

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1923

H.P. 1361

House of Representatives, June 12, 2007

An Act To Implement the Recommendations of the Right To Know Advisory Committee Creating the Public Access Ombudsman

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.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 5 MRSA §200-I** is enacted to read:

3 **§200-I. Public Access Division; Public Access Ombudsman**

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

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

10 A. Prepare and make available interpretive and educational materials and programs
11 concerning the State's freedom of access laws in cooperation with the Right To Know
12 Advisory Committee established in Title 1, section 411;

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 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 in Title 1, section 411 concerning the activities of the ombudsman for the
37 previous year. The report must include:

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

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

16 **Sec. 2. Appropriations and allocations.** The following appropriations and
17 allocations are made.

18 **ATTORNEY GENERAL, DEPARTMENT OF THE**

19 **Administration - Attorney General 0310**

20 Initiative: Provides funds for a part-time Assistant Attorney General position and general
21 operating expenses required to carry out the purposes of this Act.

22	GENERAL FUND	2007-08	2008-09
23	POSITIONS - LEGISLATIVE COUNT	0.500	0.500
24	Personal Services	\$27,941	\$39,458
25	All Other	\$1,718	\$1,290
26			
27	GENERAL FUND TOTAL	<u>\$29,659</u>	<u>\$40,748</u>

28 **SUMMARY**

29 This bill is introduced by the Joint Standing Committee on Judiciary pursuant to the
30 Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G and is based on
31 the Right To Know Advisory Committee's recommendation to establish a Public Access
32 Ombudsman.

1 This bill establishes the Public Access Ombudsman within the Department of the
2 Attorney General. The ombudsman will provide information and educational materials
3 and programs to the public, as well as public agencies and officials, in cooperation with
4 the Right To Know Advisory Committee. The ombudsman will respond to informal
5 inquiries, resolve freedom of access complaints when possible and issue advisory
6 opinions concerning the State's freedom of access laws. The ombudsman is not permitted
7 to issue an advisory opinion on an issue that is the subject of a lawsuit filed under the
8 freedom of access laws. The ombudsman must make the advisory opinions available to
9 the public once they are distributed to the persons requesting the advisory opinion and the
10 parties involved. The ombudsman will make recommendations concerning ways to
11 improve public access to public records and public proceedings.

12 The ombudsman may request the assistance of any public agency or official in
13 carrying out these responsibilities. The ombudsman may access records that a public
14 agency or official believes are confidential in order to determine whether the records may
15 be released to the public. Records that would be confidential if they were in the
16 possession or custody of a public agency or official are confidential if those records are in
17 the possession of the ombudsman. The ombudsman shall maintain the confidentiality of
18 confidential records and information provided to the ombudsman.

19 Beginning in March 2008, the ombudsman will report annually to the Legislature and
20 the Right To Know Advisory Committee regarding the ombudsman's activities and the
21 inquiries and complaints received. The report must also include recommendations
22 concerning ways to improve public access to public records and proceedings.

FISCAL NOTE REQUIRED
(See attached)

**123rd MAINE LEGISLATURE****LD 1923****LR 2685(01)****An Act To Implement the Recommendations of the Right To Know Advisory Committee Creating the
Public Access Ombudsman****Fiscal Note for Original Bill****Committee: Judiciary****Fiscal Note Required: Yes**

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$29,659	\$40,748	\$41,963	\$43,216
Appropriations/Allocations				
General Fund	\$29,659	\$40,748	\$41,963	\$43,216

Fiscal Detail and Notes

This bill includes a General Fund appropriation to the Department of the Attorney General of \$29,659 in fiscal year 2007-08 and \$40,748 in fiscal year 2008-09 for a part-time Assistant Attorney General position and general operating expenses to carry out the purposes of this act.