

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1792

H.P. 1280

House of Representatives, February 23, 2010

**An Act To Implement the Recommendations of the Right To Know
Advisory Committee Concerning Public Records Exceptions**

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 pursuant to 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. 5 MRSA §244-E** is enacted to read:

3 **§244-E. Referral service; confidentiality; public records**

4 **1. Identity confidential.** The identity of a person making a complaint alleging
5 fraud, waste, inefficiency or abuse through a hotline or other referral service established
6 by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse
7 in State Government is confidential and may not be disclosed, unless the person making
8 the complaint agrees in writing to the disclosure of that person's name.

9 **2. Contents of complaint confidential.** A complaint alleging fraud, waste,
10 inefficiency or abuse made through a hotline or other referral service established by the
11 State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in
12 State Government and any resulting investigation is confidential and may not be
13 disclosed except as provided in subsections 3 and 4.

14 **3. Coordination with Office of Program Evaluation and Government**
15 **Accountability and Attorney General.** The State Auditor may disclose information that
16 is confidential under this section to the Director of the Office of Program Evaluation and
17 Government Accountability and the Attorney General to ensure appropriate agency
18 referral or coordination between agencies to respond appropriately to all complaints made
19 under this section.

20 **4. Reports.** For each complaint under this section, the State Auditor shall submit a
21 written report to the Governor and publish the report on the auditor's publicly accessible
22 website. The report must include a detailed description of the nature of the complaint, the
23 office, bureau or division within the department or any agency that is the subject of the
24 complaint, the determination of potential cost savings, if any, any recommended action
25 and a statement indicating the degree to which the complaint has been substantiated. The
26 report must be submitted no later than 120 days after the State Auditor receives the
27 complaint. In addition, the State Auditor shall publish a semiannual report to the
28 Governor and Legislature of the complaints received by the hotline or other referral
29 service, which may be electronically published. The report must include the following
30 information:

- 31 **A. The total number of complaints received;**
32 **B. The number of referrals of fraud or other criminal conduct to the Attorney**
33 **General;**
34 **C. The number of referrals of agency performance issues to the Office of Program**
35 **Evaluation and Government Accountability; and**
36 **D. The number of investigations by the State Auditor by current status whether**
37 **opened, pending, completed or closed.**

38 **Sec. 2. 10 MRSA §945-J, first ¶,** as enacted by PL 1995, c. 648, §5, is amended
39 to read:

1 The following records and proceedings of the center are ~~confidential and are not open~~
2 ~~to public inspection for the purposes of Title 1, chapter 13, except as otherwise provided~~
3 ~~in this section.~~

4 **Sec. 3. 10 MRSA §945-J, sub-§1**, as enacted by PL 1995, c. 648, §5, is amended
5 to read:

6 **1. Proprietary information; other information.** Information provided to or
7 developed by the center and included in a business or marketing plan is ~~confidential so~~
8 ~~long as public unless~~ the person to whom the information belongs or pertains requests
9 that it be designated as confidential and ~~if, when made available, the center has~~
10 ~~determined it contains proprietary information would allow a person to obtain a business~~
11 ~~or competitive advantage over another person or would result in significant detriment to~~
12 ~~the person to whom the information belongs and when the information is not otherwise~~
13 ~~available in the public domain. For the purposes of this subsection, "proprietary~~
14 ~~information" means information that is a trade secret or production, commercial or~~
15 ~~financial information the disclosure of which would impair the competitive position of~~
16 ~~the center or the person submitting the information and would make available information~~
17 ~~not otherwise publicly available.~~

18 **Sec. 4. 10 MRSA §975-A**, as amended by PL 2003, c. 537, §17 and affected by
19 §53, is repealed.

20 **Sec. 5. 10 MRSA §975-B** is enacted to read:

21 **§975-B. Freedom of access; confidentiality of records**

22 The records of the authority are subject to the freedom of access laws, Title 1, chapter
23 13, except as specifically provided in this section.

24 **1. Confidential records.** The following records are designated as confidential:

25 A. A record obtained or developed by the authority that:

26 (1) A person, including the authority, to whom the record belongs or pertains has
27 requested be designated confidential; and

28 (2) The authority has determined contains information that gives the owner or a
29 user an opportunity to obtain business or competitive advantage over another
30 person who does not have access to the information, except through the record, or
31 access to which by others would result in a business or competitive disadvantage,
32 loss of business or other significant detriment to any person to whom the record
33 belongs or pertains; and

34 B. A financial statement or tax return.

35 The authority shall provide to a legislative committee, on written request signed by the
36 chairs of that committee, any information or record, including information designated
37 confidential under this subsection, specified in the written request. The information or
38 record may be used only for the lawful purposes of the committee and in any action

1 arising out of any investigation conducted by the committee and may not be released for
2 any other purpose.

3 2. Exceptions. Notwithstanding subsection 1, the following are public records and
4 are not confidential:

5 A. Any otherwise confidential information the confidentiality of which the authority
6 determines to have been satisfactorily and effectively waived;

7 B. Any otherwise confidential information that has already lawfully been made
8 available to the public; and

9 C. Impersonal, statistical or general information.

10 3. Disclosure prohibited; further exceptions. A person may not knowingly
11 divulge or disclose records designated confidential by this section, except that the
12 authority, in its discretion and in conformity with legislative freedom of access criteria in
13 Title 1, chapter 13, subchapter 1-A, may make or authorize any disclosure of information
14 of the following types or under the following circumstances:

15 A. If necessary in connection with processing any application for, obtaining or
16 maintaining financial assistance for any person;

17 B. Information requested by a financing institution or credit reporting service;

18 C. Information necessary to comply with any federal or state law or rule or with any
19 agreement pertaining to financial assistance;

20 D. If necessary to ensure collection of any obligation in which the authority has or
21 may have an interest;

22 E. In any litigation or proceeding in which the authority has appeared, introduction
23 for the record of any information obtained from records designated confidential by
24 this section; and

25 F. Pursuant to a subpoena, request for production of documents, warrant or other
26 order by competent authority, as long as the order appears to have first been served
27 on the person to whom the confidential information sought pertains or belongs and as
28 long as the order appears on its face or otherwise to have been issued or made upon
29 lawful authority.

30 **Sec. 6. 10 MRSA §9202, sub-§1-B,** as enacted by PL 2003, c. 506, §7, is
31 amended to read:

32 **1-B. Records disclosure and confidentiality.** Records of the corporation, as a
33 subsidiary of the authority, are subject to the disclosure and confidentiality provisions
34 governing the records of the authority under section ~~975-A~~ 975-B.

35 **Sec. 7. 12 MRSA §549-B, sub-§5, ¶D,** as enacted by PL 1985, c. 201, §2, is
36 amended to read:

37 **D.** An affidavit of investigatory and exploratory work ~~shall~~ must be filed each year
38 with the director of the survey on June 30th. At the time of filing that affidavit, the
39 claimant shall demonstrate to the director that investigatory work has been performed

1 on that claim at a rate of at least \$5 per acre during the year ending June 30th. For
2 claims recorded after April 1st and before June 30th, the first affidavit of
3 investigatory and exploratory work shall must be filed on the 2nd June 30th
4 following. All work done shall must be described in the affidavit and shall include
5 work which that tends to reveal such characteristics of the material sought as length,
6 width, depth, thickness, tonnage and mineral or metal content, or, with respect to
7 nonmetallic minerals, other physical characteristics of the deposit relating directly to
8 the commercial exploitation of the deposit and such other information relating to the
9 exploration work as the director of the survey may require. ~~This information may be~~
10 ~~shared with other governmental agencies, but shall not constitute records available~~
11 ~~for public inspection or disclosure pursuant to Title 1, section 408, during the period~~
12 ~~of time in which the claim is in effect. During the period of time in which the claim~~
13 ~~is in effect, this information is confidential and may not be disclosed, except that the~~
14 ~~information may be shared with other governmental agencies.~~

15 **Sec. 8. 12 MRSA §549-B, sub-§13**, as enacted by PL 1985, c. 201, §2, is
16 amended to read:

17 **13. Annual reports.** Any person with a mining lease engaged in mine development
18 or mining under this subchapter shall, in the month of June following the year the
19 operation was carried on, pay all applicable fees, rentals and royalties and file an annual
20 report with the director of the survey and director of the agency having jurisdiction over
21 the state-owned land setting forth:

- 22 A. The location of the operation;
- 23 B. The quality and grade of mineral products or ores produced;
- 24 C. The amount of royalty which that has accrued on material extracted;
- 25 D. The number of persons ordinarily employed at operation below ground and
26 above ground; and
- 27 E. Any other information, relating to the mining lease, mine development or
28 mining, the director of the bureau and the director of the agency having jurisdiction
29 over the state-owned lands may require by regulation.

30 ~~This information may be shared with other government~~ is confidential and may not be
31 disclosed, except that the information may be shared with other governmental agencies;
32 ~~but shall not constitute records available for public inspection or disclosure pursuant to~~
33 ~~Title 1, section 408.~~

34 **Sec. 9. 12 MRSA §550-B, sub-§6**, as amended by PL 1999, c. 556, §17, is
35 further amended to read:

36 **6. Information use.** Information collected by the Bureau of Geology and Natural
37 Areas, Maine Geological Survey under this chapter section is exempt from subject to
38 Title 1, chapter 13, subchapter 1, unless the well drilling company to whom the
39 information belongs or pertains requests that it be designated as confidential and the
40 bureau has determined it contains proprietary information. For the purposes of this
41 subsection, "proprietary information" means information that is a trade secret or
42 production, commercial or financial information the disclosure of which would impair the

1 competitive position of the person submitting the information and would make available
2 information not otherwise publicly available. The Bureau of Geology and Natural Areas,
3 Maine Geological Survey shall make information collected under this chapter available to
4 any federal, state or municipal entity or authorized agent of such entity.

5 **Sec. 10. 12 MRSA §6455, sub-§1-A, ¶C,** as enacted by PL 1993, c. 545, §1, is
6 amended to read:

7 C. Notwithstanding any provisions of paragraphs A and B:

8 (1) All meetings and records of the council are subject to the provisions of Title
9 1, chapter 13, subchapter 1, except that, ~~by majority vote of the members, the~~
10 ~~council may designate market studies or promotional plans developed or funded~~
11 ~~by the council as confidential as provided in subsection 1-B.~~ The commissioner
12 and those members of the Legislature appointed to serve on the joint standing
13 committee of the Legislature having jurisdiction over marine resource matters
14 have access to all material designated confidential by the council;

15 (2) Except as required by subsection 2, members of the council are governed by
16 the conflict of interest provisions set forth in Title 5, section 18; and

17 (3) For the purposes of the Maine Tort Claims Act, the council is a
18 "governmental entity" and its employees are "employees" as those terms are
19 defined in Title 14, section 8102.

20 **Sec. 11. 12 MRSA §6455, sub-§1-B** is enacted to read:

21 **1-B. Market studies and promotional plans; proprietary information.**
22 Information provided to or developed by the council and included in a promotional plan
23 or market study is public unless the council determines that it contains proprietary
24 information. For the purposes of this subsection, "proprietary information" means
25 information that is a trade secret or production, commercial or financial information the
26 disclosure of which would impair the competitive position of the council or the person
27 submitting the information and would make available information not otherwise publicly
28 available.

29 **Sec. 12. 12 MRSA §8869, sub-§13,** as amended by PL 2007, c. 271, §5, is
30 further amended to read:

31 **13. Confidential information.** Information provided to the bureau voluntarily or to
32 fulfill reporting requirements for the purposes of establishing and monitoring outcome-
33 based forest policy experimental areas, as created pursuant to section 8003, subsection 3,
34 paragraph Q, ~~is designated as confidential for the purposes of Title 1, section 402,~~
35 ~~subsection 3, paragraph A if the bureau has determined that failure to designate the~~
36 ~~information as confidential would provide competitors an opportunity to obtain business~~
37 ~~or competitive advantage over the person to whom the information belongs or pertains or~~
38 ~~would result in less or other significant detriment to that person public unless the person~~
39 ~~to whom the information belongs or pertains requests that it be designated as confidential~~
40 ~~and the bureau has determined it contains proprietary information. For the purposes of~~
41 ~~this subsection, "proprietary information" means information that is a trade secret or~~

1 production, commercial or financial information the disclosure of which would impair the
2 competitive position of the person submitting the information and would make available
3 information not otherwise publicly available. The bureau, working with the landowner
4 and the panel of technical experts appointed under subsection 3-A, may publish reports as
5 long as those reports do not reveal confidential information. This subsection is repealed
6 July 1, 2012.

7 **Sec. 13. 20-A MRSA §11481**, as enacted by PL 1997, c. 732, §4, is amended to
8 read:

9 **§11481. Release of information**

10 Notwithstanding any other provision of law, including, without limitation, Title 1,
11 chapter 13, subchapter I and ~~Title 10, section 975-A 1~~, the authority may provide
12 information regarding individual participation accounts as required by federal law and
13 laws of the state of residence of any participant or beneficiary.

14 **Sec. 14. 20-A MRSA §13004, sub-§2-A, ¶D** is enacted to read:

15 D. Notwithstanding paragraph A, the following information concerning final written
16 decisions relating to disciplinary action taken by the commissioner against a person
17 holding certification is a public record:

18 (1) The name of the person;

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

21 (3) The grounds for the action taken;

22 (4) The relevant dates of the action;

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

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

25 (7) The dates of employment.

26 **Sec. 15. Requests for bulk data.** The Right To Know Advisory Committee shall
27 review and make recommendations concerning the issues involved with requests for
28 public records in bulk, including:

29 1. Public access to databases;

30 2. Protection of personal information that is not designated as confidential but is
31 contained in databases that include public records;

32 3. Reasonable costs for copies when public records are requested in bulk;

33 4. Whether access or costs should be based on the intended or subsequent use of the
34 information requested in bulk;

35 5. The acceptable formats for responses to requests, including electronic and paper;

1 This bill amends the laws governing mineral exploration claims on state lands to
2 make the language consistent with other confidentiality language.

3 This bill amends the laws governing well drilling information to provide that the
4 information required to be reported to the Department of Conservation, Bureau of
5 Geology and Natural Areas, Maine Geological Survey is public unless the well drilling
6 company reporting the information requests that the information be designated
7 confidential and the bureau determines that it is proprietary information.

8 This bill amends the laws governing the Lobster Promotion Council to establish that
9 information provided to or developed by the council and included in a promotional plan
10 or market study is public unless the council determines that it contains proprietary
11 information.

12 This bill amends the laws governing confidentiality of information related to
13 experimental forestry practice areas to provide that the information is public unless the
14 person to whom the information belongs or pertains requests that it be designated as
15 confidential and the Department of Conservation, Bureau of Forestry determines that it is
16 proprietary information.

17 This bill amends the laws governing the confidentiality of information about the
18 Commissioner of Education's disciplinary actions with regard to educational personnel.
19 This bill makes public certain information concerning final written decisions relating to
20 disciplinary action taken by the commissioner against persons holding certifications.

21 This bill directs the Right To Know Advisory Committee to review and make
22 recommendations concerning issues involved with requests for public records in bulk.
23 The recommendations must be included in the advisory committee's annual report to be
24 submitted by January 15, 2011.