

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 679

S.P. 254

In Senate, February 24, 2009

An Act To Allow a Court To Award Attorney's Fees in Successful Freedom of Access Appeals

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.
Cosponsored by Representative DILL of Cape Elizabeth and
Senators: BLISS of Cumberland, RAYE of Washington, ROSEN of Hancock, SMITH of
Piscataquis, Representative: PRIEST of Brunswick.

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

2 **Sec. 1. 1 MRSA §409**, as amended by PL 2007, c. 695, Pt. C, §1, is further
3 amended to read:

4 **§409. Appeals**

5 **1. Records.** If any body or agency or official, ~~who~~ that has custody or control of any
6 public record, ~~shall refuse~~ refuses permission to ~~se~~ inspect or copy or abstract a public
7 record, this denial ~~shall~~ must be made by the body or agency or official in writing, stating
8 the reason for the denial, within 5 working days of the request for inspection by any
9 person. Any person aggrieved by a denial may appeal ~~therefrom~~, within 5 working days
10 of the receipt of the written notice of the denial, to any Superior Court within the State. If
11 a court, after a trial de novo, determines ~~such~~ the denial was not for just and proper cause,
12 it shall enter an order for disclosure and may award the party bringing the appeal
13 reasonable attorney's fees and expenses incurred in connection with the appeal. Appeals
14 ~~shall be~~ are privileged in respect to their assignment for trial over all other actions except
15 writs of habeas corpus and actions brought by the State against individuals.

16 **2. Actions.** If any body or agency approves any ordinances, orders, rules,
17 resolutions, regulations, contracts, appointments or other official ~~action~~ actions in an
18 executive session, this action is illegal and the officials responsible are subject to the
19 penalties hereinafter provided. Upon learning of any such action, any person may appeal
20 to any Superior Court in the State. If a court, after a trial de novo, determines this action
21 was taken illegally in an executive session, it shall enter an order providing for the action
22 to be null and void and may award the party bringing the appeal reasonable attorney's
23 fees and expenses incurred in connection with the appeal. Appeals are privileged in
24 respect to their assignment for trial over all other actions except writs of habeas corpus or
25 actions brought by the State against individuals.

26 **3. Proceedings not exclusive.** The proceedings authorized by this section ~~shall~~ are
27 not be exclusive of any other civil remedy provided by law.

28 **SUMMARY**

29 This bill allows a court to award a party that brings a successful appeal in a case
30 involving the laws governing freedom of access reasonable attorney's fees and expenses
31 incurred in connection with the appeal.