

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

HUMAN SERVICES, DEPARTMENT OF		
DEPARTMENT TOTALS	2003-04	2004-05
FEDERAL EXPENDITURES		
FUND	\$0	\$500
OTHER SPECIAL REVENUE		
FUNDS	0	500
DEPARTMENT TOTAL -		
ALL FUNDS	\$0	\$1,000

See title page for effective date.

CHAPTER 709

H.P. 1456 - L.D. 1957

**An Act To Implement the
Recommendations of the Committee
To Study Compliance with Maine's
Freedom of Access Laws**

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

Sec. 1. 1 MRSA §405, sub-§4, as enacted by PL 1975, c. 758, is amended to read:

4. Motion contents. A motion to go into executive session shall must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

Sec. 2. 1 MRSA §408, as enacted by PL 1975, c. 758, is repealed and the following enacted in its place:

§408. Public records available for public inspection and copying

1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record.

2. Inspection, translation and copying scheduled. Inspection, translation and copying 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 public record sought.

3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.

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

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.

D. An agency or official may not charge for inspection.

4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.

5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:

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

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

6. Waivers. The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 3. 1 MRSA c. 13, sub-c. 1-A is enacted to read:

SUBCHAPTER 1-A**EXCEPTIONS TO PUBLIC RECORDS****§431. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Public records exception. "Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee. "Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

§432. Exceptions to public records; review

1. Recommendations. During the second regular session of each Legislature, the review committee shall report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process.

2. Process of evaluation. According to the schedule in section 434, the review committee shall evaluate each public records exception that is scheduled for review that biennium. The review committee shall use the following criteria to determine whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substan-

tially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

3. Assistance from committees of jurisdiction.

The review committee shall seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The review committee may hold joint public hearings with the appropriate committees of jurisdiction. The review committee shall notify the appropriate committees of jurisdiction concerning work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. The joint standing committee of the Legislature having jurisdiction over judiciary matters shall review public records exceptions as follows.

A. In 2006 and every 10 years thereafter, the committee shall review exceptions codified in:

(1) Title 1;

(2) Title 2;

(3) Title 3;

(4) Title 4; and

(5) Title 5.

B. In 2008 and every 10 years thereafter, the committee shall review exceptions codified in:

(1) Title 6;

(2) Title 7;

(3) Title 8;

(4) Title 9;

(5) Title 9-A;

- (6) Title 9-B;
- (7) Title 10;
- (8) Title 11;
- (9) Title 12;
- (10) Title 13;
- (11) Title 13-B;
- (12) Title 13-C;
- (13) Title 14; and
- (14) Title 15.

C. In 2010 and every 10 years thereafter, the committee shall review exceptions codified in:

- (1) Title 16;
- (2) Title 17;
- (3) Title 17-A;
- (4) Title 18-A;
- (5) Title 19-A;
- (6) Title 20;
- (7) Title 20-A;
- (8) Title 21-A; and
- (9) Title 22.

D. In 2012 and every 10 years thereafter, the committee shall review exceptions codified in:

- (1) Title 23;
- (2) Title 24;
- (3) Title 24-A;
- (4) Title 25;
- (5) Title 26;
- (6) Title 27;
- (7) Title 28-A; and
- (8) Title 29-A.

E. In 2014 and every 10 years thereafter, the committee shall review exceptions codified in:

- (1) Title 30;
- (2) Title 30-A;

- (3) Title 31;
- (4) Title 32;
- (5) Title 33;
- (6) Title 34-A;
- (7) Title 34-B;
- (8) Title 35-A;
- (9) Title 36;
- (10) Title 37;
- (11) Title 37-A;
- (12) Title 38; and
- (13) Title 39-A.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees.

Whenever a legislative measure containing a new public records exception is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception may not be enacted into law unless review and evaluation pursuant to subsection 2 have been completed.

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;

C. Whether federal law requires a record covered by the proposed exception to be confidential;

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether

that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the proposed exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

Sec. 4. 29-A MRSA §2251, sub-§7, as amended by PL 2003, c. 434, §27 and affected by §37, is further amended to read:

7. Report information. An accident report made by an investigating officer or a 48-hour report made by an operator as required by former subsection 5 is for the purposes of statistical analysis and accident prevention.

A report or statement contained in the accident report, or a 48-hour report as required by former subsection 5, a statement made or testimony taken at a hearing before the Secretary of State held under section 2483, or a decision made as a result of that report, statement or testimony may not be admitted in evidence in any trial, civil or criminal, arising out of the accident.

A report may be admissible in evidence solely to prove compliance with this section.

The Chief of the State Police may disclose the date, time and location of the accident and the names and addresses of operators, owners, injured persons, witnesses and the investigating officer. On written request, the chief may furnish a photocopy of the investigating officer's report at the expense of the

person making the request. The cost of furnishing a copy of the report is not subject to the limitations of Title 1, section 408, subsection 3.

Sec. 5. Resolve 2003, c. 83, §4 is amended to read:

Sec. 4. Committee duties. Resolved: That the committee shall meet a total of not more than 4-8 times to study state and local governmental compliance with Maine's freedom of access laws and other issues relating to citizens' access to public records and public proceedings. In examining these issues, the committee shall:

1. Review and analyze the Report on Public Records Audit, prepared by the Maine Freedom of Information Coalition in November 2002, and the recommendations made in the report;

2. Study what measures, if any, state and local governmental entities in Maine and in other states have taken to ensure their employees are knowledgeable about and comply with Maine's freedom of access laws or other comparable state laws;

3. Investigate and recommend ways in which governmental compliance with Maine's freedom of access laws may be meaningfully improved and calculate what, if any, costs may be associated with making such improvements;

4. Undertake a comprehensive inventory and review of the various exceptions to public access to records and proceedings found within the freedom of access laws and identify possible changes to these exceptions in order to streamline Maine law and thereby make it more easily understood and complied with by governmental employees;

5. Reconsider whether the need for any of the statutory exceptions, as currently worded, is outweighed by the State's general interest in ensuring citizens' access to public records and proceedings; ~~and~~

6. Study whether and to what extent the freedom of access laws may be used as a harassment tool against local governmental entities and what remedies may be available and appropriate to deter any such harassment; ~~and be it further~~

7. Recommend whether the personal home contact information of public employees should be confidential and not subject to disclosure;

8. Review the fees charged by agencies and officials for copies of public records and determine whether a cap on fees is appropriate and, if so, recommend the level of such a cap on copying fees;

9. Review the issues surrounding appropriate charges for remote electronic access to public records;

10. Recommend whether the court should have discretion to award attorney's fees to a party denied access to records or proceedings and, if so, under what circumstances;

11. Recommend whether the enforcement procedures of Maine's freedom of access laws, including the imposition of monetary penalties, should be modified;

12. Explore options for providing staffing assistance for the legislative review of exceptions to the definition of "public records";

13. Review the issues surrounding the extent to which voice mail and electronic mail are public records and determine if statutory changes are necessary to ensure public access to public records;

14. Review the issues surrounding the conduct of public proceedings through electronic means and the methods of ensuring public access to such proceedings;

15. Review the options for standardization and clarification of Maine law contained in the report to the Legislature, Confidentiality of Public Records (1992), prepared by the Office of Policy and Legal Analysis;

16. Review the efforts of the Department of the Attorney General to provide public access assistance to the public and entities covered by Maine's freedom of access laws; and

17. Review any other public access issues that may improve compliance with Maine's freedom of access laws and enhance public access to public proceedings; and be it further

Sec. 6. Resolve 2003, c. 83, §7-A is enacted to read:

Sec. 7-A. Funding for 2nd year of study. Resolved: That any unexpended balance of funds originally budgeted to support the work of the committee that remain within the Legislature's Miscellaneous Studies account must be used for the same purposes; and be it further

Sec. 7. Resolve 2003, c. 83, §9 is amended to read:

Sec. 9. Initial report. Resolved: That the committee shall submit ~~a~~ an initial report that includes its findings and recommendations including suggested legislation for presentation to the Joint Standing Committee on Judiciary and the Legislative Council by December 3, 2003. Following receipt and

review of the report, the Joint Standing Committee on Judiciary may report out a bill to the Second Regular Session of the 121st Legislature to implement the committee's recommendations. If the committee requires a limited extension of time to conclude its study and to make its report, it may apply to the Legislative Council, which may grant the extension; and be it further

Sec. 8. Resolve 2003, c. 83, §9-A is enacted to read:

Sec. 9-A. Final report. Resolved: That, not later than November 3, 2004, the committee shall submit a final report that includes its findings and recommendations, including suggested legislation, for presentation to the First Regular Session of the 122nd Legislature. The committee is authorized to submit legislation related to its report for introduction to the First Regular Session of the 122nd Legislature at the time of submission of its report; and be it further

Sec. 9. Codification of public records exceptions. The Office of Policy and Legal Analysis and the Office of the Revisor of Statutes shall produce a bill for introduction in the First Regular Session of the 122nd Legislature that lists in the Maine Revised Statutes, Title 1, chapter 13, subchapter 1-A all the public records exceptions that exist elsewhere in the statutes, including cross-references to those exceptions.

Sec. 10. Retroactivity. Those sections of this Act that amend Resolve 2003, chapter 83, section 9 and enact Resolve 2003, chapter 83, section 9-A apply retroactively to December 3, 2003.

See title page for effective date.

CHAPTER 710

S.P. 334 - L.D. 993

An Act To Promote Economic Growth by Retaining Engineers in Maine

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

Sec. 1. 5 MRSA §12004-I, sub-§18-E is enacted to read:

<u>18-E.</u>	<u>Maine</u>	<u>Expenses</u>	<u>20-A</u>
<u>Education:</u>	<u>Engineers</u>	<u>Only</u>	<u>MRSA</u>
<u>Financial</u>	<u>Recruitment</u>		<u>§12523</u>
<u>Aid</u>	<u>and Retention</u>		
	<u>Advisory</u>		
	<u>Committee</u>		