

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1088

H.P. 749

House of Representatives, March 25, 2015

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

Reported by Representative HOBBS of Saco 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.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **PART A**

3 **Sec. A-1. 1 MRSA §411, sub-§2, ¶¶L and M**, as enacted by PL 2005, c. 631,
4 §1, are amended to read:

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

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

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

9 N. One member with broad experience in and understanding of issues and costs in
10 multiple areas of information technology, including practical applications concerning
11 creation, storage, retrieval and accessibility of electronic records; use of
12 communication technologies to support meetings, including teleconferencing and
13 Internet-based conferencing; databases for records management and reporting; and
14 information technology system development and support, appointed by the Governor.

15 **PART B**

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

18 **5. Report.** The ombudsman shall submit a report not later than ~~March~~ January 15th
19 of each year to the Legislature and the Right To Know Advisory Committee established
20 in Title 1, section 411 concerning the activities of the ombudsman for the previous year.
21 The report must include:

22 A. The total number of inquiries and complaints received;

23 B. The number of inquiries and complaints received respectively from the public, the
24 media and public agencies or officials;

25 C. The number of complaints received concerning respectively public records and
26 public meetings;

27 D. The number of complaints received concerning respectively:

28 (1) State agencies;

29 (2) County agencies;

30 (3) Regional agencies;

31 (4) Municipal agencies;

32 (5) School administrative units; and

33 (6) Other public entities;

34 E. The number of inquiries and complaints that were resolved;

35 F. The total number of written advisory opinions issued and pending; and

1 G. Recommendations concerning ways to improve public access to public records
2 and proceedings.

3 **PART C**

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

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

7 **§3. Confidentiality of records**

8 **1. Confidential records.** Except as provided in subsections 2 and 3, all information
9 and reports received by the director or the director's authorized agents under this Title are
10 confidential for the purposes of Title 1, section 402, subsection 3, paragraph A.

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

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

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

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

26 **Sec. C-3. 26 MRSA §934, 4th ¶**, as enacted by PL 1985, c. 294, §§2 and 3, is
27 amended to read:

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

37 **Sec. C-4. 29-A MRSA §152, sub-§3**, as enacted by PL 1993, c. 683, Pt. A, §2
38 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. C-5. 29-A MRSA §257**, as enacted by PL 2003, c. 434, §6 and affected by
8 §37, is repealed.

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

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

23 **Sec. C-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. C-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. C-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. C-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 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 D**

24 **Sec. D-1. 1 MRSA §433, sub-§2**, as enacted by PL 2005, c. 631, §5, is repealed.

25 **Sec. D-2. 1 MRSA §433, sub-§2-A** is enacted to read:

26 **2-A. Scheduling guidelines.** The advisory committee shall use the following list as
27 a guideline for scheduling reviews of public records exceptions and reporting its
28 recommendations to the review committee:

29 A. Exceptions enacted after 2004 and before 2013 are scheduled to be reviewed by
30 the review committee no later than 2017;

31 B. Exceptions codified in the following Titles are scheduled to be reviewed by the
32 review committee no later than 2019:

33 (1) Title 1;

34 (2) Title 2;

35 (3) Title 3;

36 (4) Title 4;

37 (5) Title 5;

38 (6) Title 6;

39 (7) Title 7; and

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(8) Title 7-A;

C. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2021:

(1) Title 8;

(2) Title 9-A;

(3) Title 9-B;

(4) Title 10;

(5) Title 11; and

(6) Title 12;

D. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2023:

(1) Title 13;

(2) Title 13-B;

(3) Title 13-C;

(4) Title 14;

(5) Title 15;

(6) Title 16;

(7) Title 17;

(8) Title 17-A;

(9) Title 18-A;

(10) Title 18-B;

(11) Title 19-A;

(12) Title 20-A; and

(13) Title 21-A;

E. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2025:

(1) Title 22;

(2) Title 22-A;

(3) Title 23;

(4) Title 24; and

(5) Title 24-A;

F. Exceptions codified in the following Titles are scheduled to be reviewed by the review committee no later than 2027:

(1) Title 25;

- 1 (2) Title 26;
- 2 (3) Title 27;
- 3 (4) Title 28-A;
- 4 (5) Title 29-A;
- 5 (6) Title 30;
- 6 (7) Title 30-A;
- 7 (8) Title 31; and
- 8 (9) Title 32; and

9 G. Exceptions codified in the following Titles are scheduled to be reviewed by the
10 review committee no later than 2029:

- 11 (1) Title 33;
- 12 (2) Title 34-A;
- 13 (3) Title 34-B;
- 14 (4) Title 35-A;
- 15 (5) Title 36;
- 16 (6) Title 37-B;
- 17 (7) Title 38; and
- 18 (8) Title 39-A.

19 **Sec. D-3. 1 MRSA §433, sub-§3,** as enacted by PL 2005, c. 631, §5, is amended
20 to read:

21 **3. Scheduling changes.** The advisory committee may make adjustments to the
22 scheduling guidelines provided in subsection 2 2-A as it determines appropriate and shall
23 notify the review committee of such adjustments.

24 **SUMMARY**

25 This bill contains recommendations of the Right To Know Advisory Committee
26 included in its ninth annual report.

27 Part A adds one additional member to the Right To Know Advisory Committee, to be
28 appointed by the Governor. The new position will bring information technology
29 expertise to the advisory committee.

30 Current law requires the Public Access Ombudsman within the Department of the
31 Attorney General to submit an annual report to the Right To Know Advisory Committee
32 and the Legislature by March 15th of each year. Part B changes the reporting date to
33 January 15th of each year, which is the same date by which the Right To Know Advisory
34 Committee is required to submit its annual report.

1 Part C implements the recommendations of the Right To Know Advisory Committee
2 relating to existing public records exceptions in the Maine Revised Statutes, Title 22 and
3 Titles 26 to 39-A.

4 Section 1 repeals the Community Right-to-Know Act, a program within the
5 Department of Health and Human Services intended to provide disclosure of information
6 about hazardous substances in the community that has never been implemented.

7 Section 2 makes clear that reports of final bureau action are public records, removing
8 the language in current law that gives the Director of the Bureau of Labor Standards the
9 discretion to release reports.

10 Section 3 clarifies that a report of the State Board of Arbitration and Conciliation in a
11 labor dispute must be released 15 days after its receipt by the Governor and Executive
12 Director of the Maine Labor Relations Board if the conciliation process is not successful.

13 Section 4 removes language authorizing the Secretary of State to adopt rules relating
14 to maintenance and use of data processing files concerning motor vehicles as the
15 confidentiality of personal information is already protected under federal law.

16 Section 5 repeals a provision of law relating to the Secretary of State's motor vehicle
17 information technology system because the confidentiality of the system is already
18 addressed in another provision of law.

19 Section 6 removes language that is addressed in another section of law.

20 Section 7 clarifies that it is the responsibility of the providers of telecommunications
21 relay services to keep relay service communications confidential.

22 Section 8 adds a cross-reference to the definition of "trade secret."

23 Section 9 removes language making mercury reduction plans for air emission sources
24 emitting mercury confidential.

25 Section 10 repeals a provision of law making hazardous air pollutant emissions
26 inventory information confidential, and section 11 corrects a cross-reference to that
27 provision.

28 Part D repeals the public records exceptions review schedule that was completed in
29 2014 and replaces it with a new review schedule. The Right To Know Advisory
30 Committee will review public records exceptions enacted after 2004 but before 2013 and
31 report its recommendations to the joint standing committee of the Legislature having
32 jurisdiction over judiciary matters over the course of 2 years, with the final review by the
33 joint standing committee completed no later than 2017. The advisory committee will
34 then begin to review all the public records exceptions codified in the statutes over a 12-
35 year period.