

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1821

H.P. 1311

House of Representatives, March 17, 2014

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

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 **PART A**

3 **Sec. A-1. 22 MRSA c. 271, sub-c. 2**, as amended, is repealed.

4 **Sec. A-2. 26 MRSA §3**, as amended by PL 2011, c. 655, Pt. DD, §10 and affected
5 by §24, is repealed and the following enacted in its place:

6 **§3. Confidentiality of records**

7 **1. Confidential records.** Except as provided in subsections 2 and 3, all information
8 and reports received by the director or the director's authorized agents under this Title are
9 confidential.

10 **2. Exceptions.** Reports of final bureau action taken under the authority of this Title
11 are public records for the purposes of Title 1, chapter 13, subchapter 1.

12 **3. Authorized disclosure.** The director shall make or authorize any disclosure of
13 information of the following types or under the following circumstances with the
14 understanding that the confidentiality of the information will be maintained:

15 **A.** Information and reports disclosed to other government agencies if the director
16 believes that the information will serve to further the protection of the public or assist
17 in the enforcement of local, state and federal laws; and

18 **B.** Information and records pertaining to the work force, employment patterns, wage
19 rates, poverty and low-income patterns, economically distressed communities and
20 regions and other similar information and data disclosed to the Department of
21 Economic and Community Development and to the Governor's Office of Policy and
22 Management for the purposes of analysis and evaluation, for the purposes of
23 measuring and monitoring poverty and economic and social conditions throughout
24 the State and to promote economic development.

25 **Sec. A-3. 26 MRSA §934, last ¶**, as enacted by PL 1985, c. 294, §§2 and 3, is
26 amended to read:

27 The board shall hear all interested persons who come before it, advise the respective
28 parties what ought to be done by either or both to adjust the controversy, and shall make a
29 confidential written report to the Governor and the Executive Director of the Maine
30 Labor Relations Board. The Governor or executive director ~~may~~ shall make the report
31 public if, after 15 days from the date of its receipt, the parties have not resolved the
32 controversy and the public interest would be served by publication. In addition, either the
33 Governor or the executive director may refer the report and recommendations of the
34 board to the Attorney General or other department for appropriate action when it appears
35 that any of the laws of this State may have been violated.

36 **Sec. A-4. 29-A MRSA §152, sub-§3**, as enacted by PL 1993, c. 683, Pt. A, §2
37 and affected by Pt. B, §5, is amended to read:

1 **3. Central computer system.** Notwithstanding any other provisions of law,
2 purchase and maintain a central computer system for purposes of administering this Title
3 and conducting departmental operations. All other uses must be approved by the
4 Secretary of State. ~~The Secretary of State shall adopt rules regarding the maintenance~~
5 ~~and use of data processing information files required to be kept confidential and shall~~
6 ~~distinguish those files from files available to the public;~~

7 **Sec. A-5. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by
8 §37, is repealed.

9 **Sec. A-6. 29-A MRSA §517, sub-§4**, as enacted by PL 1993, c. 683, Pt. A, §2
10 and affected by Pt. B, §5, is amended to read:

11 **4. Unmarked law enforcement vehicles.** An unmarked motor vehicle used
12 primarily for law enforcement purposes, when authorized by the Secretary of State and
13 upon approval from the appropriate requesting authority, is exempt from displaying a
14 special registration plate. Records for all unmarked vehicle registrations are confidential.

15 ~~Upon receipt of a written request by an appropriate criminal justice official showing~~
16 ~~cause that it is in the best interest of public safety, the Secretary of State may determine~~
17 ~~that records of a nongovernment vehicle may be held confidential for a specific period of~~
18 ~~time, which may not exceed the expiration of the current registration.~~

19 **Sec. A-7. 35-A MRSA §8703, sub-§5**, as enacted by PL 1989, c. 851, §7, is
20 amended to read:

21 **5. Confidentiality.** ~~Relay service communications must be~~ The providers of
22 telecommunications relay services must keep relay service communications confidential.

23 **Sec. A-8. 38 MRSA §414, sub-§6**, as amended by PL 1997, c. 794, Pt. A, §20, is
24 further amended to read:

25 **6. Confidentiality of records.** Any records, reports or information obtained under
26 this subchapter is available to the public, except that upon a showing satisfactory to the
27 department by any person that any records, reports or information, or particular part of
28 any record, report or information, other than the names and addresses of applicants,
29 license applications, licenses and effluent data, to which the department has access under
30 this subchapter would, if made public, divulge methods or processes that are entitled to
31 protection as trade secrets as defined in Title 10, section 1542, subsection 4, these
32 records, reports or information must be confidential and not available for public
33 inspection or examination. Any records, reports or information may be disclosed to
34 employees or authorized representatives of the State or the United States concerned with
35 carrying out this subchapter or any applicable federal law, and to any party to a hearing
36 held under this section on terms the commissioner may prescribe in order to protect these
37 confidential records, reports and information, as long as this disclosure is material and
38 relevant to any issue under consideration by the department.

39 **Sec. A-9. 38 MRSA §585-B, sub-§6**, as amended by PL 2009, c. 535, §2, is
40 further amended to read:

1 **6. Mercury reduction plans.** An air emission source emitting mercury in excess of
2 10 pounds per year after January 1, 2007 must develop a mercury reduction plan. Except
3 as provided in subsection 7, the mercury reduction plan must be submitted to the
4 department no later than September 1, 2008. The mercury reduction plan must contain:

5 A. Identification, characterization and accounting of the mercury used or released at
6 the emission source; and

7 B. Identification, analysis and evaluation of any appropriate technologies,
8 procedures, processes, equipment or production changes that may be utilized by the
9 emission source to reduce the amount of mercury used or released by that emission
10 source, including a financial analysis of the costs and benefits of reducing the amount
11 of mercury used or released.

12 ~~The department may keep information submitted to the department under this subsection~~
13 ~~confidential as provided under section 1310-B.~~

14 The department shall submit a report to the joint standing committee of the Legislature
15 having jurisdiction over natural resources matters no later than March 1, 2009
16 summarizing the mercury emissions and mercury reduction potential from those emission
17 sources subject to this subsection. In addition, the department shall include an evaluation
18 of the appropriateness of the 25-pound mercury standard established in subsection 5.
19 The evaluation must address, but is not limited to, the technological feasibility, cost and
20 schedule of achieving the standards established in subsection 5. The department shall
21 submit an updated report to the committee by March 1, 2013. The joint standing
22 committee of the Legislature having jurisdiction over natural resources matters is
23 authorized to report out to the 126th Legislature a bill relating to the evaluation and the
24 updated report.

25 **Sec. A-10. 38 MRS §585-C, sub-§2, ¶D,** as affected by PL 1989, c. 890, Pt.
26 A, §40 and amended by Pt. B, §160, is repealed.

27 **Sec. A-11. 38 MRS §1310-B, sub-§2,** as repealed and replaced by PL 2011, c.
28 420, Pt. A, §35 and amended by c. 657, Pt. W, §5, is further amended to read:

29 **2. Hazardous waste information and information on mercury-added products**
30 **and electronic devices; chemicals.** Information relating to hazardous waste submitted to
31 the department under this subchapter, information relating to mercury-added products
32 submitted to the department under chapter 16-B, information relating to electronic
33 devices submitted to the department under section 1610, subsection 6-A, ~~information~~
34 ~~relating to mercury reduction plans submitted to the department under section 585-B,~~
35 ~~subsection 6;~~ information related to priority toxic chemicals submitted to the department
36 under chapter 27 or information related to products that contain the "deca" mixture of
37 polybrominated diphenyl ethers submitted to the department under section 1609 may be
38 designated by the person submitting it as being only for the confidential use of the
39 department, its agents and employees, the Department of Agriculture, Conservation and
40 Forestry and the Department of Health and Human Services and their agents and
41 employees, other agencies of State Government, as authorized by the Governor,
42 employees of the United States Environmental Protection Agency and the Attorney
43 General and, for waste information, employees of the municipality in which the waste is

1 located. The designation must be clearly indicated on each page or other portion of
2 information. The commissioner shall establish procedures to ensure that information so
3 designated is segregated from public records of the department. The department's public
4 records must include the indication that information so designated has been submitted to
5 the department, giving the name of the person submitting the information and the general
6 nature of the information. Upon a request for information, the scope of which includes
7 information so designated, the commissioner shall notify the submitter. Within 15 days
8 after receipt of the notice, the submitter shall demonstrate to the satisfaction of the
9 department that the designated information should not be disclosed because the
10 information is a trade secret or production, commercial or financial information, the
11 disclosure of which would impair the competitive position of the submitter and would
12 make available information not otherwise publicly available. Unless such a
13 demonstration is made, the information must be disclosed and becomes a public record.
14 The department may grant or deny disclosure for the whole or any part of the designated
15 information requested and within 15 days shall give written notice of the decision to the
16 submitter and the person requesting the designated information. A person aggrieved by a
17 decision of the department may appeal only to the Superior Court in accordance with the
18 provisions of section 346. All information provided by the department to the
19 municipality under this subsection is confidential and not a public record under Title 1,
20 chapter 13. In the event a request for such information is submitted to the municipality,
21 the municipality shall submit that request to the commissioner to be processed by the
22 department as provided in this subsection.

23 PART B

24 **Sec. B-1. 1 MRSA §411, sub-§2, ¶¶L and M**, as enacted by PL 2005, c. 631,
25 §1, are amended to read:

26 L. Two representatives of the public, one appointed by the President of the Senate
27 and one appointed by the Speaker of the House; ~~and~~

28 M. The Attorney General or the Attorney General's designee; ~~and~~

29 **Sec. B-2. 1 MRSA §411, sub-§2, ¶N** is enacted to read:

30 N. One member, appointed by the Governor, with broad experience in and
31 understanding of issues and costs in multiple areas of information technology,
32 including practical applications concerning creation, storage, retrieval and
33 accessibility of electronic records; use of communication technologies to support
34 meetings, including audio and Internet conferencing; databases for records
35 management and reporting; and information technology system development and
36 support.

37 PART C

38 **Sec. C-1. 5 MRSA §200-I, sub-§5**, as enacted by PL 2007, c. 603, §1, is
39 amended to read:

40 **5. Report.** The ombudsman shall submit a report not later than ~~March~~ January 15th
41 of each year to the Legislature and the Right To Know Advisory Committee established

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

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

19 **PART D**

20 **Sec. D-1. 1 MRSA §408-A**, as amended by PL 2013, c. 350, §§1 and 2, is further
21 amended to read:

22 **§408-A. Public records available for inspection and copying**

23 Except as otherwise provided by statute, a person has the right to inspect and copy
24 any public record in accordance with this section within a reasonable time of making the
25 request to inspect or copy the public record.

26 **1. Inspect.** A person may inspect any public record during reasonable office hours.
27 ~~A~~ A body, agency or official may not charge a fee for inspection unless the public
28 record cannot be inspected without being converted or compiled, in which case the body,
29 agency or official may charge a fee as provided in subsection 8.

30 **2. Copy.** A person may copy a public record in the office of the body, agency or
31 official having custody of the public record during reasonable office hours or may request
32 that the body, agency or official having custody of the record provide a copy. The body,
33 agency or official may charge a fee for copies as provided in subsection 8.

- 34 A. A request need not be made in person or in writing.
- 35 B. The body, agency or official shall mail the copy upon request.

1 **3. Acknowledgment; clarification; time estimate; cost estimate.** The body,
2 agency or official having custody or control of a public record shall acknowledge receipt
3 of a request made according to this section within 5 working days of receiving the request
4 ~~and.~~ The body, agency or official may request clarification concerning which public
5 record or public records are being requested. Within a reasonable time of receiving the
6 request, the body, agency or official shall provide a good faith, nonbinding estimate of
7 the time within which the body, agency or official will comply with the request, as well
8 as a cost estimate as provided in subsection 9. The body, agency or official shall make a
9 good faith effort to fully respond to the request within the estimated time. For purposes
10 of this subsection, the date a request is received is the date a sufficient description of the
11 public record is received by the body, agency or official.

12 **4. Refusals; denials.** If a body ~~or an,~~ agency or official having custody or control of
13 any public record refuses permission to inspect or copy ~~or abstract~~ a public record, the
14 body ~~or,~~ agency or official shall provide written notice of the denial, stating the reason for
15 the denial, within 5 working days of the receipt of the request for inspection or copying.
16 Failure to ~~comply with~~ provide the notice required by this subsection within 10 working
17 days of the receipt of the request is considered ~~failure~~ a denial to allow inspection or
18 copying and is subject to appeal as provided in section 409.

19 **5. Schedule.** Inspection, conversion pursuant to subsection 7 and copying of a
20 public record subject to a request under this section may be scheduled to occur at a time
21 that will not delay or inconvenience the regular activities of the body, agency or official
22 having custody or control of the public record requested. If the body, agency or official
23 does not have regular office hours, the name and telephone number of a contact person
24 authorized to provide access to the body's, agency's or official's records must be posted in
25 a conspicuous public place and at the office of the body, agency or official, if an office
26 exists.

27 **6. No requirement to create new record.** ~~An~~ A body, agency or official is not
28 required to create a record that does not exist.

29 **7. Electronically stored public records.** ~~An~~ A body, agency or official having
30 custody or control of a public record subject to a request under this section shall provide
31 access to an electronically stored public record either as a printed document of the public
32 record or in the medium in which the record is stored, at the requester's option, except
33 that the body, agency or official is not required to provide access to an electronically
34 stored public record as a computer file if the body, agency or official does not have the
35 ability to separate or prevent the disclosure of confidential information contained in or
36 associated with that file.

37 A. If in order to provide access to an electronically stored public record the body,
38 agency or official converts the record into a form susceptible of visual or aural
39 comprehension or into a usable format for inspection or copying, the body, agency or
40 official may charge a fee to cover the cost of conversion as provided in subsection 8.

41 B. This subsection does not require ~~an~~ a body, agency or official to provide a
42 requester with access to a computer terminal.

1 **8. Payment of costs.** Except as otherwise specifically provided by law or court
2 order, ~~an~~ a body, agency or official having custody of a public record may charge fees for
3 public records as follows.

4 A. The body, agency or official may charge a reasonable fee to cover the cost of
5 copying.

6 B. The body, agency or official may charge a fee to cover the actual cost of
7 searching for, retrieving and compiling the requested public record of not more than
8 \$15 per hour after the first hour of staff time per request. Compiling the public record
9 includes reviewing and redacting confidential information.

10 C. The body, agency or official may charge for the actual cost to convert a public
11 record into a form susceptible of visual or aural comprehension or into a usable
12 format.

13 D. ~~An~~ A body, agency or official may not charge for inspection unless the public
14 record cannot be inspected without being compiled or converted, in which case
15 paragraph B or C applies.

16 E. The body, agency or official may charge for the actual mailing costs to mail a
17 copy of a record.

18 **9. Estimate.** The body, agency or official having custody or control of a public
19 record subject to a request under this section shall provide to the requester an estimate of
20 the time necessary to complete the request and of the total cost as provided by subsection
21 8. If the estimate of the total cost is greater than \$30, the body, agency or official shall
22 inform the requester before proceeding. If the estimate of the total cost is greater than
23 \$100, subsection 10 applies.

24 **10. Payment in advance.** The body, agency or official having custody or control of
25 a public record subject to a request under this section may require a requester to pay all or
26 a portion of the estimated costs to complete the request prior to the search, retrieval,
27 compiling, conversion and copying of the public record if:

28 A. The estimated total cost exceeds \$100; or

29 B. The requester has previously failed to pay a properly assessed fee under this
30 chapter in a timely manner.

31 **11. Waivers.** The body, agency or official having custody or control of a public
32 record subject to a request under this section may waive part or all of the total fee charged
33 pursuant to subsection 8 if:

34 A. The requester is indigent; or

35 B. The body, agency or official considers release of the public record requested to be
36 in the public interest because doing so is likely to contribute significantly to public
37 understanding of the operations or activities of government and is not primarily in the
38 commercial interest of the requester.

39 **Sec. D-2. 1 MRSA §409, sub-§1**, as repealed and replaced by PL 2013, c. 350,
40 §3, is amended to read:

1 It clarifies that it is the responsibility of the providers of telecommunications relay
2 services to keep relay service communications confidential.

3 It adds a cross-reference to the definition of "trade secret" in the law governing waste
4 discharge licenses.

5 It strikes language allowing mercury reduction plans for air emission sources emitting
6 mercury to be designated as confidential.

7 It repeals language allowing hazardous air pollutant emissions inventory reports to be
8 designated as confidential.

9 Part B adds one additional member to the Right To Know Advisory Committee,
10 appointed by the Governor. The new position will bring information technology
11 expertise to the committee.

12 Current law requires the Public Access Ombudsman to submit an annual report to the
13 Right To Know Advisory Committee and the Legislature by March 15th of each year.
14 Part C changes the reporting date to January 15th of each year, which is the same date by
15 which the Right To Know Advisory Committee is required to submit its annual report.

16 Part D amends the Freedom of Access Act to clarify that the date of receipt of a
17 request to copy or inspect a public record is the date a sufficient description of the public
18 record is received by the body, agency or official.

19 Current law requires a body, agency or official to provide, within 5 days of the
20 receipt of a request to inspect or copy a public record, a written notice that the request is
21 denied. Part D clarifies that refusing to allow inspection or copying is considered a
22 denial, as is the failure, within 10 days of the receipt of a request, to provide a written
23 notice that the request is denied.

24 Part D amends the Freedom of Access Act with regard to appeals of denials of
25 requests to inspect or copy public records. Under current law, a person whose request has
26 been denied may appeal the denial to any Superior Court within 30 calendar days of
27 receipt of the written notice of denial. The bill provides that if no written notice of denial
28 is provided, the requester may file an appeal within 40 calendar days of the request in the
29 Superior Court for the county where the requester resides or where the body, agency or
30 official maintains an office to which the request was made. Current law requires the
31 agency or official to file an answer within 14 calendar days. This bill clarifies that the
32 body, agency or official must file an answer within 14 calendar days of service of the
33 appeal. This bill provides that the court does not have to convene a trial, but must
34 conduct a de novo review and take testimony and other evidence it determines necessary,
35 and if it determines that the denial was not for just and proper cause, the court is required
36 to enter an order for disclosure.