

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1822

H.P. 1270

House of Representatives, April 4, 2007

### **An Act To Implement the Recommendations of the Right To Know Advisory Committee**

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Reported by Representative SIMPSON of Auburn for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2 **Sec. 1. 1 MRSA §412** is enacted to read:

3 **§412. Public records and proceedings training for certain elected officials**

4 **1. Training required.** Beginning January 1, 2008, an elected official subject to this  
5 section shall complete a course of training on the requirements of this chapter relating to  
6 public records and proceedings. The official shall complete the training not later than the  
7 90th day after the date the elected official takes the oath of office to assume the person's  
8 duties as an elected official. For elected officials subject to this section serving in office  
9 on January 1, 2008, the training required by this section must be completed by April 1,  
10 2008.

11 **2. Minimum requirements.** The training course under subsection 1 must be  
12 developed by the Public Access Ombudsman, established pursuant to Title 5, section  
13 200-I, in conjunction with the advisory committee. The training must be provided to  
14 elected officials through a central publicly accessible website at no cost. The training  
15 must be designed to be completed by an official in less than 2 hours. At a minimum, the  
16 training must include instruction in:

17 A. The general legal requirements of this chapter regarding public records and public  
18 proceedings;

19 B. Procedures and requirements regarding complying with a request for a public  
20 record under this chapter; and

21 C. Penalties and other consequences for failure to comply with this chapter.

22 **3. Certification of completion.** Upon completion of the training course under  
23 subsection 1, the elected official shall send an electronic notification to the Public Access  
24 Ombudsman, established pursuant to Title 5, section 200-I, attesting to the fact that the  
25 training has been completed. The Public Access Ombudsman shall maintain a record of  
26 those elected officials who have completed the training required by this section and make  
27 that record available to the public in accordance with the requirements of this chapter.

28 **4. Application.** This section applies to:

29 A. The Governor;

30 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

31 C. Members of the Legislature; and

32 D. An elected official of a county, municipality, school district or school board or  
33 any regional or other political subdivision who, as part of the duties of the office,  
34 exercises executive or legislative powers.

35 **Sec. 2. 5 MRSA §200-I** is enacted to read:

1 **§200-I. Public Access Division; Public Access Ombudsman**

2 **1. Public Access Division; Public Access Ombudsman.** There is created, within  
3 the Department of the Attorney General, the Public Access Division to assist in  
4 compliance with the State's freedom of access laws, Title 1, chapter 13. The Attorney  
5 General shall appoint the Public Access Ombudsman, referred to in this section as "the  
6 ombudsman," to administer the division.

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

8 **A.** Prepare and make available interpretive and educational materials and programs  
9 concerning the State's freedom of access laws in cooperation with the Right To Know  
10 Advisory Committee, established under Title 1, section 411. The ombudsman, in  
11 conjunction with the Right To Know Advisory Committee, shall develop the training  
12 required by Title 1, section 412;

13 **B.** Respond to informal inquiries made by the public and public agencies and  
14 officials concerning the State's freedom of access laws;

15 **C.** Respond to and work to resolve complaints made by the public and public  
16 agencies and officials concerning the State's freedom of access laws;

17 **D.** Furnish, upon request, advisory opinions regarding the interpretation of and  
18 compliance with the State's freedom of access laws to any person or public agency or  
19 official in an expeditious manner. The ombudsman may not issue an advisory  
20 opinion concerning a specific matter with respect to which a lawsuit has been filed  
21 under Title 1, chapter 13. Advisory opinions must be publicly available after  
22 distribution to the requestor or requestors and the parties involved; and

23 **E.** Make recommendations concerning ways to improve public access to public  
24 records and proceedings.

25 **3. Assistance.** The ombudsman may request from any public agency or official such  
26 assistance, services and information as will enable the ombudsman to effectively carry  
27 out the responsibilities of this section.

28 **4. Confidentiality.** The ombudsman may access records that a public agency or  
29 official believes are confidential in order to make a determination whether the records  
30 may be released to the public. Records that would be confidential if they were in the  
31 possession or custody of a public agency or official are confidential if those records are in  
32 the possession of the ombudsman. The ombudsman shall maintain the confidentiality of  
33 confidential records and information provided to the ombudsman.

34 **5. Report.** Beginning in 2008, the ombudsman shall submit a report not later than  
35 March 15th of each year to the Legislature and the Right To Know Advisory Committee,  
36 established under Title 1, section 411, concerning the activities of the ombudsman for the  
37 previous year. The report must include the following information:

38 **A.** The total number of inquiries and complaints received;

39 **B.** The number of inquiries and complaints received respectively from the public, the  
40 media and public agencies or officials;

- 1 C. The number of complaints received concerning respectively public records and
- 2 public meetings;
- 3 D. The number of complaints received concerning respectively:
- 4 (1) State agencies;
- 5 (2) County agencies;
- 6 (3) Regional agencies;
- 7 (4) Municipal agencies;
- 8 (5) School administrative units; and
- 9 (6) Other public entities;
- 10 E. The number of inquiries and complaints that were resolved;
- 11 F. The total number of written advisory opinions issued and pending; and
- 12 G. Recommendations concerning ways to improve public access to public records
- 13 and proceedings.

14 **SUMMARY**

15 This bill consists of the legislative recommendations of the Right To Know Advisory  
16 Committee.

17 This bill requires certain elected officials to complete a training course on the State's  
18 freedom of access laws within 90 days of taking elected office beginning January 1, 2008.  
19 The bill requires that the Public Access Ombudsman, in conjunction with the Right To  
20 Know Advisory Committee, develop a training course of less than 2 hours using the  
21 State's publicly accessible website to be available at no cost to the elected official. The  
22 bill also requires that elected officials send electronic notification to the ombudsman upon  
23 completion of the training and further requires the ombudsman to make a record of those  
24 elected officials who have completed the training available to the public.

25 This bill establishes the Public Access Division and the Public Access Ombudsman  
26 within the Department of the Attorney General. The ombudsman is required to provide  
27 information and educational materials and programs to the public, as well as to public  
28 agencies and officials, in cooperation with the Right To Know Advisory Committee. The  
29 ombudsman will respond to informal inquiries, resolve freedom of access complaints  
30 when possible and issue advisory opinions concerning the State's freedom of access laws.  
31 The ombudsman is not permitted to issue an advisory opinion on an issue that is the  
32 subject of a lawsuit filed under the freedom of access laws. The ombudsman must make  
33 the advisory opinions available to the public once they are distributed to the persons  
34 requesting the advisory opinion and the parties involved. The ombudsman is required to  
35 make recommendations concerning ways to improve public access to public records and  
36 public proceedings.

37 The ombudsman may request the assistance of any public agency or official in  
38 carrying out these responsibilities. The ombudsman may access records that a public

1 agency or official believes are confidential in order to determine whether the records may  
2 be released to the public. Records that would be confidential if they were in the  
3 possession or custody of a public agency or official are confidential if those records are in  
4 the possession of the ombudsman. The ombudsman shall maintain the confidentiality of  
5 confidential records and information provided to the ombudsman.

6 Beginning in March 2008, the ombudsman is required to report annually to the  
7 Legislature and the Right To Know Advisory Committee regarding the ombudsman's  
8 activities and the inquiries and complaints received. The report must also include  
9 recommendations concerning ways to improve public access to public records and  
10 proceedings.