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THE NEED FOR PROTECTION FROM DISCRIMINATION FOR
STATE EMPLOYEES WHO TESTIFY BEFORE LEGISLATIVE COMMITTEES

REPORT OF A STUDY

BY THE

JOINT STANDING COMMITTEE ON STATE GOVERNMENT

TO THE

MAINE LEGISLATURE

January, 1985

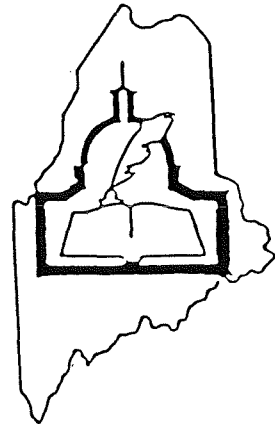
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Representative Dan A. Gwadosky

Committee Members

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Senator Walter W. Hichens
Representative Patrick E. Paradis
Representative Harriet A. Ketover
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STATE OF MAINE
ONE HUNDRED AND ELEVENTH LEGISLATURE
COMMITTEE ON STATE GOVERNMENT

Representative John N. Diamond, Chairman
Legislative Council
State House
Augusta, ME 04333

Dear Representative Diamond:

Enclosed is the final report of the Joint Standing Committee on State Government of the 11th Legislature on its study of the Need for Protection from Discrimination for State Employees who Testify before Legislative Committees. This was authorized by the Legislative Council, and the final report is required to be presented to the First Regular Session of the 112th Legislature. We hope the 112th Legislature will find this report valuable.

Sincerely,

Handwritten signature of Paul E. Violette in cursive.

Senator Paul E. Violette
Senate Chairman

Handwritten signature of Dan A. Gwadosky in cursive.

Representative Dan A. Gwadosky
House Chairman

enclosure
elk/277

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STATE OF MAINE
ONE HUNDRED AND ELEVENTH LEGISLATURE
COMMITTEE ON STATE GOVERNMENT

**Report of the Joint Standing Committee
on State Government**

With Respect To Its Study of

**The Need for Protection from Discrimination
for State Employees who Testify before
Legislative Committees**

December, 1984

SUMMARY

During the Second Regular Session of the 111th Legislature, LD 2109, "AN ACT to Strengthen the Audit and Program Review Process", was presented to the Joint Standing Committee on Audit and Program Review. LD 2109 proposed to encourage state employees to present information to the Joint Standing Committee on Audit and Program Review with respect to the departments in which they work. To accomplish this end, the bill proposed to reduce the amount of time for which a state employee might suffer lost pay and benefits as a result of department retaliation against the employee for providing the information to the Legislature. In addition, recrimination against state employees for testifying before legislative committees was outlawed. The bill was withdrawn in order to provide the Legislature with the opportunity to more deeply probe the issues in the proposal. At the request of the Audit and Program Review Committee, the Joint Standing Committee on State Government was assigned the study to include an examination of the need to extend protection to employees who testify before any legislative committee.

There are several issues involved in the proposal of LD 2109 which the Joint Standing Committee on State Government addressed. These issues include:

1. the extent to which state employees are interested in testifying before legislative committees, but who do not testify, in general, before the Legislature;
2. the need for state employee testimony other than the testimony and information provided by departmental spokesmen;
3. the reasons why state employees do not testify before legislative committees, and the incentives necessary to encourage state employees, except policy-influencing persons, to provide useful information to the Legislature; and
4. the extent to which current statutory and constitutional provisions protect state employees who provide useful information to legislative committees.

In order to obtain the information that is needed to propose recommendations, the study subcommittee:

1. conducted a survey of state employees, except policy influencing persons, to determine the extent that state employees may experience recrimination or fear it as a result of testifying before Legislative Committees;

2. conducted a survey of chairpersons of joint standing committees of the Legislature to determine the extent that state employees, representing themselves, testify before legislative committees,

a. In addition, this survey examined the need for testimony from other perspectives.

3. examined current statutory and constitutional provisions as they relate to information presented to the Legislature, and

4. surveyed other states with respect to policies governing state employees when they testify before legislative committees.

The Joint Standing Committee on State Government derived the following findings from its research:

1. There is no formal or written policy governing state employees when they testify before legislative committees.

a. The Governor's office has indicated informally that state employees may testify on their own time and represent themselves before legislative committees without incurring any penalties. This informal policy, however, is not well publicized among state employees. In addition, numerous departmental policies conflict with and supercede the governor's concept.

2. Currently, there are no statutory or constitutional provisions that protect state employees from departmental discrimination when these employees voluntarily provide information to legislative committees.

a. The "Whistleblowers Protection Act" protects public and private sector employees who report employer violations of laws or who are requested to appear before public bodies, including legislative committees. The Whistleblower's Protection Act does not apply to persons who appear on their own initiative before legislative committees.

b. The "Freedom of Access Law" protects public access to legislative information and materials used to prepare House and Senate documents. The Freedom of Access Law does not protect individuals or testimony presented to a legislative committee.

c. The Maine and federal Constitutions protect only certain types of information that is presented to legislative committees. The Courts have ruled that there are two competing interests involved in this issue. Individual right to free speech competes with the efficient and effective operation of a department. In general, the more that testimony at a hearing addresses issues with broad public impact, the greater the possibility that constitutional protection applies. the more narrow the testimony which impedes the effective and efficient operation of a department, the less the possibility that constitutional protection applies.

3. There is a problem pertaining to state employee participation at legislative hearings. Many state employees surveyed by questionnaire have useful information and want to provide testimony to legislative committees, but have never testified before a legislative committee.

a. Of the 251 respondents to the questionnaire, 88% said they have not testified at a legislative hearing.

b. Of the 237 respondents who answered the question concerning degree of interest in participating at hearings, nearly 65% claim that they have a moderate or great interest in providing information about their departments to legislative committees.

c. Of the 144 respondents to the question relating to the type of information they could provide,

1) nearly 50% indicated they are willing and able to provide information about existing programs,

2) 35% are willing to provide information about proposed programs, and

3) 52% are willing and able to provide information about departmental policies and procedures.

4. Many state employees, particularly middle-management employees, do not testify before legislative committees because they do not understand the procedure and conditions for presenting testimony and they are fearful of recrimination from department superiors. These two factors are not necessarily mutually exclusive. Many do not understand the legislative process and, at the same time, fear retribution that may result from presenting information critical of a department.

a. Of the 222 responses to the question relating to the reasons for not providing information to legislative committees,

1) 70% indicated that they had not been asked to testify,

2) between 25% and 45% indicated some degree of fear of the repercussions that might ensue following a presentation to a legislative committee,

b. Roughly 40% of the total number (251) of respondents to the questionnaire stated that they have provided information anonymously to legislators and legislative committees.

5. Respondents to the questionnaire, in general, do not testify before legislative committees about matters unrelated to the departments in which they work for nearly the same reasons as those reasons related to testifying about department matters.

a. of the 205 respondents to the question relating to reasons for not testifying before committees about matters unrelated to department/work issues,

1) roughly 35% expressed some degree of fear for providing the information to the Legislature, and

2) approximately 33% stated that they have never been asked to testify about such matters.

6. While the incentives proposed in the questionnaire to encourage state employees to testify before legislative committees were endorsed by roughly 50% of the respondents, the effect of the incentives may not be as substantial as the response indicates.

a. A substantial majority of those employees endorsing the incentives also favored confidentiality of employee identity as necessary to encourage employees to testify. Confidentiality, however, may violate the "Right-To-Know Law", and the absence of this incentive may make other incentives meaningless.

b. A significant minority, approximately 33.3% pointed out that the proposed incentives would have no impact upon their decision to testify before a legislative committee.

1) many of the respondents believe that management can easily circumvent any law and make the work environment very unhappy for any employee who provides information to a legislative committee.

7. The other New England States and the State of New York do not have written or formal policies governing state employees when they testify before legislative committees. In general, the states surveyed do not encourage state employees to voluntarily appear before legislative committees.

a. In order to appear before a legislative committee on one's own initiative departmental approval is required;

b. A distinction is made between the right to freedom-of-speech, and the right to a job. The former cannot be denied, but the latter is not deemed a "right."

c. Unlike Maine, legislatures in the other New England states and the State of New York formally request state employees to appear before the Legislature. Under these conditions, the state employee is protected by the Whistleblower Protection Law of these states.

The Joint Standing Committee on State Government recommends that a written, formal policy defining the rights of state employees to testify before legislative committees be adopted and distributed throughout state government. This policy should consist of the following:

1. a statutory affirmation of the right of a state employee to represent himself/herself and testify on the employee's own time before a legislative committee.

2. A statutory prohibition against the denial of the right of state employees to testify before a legislative committee as a person representing himself or herself on his/her own time.

3. A statutory prohibition against department discrimination towards department employees who comply with the policy.

4. An exclusion of certain types of testimony from protection of this statutory policy as described below:

a. slanderous and libelous statements

b. statements relating to the personal style of upper management persons, unless this information is requested by a legislator, and

5. some examples of testimony to be protected:
 - a. testimony about successes, failures, and problems of existing programs
 - b. testimony about advantages, disadvantages, and other relevant information about proposed programs
 - c. means of improving existing programs, and alternatives to existing or proposed programs
6. The Personnel Department should be responsible for informing "upper" management personnel about the policy and explaining the provisions of this policy
7. The Personnel Department should be responsible for distributing the policy and insuring that the policy is circulated among all employees of State Government.
8. A penalty, similar to the penalty in the "Whistleblower's Protection Act", should be applied to individuals who attempt to deny the right of state employees to testify before legislative committees or who discriminate against state employees who testify before legislative committees.

The best means of insuring that legislative committees obtain most of the information needed to make prudent decisions with respect to department programs and policies is for the committees to go to the "workplace" and discuss issues with middle management and other state employees.

This procedure can be accomplished by sending committee staff and/or subcommittees to the department.

REPORT OF THE JOINT STANDING COMMITTEE ON
STATE GOVERNMENT

TO

THE LEGISLATIVE COUNCIL AND THE FIRST REGULAR SESSION
OF THE 112TH LEGISLATURE

WITH RESPECT TO

THE NEED FOR PROTECTION FOR DISCRIMINATION FROM STATE EMPLOYEES
WHO TESTIFY BEFORE LEGISLATIVE COMMITTEES

I. BACKGROUND OF STUDY

The Legislative Council of the 111th Legislature approved a study directing the Joint Standing Committee on State Government to study the provisions of LD 2109, "AN ACT to Strengthen the Audit and Program Review Process," and to report the Committee's findings and any necessary implementing legislation to the First Regular Session of the 112th Legislature. The bill, LD 2109, was presented to the Joint Standing Committee on Audit and Program Review during the Second Regular Session of the 111th Legislature, and was withdrawn in order to provide the Legislature with the opportunity to more deeply probe the issues in the proposal.

The Audit and Program Review Committee heard conflicting testimony from the Maine State Employees Association, on one hand, and from the Department of Personnel and the Governor's office on the other side.

The Maine State Employees Association (MSEA) argues that there is no legal or contract right for state employees to voluntarily provide information, including personal evaluations of departmental policies and procedures, to the Legislature. In addition, there has been no determination that the Constitutional guarantee of individual freedom of expression applies in this case. According to this argument, there is statutory protection for state employees who provide information to the Legislature in compliance with statutory standards (conditions). Therefore, the absence of information to the Legislature may be interpreted as a prohibition against this practice.

The MSEA also argues that the penalties that a state employee may incur for voluntarily providing information to the Legislature whether or not this practice is authorized, serves to prevent this action. An employee who may be suspended without pay, dismissed, etc., and who after several months may be reinstated with full back pay, nevertheless may not wish to take this risk or may also incur substantial debts as a result of the loss of the state's medical insurance plan benefits.

The Department of Personnel, on the other hand, has not adopted any rules that prohibit state employees from volunteering information or providing information, including personal evaluations of departmental policies and procedures, to a legislative committee. According to the department, the absence of a Personnel Department prohibition against state employees providing information to the Legislature is an authorization for state employees to engage in this type of activity. In addition, the department argues that the Constitutions of the United States and Maine guarantee individual freedom of expression which protects state employees who testify before legislative committees. The Governor's office and the Department of Personnel also argue that additional statutory protection exists for state employees who wish to testify. As a result, the Personnel Department would determine as unjust, any type of disciplinary action against a state employee for testimony the employee voluntarily provided to a legislative committee.

In the light of the controversy over the need for protection for state employees who testify before legislative committees, the legislation was withdrawn for further study.

At the request of the Joint Standing Committee on Audit and Program Review, the Joint Standing Committee on State Government has undertaken the study and broadened the scope of the study beyond the provisions of LD 2109. The Audit and Program Review Committee perceived broader issues raised by the bill, and the State Government Committee examined those issues.

II. PURPOSE OF THE STUDY

The purpose of the study is to examine whether there is a need for any additional statutory protection for state employees from recrimination by departmental supervisors as a result of information that these employees provide to legislative committees. The Joint Standing Committee on Audit and Program Review has encountered significant reluctance on the part of many state employees to provide information concerning department policies and programs to the Audit and Program Review Committee.

The Maine State Employees Association (MSEA) asserts that a number of its members (although a minority of its total membership but still sufficient to warrant concern) have requested guidance from the MSEA concerning testifying before Legislative committees. The MSEA has advised its membership that:

1. employee testimony relating to department policies and programs most probably does not constitute just cause for dismissal,

2. employee testimony which is factual but also critical of a department could result in recrimination against the employee, and

3. the process for obtaining relief or restoration of the employee's job and benefits could be a long process (nearly a year in some cases) which could be very costly (loss of income) to the employee.

As a result most employees who request MSEA advice with respect to providing information about department programs and policies to legislative committees are discouraged by this advice from providing the information.

III. COMMITTEE STUDY PROCEDURE

The Joint Standing Committee on State Government established a subcommittee to undertake the basic research of the study and to develop recommendations for consideration by the entire committee. In order to accomplish its task, the subcommittee devised an approach that included:

A. An examination of existing laws relating to "protected information,"

B. A request for an Attorney-General's opinion with respect to the degree of protection provided by the Maine and federal Constitutions for information presented to legislative committees

C. A survey of state employees to determine the

1. extent of the problem, if any, that exists with respect to state employees providing testimony to Legislative Committees,

2. degree of interest of state employees to testify at legislative hearings,

3. the type of information, if any, that state employees may wish to provide to legislative committees,

4. incentives necessary to encourage a greater participation rate of state employees at legislative hearings, and

5. perceptions of state employees of department policies regarding employee testimony before legislative committees.

D. A survey of joint standing committees of the Legislature to determine the:

1. extent that state employees, excluding policy-influencing persons and bureau chiefs, provide information to legislative committees,
2. need for additional information about department policies and programs from persons other than "upper management" individuals,
3. extent to which legislative committees obtain information anonymously from state employees, and
4. perceptions of legislative committees with respect to department information and department policies relating to state employee testimony before the legislature.

E. A review of the policies of other states regarding state employee testimony before legislative committees.

IV. DISCUSSION OF ISSUES ENUMERATED IN STUDY PROCEDURE

A. Examination of Existing Laws

There are principally two laws relating to "protected" legislative information. The "Freedom of Access" Law and the "Whistleblower's Protection Act" protect different subjects. The former protects the public's accessibility to legislative information, and the latter protects individuals for information they provide under specific conditions to the proper authorities.

The "Whistleblowers Protection Act", Title 26, Sections 831-840, is designed to protect public and private sector employees from employer recrimination for providing information relating to an employer's violation of a law or rule to the proper authorities. The term, "employer" includes the state and any political subdivision.

In addition to the protection afforded employees who report employer violations of laws and rules, the "Whistleblowers Protection Act" also protects any employee... "requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action." A state employee who is requested by a legislative committee to provide information to the committee, therefore, is protected from recrimination at the hands of the employee's superiors.

The employee who is not protected by the "Whistleblowers Protection" law is the person who voluntarily provides information to a legislative committee and the information does not relate to employer violations of laws or rules.

The "Freedom of Access" law, Title 1, Chapter 13, Subchapter I, does not provide any protection to persons offering testimony at a legislative committee hearing. The "Freedom of Access" law is intended to prevent abuse of power and privilege that arises from secrecy in government.

Legislative committee hearings and the testimony provided at the hearings are statutorily made available or open to the general public. According to the provisions of 1 MRSA §405, testimony provided by the general public or state employees with respect to departmental policies, programs, and management are not defined as subjects that may be discussed at executive sessions of legislative committees.

The only legislative information that may be deemed confidential under title 1, Chapter 13 include records, working papers, and inter-intra-office memoranda of a legislator, legislative agency, or legislative employee to prepare House and Senate papers. Following the termination of a legislative biennium, these materials become available to the public.

B. Protection afforded by the Maine and Federal Constitutions

The Joint Standing Committee on State Government, through its appointed subcommittee, requested the Attorney-General to advise the committee with respect to the degree of protection afforded to state employees by the State and Federal Constitutions with respect to testimony presented to legislative committees. The initial request was a "shotgun" approach that asked the Attorney General to review Constitutional protection as it relates to:

1. the types of state employees (classified, unclassified, and policy-influencing people) who provide information to legislative committees,
2. the conditions under which the information is provided, to include, in part, the following:
 - a. voluntary testimony
 - b. testimony requested by a committee
 - c. testimony provided on "state time"
 - d. testimony offered on employee vacation time,
 - e. etc., and
3. the type of information provided, such as:
 - a. evaluation of departmental programs and policies
 - b. evaluation of departmental management
 - c. factual information about department operations
 - d. employee data concerning department operations
 - e. departmental records, books, memos, etc.

The Attorney-General's office responded that case law does not address the issues raised in the initial State Government Committee request. According to this opinion, the Constitution and case law do not differentiate among people and protect some people, but not others. In a similar manner, neither the Constitution nor case law based upon the Constitution differentiate among conditions under which information is provided. Therefore, it is not possible to define any conditions by which state employees may present information to legislative committees under protection by the Constitution.

The Attorney-General's staff urged the State Government Committee to define the type of information that the Committee would like the Attorney General to investigate with respect to the degree of protection that the Constitution provides. The second request to the Attorney-General focused upon information relating to departments. Specifically, the request asked for an opinion pertaining to:

1. factual evidence and personal evaluation relating to department policies and programs,
2. factual evidence and personal evaluation relating to departmental management and operations, and
3. factual evidence and personal evaluation of Gubernatorial policies and programs.

The Attorney-General's response explained that there is no clear and simple answer to the State Government Committee's request. According to the opinion rendered by the Attorney-General's staff, "...the particular circumstances of each separate case will control the outcome."

The question posed for review contains competing interests. One interest is Constitutional protection of individual speech or freedom of expression. The competing interest is the effective and efficient operation of government which requires a good working relationship between management and subordinate employees.

The Attorney-General's staff explains in a letter to the committee that:

In applying the free speech protections of the Federal Constitution however, the United States Supreme court has stated that it is neither appropriate nor feasible to lay down a general standard for conducting the judicial balancing of these competing considerations.

Thus, the Attorney-General is unable to provide a definitive opinion pertaining to the degree of protection afforded by the Constitution to State employees who provide information to legislative committees.

C. Survey of State Employees

In order to determine whether a problem exists with respect to protection of state employees from recrimination by departmental management for testimony presented to legislative committees, the State Government Study Subcommittee prepared a questionnaire that was sent to roughly 1000 state employees in 4 bargaining units. These bargaining units represent approximately 6800 state employees as described below:

1. Supervisory = 933 employees

2. Professional/technical = 2968 employees
3. Administrative Services = 2562 employees, and
4. Law enforcement = 340 employees.

As a result of a computer input error, a number of questionnaires went to retired state employees. The effective number of persons who received questionnaires, therefore, is 970 employees. The employees were randomly selected by computer which selected every 6th person in each of the 4 categories of state employees.

A total of 251 responses were received. This figure represents 25.9% of those actively employed state employees who received a questionnaire. The recipients of the survey include classified and unclassified state employees and "middle management" state employees in positions below Bureau director. The "middle management" group was selected for the survey because this group would most likely have information necessary and useful to legislative committees. The middle management group is primarily responsible for implementing programs and is thereby knowledgeable of problems, successes, and results of department programs, policies, and activities.

Since the response to the survey represents only a 26% rate of return, the results must be evaluated very carefully and related only to the sample surveyed. If the rate of return had been 50-75%, the results could have been applied to a much larger number of employees (6800 in the middle management/administrative services group). Thus, every response represents roughly 6 people. The most valid projection or extension of the results to the state employee population is limited to the actual number of State employees who received a questionnaire (TSES--total state employees surveyed).

The questionnaire was designed not only to determine whether there is a need to protect state employees from departmental recrimination for testimony presented to legislative committees, but also to determine why state employees do or don't participate at legislative hearings. In addition, the questionnaire presented 4 possible incentives to encourage more state employee participation at hearings and requested employee evaluation of these incentives. A copy of the questionnaire and the results are in the appendix.

Of the total number of returned questionnaires:

1. 40.2% were received from persons who classified themselves in supervisory positions,
2. 50.2% were received from persons who classified themselves in non-supervisory positions,
3. 77.3% were received from classified employees, and 15.5% were received from unclassified employees,
4. roughly 60 percent were received from respondents in 8 departments who were willing to identify the department of their employment,
5. 26.7% did not disclose the department of their employment.

D. Survey of Joint Standing Committees

A survey of 36 Joint Standing Committee chairpersons was conducted to ascertain:

1. the extent of state employee, except policy influencing people and bureau chiefs, participation at legislative hearings,
2. the committees' need for additional information and different perspectives on issues and
3. the types of information necessary for the committees to undertake their tasks.

Four (4) committee chairpersons or 11% of all chairpersons surveyed responded to the questionnaire. This very low response rate does not permit the projection of the results of the survey. In general, the 4 chairpersons agreed that

1. state employees, except those representing departments, very seldom testify at committee hearings, and
2. the committees need information from more and different sources.

E. Survey of other States

The study subcommittee conducted a survey of the New England States and the State of New York to determine whether these states had developed policies relating to state employees testifying before legislative committees. One particular question posed to these states relates to the degree of protection available to a state employee who testifies before a legislative committee about departmental matters as a person representing himself or herself and who testifies on the employee's own time.

Other questions posed to the New England states and New York State relate to:

1. the extent that state employees in those states testify before legislative committees,
2. the extent of disciplinary action, if any, that has been taken against state employees who have testified before the legislatures, and
3. the type of information that is protected, if at all, which an employee may provide without incurring any disciplinary or retaliatory action.

U. FINDINGS

A. General Findings

1. In general, state employees act in a very similar manner to that of members of the general public with respect to providing testimony to legislative committees. A very small percentage of state employees testify before legislative committees, and these people tend primarily to represent the opinions of the various departments.

a. It is intimidating in and of itself to stand before a 13 member committee, professional lobbyists, and very knowledgeable "upper management" department personnel and provide testimony on issues in which a number of people have a considerable interest.

b. Since most legislative committee hearings are held during the work day, it is inconvenient for some and nearly impossible for others who live long distances from Augusta to testify before these committees.

2. There is no written policy that applies to state employees in general, which addresses the issue pertaining to state employees who wish to testify before legislative committees.

a. The Personnel Department has not developed and distributed a policy relating to this issue among the various agencies of state government. The Personnel Department has no rules that define the procedure and conditions by which state employees may provide testimony to legislative committees.

3. The lack of a general policy has permitted some departments of government and sub-units within a department to develop various informal policies regarding the right of department employees to testify before legislative committees. Often times these informal policies are more "prohibitory" than encouraging with respect to middle management people appearing before committees.

a. In many cases, supervisors and upper management people assume there is no right for state employees to appear before committees of the legislature, and state employees are directly or indirectly told not to testify.

4. Awareness or lack of awareness of issues before the Legislature has very little effect on state employees with respect to:

a. interest/willingness to testify before Legislative Committees,

b. incentives to encourage more employee participation at hearings, and

c. the number of employees who have or have not testified before the Legislature.

B. Legal Protection

1. Currently, there is no statutory protection available to state employees who voluntarily provide information to legislative committees.

a. The "Whistleblowers Protection Act" protects public and private sector employees who report employer violations of laws or who are requested to appear before public bodies, including legislative committees. The Whistleblower's Protection Act does not apply to persons who appear on their own initiative before legislative committees.

b. The "Freedom of Access Law" protects public access to legislative information and materials used to prepare House and Senate documents. The Freedom of Access Law does not protect individuals or testimony presented to a legislative committee.

2. The United States and Maine Constitutions do not categorically guarantee protection to individuals who testify before legislative committees. Whatever protection exists for persons who provide information to legislative committees under the right-to-free-speech is based on the type of information presented.

a. The Courts have ruled that there are two competing interests involved in this issue. Individual right to free speech competes with the efficient and effective operation of a department. In general, the more that testimony at a hearing addresses issues with broad public impact, the greater the possibility that constitutional protection applies. The more narrow the testimony which impedes the effective and efficient operation of a department, the less the possibility that constitutional protection applies.

C. Survey Results

1. There is a problem pertaining to state employee participation at legislative hearings. Many state employees surveyed by questionnaire have useful information and want to provide testimony to legislative committees, but have never testified before a legislative committee.

a. Of the 251 respondents to the questionnaire, 88% said they have not testified at a legislative hearing.

b. Of the 237 respondents who answered the question concerning degree of interest in participating at hearings, nearly 65% claim that they have a moderate or great interest in providing information about their departments to legislative committees.

c. Of the 144 respondents to the question relating to the type of information they could provide,

1) nearly 50% indicated they are willing and able to provide information about existing programs,

2) 35% are willing to provide information about proposed programs, and

3) 52% are willing and able to provide information about departmental policies and procedures.

2. Many state employees, particularly middle-management employees, do not testify before legislative committees because they do not understand the procedure and conditions for presenting testimony and they are fearful of recrimination from department superiors. These two factors are not necessarily mutually exclusive. Many do not understand the legislative process and, at the same time, fear retribution that may result from presenting information critical of a department.

a. Of the 222 responses to the question relating to the reasons for not providing information to legislative committees,

1) 70% indicated that they had not been asked to testify,

2) between 25% and 45% indicated some degree of fear of the repercussions that might ensue following a presentation to a legislative committee,

b. Roughly 40% of the total number (251) of respondents to the questionnaire stated that they have provided information anonymously to legislators and legislative committees.

3. Many state employees do not testify before legislative committees because they are unaware of many issues before the Legislature. In part, this "unawareness" is the result of a perception that state employees are not authorized to testify before legislative committees or they are intimidated by department policies.

a. of the 251 respondents to the questionnaire, 113 or 45% indicated they are unaware of issues, bills, or questions which they may have useful information to present to legislative committees

b. of the 113 employees unaware of issues before the legislature, nearly 45% pointed out that they have a moderate or great interest in providing information to the Legislature

c. of the 113 employees unaware of issues before the legislature, 67% indicated that they would be more likely to testify if they were clearly protected by a law to allow them to testify.

4. Respondents to the questionnaire, in general, do not testify before legislative committees about matters unrelated to the departments in which they work for nearly the same reasons as those reasons related to testifying about department matters.

a. of the 205 respondents to the question relating to reasons for not testifying before committees about matters unrelated to department/work issues,

1) roughly 35% expressed some degree of fear for providing the information to the Legislature, and

2) approximately 33% stated that they have never been asked to testify about such matters.

5. While the incentives proposed in the questionnaire to encourage state employees to testify before legislative committees were endorsed by roughly 50% of the respondents, the effect of the incentives may not be as substantial as the response indicates.

a. A substantial majority of those employees endorsing the incentives also favored confidentiality of employee identity as necessary to encourage employees to testify. Confidentiality, however, may violate the "Right-To-Know Law", and the absence of this incentive may make other incentives meaningless.

b. A significant minority, approximately 33.3% pointed out that the proposed incentives would have no impact upon their decision to testify before a legislative committee.

1) many of the respondents believe that management can easily circumvent any law and make the work environment very unhappy for any employee who provides information to a legislative committee.

6. Although a very small number (4 or 11.1%) of joint standing committee chairpersons responded to the written request of the Joint Standing Committee on State Government for information relating to state employee participation at legislative hearings, the respondents agreed that:

a. state employees, in general, very seldom appear before their legislative committees, particularly employees who represent themselves and not their department, and

b. the committees which they chair would welcome state employee participation at hearings and a different perspective on issues before the Legislature.

D. Survey of Other States

1. The other New England States and the State of New York, like the State of Maine, have a "Whistleblower's Protection Law" which protects public and private sector employees from employer retaliation when the employees report employer violations of state laws.

2. The New England States and the State of New York do not have any written or statutory policies relating to state employees testifying before legislative committees.

3. The approach of the other New England States and the State of New York to the issue of state employees testifying before legislative committees may be characterized as follows:

A state employee has a right to freedom of speech, but not the right to a job.

4. In the states surveyed, one or all of the following apply:

a. State employees do not testify before legislative committees unless requested by the committees.

b. State employees who wish to testify on any issue of personal interest are required to obtain departmental approval of "leave-time" to be taken to testify.

1) A Commissioner may deny "leave" for any state employee who wishes to testify if the commissioner believes the employee's absence will pose a hardship on the department.

c. if state employees do testify in some states (very seldom), they are included with the general public which is slated to testify last (following all other groups), and

d. state employees may seek redress for any disciplinary action taken against them by appealing to a Personnel Department Appeals Board or through a state employee's union.

5. In general, legislative committees in the other New England States and in New York State request state employees outside "upper management" positions to testify before the committees when the committees are concerned about programs, policies, or procedures of a department.

a. This removes the burden that a state employee would bear who voluntarily offers significant information to a committee.

RECOMMENDATIONS

1. A policy is needed that defines the rights of state employees in general to testify before legislative committees. This policy should be distributed throughout state government, and bureau directors and other agency management people should be required to circulate the policy among all employees of each agency.

A. This policy should consist of the following:

1) a statutory affirmation of the right of a state employee to represent himself/herself and testify on the employee's own time before a legislative committee.

2) A statutory prohibition against the denial of the right of state employees to testify before a legislative committee as a person representing himself or herself on his/her own time.

3) A statutory prohibition against department discrimination towards department employees who comply with the policy.

4) An exclusion of certain types of testimony from protection of this statutory policy as described below:

a) slanderous and libelous statements

b) statements relating to the personal style of upper management persons, unless this information is requested by a legislator, and

5) some examples of testimony to be protected:

a) testimony about successes, failures, and problems of existing programs

b) testimony about advantages, disadvantages, and other relevant information about proposed programs

c) means of improving existing programs, and alternatives to existing or proposed programs

B. The Personnel Department should be responsible for informing "upper" management personnel about the policy and explaining the provisions of this policy

C. The Personnel Department should be responsible for distributing the policy and insuring that the policy is circulated among all employees of State Government.

D. A penalty, similar to the penalty in the "Whistleblower's Protection Act", should be applied to individuals who attempt to deny the right of state employees to testify before legislative committees or who discriminate against state employees who testify before legislative committees.

a. The penalty is a civil fine of \$10 per day of willful violation which shall not be suspended.

E. This policy should not apply to non-partisan staff of the Legislature.

2. The best means of insuring that legislative committees obtain most of the information needed to make prudent decisions with respect to department programs and policies is for the committees to go to the "workplace" and discuss issues with middle management and other state employees.

A. This procedure can be accomplished by sending committee staff and-or subcommittees to the department.

TP/elk/069

Study Bill from the Joint
Standing Committee on State
Government
Study on Protection of State
Employees Who Testify before
Legislative Committees
Drafted by Ted Potter
12/84

STATE OF MAINE
112TH LEGISLATURE
FIRST REGULAR SESSION
HOUSE OF REPRESENTATIVES

"AN ACT Defining the Right of State Employees to Testify
Before Legislative Committees"

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

Sec. 1. 5 MRSA c. 2 is enacted to read:

CHAPTER 2

Testimony Provided by State Employees
to Legislative Committees

§21. Definitions. As used in this chapter, unless the context
otherwise indicates, the following terms shall have the
following meanings.

1. Legislative committee. "Legislative committee" means a
Joint Standing committee of the Legislature; a Joint Select
Committee of the Legislature; a task force, commission,
council, or any other committee established by the Legislature
and composed wholly or partly of legislators for the purpose of
conducting legislative business.

2. Non-partisan staff. Non-partisan staff means the
directors and staffs of the Office of Legislative Assistants,
the Legislative Finance Office, the Legislative Research
Office, the Legislative Information Office, and the Office of
the Legislative Administrative Director;

3. Own time. "Own time" means an employee's vacation or
personal time, earned as a condition of employment.

4. State employee. "State employee" means any employee
subject to Title 5, Chapters 51-57, or Chapter 71 of the Maine
Revised Statutes, except non-partisan staff of the Legislature;
and

5. Supervisor. "Supervisor" means a commissioner, bureau chief, director, manager, or any other person who oversees or supervises state employees in their employment.

§22. Right to Provide Testimony.

Every state employee shall have the right to represent himself and testify before a legislative committee on his own time. No state employee who complies with the provisions of this chapter may be denied the right to testify before a legislative committee.

§23. Discharge of, threats to or discrimination against state employees for testimony presented to legislative committees.

A supervisor shall not discharge, threaten, or otherwise discriminate against a state employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee, in compliance with this chapter, testified before or provides information to a legislative committee.

§24. Presentation of Testimony and Information.

1. Type of information. The provisions of this chapter shall protect any state employee who, in compliance with the provisions of this chapter, presents testimony or information relating to departments or agencies of state government and which testimony or information pertains to:

- A. successes, failures, or problems of current programs;
- B. advantages, disadvantages, or other relevant information about proposed programs; and
- C. the means of improving existing programs, and alternatives to existing programs.

§25. Exclusion of Testimony and information from protection.

1. Liability of state employees. The provisions in this chapter shall not authorize the presentation to a legislative committee or protect any state employee who presents to a legislative committee the following:

- A. slander and libel; and
- B. statements relating to the personal style of supervisors, unless this information is requested by a legislator.

§26. Non-Partisan Legislative Staff

Non-Partisan staff of the Legislature shall be subject to the policies and rules of the Legislative Council as these policies and rules relate to testifying or providing information to Legislative Committees.

§27. Representatives of Agencies and departments.

1. Department testimony and information. Nothing in this chapter shall be construed to prohibit a state employee to testify before or present information to a legislative committee as a representative of a department or agency of state government and who has been authorized by the commissioner or director of that department or agency to act in this capacity.

2. Misrepresentations of state employees. Any state employee who represents himself as a spokesperson or representative of a department or agency without the authorization of the commissioner or director of that organization shall not be protected by the provisions of this chapter and shall be subject to the penalty in sub-§3.

3. Penalty. Any person who violates the provisions of this section shall be guilty of a Class E crime.

§28. Civil actions for injunctive relief or other remedies.

A state employee who alleges a violation of his rights under this chapter and who has first made a reasonable effort to maintain or restore his rights through any grievance procedure or similar process which may be available at his place of employment may bring a civil action including an action for injunctive relief within 90 days after the occurrence of that alleged violation or, if a grievance procedure or similar process is used, within 60 days after the grievance procedure or similar process terminates without resolution. The action may be brought in the Superior Court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides.

An employee shall establish each and every element of his case by a preponderance of the evidence.

§29. Remedies ordered by court.

A court, in rendering a judgment in an action brought pursuant to this subchapter, may order, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights or any combination of these remedies. A court may also award the prevailing party all or a portion of the costs of litigation, including reasonable attorneys' fees and witness fees, if the court determines that the award is appropriate.

§30. Penalties for violations.

A person who violates sections 22, 23, and 24 is liable for a civil fine of \$10 for each day of willful violation which shall not be suspended. Any civil fine imposed under this section shall be submitted to the Treasurer of State for deposit to the General Fund.

§31. Collective bargaining rights.

This subchapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement.

§32. Jury Trial; Common Law Rights.

Any action brought under this subchapter may be heard by a jury. Nothing in this subchapter may be construed to derogate any common-law rights of an employee.

§33. Personnel Department to inform supervisors and state employees.

The Commissioner of the Department of Personnel is responsible for informing supervisors and state employees about the provisions of this chapter. The commissioner of the Department of Personnel, at a minimum, shall distribute a sufficient number of copies of this chapter which shall be visibly posted in all state buildings in order to notify the greatest possible number of state employees about the provisions in this chapter.

The Commissioner of Personnel shall use the necessary means to instruct all supervisory personnel about the provisions in this chapter.

STATEMENT OF FACT

The purpose of this bill is to provide protection from discrimination by supervisors for state employees who provide legislative committees with information about department programs. This bill prohibits supervisors from discriminating against state employees who provide information about

1. successes, failures, and problems of existing programs;
2. advantages and disadvantages of proposed programs;
3. means of improving existing programs, and
4. alternatives to existing programs.

The Committee on State Government found that there is no written or formal policy relating to state employees who testify on their own time before legislative committees. The "Whistleblowers" Protection Act does not protect state employees who voluntarily testify before legislative committees, and the Maine and federal Constitutions do not provide categorical or definitive protection. Each case must be analyzed individually to determine the degree of protection provided by the Constitution.

This bill provides remedies for state employees who suffer discriminatory acts in violation of the provisions in the bill. A State employee may bring a civil action, including injunctive relief, within 90 days following the alleged violation.

The Department of Personnel is required to distribute copies of the policy throughout State Government and to inform supervisors about the policy.

TP/elk/231

APPENDIX

QUESTIONNAIRE FOR STATE EMPLOYEES

***** TRTQ=TOTAL NUMBER OF RESPONDENTS TO THE*****
QUESTION

SEAQ=STATE EMPLOYEES WHO ANSWERED THE QUESTION

IF A QUESTION CONTAINS MULTIPLE ANSWERS, THE PERCENTAGE APPLIES TO THE TOTAL NUMBER OF DIFFERENT RESPONDENTS WHO FILLED IN ONE OR MORE CHOICES

TSES=TOTAL NUMBER OF STATE EMPLOYEES SURVEYED OR THE TOTAL NUMBER TO WHOM A QUESTIONNAIRE WAS SENT

BLANK=THE NUMBER OF STATE EMPLOYEES WHO DID NOT ANSWER THE QUESTION

***** SUMMARY=THE NUMBER OF STATE EMPLOYEES WHO*****
ANSWERED THE QUESTION

A. BACKGROUND INFORMATION

Please check the description that applies to your position.

194 classified or 39 unclassified employee 18 BLANK
77.3% of TRTQ 15.5% of TRTQ 7.2% of TRTQ

101 supervisory position or 126 non-supervisory position 24 BLANK
40.2% of TRTQ 50.7% of TRTQ 9.6% of T.R.T.Q.

18 Division Chief or 160 not a Division Chief 73 BLANK
7.2% of T.R.T.Q. 63.7% of T.R.T.Q. 29.1% of T.R.T.Q.

Name of Department (optional) _____ in which you work.

BLANK 67 = 26.7% of TRTQ

CONSERVATION 13 = 5.2% of TRTQ

EDUCATION 11 = 4.4% of TRTQ

FINANCE & ADMINISTRATION 9 = 3.6% TRTQ

HUMAN SERVICES 39 = 15.5% of TRTQ

INLAND FISHERIES & WILDLIFE = 14 5.6% of TRTQ

MENTAL HEALTH & RETARDATION = 17 = 6.8% of TRTQ

PUBLIC SAFETY = 14 5.6% of TRTQ

TRANSPORTATION = 28 = 11.2% of TRTQ

B. QUESTIONS. Please check the answer(s) that best applies to each question provided below:

1. Have you ever been aware of an issue, bill, or question before the Legislature for which a hearing was held and for which you had information that would be useful or interesting to the Legislature?

<u>135</u> Yes; <u>113</u> No. <u>3</u> BLANK	
<u>YES</u>	<u>NO</u>
53.8% of TRTQ	45.0% of TRTQ
13.9% of TSES	11.6% of TSES

<u>PROJECTION</u>	<u>PROJECTION</u>
Represents 810 S.E.	Represents 678 S.E.
or 11.9% of TGS	or 10% of TGS

2. If you have testified before a legislative Committee have you ever been intimidated by a Legislative Committee member or members that discouraged further participation at legislative hearings?

A. 7 Yes 171 No 73 BLANK

B. Please explain

<u>YES</u>	<u>NO</u>	<u>BLANK</u>
2.8% of TRTQ	68.1% of TRTQ	29.1% of TRTQ
3.9% of SEAQ	96.1% of SEAQ	
0.7% of TSES	17.6% of TSES	

<u>PROJECTION</u>	<u>PROJECTION</u>
Represents 42 S.E.	Represents 1026 S.E.
or 0.6% of TGS	or 15.1% of TGS

TESTIMONY RELATED TO YOUR DEPARTMENT

3. Have you ever testified before or provided information to a legislative committee about the department in which you work as a person representing yourself and your own opinions?

27 Yes; 222 No. 2 BLANK

<u>YES</u>	<u>NO</u>
10.8% of TRTQ	88.1% of TRTQ
2.8% of TSES	22.9% of TSES

<u>PROJECTION</u>	<u>PROJECTION</u>
Represents 162 SE	Represents 1332 SE
or 2.4% of TGS	or 19.6% of TGS

4. If you have not testified before a legislative committee as a person representing your own opinions about the department in which you work, please explain the reason(s). (You may pick more than 1 answer).

A. 19 not interested,

4A

7.6% of TRTQ
8.6% of SEAQ
1.95% of TSES

B. 50 Interested, but the date/time of the hearing and other factors made it inconvenient to testify,

4B

19.9% of TRTQ
22.5% of SEAQ
5.2% of TSES

C. 5 A department supervisor told you not to testify.

4C

2.0% of TRTQ
2.3% of SEAQ
0.5% of TSES

D. 22 A department supervisor implied that it would not be a good idea for you to testify,

4D

8.8% of TRTQ
10.0% of SEAQ
2.3% of TSES

E. 35 The department for which you work requires all testimony to be approved by the department,

4E

13.9% of TRTQ
15.8% of SEAQ
3.6% of TSES

F. 8 Other employees in the department have been reprimanded or punished previously for testimony they provided to legislative committees (for example-demoted, fired, given undesirable work assignments, transferred, poor job evaluations, etc.).

4F

3.2% of TRTQ
3.6% of SEAQ
0.8% of TSES

G. 22 Other employees in the department who have not liked some of the policies and ideas of the management have been treated badly (fired, demoted, transferred, given undesirable work, poor job evaluations, etc.) by the department superiors.

4G

8.8% of TRTQ
10.0% of SEAQ
2.3% of TSES

H. 23 Personal fear of being fired, demoted, transferred, given undesirable work, given a salary reduction, etc.

4H

9.2% of TRTQ
10.4% of SEAQ
2.4% of TSES

I. 155 Not asked to testify

61.8% of TRTQ
69.8% of SEAQ
16.0% of TSES

J. 41 Other (Please specify).

4J

16.3% of TRTQ
18.5% of SEAQ
4.2% of TRTQ

K. 222 Summary

4K

88.4% of TRTQ

STATE EMPLOYEES RESPONDING WITH MULTIPLE ANSWERS

4B & 4I = 151
60.2% of TRTQ
68.0% of SEAQ
15.6% of TSES

4B & 4G = 27
10.8% of TRTQ
12.2% of SEAQ
2.8% of TSES

4C & 4F = 36
14.3% of TRTQ
16.2% of SEAQ
3.7% of TSES

4D & 4G = 47
18.7% of TRTQ
21.2% of SEAQ
4.8% of TSES

4E & 4I = 59
23.5% of TRTQ
26.6% of SEAQ
6.1% of TSES

4B, 4D, 4E, 4G, & 4H = 62
24.7% of TRTQ
27.9% of SEAQ
6.4% of TSES

4B, 4C, 4F, 4G, & 4H = 0

4C, 4D, 4E, 4F, 4G, & 4H = 5
2.0% of TRTQ
2.3% of SEAQ
0.5% of TSES

4C, 4D, 4F, & 4G = 45
17.9% of TRTQ
20.3% of SEAQ
4.6% of TSES

5. If you have testified before a legislative committee as a person representing your own opinions about the department in which you work, how would you describe the comments that you made?

A. 8 The comments generally found many faults with the department (policies, programs, operation, etc.).

5A

3.2% of TRTQ

34.8% of SEAQ

0.8% of TSES

B. 9 The comments were generally favorable about the department (policies, operation, etc.),

5B

3.6% of TRTQ

39.1% of SEAQ

0.9% of TSES

C. 7 The comments contained both good and bad statements about the department,

5C

2.8% of TRTQ

30.4% of SEAQ

0.7% of TSES

D. 4 Other, please specify.

5D

1.6% of TRTQ

17.4% of SEAQ

0.4% of TSES

E. 23 Summary

5E

9.2% of TRTQ

6. If you have testified before a legislative committee as a person representing your own opinions about the department in which you work, what were the results with respect to your employment in the department?

A. 14 There was no change in attitude of department superiors toward you, no action taken against you, and no change in department policies with respect to employees testifying before legislative committees.

6A

5.6% of TRTQ

56.0% of SEAQ

1.4% of TSES

B. 2 Your department superiors advised you not to testify at any other time in the future,

6B

0.8% of TRTQ
8.0% of SEAQ
0.2% of TSES

C. 3 Your department superiors implied that you should not testify in the future unless permitted by the department,

6C

1.2% of TRTQ
12.0% of SEAQ
0.3% of TSES

D. 0 You were transferred to another Bureau, division or department,

E. 0 You were fired,

F. 1 You were demoted or given undesirable work assignments,

6F

0.4% of TRTQ
4.0% of SEAQ
0.1% of TSES

G. 3 The attitude of department superiors was hostile to you and forced you to quit or transfer,

6G

1.2% of TRTQ
12.0% of SEAQ
0.3% of TSES

H. 7 Other, (please specify).

6H

2.8% of TRTQ
28.0% of SEAQ
0.7% of TSES

I. 25 Summary

6I

10.0% of TRTQ

7. If you have been told that you cannot testify, what kind of information have you been told that you cannot provide?

A. 11 facts about the agency where you work,

7A
4.4% of TRTQ
57.9% of SEAQ
1.1% of TSES

B. 10 your personal opinions about the agency where you work,

7B
4.0% of TRTQ
52.6% of SEAQ
0.3% of TSES

C. 8 your personal opinions about non-work issues,

7C
1.2% of TRTQ
15.8% of SEAQ
0.3% of TSES

D. 6 other (please specify).

7D
2.4% of TRTQ
31.6% of SEAQ
0.6% of TSES

E. 19 Summary

7E
7.6% of TRTQ
2.0% of TSES

8. Have you ever provided information representing your personal opinion to the Legislature by secretive or private means such as an anonymous phone call or letter or by providing private remarks to a legislator or committee staff person?

95 Yes; 154 No 2 BLANK

<u>YES</u>	<u>NO</u>
37.8% of TRTQ	61.4% of TRTQ
9.8% of TSES	15.9% of TSES

9. Do you have any interest in discussing with a legislative committee information about the department in which you work?

A. 53 great interest

9A
21.1% of TRTQ
22.6% of SEAQ
5.5% of TSES

B. 97 moderately interested

9B
38.6% of TRTQ
41.5% of SEAQ
10.0% of TSES

C. 84 no interest

9C
33.5% of TRTQ
35.9% of SEAQ
8.7% of TSES

10. If you do have an interest in providing information to a legislative committee, what type of information would you like to present? Please check all items that apply.

A. 71 information about an existing program

10A
28.3% of TRTQ
49.3% of SEAQ
7.3% of TSES

B. 50 information about a proposed program

10B
19.9% of TRTQ
34.7% of SEAQ
5.2% of TSES

C. 75 information about departmental policies & procedures

10C
29.9% of TRTQ
52.1% of SEAQ
7.7% of TSES

D. 62 information about department management

10D
24.7% of TRTQ
43.1% of SEAQ
6.4% of TSES

E. 29 information about a policy or program of the Governor

10E
11.6% of TRTQ
20.1% of SEAQ
3.0% of TSES

G. 13 other (please describe).

10G
5.2% of TRTQ
9.0% of SEAQ
1.3% of TSES

H. 144 Summary

10H
57.3% of TRTQ
14.8% of TSES

TESTIMONY UNRELATED TO YOUR DEPARTMENT

11. Have you ever testified before or provided information to a legislative committee as a person representing yourself or your personal opinions about matters unrelated to the department in which you work?

30 Yes; 208 No.

13 BLANK

YES

NO

BLANK

12.0% of TRTQ 82.9% of TRTQ
12.6% of SEAQ 87.4% of SEAQ
3.0% of TSES 21.4% of TSES

5.2% of TRTQ
1.3% of TSES

12. If you have not testified or provided information about matters unrelated to your department or work, why have you not testified? (You may pick more than 1 answer).

A. 57 not interested,

12A

22.7% of TRTQ

27.8% of SEAQ

5.9% of TSES

B. 57 Interested, but the date/time of the hearing and other factors made it inconvenient to testify,

12B

22.7% of TRTQ

27.8% of SEAQ

5.9% of TSES

C. 3 A department supervisor told you not to testify.

12C

1.2% of TRTQ

1.5% of SEAQ

0.3% of TSES

D. 8 A department supervisor implied that it would not be a good idea for you to testify,

12D

3.2% of TRTQ

3.9% of SEAQ

0.8% of TSES

E. 12 The department for which you work requires all testimony to be approved by the department,

12E

4.8% of TRTQ

5.9% of SEAQ

1.2% of TSES

F. 10 Other employees in the department have been reprimanded or punished previously for testimony unrelated to their department or work that they provided to legislative committees (for example - demoted, fired, given undesirable work assignments, transferred, etc.).

12F

4.0% of TRTQ
4.9% of SEAQ
1.0% of TSES

G. 23 Personal fear of being fired, demoted, transferred, given undesirable work, given a salary reduction, etc.

12G

9.2% of TRTQ
11.2% of SEAQ
2.4% of TSES

H. 68 Other (Please specify).

12H

27.1% of TRTQ
33.2% of SEAQ
7.0% of TSES

I. 205 Summary

12I

81.6% of TRTQ
21.1% of TSES

13. If you have testified or provided information to a legislative committee as a person representing yourself and your personal opinions about matters unrelated to your department or work, what were the results with respect to your employment in the department?

A. 27 There was no change in attitude of department superiors toward you, no action taken against you, and no change in department policies with respect to employees testifying before legislative committees.

13A

10.8% of TRTQ
77.1% of SEAQ
2.8% of TSES

B. 1 Your department superiors advised you not to testify at any other time in the future,

13B

0.4% of TRTQ
2.9% of SEAQ
0.1% of TSES

C. 5 Your department superiors implied that you should not testify in the future unless permitted by the department,

13C

2.0% of TRTQ
14.3% of SEAQ
0.5% of TSES

D. 1 You were transferred to another Bureau, division or department,

13D

0.4% of TRTQ
2.9% of SEAQ
0.1% of TSES

E. 0 You were fired,

F. 0 You were demoted or given undesirable work assignments,

G. 0 The attitude of department superiors was hostile to you and forced you to quit or transfer,

H. 5 Other, (please specify).

13H

13.9% of TRTQ
14.3% of SEAQ
0.5% of TSES

I. 35 Summary

13I

13.9% of TRTQ
3.6% of TSES

INCENTIVES TO TESTIFY BEFORE LEGISLATIVE COMMITTEES

14. If you were clearly protected by law with respect to testifying before a legislative committee or providing personal opinions to a committee about the department in which you work, would you be more willing to provide the information to the committee as compared to the present situation?

169 Yes; 55 No. 27 BLANK

If "no", please briefly explain why you would not be willing to provide the information.

<u>YES</u>	<u>NO</u>	<u>BLANK</u>
67.3% of TRTQ	21.9% of TRTQ	10.8% of TRTQ
75.4% of SEAQ	24.6% of SEAQ	
17.4% of TSES	5.7% of TSES	

15. Please check whether any of the following would make you be more likely or less likely to present information to a legislative committee or whether there would be no difference.

	more likely	less likely	no dif- difference	
A. A state law prohibiting supervisors from discriminating against employees who present information to legislative committees	<u>133</u>	<u>3</u>	<u>87</u>	<u>28</u> BLANK
B. A guarantee that a legislative committee would keep your name confidential	<u>138</u>	<u>6</u>	<u>79</u>	<u>28</u> BLANK
C. Require a hearing before a supervisor could take any action against an employee who presented information to a legislative committee	<u>106</u>	<u>20</u>	<u>90</u>	<u>35</u> BLANK
D. Speed up the process by which you can regain salary or benefits if you are discriminated against for presenting information to a legislative committee	<u>116</u>	<u>12</u>	<u>81</u>	<u>42</u> BLANK
E. Other (please describe)	_____	_____	_____	

	<u>ML=</u>	<u>L.L.</u>	<u>N.D.</u>	<u>BLANK</u>	<u>SUMMARY</u>
15 A.	13.7%-TSES 53.0%-TRTQ 59.6%-SEAQ	0.3%-TSES 1.2%-TRTQ 1.3%-SEAQ	9.0%-TSES 34.7%-TRTQ 39.0%-SEAQ	2.9%-TSES 11.2%-TRTQ	23.0%-TSES 88.8%-TRTQ (223-Responses)
15 B.	14.2%-TSES 55.0%-TRTQ 61.9%-SEAQ	0.6%-TSES 2.9%-TRTQ 2.6%-SEAQ	8.1%-TSES 31.5%-TRTQ 35.9%-SEAQ	2.9%-TSES 11.2%-TRTQ	23.0%-TSES 88.8%-TRTQ (223 Responses)
15 C.	10.9%-TSES 42.2%-TRTQ 49.1%-SEAQ	2.1%-TSES 8.0%-TRTQ 9.3%-SEAQ	9.3%-TSES 35.9%-TRTQ 41.7%-SEAQ	3.6%-TSES 13.9%-TRTQ	22.3%-TSES 86.1%-TRTQ (216 Responses)
15 D.	12.0%-TSES 46.2%-TRTQ 55.8%-SEAQ	1.2%-TSES 4.8%-TRTQ 5.8%-SEAQ	8.4%-TSES 32.3%-TRTQ 38.9%-SEAQ	4.3%-TSES 16.7%-TRTQ	21.4%-TSES 82.9%-TRTQ (208 Responses)