

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1199

H.P. 823

House of Representatives, March 25, 2009

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

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Reported by Representative PRIEST of Brunswick 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2 **Sec. 1. 1 MRSA §403**, as repealed and replaced by PL 1975, c. 758, is amended to  
3 read:

4 **§403. Meetings to be open to public**

5 Except as otherwise provided by statute or by section 405, all public proceedings  
6 ~~shall must~~ be open to the public, any person ~~shall must~~ be permitted to attend any public  
7 proceeding and any public record or minutes of such proceedings that ~~is are~~ required by  
8 law ~~shall must~~ be made promptly and ~~shall must~~ be open to public inspection.

9 **Sec. 2. 1 MRSA §405**, as amended by PL 2003, c. 709, §1, is further amended to  
10 read:

11 **§405. Executive sessions**

12 Those bodies or agencies falling within this subchapter may hold executive sessions  
13 subject to the following conditions.

14 **1. Not to defeat purposes of subchapter.** ~~These sessions shall~~ An executive session  
15 may not be used to defeat the purposes of this subchapter as stated in section 401.

16 **2. Final approval of certain items prohibited.** ~~No ordinances, orders, rules,~~  
17 ~~resolutions, regulations, contracts, appointments~~ An ordinance, order, rule, resolution,  
18 regulation, contract, appointment or other official ~~actions shall~~ action may not be finally  
19 approved at an executive sessions session.

20 **3. Procedure for calling of executive session.** ~~Executive sessions~~ An executive  
21 session may be called only by a public, recorded vote of 3/5 of the members, present and  
22 voting, of such bodies or agencies.

23 **4. Motion contents.** A motion to go into executive session must indicate the precise  
24 nature of the business of the executive session and include a citation of one or more  
25 sources of statutory or other authority that permits an executive session for that business.  
26 Failure to state all authorities justifying the executive session does not constitute a  
27 violation of this subchapter if one or more of the authorities are accurately cited in the  
28 motion. An inaccurate citation of authority for an executive session does not violate this  
29 subchapter if valid authority that permits the executive session exists and the failure to  
30 cite the valid authority was inadvertent.

31 **5. Matters not contained in motion prohibited.** ~~No~~ Matters other ~~matters than~~  
32 those identified in the motion to go into executive session may not be considered in that  
33 particular executive session.

34 **6. Permitted deliberation.** Deliberations on only the following matters may be  
35 conducted ~~in during an executive sessions on the following matters and no others~~ session:

36 A. Discussion or consideration of the employment, appointment, assignment,  
37 duties, promotion, demotion, compensation, evaluation, disciplining, resignation or

1 dismissal of an individual or group of public officials, appointees or employees of the  
2 body or agency or the investigation or hearing of charges or complaints against a  
3 person or persons subject to the following conditions:

4 (1) An executive session may be held only if public discussion could be  
5 reasonably expected to cause damage to the individual's reputation or the  
6 individual's right to privacy would be violated;

7 (2) Any person charged or investigated shall must be permitted to be present at  
8 an executive session if ~~he~~ that person so desires;

9 (3) Any person charged or investigated may request in writing that the  
10 investigation or hearing of charges or complaints against ~~him~~ that person be  
11 conducted in open session. A request, if made to the agency, must be honored;  
12 and

13 (4) Any person bringing charges, complaints or allegations of misconduct  
14 against the individual under discussion shall must be permitted to be present.

15 This paragraph does not apply to discussion of a budget or budget proposal;

16 B. Discussion or consideration by a school board of suspension or expulsion of a  
17 public school student or a student at a private school, the cost of whose education is  
18 paid from public funds, ~~provided that~~ as long as:

19 (1) The student and legal counsel and, if the student ~~be~~ is a minor, the student's  
20 parents or legal guardians shall ~~be~~ are permitted to be present at an executive  
21 session if the student, parents or guardians so desire;

22 C. Discussion or consideration of the condition, acquisition or the use of real or  
23 personal property permanently attached to real property or interests therein or  
24 disposition of publicly held property or economic development only if premature  
25 disclosures of the information would prejudice the competitive or bargaining position  
26 of the body or agency;

27 D. Discussion of labor contracts and proposals and meetings between a public  
28 agency and its negotiators. The parties must be named before the body or agency  
29 may go into executive session. Negotiations between the representatives of a public  
30 employer and public employees may be open to the public if both parties agree to  
31 conduct negotiations in open sessions;

32 E. Consultations between a body or agency and its attorney concerning the legal  
33 rights and duties of the body or agency, pending or contemplated litigation,  
34 settlement offers and matters where the duties of the public body's or agency's  
35 counsel to ~~his~~ the attorney's client pursuant to the code of professional responsibility  
36 clearly conflict with this subchapter or where premature general public knowledge  
37 would clearly place the State, municipality or other public agency or person at a  
38 substantial disadvantage;

39 F. Discussions of information contained in records made, maintained or received by  
40 a body or agency when access by the general public to those records is prohibited by  
41 statute;

1 G. Discussion or approval of the content of examinations administered by a body or  
2 agency for licensing, permitting or employment purposes; consultation between a  
3 body or agency and any entity that provides examination services to that body or  
4 agency regarding the content of an examination; and review of examinations with the  
5 person examined; and

6 H. Consultations between municipal officers and a code enforcement officer  
7 representing the municipality pursuant to Title 30-A, section 4452, subsection 1,  
8 paragraph C in the prosecution of an enforcement matter pending in District Court  
9 when the consultation relates to that pending enforcement matter.

10 **Sec. 3. 1 MRSA §407, sub-§2**, as enacted by PL 1975, c. 758, is amended to  
11 read:

12 **2. Dismissal or refusal to renew contract.** Every agency shall make a written  
13 record of every decision involving the dismissal or the refusal to renew the contract of  
14 any public official, employee or appointee. The agency shall, except in case of  
15 probationary employees, set forth in the record the reason or reasons for its decision and  
16 make findings of fact, in writing, sufficient to ~~appraise~~ apprise the individual concerned  
17 and any interested member of the public of the basis for the decision. A written record or  
18 a copy thereof ~~shall~~ must be kept by the agency and made available to any interested  
19 member of the public who may wish to review it.

20 **Sec. 4. 1 MRSA §408, sub-§6, ¶B**, as enacted by PL 2003, c. 709, §2, is  
21 amended to read:

22 B. Release of the public record requested is in the public interest because ~~it~~ doing  
23 so is likely to contribute significantly to public understanding of the operations or  
24 activities of government and is not primarily in the commercial interest of the  
25 requester.

26 **Sec. 5. 1 MRSA §409, sub-§1**, as amended by PL 1987, c. 477, §5, is further  
27 amended to read:

28 **1. Records.** If any body or agency or official, who has custody or control of any  
29 public record, ~~shall refuse~~ refuses permission to ~~se~~ inspect or copy or abstract a public  
30 record, this denial ~~shall~~ must be made by the body or agency or official in writing, stating  
31 the reason for the denial, within 5 working days of the request for inspection by any  
32 person. Any person aggrieved by denial may appeal ~~therefrom~~, within 5 working days of  
33 the receipt of the written notice of denial, to any Superior Court within the State. If a  
34 court, after a trial de novo, determines such denial was not for just and proper cause, it  
35 shall enter an order for disclosure. Appeals ~~shall be~~ are privileged in respect to their  
36 assignment for trial over all other actions except writs of habeas corpus and actions  
37 brought by the State against individuals.

38 **Sec. 6. 1 MRSA §409, sub-§3**, as enacted by PL 1975, c. 758, is amended to  
39 read:

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

1           **Sec. 7. 12 MRSA §6072, sub-§10, ¶D**, as repealed and replaced by PL 2003, c.  
2 247, §6, is amended to read:

3           D. The lessee shall annually submit to the department a seeding and harvesting  
4 report for the past year and a seeding and harvesting plan for the coming year. Upon  
5 written request, the department shall provide a copy of the report to the municipality  
6 or municipalities in which or adjacent to which the lease is located. The seeding and  
7 harvesting reports submitted by a lessee under this paragraph are considered  
8 ~~confidential business record~~ proprietary information for the purposes of section 6077,  
9 subsection 4.

10           **Sec. 8. 12 MRSA §6072-A, sub-§17-A, ¶B**, as enacted by PL 2003, c. 247, §13,  
11 is amended to read:

12           B. The lessee shall mark the leased area in a manner prescribed by the  
13 commissioner; and

14           **Sec. 9. 12 MRSA §6072-A, sub-§17-A, ¶C**, as enacted by PL 2003, c. 247, §13,  
15 is amended to read:

16           C. The lessee shall annually submit to the commissioner a report for the past year  
17 on results of the scientific research or commercial research and development  
18 undertaken at the lease site and a plan for the coming year. Results of commercial  
19 research and development submitted to the commissioner are confidential records for  
20 the purposes of Title 1, section 402, subsection 3, paragraph A. ~~Upon written~~  
21 ~~request, the commissioner shall provide a copy of the public records in the report to~~  
22 ~~the municipality or municipalities in which or adjacent to which the lease is located;~~  
23 and

24           **Sec. 10. 12 MRSA §6072-A, sub-§17-A, ¶D** is enacted to read:

25           D. The lessee shall annually submit to the department a seeding and harvesting  
26 report for the past year and a seeding and harvesting plan for the coming year. Upon  
27 written request, the commissioner shall provide a copy of the report to the  
28 municipality or municipalities in which or adjacent to which the lease is located. The  
29 seeding and harvesting reports submitted by a lessee under this paragraph are  
30 considered proprietary information for the purposes of section 6077, subsection 4.

31           **Sec. 11. 12 MRSA §6077, sub-§4, ¶A**, as amended by PL 2003, c. 247, §17, is  
32 further amended to read:

33           A. Information submitted to the department under this section may be designated  
34 by the submitter as proprietary information and being only for the confidential use of  
35 the department, its agents and employees, other agencies of State Government, as  
36 authorized by the Governor, employees of the United States Environmental  
37 Protection Agency, the United States Army Corps of Engineers, the United States  
38 Fish and Wildlife Service, the National Marine Fisheries Services, the United States  
39 Department of Agriculture, the Attorney General and employees of the municipality  
40 in which the aquaculture facility is located. The designation must be clearly  
41 indicated on each page or other portion of information. The commissioner shall

1 establish procedures to ensure that information so designated is segregated from  
2 public records of the department. The department's public records must include the  
3 indication that information so designated has been submitted to the department,  
4 giving the name of the submitter and the general nature of the information. Upon a  
5 request for information, the scope of which includes information so designated, the  
6 commissioner shall notify the submitter. Within 15 days after receipt of the notice,  
7 the submitter shall demonstrate to the satisfaction of the department that the  
8 designated information should not be disclosed ~~because the information is a trade~~  
9 ~~secret or production, commercial or financial information, the disclosure of which~~  
10 ~~would impair the competitive position of the submitter and would make available~~  
11 ~~information not otherwise publicly available.~~ Unless such a demonstration is made,  
12 the information must be disclosed and becomes a public record. The department may  
13 grant or deny disclosure for the whole or any part of the designated information  
14 requested and within 15 days shall give written notice of the decision to the submitter  
15 and the person requesting the designated information. A person aggrieved by a  
16 decision of the department may appeal to the Superior Court. Information that has  
17 been designated by the submitter as proprietary information may not be disclosed in a  
18 manner or form that permits identification of any person or vessel, except when  
19 required by court order or when specifically permitted under this section. All  
20 information provided by the department to the municipality under this paragraph is  
21 confidential and not a public record under Title 1, chapter 13. If a request for the  
22 information is submitted to the municipality, the municipality shall submit that  
23 request to the commissioner to be processed by the department as provided in this  
24 paragraph.

25 **Sec. 12. 12 MRSA §6077, sub-§4, ¶E,** as enacted by PL 1991, c. 381, §6, is  
26 amended to read:

27 E. It is unlawful to disclose designated information to any person not authorized by  
28 this section.

29 (1) Any person who solicits, accepts or agrees to accept, or who promises, offers  
30 or gives any pecuniary benefit in return for the disclosure of designated  
31 information is guilty of a Class D crime.

32 (2) A person who knowingly discloses designated information, knowing that the  
33 disclosure is not authorized, commits a civil violation for which a penalty of not  
34 more than \$5,000 may be assessed.

35 (3) In any action under this paragraph, the court shall first declare that the  
36 information is ~~a trade secret or production, commercial or financial~~ proprietary  
37 ~~information, the disclosure of which would impair the competitive position of the~~  
38 ~~submitter and would make available information not otherwise publicly~~  
39 ~~available.~~

40 **Sec. 13. 12 MRSA §6077, sub-§4, ¶F** is enacted to read:

41 F. For the purposes of this subsection, "proprietary information" means information  
42 that is a trade secret or production, commercial or financial information, the

1 disclosure of which would impair the competitive position of the submitter and  
2 would make available information not otherwise publicly available.

3 **Sec. 14. 12 MRSA §6078-A, sub-§1**, as enacted by PL 2003, c. 247, §19, is  
4 amended to read:

5 **1. Fund established.** The Aquaculture Monitoring, Research and Development  
6 Fund, referred to in this section as "the fund," is established. All income received by the  
7 commissioner under this section must be deposited with the Treasurer of State, tracked  
8 according to its source and credited to the fund. Any balance remaining in the fund at the  
9 end of a fiscal year does not lapse but must be carried forward to the next fiscal year.  
10 Any interest earned on assets of the fund is credited to the fund. All records related to  
11 harvests submitted by aquaculture lease holders are considered ~~confidential business~~  
12 ~~record~~ proprietary information for the purposes of section 6077, subsection 4.

13 **Sec. 15. 20-A MRSA §13004, sub-§2-A**, as amended by PL 2007, c. 666, §1, is  
14 repealed and the following enacted in its place:

15 **2-A. Complaints, replies, investigations, decisions; national clearinghouse.** This  
16 subsection governs the confidentiality of records concerning complaints, charges,  
17 accusations, replies, investigations and certification decisions.

18 A. Complaints, charges or accusations made and investigated pursuant to section  
19 13020, replies to those complaints, charges or accusations and any other information  
20 or materials that may result in an action to deny, revoke or suspend certification are  
21 confidential.

22 B. Any charges or information filed by the commissioner with the District Court in  
23 support of a petition to revoke or suspend certification and any decision of the court  
24 are public records.

25 C. The following information concerning final written decisions relating to  
26 disciplinary action taken by the commissioner against persons holding certifications  
27 are public records:

28 (1) Name of the person;

29 (2) The type of action taken, consisting of denial, revocation, suspension,  
30 surrender or reinstatement;

31 (3) The grounds for the action taken;

32 (4) The relevant dates of the action;

33 (5) The type of certification and endorsements held, including relevant dates;

34 (6) The schools where the person was or is employed; and

35 (7) The dates of employment.

36 D. The department shall report all denials, revocations, suspensions, surrenders and  
37 reinstatements of certification that are not under appeal or still subject to appeal, and  
38 the grounds for the action taken, to a national association of state directors of teacher  
39 education and certification within 30 days of the action. In reports to the national

1 association of state directors of teacher education and certification, the department  
2 may not disclose any information designated in paragraph A as confidential.

3 **SUMMARY**

4 This bill implements the recommendations of the Right To Know Advisory  
5 Committee.

6 This bill makes technical changes to the Maine Revised Statutes, Title 1, chapter 13:

7 The bill also makes changes to several exceptions related to records maintained by  
8 the Department of Marine Resources to add a definition of "proprietary information" and  
9 use statutory language consistent with Title 12, section 6173-A. This bill requires an  
10 aquaculture lessee to submit an annual seeding and harvesting report. The entire report is  
11 considered proprietary information and not public, but the Department of Marine  
12 Resources shall provide a copy of the report upon request to the municipalities in which  
13 or adjacent to which the lease is located. The bill also provides that confidential  
14 aquaculture monitoring program information may not be disclosed in a manner or form  
15 that permits identification of any person or vessel, except as required by court order or  
16 when otherwise specifically permitted.

17 This bill also clarifies confidentiality with regard to educational personnel  
18 credentialing records concerning actions taken by the Commissioner of Education. This  
19 bill clarifies that complaints, charges or accusations made and investigated pursuant to  
20 Title 20-A, section 13020, replies to those complaints, charges or accusations and any  
21 other information or materials that may result in an action to deny, revoke or suspend  
22 certification are confidential, but that the action taken by the commissioner, whether it is  
23 denial, revocation, suspension, surrender or reinstatement, is public. The grounds for the  
24 action are also public. In addition, specific information about the person is public once  
25 the action is taken: the name of the person; the relevant dates of the action; the type of  
26 certification and endorsements held, including relevant dates; the schools where the  
27 person was or is employed; and the dates of employment. In addition, this bill clarifies  
28 that the Department of Education shall report information about disciplinary action to a  
29 national association of state directors of teacher education and certification, including the  
30 grounds for the action. The department may not report to the national association of state  
31 directors of teacher education and certification information that is designated confidential  
32 by Title 20-A, section 13004.