 2006-07 in the amount of \$500 in the event outside funding is received for the Right To Know Advisory Committee. If further funding is received to conduct public hearings, conferences, workshops and other meetings or to contract for administrative, professional and clerical services, the Legislature will require additional allocation for those purposes in an amount that can not be determined at this time.

The additional costs associated with providing staffing assistance to the committee during the interim between legislative sessions can be absorbed by the Legislature utilizing existing budgeted resources.