

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

---

Legislative Document

No. 1551

H.P. 1093

House of Representatives, December 21, 2009

---

### **An Act To Further Regulate the Communications of Members of Public Bodies**

---

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 17, 2009. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DOSTIE of Sabattus.  
Cosponsored by Senator NUTTING of Androscoggin and  
Representatives: BERRY of Bowdoinham, BICKFORD of Auburn, LAJOIE of Lewiston,  
ROTUNDO of Lewiston, TREAT of Hallowell, VAN WIE of New Gloucester, Senators:  
CRAVEN of Androscoggin, SIMPSON of Androscoggin.

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

2               **Sec. 1. 1 MRSA §402, sub-§1-B** is enacted to read:

3               **1-B. Electronic mail.** "Electronic mail" means a communication sent or delivered  
4               by transmission over the Internet.

5               **Sec. 2. 1 MRSA §402, sub-§1-C** is enacted to read:

6               **1-C. Group electronic mail.** "Group electronic mail" means electronic mail sent to  
7               more than one person by means of a single transmission. "Group electronic mail" does  
8               not include an identical communication sent by a series of individual transmissions to  
9               individual recipients.

10              **Sec. 3. 1 MRSA §402, sub-§3**, as corrected by RR 2009, c. 1, §§1 to 3, is further  
11              amended to read:

12              **3. Public records.** The term "public records" means any written, printed or graphic  
13              matter or any mechanical or electronic data compilation from which information can be  
14              obtained, directly or after translation into a form susceptible of visual or aural  
15              comprehension, that is in the possession or custody of an agency or public official of this  
16              State or any of its political subdivisions, or is in the possession or custody of an  
17              association, the membership of which is composed exclusively of one or more of any of  
18              these entities, and has been received or prepared for use in connection with the  
19              transaction of public or governmental business or contains information relating to the  
20              transaction of public or governmental business, except:

21              A. Records that have been designated confidential by statute;

22              B. Records that would be within the scope of a privilege against discovery or use as  
23              evidence recognized by the courts of this State in civil or criminal trials if the records  
24              or inspection thereof were sought in the course of a court proceeding;

25              C. Legislative papers and reports until signed and publicly distributed in accordance  
26              with legislative rules, and records, working papers, drafts and interoffice and  
27              intraoffice memoranda used or maintained by any Legislator, legislative agency or  
28              legislative employee to prepare proposed Senate or House papers or reports for  
29              consideration by the Legislature or any of its committees during the legislative  
30              session or sessions in which the papers or reports are prepared or considered or to  
31              which the paper or report is carried over;

32              D. Material prepared for and used specifically and exclusively in preparation for  
33              negotiations, including the development of bargaining proposals to be made and the  
34              analysis of proposals received, by a public employer in collective bargaining with its  
35              employees and their designated representatives;

36              E. Records, working papers, interoffice and intraoffice memoranda used by or  
37              prepared for faculty and administrative committees of the Maine Maritime Academy,  
38              the Maine Community College System and the University of Maine System. The  
39              provisions of this paragraph do not apply to the boards of trustees and the committees

1 and subcommittees of those boards, which are referred to in subsection 2, paragraph  
2 B;

3 F. Records that would be confidential if they were in the possession or custody of  
4 an agency or public official of the State or any of its political or administrative  
5 subdivisions are confidential if those records are in the possession of an association,  
6 the membership of which is composed exclusively of one or more political or  
7 administrative subdivisions of the State; of boards, commissions, agencies or  
8 authorities of any such subdivisions; or of any combination of any of these entities;

9 G. Materials related to the development of positions on legislation or materials that  
10 are related to insurance or insurance-like protection or services which are in the  
11 possession of an association, the membership of which is composed exclusively of  
12 one or more political or administrative subdivisions of the State; of boards,  
13 commissions, agencies or authorities of any such subdivisions; or of any combination  
14 of any of these entities;

15 H. Medical records and reports of municipal ambulance and rescue units and other  
16 emergency medical service units, except that such records and reports must be  
17 available upon request to law enforcement officers investigating criminal conduct;

18 I. Juvenile records and reports of municipal fire departments regarding the  
19 investigation and family background of a juvenile fire setter;

20 J. Working papers, including records, drafts and interoffice and intraoffice  
21 memoranda, used or maintained by any advisory organization covered by subsection  
22 2, paragraph F, or any member or staff of that organization during the existence of the  
23 advisory organization. Working papers are public records if distributed by a member  
24 or in a public meeting of the advisory organization;

25 K. Personally identifying information concerning minors that is obtained or  
26 maintained by a municipality in providing recreational or nonmandatory educational  
27 programs or services, if the municipality has enacted an ordinance that specifies the  
28 circumstances in which the information will be withheld from disclosure. This  
29 paragraph does not apply to records governed by Title 20-A, section 6001 and does  
30 not supersede Title 20-A, section 6001-A;

31 L. Records describing security plans, security procedures or risk assessments  
32 prepared specifically for the purpose of preventing or preparing for acts of terrorism,  
33 but only to the extent that release of information contained in the record could  
34 reasonably be expected to jeopardize the physical safety of government personnel or  
35 the public. Information contained in records covered by this paragraph may be  
36 disclosed to the Legislature or, in the case of a political or administrative subdivision,  
37 to municipal officials or board members under conditions that protect the information  
38 from further disclosure. For purposes of this paragraph, "terrorism" means conduct  
39 that is designed to cause serious bodily injury or substantial risk of bodily injury to  
40 multiple persons, substantial damage to multiple structures whether occupied or  
41 unoccupied or substantial physical damage sufficient to disrupt the normal  
42 functioning of a critical infrastructure;

43 M. Records or information describing the architecture, design, access  
44 authentication, encryption or security of information technology infrastructure and

1 systems. Records or information covered by this paragraph may be disclosed to the  
2 Legislature or, in the case of a political or administrative subdivision, to municipal  
3 officials or board members under conditions that protect the information from further  
4 disclosure;

5 N. Social security numbers in the possession of the Department of Inland Fisheries  
6 and Wildlife;

7 O. Personal contact information concerning public employees, except when that  
8 information is public pursuant to other law. For the purposes of this paragraph:

9 (1) "Personal contact information" means home address, home telephone  
10 number, home facsimile number, home e-mail address and personal cellular  
11 telephone number and personal pager number; and

12 (2) "Public employee" means an employee as defined in Title 14, section 8102,  
13 subsection 1, except that "public employee" does not include elected officials;

14 P. Geographic information regarding recreational trails that are located on private  
15 land that are authorized voluntarily as such by the landowner with no public deed or  
16 guaranteed right of public access, unless the landowner authorizes the release of the  
17 information; and

18 Q. Security plans, staffing plans, security procedures, architectural drawings or risk  
19 assessments prepared for emergency events that are prepared for or by or kept in the  
20 custody of the Department of Corrections or a county jail if there is a reasonable  
21 possibility that public release or inspection of the records would endanger the life or  
22 physical safety of any individual or disclose security plans and procedures not  
23 generally known by the general public. Information contained in records covered by  
24 this paragraph may be disclosed to state and county officials if necessary to carry out  
25 the duties of the officials, the Department of Corrections or members of the State  
26 Board of Corrections under conditions that protect the information from further  
27 disclosure.

28 "Public records" includes electronic mail that is sent by a member of a body described in  
29 subsection 2, paragraphs A to G to a quorum of members of that same body regarding a  
30 substantive matter that is before the body.

31 **Sec. 4. 1 MRSA §402, sub-§5** is enacted to read:

32 **5. Substantive matter.** "Substantive matter" means a matter of policy or substance  
33 as opposed to a matter of form or procedure. "Substantive matter" does not include  
34 administrative issues such as the scheduling of meetings, the dissemination of studies or  
35 reports or the development of agendas.

36 **Sec. 5. 1 MRSA §413** is enacted to read:

37 **§413. Prohibited communications**

38 **1. Group electronic mail to other members.** A member of a body described in  
39 section 402, subsection 2, paragraphs A to G may not knowingly send a group electronic

1 mail to a quorum of the members of that body regarding a substantive matter that is  
2 before the body.

3 2. Communicate majority agreement. A member of a body described in section  
4 402, subsection 2, paragraphs A to G may not directly or through an intermediary  
5 communicate that a majority of the body is in agreement regarding a substantive matter  
6 that is before the body to a person who is not a member of the body, unless the agreement  
7 was previously reached at a public proceeding.

8 **Sec. 6. 1 MRSA §414** is enacted to read:

9 **§414. Electronic mail; disclosure requirement**

10 If a member of a body described in section 402, subsection 2, paragraphs A to G  
11 sends electronic mail to a quorum of members of that same body regarding a substantive  
12 matter that is before the body, the member that sends the electronic mail must ensure that  
13 the electronic mail is printed and made available to the public at the next public meeting  
14 of the body before the body takes a vote on the substantive matter.

15 **SUMMARY**

16 This bill amends the law governing access to public records and proceedings. This  
17 bill:

18 1. Provides definitions of "electronic mail," "group electronic mail" and "substantive  
19 matter";

20 2. Prohibits a member of a public body from knowingly sending a group electronic  
21 mail to a quorum of the members of that body regarding a substantive matter that is  
22 before the body;

23 3. Prohibits a member of a public body from directly or through an intermediary  
24 communicating that a majority of that body is in agreement regarding a substantive  
25 matter that is before the body to interested persons who are not members of the body;

26 4. Specifies that "public records" includes electronic mail that is sent by a member of  
27 a public body to a quorum of members of that same body regarding a substantive matter  
28 that is before the body; and

29 5. Requires that if a member of a public body sends electronic mail to a quorum of  
30 members of that same body regarding a substantive matter that is before the body, the  
31 electronic mail must be printed and made available to the public at the next public  
32 meeting before the body takes a vote on that matter.