

# MAINE STATE LEGISLATURE

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LAWS  
OF THE  
STATE OF MAINE

AS PASSED BY THE

One Hundred and Seventh Legislature

AT THE

1ST SPECIAL SESSION

JANUARY 19, 1976 TO APRIL 29, 1976

AND

2ND SPECIAL SESSION

JUNE 14, 1976

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN  
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TITLE 3, SECTION 164, SUBSECTION 6.

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PORTLAND LITHOGRAPH COMPANY  
PORTLAND, MAINE  
1977

**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
One Hundred and Seventh Legislature  
AT THE FIRST SPECIAL SESSION  
January 19, 1976 to April 29, 1976  
AND THE SECOND SPECIAL SESSION  
June 14, 1976

Supplementary to the Acts and Resolves of the Regular Session

[supplied from page 3097 of volume]

## CHAPTER 758

AN ACT to Revise and Clarify the Freedom of Access Law.

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

1 MRSA c. 13, sub-c. I, as amended, is repealed and the following enacted in place thereof:

### CHAPTER 13

#### PUBLIC RECORDS AND PROCEEDINGS

##### SUBCHAPTER I

##### FREEDOM OF ACCESS

###### § 401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

###### § 402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

2. Public proceedings. The term "public proceedings" as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any of the following:

A. The Legislature of Maine and its committees and subcommittees;

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine and the Board of Trustees of the Maine Maritime Academy; and

C. Any board, commission, agency or authority of any county, municipality, school district or any other political or administrative subdivision.

3. Public records. The term "public records" shall mean any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

A. Records that have been designated confidential by statute;

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

C. Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared; and

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

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for subcommittees of the University of Maine Board of Trustees, Board of Trustees of the Maine Maritime Academy, or faculty and administrative committees of both institutions.

#### § 403. Meetings to be open to public

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

#### § 404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these activities, so long as these rules or regulations do not defeat the purpose of this subchapter.

#### § 405. Executive sessions

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

1. Not to defeat purposes of subchapter. These sessions shall not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. No ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved at executive sessions.

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

4. Motion contents. A motion to go into executive session shall indicate the precise nature of the business of the executive session.

5. Matters not contained in motion prohibited. No other matters may be considered in that particular executive session.

6. Permitted deliberation. Deliberations may be conducted in executive sessions on the following matters and no others:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against persons subject to the following conditions:

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

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

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

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

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

(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians shall be permitted to be present at an executive session if the student, parents or guardians so desire.

C. Discussion or consideration of the condition, acquisition or the use of

real or personal property permanently attached to real property or interests therein or disposition of publicly held property only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency.

D. Negotiations between the representatives of a public employer and public employees may be open to the public provided both parties agree to conduct negotiations in open sessions. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators may be held in an executive session.

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

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

#### § 406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons and the body or agency will deal with the expenditure of public funds or taxation, or will adopt policy at the meeting. This notice shall be given in ample time to allow public attendance. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

#### § 407. Decisions

1. Conditional approval or denial. Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to appraise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

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

**§ 408. Public records available for public inspection**

Except as otherwise provided by statute, every person shall have the right to inspect and copy any public record during the regular business hours of the custodian or location of such record; provided that, whenever inspection cannot be accomplished without translation of mechanical or electronic data compilations into some other form, the person desiring inspection may be required to pay the State in advance the cost of translation and both translation and inspection may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the record sought and provided further that the cost of copying any public record to comply with this section shall be paid by the person requesting the copy.

**§ 409. Appeals**

1. Records. If any body or agency or official, who has custody or control of any public record, shall refuse permission to so inspect or copy or abstract a public record, this denial shall be made by the body or agency or official in writing, stating the reason for the denial, within 10 days of the request for inspection by any person. Any person aggrieved by denial may appeal therefrom, within 10 days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action shall be illegal and the officials responsible shall be subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals shall be privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.

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

**§ 410. Violations**

A willful violation of any requirement of this subchapter is a Class E crime.

Effective July 29, 1976

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**CHAPTER 759**

**AN ACT Relating to Campaign Reports and Finances.**