

MAINE STATE LEGISLATURE

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STATE OF MAINE
125TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

June 2012

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STATE OF MAINE

125TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 125th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

| | |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------|
| <i>CARRIED OVER</i> | <i>carried over to a subsequent session of the Legislature</i> |
| <i>CON RES XXX</i> | <i>chapter # of constitutional resolution passed by both houses</i> |
| <i>CONF CMTE UNABLE TO AGREE</i> | <i>Committee of Conference unable to agree; legislation died</i> |
| <i>DIED BETWEEN HOUSES</i> | <i>House & Senate disagreed; legislation died</i> |
| <i>DIED IN CONCURRENCE</i> | <i>defeated in each house, but on different motions; legislation died</i> |
| <i>DIED ON ADJOURNMENT</i> | <i>action incomplete when session ended; legislation died</i> |
| <i>EMERGENCY</i> | <i>enacted law takes effect sooner than 90 days after session adjournment</i> |
| <i>FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE</i> | <i>emergency failed to receive required 2/3 vote</i> |
| <i>FAILED, ENACTMENT or FINAL PASSAGE</i> | <i>failed to receive final majority vote</i> |
| <i>FAILED, MANDATE ENACTMENT</i> | <i>legislation proposing local mandate failed required 2/3 vote</i> |
| <i>HELD BY GOVERNOR</i> | <i>Governor has not signed; final disposition to be determined at subsequent session</i> |
| <i>LEAVE TO WITHDRAW</i> | <i>sponsor's request to withdraw legislation granted</i> |
| <i>NOT PROPERLY BEFORE THE BODY</i> | <i>ruled out of order by the presiding officer; legislation died</i> |
| <i>INDEF PP</i> | <i>indefinitely postponed; legislation died</i> |
| <i>ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X</i> ... | <i>ought-not-to-pass report accepted; legislation died</i> |
| <i>P&S XXX</i> | <i>chapter # of enacted private & special law</i> |
| <i>PUBLIC XXX</i> | <i>chapter # of enacted public Law</i> |
| <i>RESOLVE XXX</i> | <i>chapter # of finally passed resolve</i> |
| <i>VETO SUSTAINED</i> | <i>Legislature failed to override Governor's veto</i> |

The effective date for non-emergency legislation enacted in the Second Regular Session of the 125th Legislature is Thursday, August 30, 2012. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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Title 18-A, section 5-532, subsection (f) is deleted because it is unrealistic to require a Maine court to unilaterally evaluate a foreign order and identify modifications, as it is unclear from the Act exactly what process would be undertaken to modify a foreign order.

Title 18-A, sections 5-541 and 5-542 are modified to provide a safeguard that will enable the appointing court to intervene if foreign registration is for any reason inappropriate.

Public Law 2011, chapter 564 contains an effective date and an application date of July 1, 2013.

LD 1465

An Act To Amend the Laws Governing Freedom of Access

PUBLIC 662

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-------------------------|---------------------------|
| ROSEN R | OTP-AM MAJ ONTP MIN | S-514 S-599 ROSEN R |

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill increases governmental transparency by enhancing the existing freedom of access laws to provide deadlines for responses to requests for public records, to ensure that requesters can access public records in the format requested and to require the designation of public access officers for every agency and political subdivision.

The bill provides funding for an Assistant Attorney General position located in the Office of the Attorney General to act as the public access ombudsman, which is a part-time position.

Committee Amendment "A" (S-514)

This amendment is the majority report of the Joint Standing Committee on Judiciary. It replaces the bill.

The amendment titles the Maine Revised Statutes, Title 1, chapter 13, subchapter 1 "the Freedom of Access Act."

The amendment adds software to the description of information technology elements that are excepted from the definition of "public records" to clarify that proprietary information, technology infrastructure, systems and software used by governmental entities are not public records.

The amendment repeals and replaces the current section of law that lays out the process and fees concerning inspecting and copying public records, although much of the current language is retained. It allows inspection and copying of public records during reasonable office hours. The reasonable office hours must be posted. It requires the agency or official, when acknowledging the receipt of a request for public records, to provide a good faith estimate of when the response to the request will be complete. Although the time estimate is not binding, the agency or official must make a good faith effort to meet that time target.

The agency or official may not charge for inspection unless the requested public record is such that it cannot be inspected without being compiled or converted. If the agency or official must compile the record for inspection, then the agency or official may charge \$15 per hour, after the first hour, for the time it takes to enable inspection. If the agency or official must convert a public record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge for the actual cost to perform the conversion. The amendment increases the per hour cost for compiling a record from \$10 to \$15, after the first hour.

The amendment clarifies that a request for a public record does not have to be made in writing or in person. The

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amendment provides that an agency or official is not required to create a record that does not exist in response to a request for a public record.

The amendment clarifies that an agency or official is not required to provide a requester with access to a computer terminal.

The amendment requires an agency or official to provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

The amendment creates the position of public access officer and requires each state agency, county, municipality, school administrative unit and regional or other political subdivision to designate an existing employee to serve in that capacity as a resource for freedom of access questions. Requests for public records do not have to be made to the public access officer. The public access officer must undergo the same freedom of access training as elected officials.

The amendment requires government agencies, when making purchases of or contracting for computer software and other information technology resources, to consider maximizing public access to public records, as well as maximizing the exportability of public records while protecting confidential information.

The amendment includes funding for a full-time Assistant Attorney General to serve as a Public Access Ombudsman in the Office of the Attorney General.

The amendment adds an appropriations and allocations section.

Senate Amendment "A" To Committee Amendment "A" (S-599)

This amendment replaces the appropriations and allocations section to reduce the amount of funding provided in Committee Amendment "A" by the amount previously provided in Public Law 2011, chapter 655 for one part-time Assistant Attorney General position. Coupled with the funding in Public Law 2011, chapter 655, this provides funds for one full-time ombudsman position and related All Other costs.

See the bill summary for LD 1903 under the Joint Standing Committee on Appropriations and Financial Affairs for detail on Public Law 2011, chapter 655.

Enacted Law Summary

Public Law 2011, chapter 662 titles the Maine Revised Statutes, Title 1, chapter 13, subchapter 1 "the Freedom of Access Act."

Chapter 662 adds software to the description of information technology elements that are excepted from the definition of "public records" to clarify that proprietary information, technology infrastructure, systems and software used by governmental entities are not public records.

Chapter 662 repeals and replaces the current section of law that lays out the process and fees concerning inspecting and copying public records, although much of the current language is retained. It allows inspection and copying of public records during reasonable office hours. The reasonable office hours must be posted. It requires the agency or official, when acknowledging the receipt of a request for public records, to provide a good faith estimate of when the response to the request will be complete. Although the time estimate is not binding, the agency or official must make a good faith effort to meet that time target.

The agency or official may not charge for inspection unless the requested public record is such that it cannot be

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inspected without being compiled or converted. If the agency or official must compile the record for inspection, then the agency or official may charge \$15 per hour, after the first hour, for the time it takes to enable inspection. If the agency or official must convert a public record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge for the actual cost to perform the conversion. The per hour cost for compiling a record is increased from \$10 to \$15, after the first hour.

Chapter 662 clarifies that a request for a public record does not have to be made in writing or in person. An agency or official is not required to create a record that does not exist in response to a request for a public record. An agency or official is not required to provide a requester with access to a computer terminal.

Chapter 662 requires an agency or official to provide access to an electronically stored public record either as a printed document of the public record or in the medium in which the record is stored, at the requester's option, except that the agency or official is not required to provide access to an electronically stored public record as a computer file if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in or associated with that file.

Chapter 662 creates the position of public access officer and requires each state agency, county, municipality, school administrative unit and regional or other political subdivision to designate an existing employee to serve in that capacity as a resource for freedom of access questions. Requests for public records do not have to be made to the public access officer. The public access officer must undergo the same freedom of access training as elected officials.

Chapter 662 requires government agencies, when making purchases of or contracting for computer software and other information technology resources, to consider maximizing public access to public records, as well as maximizing the exportability of public records while protecting confidential information.

Chapter 662 includes funding for a half-time Assistant Attorney General to serve as a Public Access Ombudsman in the Office of the Attorney General. This funding, when combined with funding for a half-time position provided in Public Law 2011, chapter 655, provides funds for one full-time ombudsman position and related All Other costs.

LD 1530 An Act To Amend the Housing Provisions of the Maine Human Rights Act

PUBLIC 613

| <u>Sponsor(s)</u> | <u>Committee Report</u> | <u>Amendments Adopted</u> |
|-------------------|-----------------------------|---------------------------|
| HASTINGS | OTP-AM MAJ ONTP MIN | S-465 |

This bill was carried over from the First Regular Session of the 125th Legislature.

This bill amends the Maine Human Rights Act in order to maintain its substantial equivalency with the federal Fair Housing Act and to update the accessible building requirements in public housing.

Committee Amendment "A" (S-465)

This amendment is the majority report of the Joint Standing Committee on Judiciary.

This amendment revises the definition of "aggrieved person" to apply to persons aggrieved by unlawful housing discrimination differently than it applies to persons aggrieved by other kinds of discrimination under the Maine Human Rights Act. The bill's definition of "aggrieved person" includes any person who claims to have been subjected to unlawful discrimination; this covers unlawful discrimination in employment, housing, public accommodations, credit and education. The amendment alters the definition of "aggrieved person" with regard to