

**RIGHT TO KNOW ADVISORY COMMITTEE  
ENCRYPTION SUBCOMMITTEE**

DRAFT AGENDA

July 16, 2012

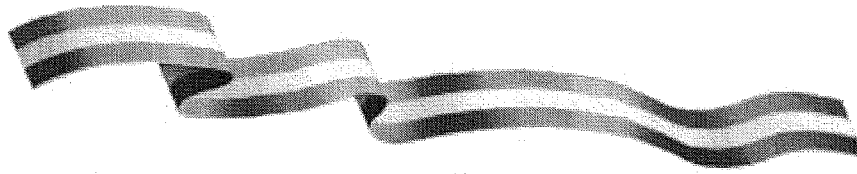
9:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions (Linda Pistner, Chair)
2. Presentations:  
Broadcasters (Suzanne Goucher, Maine Freedom of Information Coalition)  
Department of Public Safety (Lt. Colonel Ray Bessette)
3. Additional comments and discussion
4. Scheduling next meeting and agenda items

**Adjourn**



Maine Freedom of Information Coalition

PO Box 232  
Augusta, Maine  
04333

April 27, 2012

The Honorable David Hastings, Senate Chair  
The Honorable Joan Nass, House Chair  
Maine Right To Know Advisory Committee

Delivered via email

Dear Senator Hastings and Representative Nass:

An issue has come to our attention, and the members of the Maine Freedom of Information Coalition respectfully request that it be examined by the RTKAC when it reconvenes this summer.

The Federal Communications Commission has mandated that public safety agencies and other VHF and UHF land mobile spectrum users must migrate to narrower-bandwidth equipment by January 1, 2013. This shift is commonly known as “narrowbanding.” In Maine, this migration, called MSCommNet, is being managed by the state Office of Information Technology. Among the features being touted for MSCommNet is the following: “Local Control - Each state agency will be able to decide who can listen and speak on their talk group and can assign their own security settings.”<sup>1</sup>

It appears that public safety and other agencies in Maine and elsewhere are taking advantage of this “feature” by encrypting their radio transmissions<sup>2</sup>, making it impossible for anyone to “listen in” on a conventional public-safety radio scanner. Indeed, this debate has been raging elsewhere since before 9/11/01<sup>3</sup>, though it is relatively new to Maine.

While we recognize that there are legitimate public safety reasons for encrypting certain radio transmissions, such as for SWAT teams or hostage-response teams, we think a wholesale shift to

<sup>1</sup> Found at [http://www.maine.gov/oit/services/radio/mscommnet/faq/MsCommNet\\_flyer.pdf](http://www.maine.gov/oit/services/radio/mscommnet/faq/MsCommNet_flyer.pdf)

<sup>2</sup> For example, the Presque Isle police department has already migrated to an encrypted radio capability, with the Presque Isle fire department soon to follow. An encrypted system is also being used by the Caribou public works department. See <http://www.mainemediasources.com/ffj/02221201b.htm>

<sup>3</sup> See, for example, “Police Scanners in the Digital Age,” written in the summer of 2001, available at [http://www.rtdna.org/pages/media\\_items/police-scanners-in-the-digital-age181.php](http://www.rtdna.org/pages/media_items/police-scanners-in-the-digital-age181.php)

encryption of public safety radio transmissions raises several important freedom of information concerns:

- If such radio transmissions are encrypted, is it now, or will it become, illegal for members of the public to purchase scanners capable of decrypting them?
- If so, does this raise a concern that it has or will become illegal for citizens to monitor business conducted by public officials at public expense?
- What assurance will there be that the public will have access to the recordings, transcripts, or other public records of encrypted radio transmissions?
- What public safety concerns are raised by the inability of the news media to inform the public about breaking news or weather events that pose a risk to life or property if the media are unable to monitor public safety radio transmissions in real time?
- Is it possible to address the need for a limited amount of encryption capability by setting aside certain frequencies for this use, and keeping the remaining frequencies “in the clear”?

We offer the following in order to inform your discussion:

There is no HIPAA<sup>4</sup> implication in the move to encryption. HIPAA’s health information privacy provisions apply only to “covered entities,” which are defined in HIPAA rules<sup>5</sup> as follows:

*Covered entity means:*

*(1) A health plan.*

*(2) A health care clearinghouse.*

*(3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.*

Public safety agencies, such as ambulance services, thus are not covered by HIPAA’s privacy requirements.

There is nothing in the Federal Communications Commission’s rules for the narrowbanding migration, or in the Federal Emergency Management Agency’s grant guidance for funding for the migration, that requires a public safety agency to encrypt its radio transmissions. In fact, the U.S. Department of Homeland Security’s SAFECOM Program has published on its website a document from the Public Safety Wireless Network Program, titled Security Issues Report—Impediments and Issues on Using Encryption on Public Safety Radio Systems, which reaches this conclusion:

*The case for improved security in communications and system architecture through the use of encryption technologies still has not been made. Expense, coupled with the concern that less-than-ideal management resources and practices are available, remain significant reasons why radio system managers find it prohibitive to move encryption into their systems for consistently secured radio traffic.*

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<sup>4</sup> The Health Insurance Portability and Accountability Act of 1996 (HIPAA)

<sup>5</sup> 45 CFR 160.103, which can be viewed at <http://www.gpo.gov/fdsys/pkg/CFR-2007-title45-vol1/pdf/CFR-2007-title45-vol1-sec160-103.pdf>

The report is at <http://tinyurl.com/cbe4wna><sup>6</sup>.

In conclusion, we feel that “security” is not a suitable reason for public officials to draw the shade over an established source of sunshine. While many law enforcement agencies have argued that encrypted communications will keep their personnel safer and prevent criminals from monitoring their radio traffic, they have offered little hard evidence that those concerns outweigh the longstanding public interest in the openness of government activities. The secrecy that results from encrypted public safety information also impedes the public’s right to know about matters of public concern and activities that are funded with public dollars.

We thank you for your attention to the foregoing, and for your exemplary service to the people of Maine.

Very truly yours,

Suzanne D. Goucher  
President, MFOIC

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<sup>6</sup> The full link is: [http://www.safecomprogram.gov/SiteCollectionDocuments/Security\\_Issues\\_Report%20-%20Impediments\\_and\\_Issues\\_on\\_Using\\_Encryption\\_on\\_Public\\_Safety\\_Radio\\_Systems.pdf](http://www.safecomprogram.gov/SiteCollectionDocuments/Security_Issues_Report%20-%20Impediments_and_Issues_on_Using_Encryption_on_Public_Safety_Radio_Systems.pdf)

**State of Maine**  
**DEPARTMENT OF PUBLIC SAFETY**  
**OFFICE OF THE COMMISSIONER**

PAUL R. LEPAGE  
GOVERNOR

JOHN E. MORRIS  
COMMISSIONER

SENT VIA E-MAIL

May 31, 2012

**MAINE RIGHT TO KNOW ADVISORY COMMITTEE**

Attn: The Honorable David R. Hastings III, Senate Chair  
The Honorable Joan M. Nass, House Chair

**SUBJECT: LAW ENFORCEMENT AND PUBLIC SAFETY AGENCIES' ENCRYPTED RADIO COMMUNICATIONS MATTER**

Senator Hastings, Representative Nass:

I understand the Maine Right to Know Advisory Committee is creating a subcommittee to examine the concern recently raised by the Maine Freedom of Information Coalition regarding the imminent ability law enforcement and public safety agencies will have to digitally encrypt radio communications between such agencies.

Given the mission of the Maine Department of Public Safety, as well as the serious public safety, officer safety, and citizen privacy issues that would presumably be discussed in relation to this matter, I am respectfully requesting that at least one person from my department be appointed as an informal member to the Right to Know Advisory Committee's "Encryption Subcommittee" – this, to ensure that the multiple perspectives our agency has on this issue may be shared as the subcommittee and full committee consider this very important topic.

Respectfully,



JOHN E. MORRIS, COMMISSIONER  
MAINE DEPARTMENT OF PUBLIC SAFETY

**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
July 16, 2012  
1:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Shenna Bellows, Chair
  
2. Existing Exceptions Remaining from 125<sup>th</sup> Legislature
  - Title 22, section 8754, reporting of sentinel events
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act
  - Title 22, section 3188, related to the Maine Managed Care Insurance Plan
  - Title 22, section 3192, related to the Community Health Access Program
  
3. Review of Existing Exceptions –Titles 26 through 39-A
  
4. Public Comments About Existing Public Records Exceptions  
*Comment period expected to begin at 2:00 pm*
  
5. Scheduling future subcommittee meetings
  
6. Other?

**Adjourn**



**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
 Revised 7/6/2012 10:26 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	26	3	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM</li> <li>• DOL</li> </ul>			
2	26	43	Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards	• DOL			
3	26	665	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	• DOL			
4	26	685	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	• ? (employer)			
5	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>			
6	26	939	Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>			
7	26	1082	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	• DOL			



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8	27	121	Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	<ul style="list-style-type: none"> <li>• Maine State Library</li> <li>• Law and Legislative Reference Library</li> <li>• <i>UMS library</i></li> <li>• <i>MCCS library</i></li> <li>• <i>MMA library</i></li> <li>• <i>Public libraries?</i></li> </ul>			
9	27	377	Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research	<ul style="list-style-type: none"> <li>• Maine Historic Preservation Commission</li> <li>• Maine State Museum</li> </ul>			
10	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	• DAFS: BABLO			
11	29-A	152	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	• SOS		<ul style="list-style-type: none"> <li>• Estimate: 12-20 times per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	
12	29-A	253	Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	• SOS		<ul style="list-style-type: none"> <li>• Estimate: 12 times per year</li> <li>• NO CHANGE</li> </ul>	
13	29-A	255	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	• SOS		<ul style="list-style-type: none"> <li>• Estimate: 6-10 times per year</li> <li>• NO CHANGE</li> </ul>	

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14	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	• SOS	<ul style="list-style-type: none"> <li>• No request</li> <li>• NO CHANGE</li> </ul>		
15	29-A	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 1-2 every couple of years</li> <li>• NO CHANGE</li> </ul>		
16	29-A	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	• SOS	<ul style="list-style-type: none"> <li>• Estimate: daily</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>		
17	29-A	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	• SOS	<ul style="list-style-type: none"> <li>• Estimate: handful per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>		
18	30-A	1	Title 30-A, section 503, subsection 1, relating to county personnel records	• Counties – Joe Brown and Bow Howe?			
19	30-A	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	• Counties – Joe Brown and Bow Howe?			
20	30-A	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	• <i>Municipalities</i>			
21	30-A	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	• <i>Municipalities</i>			

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22	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	• Municipalities		
23	30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	• Municipalities		
24	32	85	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board	• Emergency Medical Services Board		
25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	• Emergency Medical Services Board		
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board		
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board		
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	• Emergency Medical Services Board		
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board		

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30	32	2105-A	3	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient	• Nursing Board		
31	32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	• Nursing Board		
32	32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	• Osteopathic Licensing Board		
33	32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	• Osteopathic Licensing Board		
34	32	3296		Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	• Medical Licensing Board		
35	32	3300-A		Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	• Medical Licensing Board		
36	32	6115	1	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters	• DPFR: Consumer Credit Regulation		
37	32	9418		Title 32, section 9418, relating to applications for private security guard license	• DPS		<ul style="list-style-type: none"> <li>• No experiences to discuss</li> <li>• NO CHANGE</li> </ul>

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38	32	11305	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	<ul style="list-style-type: none"> <li>• DPFR: Securities Regulation</li> </ul>			
39	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> <li>• Real Estate Commission</li> </ul>			
40	32	16607	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>• DPFR: Securities Regulation</li> </ul>			
41	33	1971	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	<ul style="list-style-type: none"> <li>• Treasurer</li> </ul>			
42	34-A	1212	Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	<ul style="list-style-type: none"> <li>• Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>• Approximately 10 times per year (during litigation)</li> <li>• NO CHANGE</li> </ul>		
43	34-A	1216	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	<ul style="list-style-type: none"> <li>• Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>• Requests are frequent; can be released to some requesters</li> <li>• NO CHANGE</li> </ul>		
44	34-A	1216	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	<ul style="list-style-type: none"> <li>• Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>• Requested occasionally</li> <li>• NO CHANGE</li> </ul>		

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45	34-A	5210	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• Requested 2-3 times per year</li> <li>• AMEND: clarify that applies regardless of entity advising Governor</li> </ul>		
46	34-A	9877	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
47	34-A	9903	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
48	34-B	1207	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client	• DHHS			
49	34-B	1223	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board	• DHHS			

**Public Records Exceptions Subcommittee**

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50	34-B	1931	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	<ul style="list-style-type: none"> <li>DHHS</li> </ul>			
51	34-B	3864	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch?</li> <li>DPS: State Police</li> </ul>	Judicial Branch <ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul> DPS: State Police:		
52	34-B	3864	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>			
53	34-B	5005	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism	<ul style="list-style-type: none"> <li>DHHS/Maine Disability Rights Commission</li> </ul>	Replaced 8/12 by §5005-A, sub-§5 (PL 2011, c. 657		
54	34-B	5475	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
55	34-B	5476	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
56	34-B	5605	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services	<ul style="list-style-type: none"> <li>DHHS</li> </ul>			
57	34-B	7014	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		

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58	35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC	• PUC		
59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division	• PUC		
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	• PUC		
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	• PUC		
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	• PUC		
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	• PUC		
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	• PUC		
65	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	• Dept. of Conservation • Maine Revenue Services	(added by PL 2011, c. 619)	
66	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	• <i>Municipal assessors</i>		



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67	36	581-G	3	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> </ul>		
68	36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	<ul style="list-style-type: none"> <li>Municipal officers</li> </ul>		
69	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>Municipal assessors</li> </ul>	(added by PL 2011, c. 618, §7)	
70	36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	<ul style="list-style-type: none"> <li>Wild Blueberry Commission</li> </ul>		
71	36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture	<ul style="list-style-type: none"> <li>Wild Blueberry Commission</li> <li>Dept. of Agriculture</li> </ul>		
72	36	6760		Title 36, section 6760, relating to employment tax increment financing	<ul style="list-style-type: none"> <li>DAFS –</li> <li>Commissioner</li> <li>State Tax Assessor</li> </ul>		
73	37-B	506		Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	<ul style="list-style-type: none"> <li>DVEM: Bureau of Veterans' Affairs</li> </ul>		
74	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>DVEM: MEMA</li> </ul>		

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75	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	• DVEM: MEMA		
76	38	100-A	1	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	• DOT: Marine Pilotage Commission		
77	38	345-A	4	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	• DEP • BEP		
78	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	• DEP • BEP		
79	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	• DEP		
80	38	585-B	6	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	• DEP		
81	38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	• DEP		
82	38	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

Revised 7/6/2012 10:26 AM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
83	38	1610	6-A	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP		
84	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP		
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP		
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board		
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board		
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	• Workers' Compensation Board		
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	• BOI		

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
90	39-A	403	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI			
91	39-A	409	Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	• BOI			

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**Sentinel Events**  
RTK AC 2011 recap

Public Records Exceptions Subcommittee  
September 29, 2011

54      22 MRSA §8754: *sentinel events*

Renee Guigard, Assistant Attorney General, engaged in a lengthy discussion with the Subcommittee members. She explained the sentinel events reporting program and explained the purpose of the complete confidentiality of the reports to the Sentinel Events Team within DHHS. “Sentinel events” are serious medical errors and must be reported by hospitals; failure to report may result in a fine of up to \$10,000 imposed by DHHS. The purpose of the reporting is to identify individual and systemic problems and to ensure the errors do not occur again. The only situation in which the confidential information is released is when it is determined the information indicates immediate jeopardy, in which case the Sentinel Events Team reports to the DHHS licensing office. The Department submits a report to the Legislature every year. DHHS is concerned that if the reports are not kept confidential, the hospitals will not report the occurrence of sentinel events, “near misses” or other instances which may or may not be sentinel events.

Sentinel event information reported to DHHS is not released to anyone, including law enforcement and family members of affected patients. Patients or their personal representatives may be able to receive specific information from the hospitals themselves, or from other sources. Information about the imposition of fines is not available. The licensing function carried out by DHHS is handled by a completely different office and there is no overlap or sharing of information (except in the case of immediate jeopardy).

Ms. Bellows was concerned that members of the public do not have information about possibly underperforming hospitals, and information that would be useful in making medical and economic decision is not available. Perry Antone understood both sides: there is an accountability factor and if the information is made public, events would not be reported; but after an investigation, there should be some information available that helps people make medical decisions. AJ Higgins mentioned that if people had known about the long-standing problems at Downeast Community Hospital, maybe they would have made different medical decisions. Linda Pistner agreed that people should have information and pointed out that the need to provide that information is addressed by the Maine Quality Forum that is part of Dirigo Health.

The Subcommittee voted to ask the full Advisory Committee for advice on how to proceed with the review and evaluation of the sentinel events confidentiality provisions.

November 17, 2011

54      22 MRSA §8754: *sentinel events*

At the Subcommittee’s invitation, representatives from the Department of Health and Human Services, Maine Hospital Association and Maine Medical Mutual Insurance



**Sentinel Events**  
RTK AC 2011 recap

Company provided their recommendation that the Subcommittee make no changes to current law. Mr. Austin explained that the current law works well; without the confidentiality provision, he believes that health care providers and professionals would be reluctant to report sentinel events to the detriment of patients. Mr. Austin explained that an injured patient or the patient's attorney would have access to the underlying facts associated with the patient's care through their medical records and other internal documents of a hospital as part of the legal process. Kevin Wells of the Department of Health and Human Services agreed with Mr. Austin that the statute should not be changed; the current law strikes the right balance between the public's right to know and open communication between hospitals and the department. Mr. Wells also pointed out that not all state laws relating to medical errors have a confidentiality statute like Maine; he believes the confidentiality provision makes the Maine law stronger.

Ms. Bellows and Mr. Brown expressed concerns that, under the current law, members of the public may not have enough information about underperforming hospitals; patients should have access to the best care possible.

Due to time constraints, the Subcommittee tabled the exception and asked staff to review other states laws for the next meeting.

December 8, 2012

54      22 *MRSA §8754: sentinel events*

The Subcommittee continued its discussion of Title 22, section 8754 relating to sentinel events. Staff reviewed sentinel events laws in other states and reported that, of the 27 states other than Maine that require reporting of sentinel events, 15 states make those reports confidential. Representatives from the Maine Hospital Association and the Department of Health and Human Services reiterated their prior recommendation that the Subcommittee make no changes to current law. It is their belief that the current law works well; without the confidentiality provision, health care providers and professionals would be reluctant to report sentinel events to the detriment of patients. Ms. Pistner reminded the Subcommittee that the provision does not deprive an individual patient from initiating a lawsuit or from accessing their own medical records relating to the event. Mr. Brown continued to raise his concern that, under the current law, members of the public may not have enough information about underperforming hospitals; patients should have access to the best care possible. AJ Higgins stated that the public should be made aware of these events, but recognizes the need for give and take between hospitals and the State to ensure reporting. Mr. Higgins asked whether there might be some middle ground: could hospitals be required to annually report their sentinel events? The Maine Hospital Association expressed some concern that individual hospital reporting may affect an individual's medical privacy, especially in smaller communities. Mr. Brown suggested that the Subcommittee consider tabling the exception so further discussion can take place.





**Sentinel Events**  
RTK AC 2011 recap

The Subcommittee voted 4-0 to make no change to Title 22, section 8754 at this time and to recommend that the Advisory Committee continue its review of the provision in 2012.

*Right to Know Advisory Committee*

December 8, 2011

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The Advisory Committee voted 14-0 to carry over Exception 54, to continue the discussion of Title 22, section 8754 in 2012.

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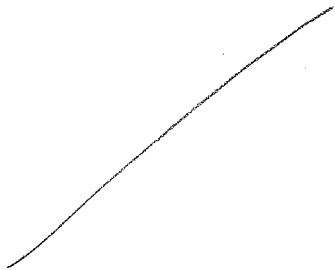
*Right to Know Advisory Committee*

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\*47914 22 M.R.S.A. § 8754

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 22. HEALTH AND WELFARE**  
**SUBTITLE 6. FACILITIES FOR CHILDREN AND ADULTS**  
**CHAPTER 1684. SENTINEL EVENTS REPORTING**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 8754. Division duties**

The division has the following duties under this chapter.

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

→ 3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

\*47915 (2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.



B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.

E. For the purposes of this subsection, "privileged and confidential information" does not include:

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State.

This subsection does not affect the obligations of the department relating to federal law.

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

**CREDIT(S)**

2001, c. 678, § 1, eff. May 1, 2003; 2009, c. 358, §§ 4 to 6.

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

2009 Legislation

Laws 2009, c. 358, § 4, rewrote subsec. 1, which formerly read:

**\*47916** "1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division."

Laws 2009, c. 358, § 5, in subsec. 3, in the introductory paragraph, deleted "of sentinel events" preceding "filed pursuant".

Laws 2009, c. 358, § 6, rewrote subsec. 4, which formerly read:

"4. Report. The division shall develop an annual report to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year. The report must be submitted by February 1st each

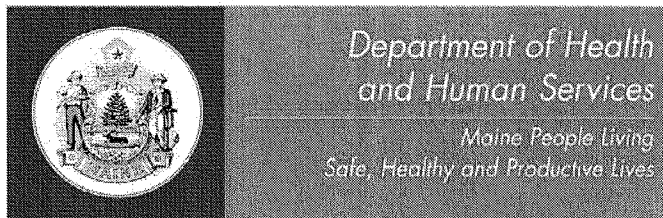
*year.*"



# Sentinel EVENTS

CY 2011

Annual Report to the Maine State Legislature



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Final Report June 2012

This report was prepared by:  
The Division of Licensing and Regulatory Services  
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This report may be found on the internet at:

[http://www.maine.gov/dhhs/dlrs/medical\\_facilities/sentinelevents/home.html](http://www.maine.gov/dhhs/dlrs/medical_facilities/sentinelevents/home.html)

The Maine Sentinel Event Reporting Statute may be found on the internet at:

<http://www.mainelegislature.org/legis/statutes/22/title22ch1684sec0.html>

The Rules Governing the Reporting of Sentinel Events may be found on the internet at:

<http://www.maine.gov/sos/cec/rules/10/144/144c114.doc>

## Executive Summary

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In 2002 Maine enacted Public Law 2001, Chapter 678 establishing a mandatory sentinel event reporting system. Since 2004 Maine Hospitals, Ambulatory Surgical Centers, End-Stage Renal Disease Facilities/Units, and Intermediate Care Facilities for Persons with Mental Retardation have been required to report whenever a serious, unexpected and preventable event, or medical error, known as a Sentinel Event, occurs. These events include unanticipated patient deaths, falls with significant injury, serious medication errors, patient suicide, surgery on the wrong body part, or an error resulting in a major loss of function. In 2011, 163 such cases were reported to the Maine Division of Licensing and Regulatory Services. The law further requires an annual report to the Legislature and public.

The number of cases reported, in and of itself, is not the most important information to focus on in this report. It is the lessons that are learned and the changes that are made as a result of these events that result in a safer environment for future patients.

In 2009 the statute requiring sentinel event reporting was amended to include new reporting requirements. Highlights of those changes include adoption of the National Quality Forum list of Serious Reportable Events and enhancements to the sentinel event definition to reduce ambiguity. Additionally, facilities are required to have standardized processes for the detection and reporting of all sentinel events.

In 2011 the most prevalent type of event reported was unanticipated death. Major loss of function and pressure ulcers came in as the second most reported event. Falls remain a high frequency event followed by retained foreign objects.

Every facility is required to conduct an in-depth analysis after every sentinel event. The facility gathers a Root Cause Analysis team and launches a review of why the event occurred, and what steps will be undertaken to prevent a recurrence. The Sentinel Event Team and facility staff will share findings to stimulate discussion in an effort to identify opportunities for system improvements. The final report is sent to the Division within 45 days of discovery of the sentinel event. The Sentinel Event Team analyzes all events for statewide trends and features. Results are then shared in the Sentinel Event Annual Report.

The Maine program has been enriched by our active participation in the National Quality Forum (NQF) and the Agency for Healthcare Research and Quality (AHRQ). The NQF and the AHRQ bring together the 27 states, including the District of Columbia, with mandatory sentinel event reporting requirements to collaborate in a national dialogue on priorities and goals to improve patient safety by preventing adverse events in healthcare.

## Background

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This report is submitted in accordance with Maine law (22 M.R.S.A. §§8751-8756) which requires the Division of Licensing and Regulatory Services (the Division) to annually report to the Legislature, health care facilities and the public on the aggregate number and type of sentinel events for the prior calendar year, rates of change, causative factors, and activities to strengthen patient safety in Maine. This report is designed to:

- Build awareness of Maine's sentinel event reporting requirements and the follow-up process used by facilities and the State when events occur;
- Provide aggregate information on the number and nature of sentinel events reported;
- Identify patterns and make recommendations to improve the quality and safety of patient care; and
- Describe efforts to address under-reporting and enhance the role of sentinel event reporting in improving patient safety.

### Definition of Sentinel Event

Sentinel events are outcomes determined to be unrelated to the natural course of the patient's illness or underlying condition, or proper treatment of that illness or underlying condition. The law further characterizes sentinel events as:

- Unanticipated death;
- A major permanent loss of function that is not present when the patient is admitted to the health-care facility;
- Surgery on the wrong patient or wrong body part;
- Hemolytic transfusion reaction involving administration of blood or blood products having blood group incompatibilities;
- Patient suicide, or attempted suicide resulting in serious disability;
- Infant abduction or discharge to the wrong family;
- Rape of a patient
- Unintended retention of a foreign object;
- Patient death or serious disability associated with a fall; or
- Death or significant injury of a patient or a staff member resulting from a physical assault

In 2010 the entire list of the National Quality Forum (NQF) Serious Reportable List was formally adopted as part of the statutory changes. NQF serious events are structured around six categories: surgical, product or device, patient protection, care management, environmental and potential criminal.

## National Quality Forum

The National Quality Forum (NQF) is a national, consensus-driven private-public partnership aimed at developing common approaches to identification of events that are serious in nature and have been determined to be largely preventable. (National Quality Forum, 2002)<sup>1</sup> Sometimes referred to as “never events,” the NQF list increasingly has become the basis for states’ mandatory reporting system. (Rosenthal, 2007)<sup>2</sup> The list of NQF serious events is intended to capture events that are clearly identifiable and measurable, largely preventable, and of interest to the public and other stakeholders. Comparability of definitions enhances clarity about what must be reported and provides benchmarks for comparing experiences across states.

## Reporting Requirements

Facilities must notify the Division within one business day of discovering an event. Through a confidential telephone exchange of information, the Sentinel Event Team determines whether the incident conforms to the statutory definition of a sentinel event. Upon confirmation that the event must be reported, the facility is required to submit a brief description of the incident via a restricted fax to the Division. A facility that knowingly violates any provision of the requirements is subject to a civil penalty.

Within 45 days of discovering a reportable event, the facility is required to share a written report with the State and the facility’s quality improvement committee describing key elements of the event, the circumstances surrounding its occurrence, the actions taken or proposed to prevent its recurrence, methods for communicating the event, and planned risk reduction actions.

The Sentinel Event Team may conduct an onsite review at each facility reporting a sentinel event to assess the incident and to ensure that all relevant factors are considered in the development of an action plan. The on-site review occurs shortly after the incident is first reported so that findings can be incorporated into the facility’s action plan. The facility’s Chief Executive Officer (CEO) is briefed during this time by the Sentinel Event Team to assure his/her active engagement in understanding factors leading to the event and plans for mitigating its recurrence. The entire medical record of the patient is reviewed during the site visit to identify contributing factors that may have gone unnoticed and have affected the outcome before, during and after an event. This process provides an independent assessment that augments the facility’s own internal review of the incident.

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<sup>1</sup> National Quality Forum. (2002). Serious reportable events in healthcare: A consensus report. Washington, DC: The National Quality Forum.

<sup>2</sup> Rosenthal, J. & Takach, M. (December 2007). 2007 guide to state adverse event reporting systems. (State Health Policy Survey Report, Vol. 1, No. 1). Portland, ME: National Academy for State Health Policy.  
[http://www.nashp.org/Files/shpsurveyreport\\_adverse2007.pdf](http://www.nashp.org/Files/shpsurveyreport_adverse2007.pdf)

Throughout their review of a sentinel event, the Sentinel Event Team studies relevant standards of care and evidence-based research to help inform their review of the facility's response to an event. Depending on the nature of the event, content experts may also be consulted to expand understanding of the possible system failures or other factors that may have contributed to a sentinel event.

Upon receipt of the facility's full written report, the Sentinel Event Team confirms that direct causal factors have been examined by the facility and that corrective actions are appropriate, comprehensive, and implemented. If the report is accepted, a letter attesting to that fact is sent to the facility's CEO. Should more information be required, a letter requesting specific details is sent to the Risk Manager with a copy to the CEO. When this report is complete, a final approval letter is sent to the facility. Should it be necessary, the Sentinel Event Team may return to the facility to follow-up on the implementation of the action plan. A flow chart diagramming the sentinel event case review process can be found in Appendix A.

Information collected on sentinel events and their reviews are entered into a confidential database. This database is the primary source for identifying and generating aggregate statistics and trends through the Annual Report.

### **Confidentiality Provisions**

By law, all sentinel event information submitted to the Division is considered privileged and confidential. No information about facilities or providers is discoverable or made public. A firewall is maintained between the sentinel event program and the survey unit that regulates facility licensing within the State. The Sentinel Event Team is responsible for reviewing the initial reported event, conducting on-site reviews, ensuring that all contributing factors to an event are identified, and that action plans are appropriate and implemented. The Sentinel Event Team is permitted to share information with the licensing team if it determines that a sentinel event represents immediate jeopardy to the public. The information shared is limited to the Conditions of Participation for the Medicare and Medicaid certification program that was impacted by the event. This ensures that the immediate jeopardy can be investigated and separate and public corrections be made to avoid harm to the public.



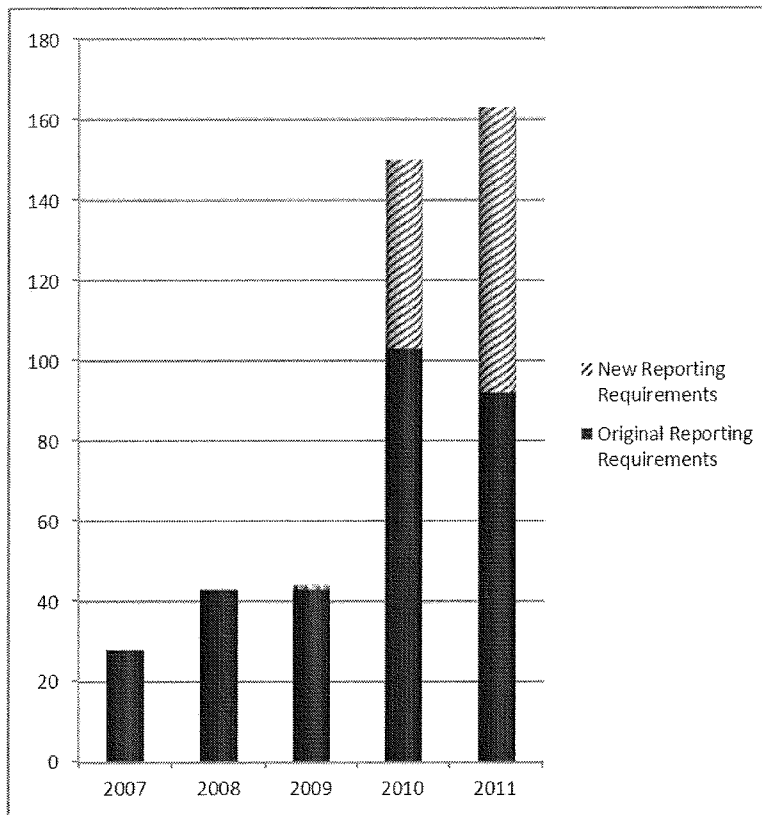
## Sentinel Events Historically Reported

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A total of 505 sentinel events have been reported to the Division since the initiation of the program in 2004. Following focused efforts to ensure that all facilities had a heightened awareness and full understanding of the reporting requirements, reporting began to increase in 2008 through 2011.

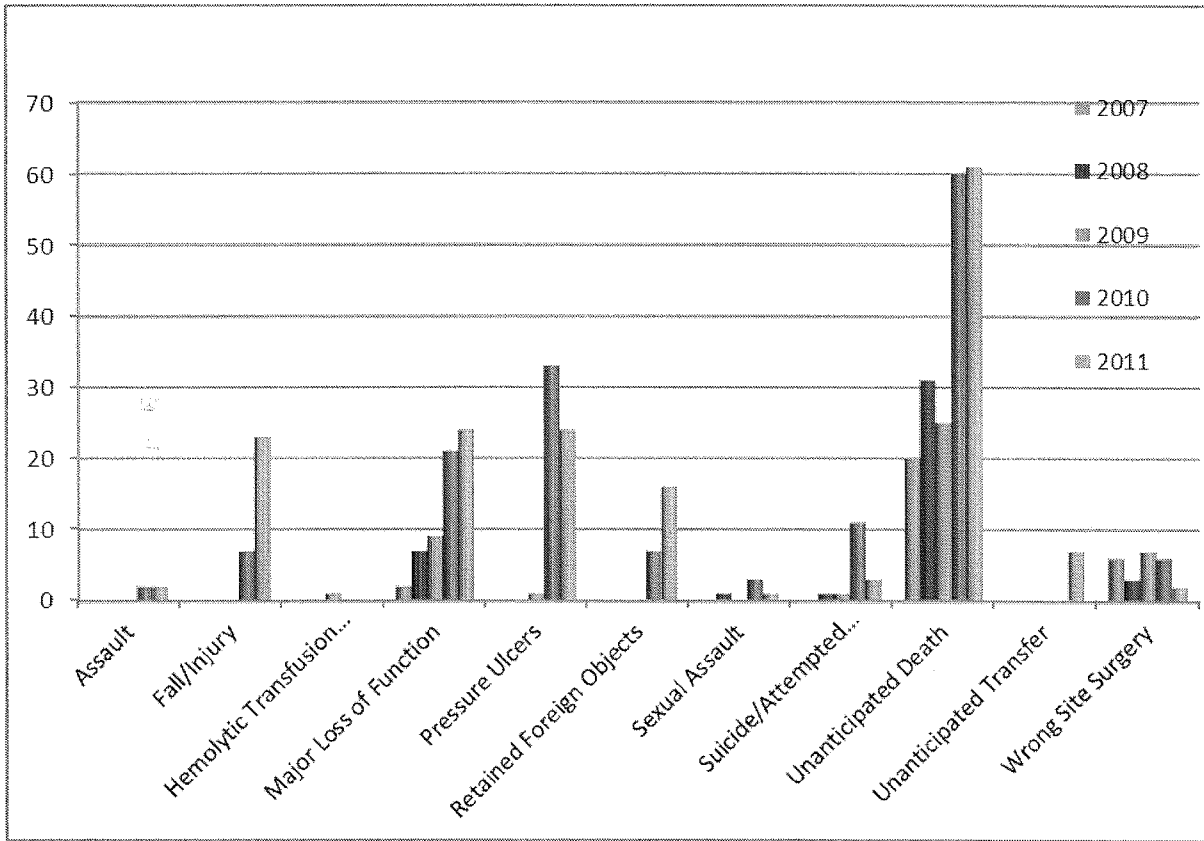
In 2010, a dramatic increase in sentinel event reporting occurred and continued through 2011. This spike in reports reflects a greater appreciation of the requirements and changes in the statutory requirements. There is also a growing awareness of the benefit of increased transparency with an emphasis on establishing a 'blame free' culture and a focus on systems improvements and reduction of the likelihood of a recurrence.

**Table 1. Sentinel Events Reported, by Year, 2007-2011**



Sentinel events reported during the period from 2004-2006 averaged approximately 25 sentinel events annually.

Table 2. Sentinel Events Reported, by Category, 2007-2011



	2007	2008	2009	2010	2011
Assault	0	0	0	2	2
Fall/Injury*	0	0	0	7	23
Hemolytic Transfusion Reaction	0	0	1	0	0
Major Loss of Function	2	7	9	21	24
Pressure Ulcers*	0	0	1	33	24
Retained Foreign Objects*	0	0	0	7	16
Sexual Assault	0	1	0	3	1
Suicide/Attempted Suicide	0	1	1	11	3
Unanticipated Death	20	31	25	60	61
Unanticipated Transfer	0	0	0	0	7
Wrong Site Surgery	6	3	7	6	2

\*New reporting requirements in 2010

During the 8 years of reporting sentinel events, hospitals have steadily increased participation in the program. By 2006, only 61% of all Maine hospitals had reported a sentinel event. By the end of 2010, 100% of the 41 acute care hospitals in Maine had reported at least one sentinel event. In 2011, there was a slight decline in the number of reporting facilities.

**Table 3. Reporting versus Non-Reporting Hospitals, 2007-2011**

	2007		2008		2009		2010		2011	
	No.	%	No.	%	No.	%	No.	%	No.	%
Reporting Hospitals	32	78%	33	80%	38	93%	41	100%	37	90%
Non-reporting Hospitals	9	22%	8	20%	3	7%	0	0%	4	10%
<b>Total</b>	<b>41</b>	<b>100%</b>	<b>41</b>	<b>100%</b>	<b>41</b>	<b>100%</b>	<b>41</b>	<b>100%</b>	<b>41</b>	<b>100%</b>

# Sentinel Events Reported in 2011

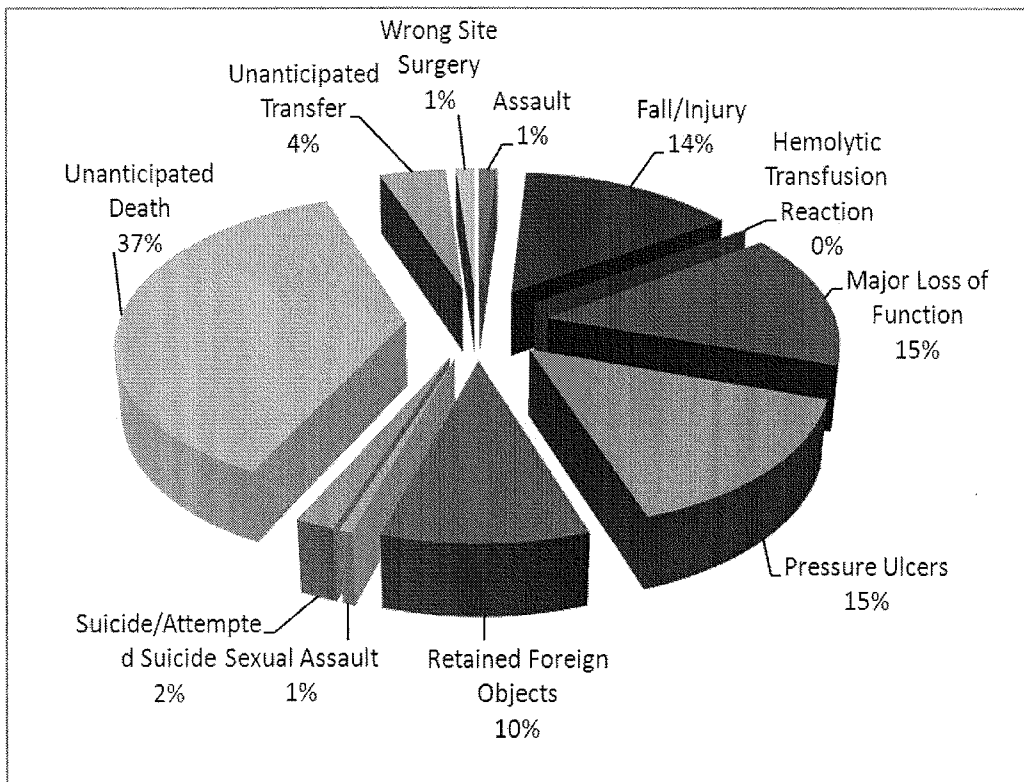
## NUMBER OF SENTINEL EVENTS REPORTED IN 2011

There were 163 sentinel events reported in 2011. This is a slight increase over the 150 reported events in 2010.

## CATEGORY OF SENTINEL EVENTS

Table 4 indicates sentinel events by category in 2011. Unanticipated deaths were reported in the majority of cases at 61 (37%). Pressure ulcers and major loss of function were the second leading events at 24 (15%) each.

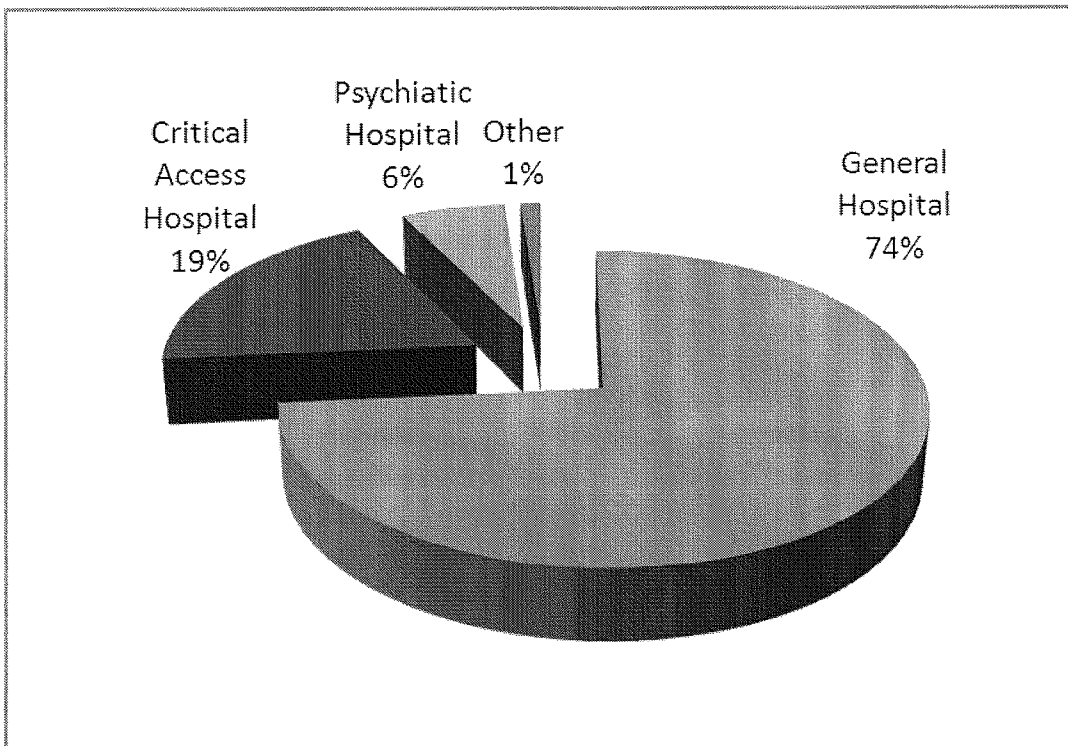
**Table 4. Sentinel Events Reported, by Category of Event, 2011**



**TYPE OF FACILITIES REPORTING SENTINEL EVENTS IN 2011**

In 2011, general hospitals represented 72.7% of the facilities that reported to the sentinel event program. Critical Access Hospitals accounted for 19.0 % and Psychiatric hospitals represented 6.1%, while ESRD (dialysis) facilities, Ambulatory Surgical Centers and ICF/MR facilities reported 1.2% of cases.

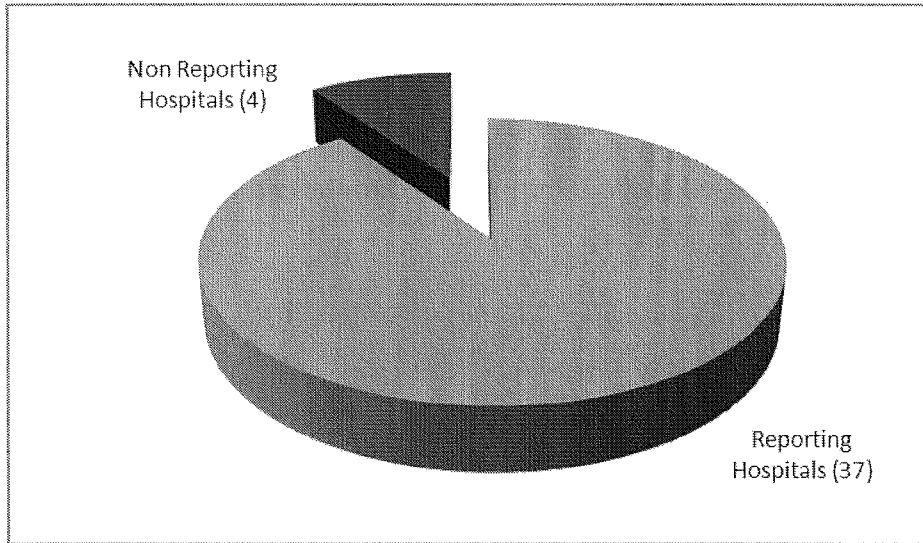
**Table 5. Sentinel Events Reported, by Facility Type, 2011**



**REPORTING VERSUS NON-REPORTING HOSPITALS, 2011**

As illustrated below, 90% of the 41 hospitals had reported a sentinel event to the Division for review in 2011.

Table 6. Reporting versus Non-Reporting Hospitals, 2011



## Conclusion

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Maine's sentinel event reporting system focuses on identifying and deterring serious, preventable incidents. Mandatory reporting is the primary tool for the State to hold facilities accountable for disclosing that an event has occurred and that appropriate action has been taken to remedy the situation. The system was designed to learn from mistakes, not punish individual practitioners or providers.

However, findings indicate that there is serious under-reporting in Maine.

To be effective, the system requires the participation of all hospitals and other reporting entities. Only by understanding the full scope of the problem can strategies be developed to improve patient safety throughout the State.

## Program Goals for 2012

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During 2012, the sentinel events program will work closely with hospitals and others to strengthen the reliability of reporting. To achieve this, the sentinel events program will do the following:

- Continue to utilize data from Maine's all-payer database to augment a review of events being reported.
- Work with the Maine Health Data Organization, the Maine Quality Forum and Maine hospitals to develop the analytical tools to identify reportable events that can reliably be detected through administrative data.
- Continue to perform on-site visits with hospitals and other facilities. This may include a review of documents to determine compliance with the Rules Governing the Reporting of Sentinel Events.
- Continue to assess the adequacy of a facility's internal systems for detecting and reporting events.
- Continue to analyze complaint data to determine if a situation reported as a complaint is a reportable sentinel event.

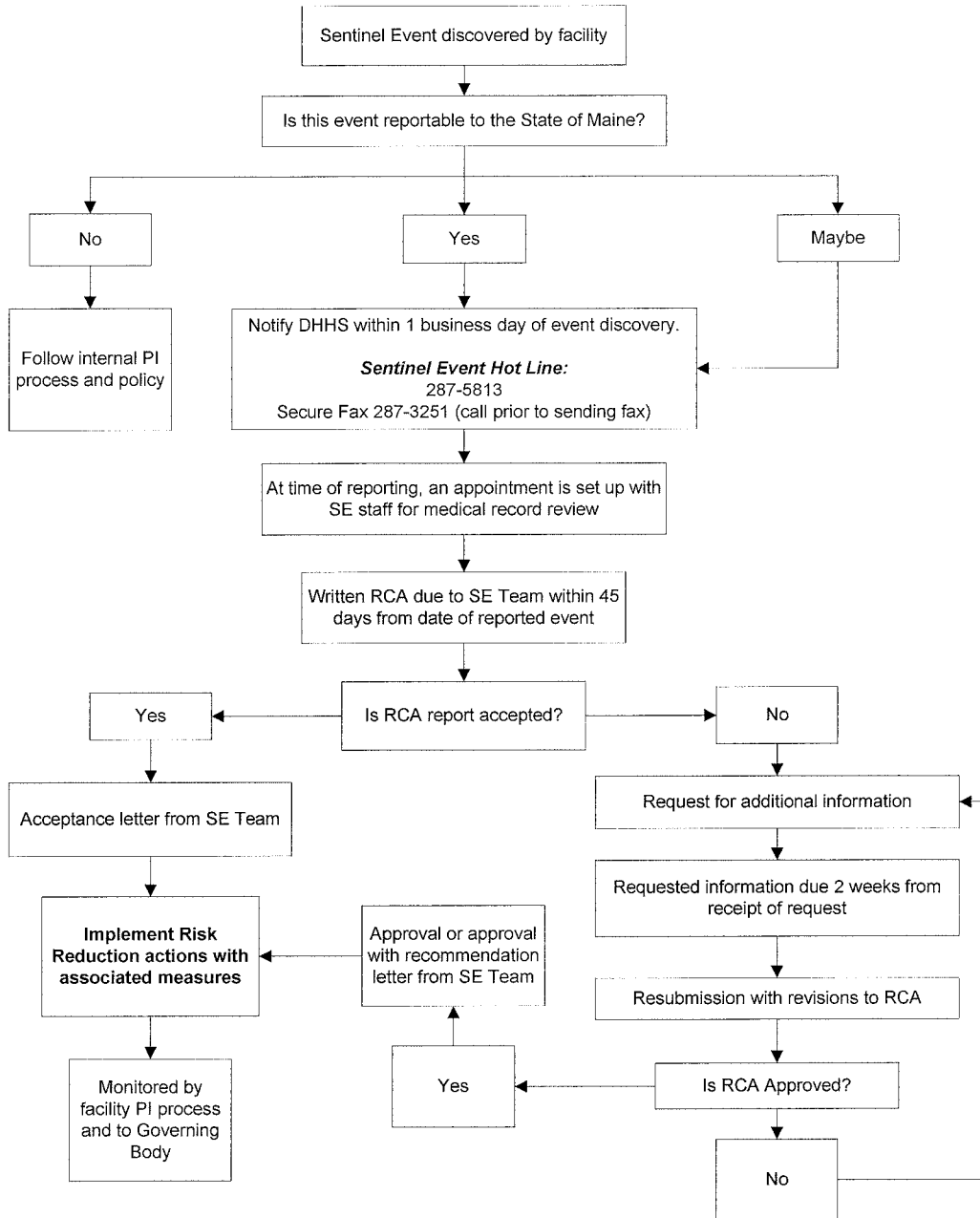
To achieve its goals, the Sentinel Events Program will continue to maintain ongoing communications with Maine hospitals, other licensed facilities and stakeholders regarding reporting requirements and lessons that can be learned to prevent events from being repeated. The Sentinel Events Program is committed to maintaining a non-punitive environment that allows for a collaborative approach for identifying serious adverse events and working toward joint solutions for reducing their occurrence.

The predominant goal of the Sentinel Events Program is to have a reporting system that helps facilitate the improvement of quality health care for all Maine's citizens.



Appendix A

State of Maine  
 Department of Health and Human Services  
 Division of Licensing and Regulatory Services  
**Sentinel Event Process Flow**



### Non-Discrimination Notice

The Department of Health and Human Services (DHHS) does not discriminate on the basis of disability, race, color, creed, gender, sexual orientation, age, or national origin, in admission to, access to, or operations of its programs, services, or activities, or its hiring or employment practices. This notice is provided as required by Title II of the Americans with Disabilities Act of 1990 and in accordance with the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, the Maine Human Rights Act and Executive Order Regarding State of Maine Contracts for Services. Questions, concerns, complaints or requests for additional information regarding the ADA may be forwarded to the DHHS ADA Compliance/EEO Coordinators, #11 State House Station, Augusta, Maine 04333, 207-287-4289 (V), or 287-3488 (V)1-888-577-6690 (TTY). Individuals who need auxiliary aids for effective communication in program and services of DHHS are invited to make their needs and preferences known to one of the ADA Compliance/EEO Coordinators. This notice is available in alternate formats, upon request.



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NICH I S. FARNHAM, District 32  
MARGARET M. CRAVEN, District 16

JANE ORBETON, Legislative Analyst  
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PETER C. STUCKEY, Portland

State of Maine  
ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE  
COMMITTEE ON HEALTH AND HUMAN SERVICES

January 25, 2012

Senator David R. Hastings, III, Chair  
Right to Know Advisory Committee  
13 State House Station  
Augusta, ME 04333

Re: Questions referred to the Health and Human Services Committee from the work of the Public Records Exceptions Subcommittee

Dear Senator Hastings:


The Health and Human Services Committee has considered three questions referred by the Right to Know Advisory Committee resulting from the work of the Public Records Exceptions Subcommittee. The HHS Committee has voted on all three questions and reports the following:

1. With regard to the Community-Right-to-Know Act, Title 22, sections 1696-D and 1696-F, the HHS Committee defers to the expertise and broader knowledge of the Environment and Natural Resources Committee.
2. With regard to the Maine Managed Care Insurance Plan, Title 22, section 3188, and the Community Health Access Program, Title 22, section 3192, the HHS Committee recommends that both sections be repealed in their entirety.
3. With regard to the Attorney General maintaining lists of licensed and unlicensed tobacco retailers pursuant to Title 22, section 1555-D, subsection 1, the HHS Committee recommends that subsection 1 be repealed.

Thank you for requesting the recommendations of the HHS Committee.

Sincerely,

  
Sen. Earle L. McCormick  
Senate Chair

  
Rep. Meredith N. Strang Burgess  
House Chair

c: Members, Health and Human Services Committee  
Sen. Thomas B. Saviello, Senate Chair, ENR Committee  
Rep. James M. Hamper, House Chair, ENR Committee  
Peggy Reinsch, OPLA  
Colleen McCarthy Reid, OPLA



\*44287 22 M.R.S.A. § 1696-D

MAINE REVISED STATUTES ANNOTATED  
TITLE 22. HEALTH AND WELFARE  
SUBTITLE 2. HEALTH  
PART 3. PUBLIC HEALTH  
CHAPTER 271. HEALTH PROGRAMS  
SUBCHAPTER 2. COMMUNITY HEALTH INVESTIGATION AND  
INFORMATION

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 1696-D. Response to requests**

When requested under this subchapter, the director shall provide, at a minimum, the identity of chemical substances in use or present at a specific location, unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director may provide information on the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

**CREDIT(S)**

1985, c. 494, § 2; 1999, c. 57, § B-3.

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

Laws 1999, c. 57, § B-3, in the first par., first sentence, substituted "is a trade secret" for "has been designated as a trade secret under Title 26, chapter 22", inserted the second sentence, and in the fourth sentence, substituted "the director's" for "his".

**REFERENCES**

**LIBRARY REFERENCES**

Environmental Law Ⓢ415.  
Westlaw Topic No. 149E.



\*44289 22 M.R.S.A. § 1696-F

**MAINE REVISED STATUTES ANNOTATED  
TITLE 22. HEALTH AND WELFARE  
SUBTITLE 2. HEALTH  
PART 3. PUBLIC HEALTH  
CHAPTER 271. HEALTH PROGRAMS  
SUBCHAPTER 2. COMMUNITY HEALTH INVESTIGATION AND  
INFORMATION**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 1696-F. Provision of information; trade secrets**

A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information, including routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record.

**CREDIT(S)**

*1985, c. 494, § 2; 1999, c. 57, § B-4.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

Laws 1999, c. 57, § B-4, in the first sentence, substituted "is a trade secret" for "has been registered as a trade secret under Title 26, chapter 22", added the second sentence, and in the third sentence, substituted "must" for "shall" and "is" for "shall be".

3





**Public Records Exceptions Subcommittee**  
Proposed draft language changes

**Exceptions # 18 and # 19 Community Right-to-know Act**

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**  
Proposed draft language changes

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about chemical substances in use or present at a specific location, unless the substance is a trade secret.~~ For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director may provide information on must include the identity of the chemical substance if it is not a trade secret, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director may withhold the identity of the chemical substance if it is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius

**Public Records Exceptions Subcommittee**  
Proposed draft language changes

of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

**22 §1696-E. Cooperation with state agencies**

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.

**22 §1696-F. Provision of information; trade secrets**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. The identity of a toxic or hazardous substance that is a trade secret is confidential; all other information provided is a public record. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public records, with the exception of the identity of substances when the identity is a trade secret. These amendments require the director to release the information that is public upon request.

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**\*45998 22 M.R.S.A. § 3188**

**MAINE REVISED STATUTES ANNOTATED  
TITLE 22. HEALTH AND WELFARE  
SUBTITLE 3. INCOME SUPPLEMENTATION  
PART 1. ADMINISTRATION  
CHAPTER 855. AID TO NEEDY PERSONS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 3188. Maine Managed Care Insurance Plan Demonstration for uninsured individuals**

1. Development of demonstration. The Department of Health and Human Services shall develop, implement and administer the Maine Managed Care Insurance Plan Demonstration for individuals without health insurance in one urban site, one rural site and one site as determined by the department. Expenditures may not be incurred relative to the development of the 3rd site unless resources other than the General Fund are received by the department for that purpose.

2. Targeted enrollment. The department shall target enrollment in this plan to low-income, non-Medicaid eligible individuals employed in groups of less than 15 and the self-employed. Individual or nongroup policies will not be offered through this program. Enrollment in this plan shall not be offered to any group where there has been a health plan offered at any time within the past 12 months or to any self-employed individual who has been covered by health benefits coverage at any time within the past 12 months; except that groups and individuals who were covered through the Medicaid program or who had health benefits and lost that coverage involuntarily and who otherwise would be eligible for the Maine Managed Care Insurance Plan Demonstration are eligible for enrollment.

The intent of this demonstration is to provide access to health benefits to those for whom financial barriers preclude the purchase of the coverage. Eligibility criteria for the Maine Managed Care Insurance Plan Demonstration shall be developed by the department based upon the advice of The Robert Wood Johnson Foundation's grant advisory committee.

3. Report. The Department of Health and Human Services shall prepare and submit to the joint standing committees of the 114th Legislature having jurisdiction over banking and insurance; human resources; and appropriations and financial affairs, a report on the Maine Managed Care Insurance Plan Demonstration during the 3rd year of the demonstration project. This report shall include, but not be limited to, the following information.

\*45999 A. An assessment of the demonstration's success in providing cost effective affordable insurance coverage for acute and primary care services for the target population;

B. An assessment of whether the demonstration should be continued, expanded incrementally to additional areas of the State, made a statewide project or discontinued; and

C. An assessment of plan contracting and competitive bidding options and a review of options for program structure as a fully public or semipublic entity.

4. Confidentiality of records. The following medical or financial information concerning applicants to

the Maine Managed Care Insurance Plan Demonstration shall be considered confidential as follows.

A. All department records that contain information regarding the identity, medical status or financial resources of particular individuals applying for health insurance coverage under the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with the written authorization of the applicant.

B. All department records that contain information regarding the identity or financial resources of a business or business owner applying for enrollment in the Maine Managed Care Insurance Plan Demonstration are confidential and subject to release only with written authorization of an authorized representative of the applicant's business.

**CREDIT(S)**

*1987, c. 349, § H, 14, eff. June 18, 1987; 1987, c. 888, eff. Sept. 23, 1988; 1989, c. 175, § 3; 1989, c. 905, eff. April 24, 1990; 2003, c. 689, § B-6, eff. July 1, 2004.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

1987 Legislation

Laws 1987, c. 888, repealed and replaced subsec. 2, which prior thereto read:

"The department shall target enrollment in this plan to low-income non-Medicaid eligible individuals, both employed and unemployed, who cannot afford to purchase individual or group coverage themselves. Enrollment in this plan shall not be offered to any of the following who have been covered by health benefits coverage at any time within the past 12 months: Groups, individuals within groups and individuals, with the exception of individuals who were covered by Medicaid and individuals who had health benefit coverage and who have lost that coverage involuntarily and who otherwise would be eligible for the Maine Managed Care Insurance Plan Demonstration. For this 3-year demonstration, this health insurance plan shall be exempt from the provision of Title 24, chapter 19 and Title 24-A, the Maine Insurance Code.

**\*46000** "The intent of this demonstration is to provide access to health benefits to those for whom financial barriers preclude the purchase of the coverage. Eligibility criteria for the Maine Managed Care Insurance Plan Demonstration shall be developed by the department based upon the advice of The Robert Wood Johnson Foundation's grant advisory committee."

1989 Legislation

Laws 1989, c. 175, § 3, enacted subsec. 4.

Laws 1989, c. 905, in subsec. 1, substituted reference to Maine Managed Care Insurance Plan Demonstration for Maine Managed Care Health Insurance Demonstration, included one site as determined by the department, and provided that expenditures may not be incurred relative to the development of the 3rd site unless resources other than the General Fund are received by the department for that purpose.

2003 Legislation

Laws 2003, c. 689, § B-6, provides:

"Sec. B-6. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words 'Department of Human Services' or 'Department of Behavioral and Developmental Services' appear or reference is made to either of those departments with reference to the duties transferred to the Department of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, 'Department of Health and Human Services.' The Revisor of Statutes shall implement this revision when updating, publishing or republishing statutes."

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\*46005 22 M.R.S.A. § 3192

**MAINE REVISED STATUTES ANNOTATED  
TITLE 22. HEALTH AND WELFARE  
SUBTITLE 3. INCOME SUPPLEMENTATION  
PART 1. ADMINISTRATION  
CHAPTER 855. AID TO NEEDY PERSONS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session of the 125th Legislature*

**§ 3192. Community Health Access Program**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Benefit design" means the health care benefits package provided through the Community Health Access Program.
- B. "Community board" means the local governing board of a community health plan corporation.
- C. "Community health plan corporation excess insurance" means insurance that protects a plan offered by a community health plan corporation against higher than expected obligations at retention levels that do not have the effect of making the plan an insured plan. The issuance of community health access program excess insurance does not constitute the business of reinsurance.
- D. "Complementary health care provider" means a health care professional, including, but not limited to, a massage therapist, naturopath, chiropractor, physical therapist or acupuncturist, who provides care or treatment to a person that complements the care or treatment provided by a primary care physician and is credentialed by a community board.
- E. "Health quality measures" means statistical data that provides information on the quality of health care outcomes for individuals and groups with similar health problems.
- F. "Medical data collection system" means the computerized, systematic collection of individual medical data, including the cost of medical care, that when analyzed provides information on the quality and costs of health care outcomes.
- G. "Micro-employer" means an employer that has an average of 4 or fewer employees eligible for health care benefits in the 12 months preceding its enrollment in a plan offered by a community health plan corporation.
- H. "Out-of-area medical services" means medical care services provided outside of the geographic region of a community health plan corporation.
- \*46006 I. "Program" means the Community Health Access Program established in this section.



2. Program established. The Community Health Access Program is established within the department to provide comprehensive health care services through local nonprofit community health plan corporations governed by community boards. The program's primary goal is to provide access to health care services to persons without health care insurance or who are underinsured for health care services. The purpose of the program is to demonstrate the economic and health care benefits of a locally managed, comprehensive health care delivery model. The program's emphasis is on preventive care, healthy lifestyle choices, primary health care and an integrated delivery of health care services supported by a medical data collection system.

3. Service areas. The department may establish 2 service areas for local plans developed by community health plan corporations in different geographic regions of the State. A service area established by the department must be an area that serves residents who seek regular primary health care services in conjunction with support from a hospital located in the same geographic region.

4. Eligible population. This subsection governs eligibility.

A. The following persons may enroll in plans developed by community health plan corporations:

- (1) Micro-employers and their employees;
- (2) Medicaid recipients;
- (3) Self-insured employers and their employees to the extent allowed under the federal Employee Retirement Income Security Act;
- (4) Self-employed persons; and
- (5) Individuals without health care insurance.

B. Individuals eligible for group health care benefits through an individual's employment or spouse's employment may not enroll.

5. Community boards. A local community health plan corporation established pursuant to this section is governed by a community board composed of community members. The board membership must include representation of primary and complementary health care providers, mental health care providers, micro-employers and individuals enrolled in a plan offered by the community health plan corporation. The community boards shall establish bylaws and operating procedures.

**\*46007** 6. Authorized powers. A local community health plan corporation may:

- A. Develop a comprehensive health care benefit package that may include, but is not limited to, primary and tertiary health care services, mental health services, complementary health care services, preventive health care services, healthy lifestyle services and pharmaceutical services;
- B. Develop medical data collection systems that will provide the program with the information necessary to support medical management strategies and will determine the costs and quality outcomes for the services provided;
- C. Establish a fee structure sufficient to cover the actuarially determined costs of the comprehensive health care benefit package offered;

- D. Develop a sliding fee schedule based on income to ensure that the fees are affordable for individuals covered by a plan offered by the community health plan corporation. The corporations are further authorized to establish mandatory minimum contributions by employers;
- E. Collect fees from enrolled individuals and employers;
- F. Solicit and accept funds from private and public sources to subsidize the corporation;
- G. Develop community preventive care education and wellness programs. A corporation may coordinate its community preventive care education and wellness programs with schools, employers and other community institutions;
- H. Enter into agreements with the department to provide care for individuals covered by the department's Medical Assistance Program in its geographic region and to develop methods to share access to medical information necessary for the program's medical data collection system; and
- I. Enter into agreements with 3rd parties to provide needed services, including, but not limited to, administration, claims processing, customer services, stop-loss insurance, education, out-of-area medical services and other related services and products.

7. Community health plan corporation excess insurance. In order to ensure adequate financial resources to pay for medical services allowed in the benefit plans developed by community health plan corporations, a local community health plan corporation is required to enter into agreements with insurers licensed in this State to obtain community health plan corporation excess insurance and to provide coverage for those portions of the health care benefits package that expose the corporations to financial risks beyond the resources of the corporation. The department may develop rules to provide further options for community health plan corporations to maintain financial solvency. Participation in the Medicaid program satisfies the requirement of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**\*46008** 8. Cost-sharing agreements. A local community health plan corporation may enter into agreements with private health insurance carriers or the Medicaid program in accordance with the following.

- A. A local community health plan corporation may enter into agreements with private health care insurers to cover individual medical costs associated with all or a portion of the costs resulting from the benefit plan or benefit plans offered by the community health plan corporation.
- B. A local community health plan corporation may enter into agreements with the department to access Medicaid coverage for all or a portion of the individual medical costs resulting from the benefit plan or benefit plans offered by the local community health plan corporation.
- C. The department may seek a waiver from the Federal Government as necessary to permit funding under the Medicaid program to be used for coverage of Medicaid-eligible individuals enrolled in a plan offered by a community health plan corporation. The department may adopt rules required to implement the waiver in accordance with this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

9. Medical and cost data. If Medicaid-eligible individuals are enrolled in the program, the department shall provide medical and cost data to each local community health plan corporation at the community health plan corporation's request in a format usable by the community health plan corporation's medical data collection system for the analysis of health care costs and health care outcomes.

10. Dissolution or sale. Upon the dissolution, sale or other distribution of assets of a local community health plan corporation, the community board may convey or transfer the assets of the corporation only to one or more domestic corporations engaged in charitable or benevolent activities substantially similar to those of the community health plan corporation.

11. Annual reports. A local community health plan corporation established pursuant to this section shall submit a written report to the commissioner on or before January 21st annually. The report must address the financial feasibility, fee structure and benefit design of the plan offered by the community health plan corporation; the health quality measures, health care costs and quality of health care outcomes under the plan; and the number of persons enrolled in the plan. The commissioner may require more frequent reports and additional information. Annually, before March 15th of each year, the department must submit a report summarizing the plan's demonstrated effectiveness to the joint standing committees of the Legislature having jurisdiction over banking and insurance matters and health and human services matters.

\*46009 12. Not subject to Title 24 or Title 24-A. A local community health plan corporation established pursuant to this section is not subject to any provisions of Title 24 or Title 24-A.

13. Confidentiality. All information in the medical data collection system maintained by a local community health plan corporation established under this section is confidential and may not be disclosed except as permitted by sections 1711-C and 1828.

14. Rules. The department shall adopt rules establishing minimum standards for financial solvency, benefit design, enrollee protections, disclosure requirements, conditions for limiting enrollment and procedures for dissolution of a community health plan corporation. The department may also adopt any rules necessary to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The department shall begin preparing the rules required under this subsection no later than January 1, 2007.

**CREDIT(S)**

*2001, c. 439, § BBB-1, eff. July 1, 2002; 2003, c. 428, §§ I-1 to I-3, eff. June 5, 2003; 2003, c. 688, § K-1, eff. May 6, 2004.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

Laws 2001, c. 439, § KK-2, provides:

"Sec. KK-2. Application. This Act applies to tax years beginning on or after January 1, 2001."

Laws 2001, c. 439, § OOO-16, provides:

"Sec. OOO-16. Nonseverability. Notwithstanding the provisions of the Maine Revised Statutes, Title 1, section 71, if any provision of this Act or its application is held invalid, it is the intent of the Legislature that the entire Act is invalidated."

Another § 3192, as added by Laws 2001, c. 450, § B-2, was reallocated to 22 M.R.S.A. § 3193 by Revisor's Report 2001, c. 1,

13

§ 27.

Laws 2003, c. 428, § 1-1, in subsec. 7, in the fourth sentence, substituted "subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A." for "subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over health insurance matters."

**\*46010** Laws 2003, c. 428, § 1-2, in subsec. 8, par. C, in the third sentence, substituted "paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A." for "paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over health insurance matters."

Laws 2003, c. 428, § 1-3, in subsec. 14, in the third sentence, substituted "subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A." for "subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over health insurance matters."

2003 Legislation

Laws 2003, c. 688, § K-1, in subsec. 14, added the fourth sentence.

**REFERENCES**

**LIBRARY REFERENCES**

Health ↻ 460, 464, 466 to 471.  
Westlaw Topic No. 198H.



\*49329 23 M.R.S.A. § 4251

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 5. PUBLIC-PRIVATE PARTNERSHIPS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4251. Public-private partnerships; transportation projects**

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

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement.

2. Applicability. This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

3. Authorization. Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

\*49330 4. Standards for review. Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department.

B. The private entity must have the financial, technical and operational capacity to discharge the

responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting.

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department.

D. The proposal must be cost-effective in the long term.

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration.

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement.

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4.

**\*49331** I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures.

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility.

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department.

L. The proposal and transportation facility are in the best interest of the public.

5. Proposal and selection processes; solicited and unsolicited. The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal.

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations.

\*49332 C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal.

6. Tolls; fares. An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F.

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry.

C. The agreement must include provisions governing changes in tolls or fares.

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement.

7. Exercise of powers. If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.



8. Term of agreement. An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

9. Legislative approval. If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

10. Confidentiality of proposals and negotiations. All records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under this subchapter are confidential and not subject to public review until the department determines that the proposal meets the standards of this subchapter or until the proposal is finally rejected by the department.

**\*49333** 11. Report of proposals. By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

12. Rules. The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [FN1]

**CREDIT(S)**

2009, c. 648, § A-1.

[FN1] 5 M.R.S.A. § 8071 et seq.

<General Materials (GM) - References, Annotations, or Tables>

\*49325 23 M.R.S.A. § 4244

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 4. CONTRACTS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4244. Design-build contracting**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Best value" means the highest overall value to the State, considering quality and cost.

B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services.

C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents.

D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product.

E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions.

F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.

G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county.

H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State.

\*49326 2. Authorization. Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the

quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

3. Prequalification. A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals. The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

4. Request for proposals. If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

\*49327 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.



6. Best-value award. If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

7. Procurement disputes. The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

**CREDIT(S)**

2009, c. 648, § B-2.

<General Materials (GM) - References, Annotations, or Tables>



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State of Maine  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
COMMITTEE ON TRANSPORTATION

TO: Senator Lawrence Bliss, Chair  
Representative Charles R. Priest, Chair  
Joint Standing Committee on Judiciary

FROM: Dennis S. Damon, Senate Chair *DS*  
Edward J. Mazurek, House Chair *EJM*  
Joint Standing Committee on Transportation

DATE: March 4, 2010

RE: Public Records Exception Review

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The Transportation Committee has voted unanimously in favor of an amended version of LD 1639, "An Act to Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs." The amendment includes provisions that provide for confidential treatment of certain information. Pursuant to Title 1, §434, we are requesting a review by your committee of those provisions.

Attached is the amendment. Part A of the amendment allows the Department of Transportation to receive and solicit proposals and enter into contractual agreements with private entities for the building, leasing or financing of certain transportation facilities. The amendment applies to proposals and agreements to form public-private partnerships when the initial capital cost of the project is at least \$25 million, or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls.

Part A of the amendment (or the proposed Title 23, §4251, sub-§10) proposes that all records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda, or other materials prepared, used or submitted in connection with any proposal considered under the public-private partnership provisions are confidential and not subject to public review until the department determines that a proposal meets the standards set forth in the public-private partnership statute, or until the department finally rejects the proposal. Upon the occurrence of either event, all records and other materials in connection with the proposal or agreement are no longer confidential and are subject to public review.

Part B of the amendment revises the current design-build procurement statute of the Department of Transportation and moves the statute to a new chapter within Title 23. Part B also includes confidentiality provisions; however, these provisions are in current law and simply moved to a new section of law. You will find those confidentiality provisions in the proposed Title 23, §4244, sub-§3 (prequalification) in the second paragraph; sub-§4 (request for proposals); and sub-§6 (best-value award) in the second paragraph.

If you have any questions, please don't hesitate to contact us.

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L.D. 1639

Date:

(Filing No. H- )

**TRANSPORTATION**

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " " to H.P. 1167, L.D. 1639, Bill, "An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'PART A**

**Sec. A-1. 23 MRSA c. 410, sub-c. 5 is enacted to read:**

**SUBCHAPTER 5**

**PUBLIC-PRIVATE PARTNERSHIPS**

**§4251. Public-private partnerships; transportation projects**

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

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

1 D. "Transportation facility" means a facility that is or if developed would be within  
2 the jurisdiction of the department including a highway, bridge, railroad line, pier,  
3 airport, trail, ferry vessel, building or other improvement.

4 2. **Applicability.** This subchapter applies to a proposal or agreement for a private  
5 entity to form a public-private partnership when the department estimates that the initial  
6 capital cost of a project is \$25,000,000 or more or when the proposal includes placing  
7 tolls on existing transportation facilities that were not previously subject to tolls. Nothing  
8 in this section is intended to prohibit or otherwise affect programs that do not meet the  
9 criteria of this subsection.

10 3. **Authorization.** Notwithstanding any other provision of law, the department is  
11 authorized to receive or solicit proposals to form a public-private partnership with respect  
12 to a transportation facility. Proposals must be reviewed in accordance with this  
13 subchapter. Upon approval of the Legislature as provided in this subchapter, the  
14 department may enter into an agreement.

15 4. **Standards for review.** Before submitting a proposal to the Legislature for  
16 approval the department must find that the proposal meets the following standards.

17 A. The purpose of and need for the transportation facility must be consistent with the  
18 long-term planning of the department.

19 B. The private entity must have the financial, technical and operational capacity to  
20 discharge the responsibilities set forth in the proposal cost-effectively and responsibly  
21 as determined by the department. This capacity must include, but is not limited to,  
22 meeting department prequalification standards for professional engineering services  
23 and general contracting.

24 C. The proposed transportation facility must be owned, controlled, operated and  
25 maintained in a manner satisfactory to the department.

26 D. The proposal must be cost-effective in the long term.

27 E. The proposal must limit the use of state capital funding to less than 50% of the  
28 initial capital cost of the transportation facility and to the extent practicable minimize  
29 the use of transportation funding sources such as the Highway Fund, general  
30 obligation bonds supported by the Highway Fund, the TransCap Trust Fund under  
31 Title 30-A, section 6006-G and program funding provided by the Federal Highway  
32 Administration.

33 F. If the proposed transportation facility is to be supported by tolls or other user fees,  
34 the private entity must provide a traffic and revenue study prepared by an expert  
35 acceptable to the department and national bond rating agencies. The private entity  
36 must also provide a finance plan consistent with the traffic and revenue study that  
37 identifies the proposal costs, revenues by source, financing, major assumptions,  
38 internal rate of return on private investments and whether any government funds are  
39 assumed to deliver a cost-feasible project and that provides a total cash flow analysis  
40 beginning with implementation of the project and extending for the term of the  
41 agreement.



- 1           G. The proposal must demonstrate safeguards adequate to ensure that no significant  
2           additional costs or service disruptions would be borne by the traveling public and  
3           residents of the State if the private entity defaults or cancels the agreement.
- 4           H. The proposal must include provisions guaranteeing performance by the private  
5           entity and payment of subcontractors, including, but not limited to, performance and  
6           payment bonds, letters of credit, parent company guarantees and lender and equity  
7           partner guarantees.
- 8           I. The proposal and the transportation facility must comply with all requirements of  
9           applicable federal, state and local laws and department rules, policies and procedures.
- 10          J. The proposal must identify the law enforcement jurisdictions and responsibilities  
11          relative to the transportation facility.
- 12          K. The proposal must provide that all reasonable costs of substantially affected local  
13          governments and utilities related to the transportation facility are borne by the private  
14          entity or are otherwise provided for to the satisfaction of the department.
- 15          L. The proposal and transportation facility are in the best interest of the public.
- 16          **5. Proposal and selection processes; solicited and unsolicited.** The department  
17          may request proposals from private entities for a public-private partnership for a  
18          transportation facility or may accept unsolicited proposals pursuant to this subsection.
- 19            A. If the department receives an unsolicited proposal and determines that it meets the  
20            standards in this subchapter, the department shall publish a notice of the receipt of the  
21            proposal on the department's publicly accessible website or through advertisements in  
22            newspapers. If a notice is published exclusively in newspapers, the notice must  
23            appear in 2 or more public newspapers circulated wholly or in part in the State and in  
24            one public newspaper circulated wholly or in part in the county where the proposed  
25            transportation facility is to be located if any such newspaper is circulated in that  
26            county. The notice must provide that the department will accept, for 120 days after  
27            the initial date of publication, proposals meeting the standards in subsection 4 from  
28            other private entities for transportation facilities that satisfy the same basic purpose  
29            and need. A copy of the notice must be mailed to each local government in the area  
30            affected by the proposal.
- 31            B. After the proposal or proposals have been received, and any public notification  
32            period has expired, the department shall rank the proposals in order of preference. In  
33            ranking the proposals, the department may consider factors that include, but are not  
34            limited to, professional qualifications, general business terms, innovative engineering  
35            or cost-reduction terms, finance plans and the need for state funds to deliver the  
36            project and discharge the agreement. The department shall undertake negotiations  
37            with the private entity submitting the 1st-ranked proposal. If the department is not  
38            satisfied with the results of the negotiations, the department may, at its sole  
39            discretion, terminate negotiations with that entity and the department may negotiate  
40            with the other entities in order of the ranking of their proposals. If only one proposal  
41            is received, the department shall negotiate in good faith and, if the department is not  
42            satisfied with the results of the negotiations, the department may, at its sole  
43            discretion, terminate negotiations.

1 C. The department may require that the private entity assume responsibility for all  
2 costs incurred by the State or local governments before execution of the agreement,  
3 including costs of retaining independent experts to review, analyze and advise the  
4 department with respect to the proposal.

5 **6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or  
6 fares for the use of the transportation facility. The following provisions apply to such an  
7 agreement.

8 A. The agreement must be consistent with the traffic and revenue study required  
9 under subsection 4, paragraph F.

10 B. The agreement must ensure that the transportation facility and any related toll  
11 facility are properly operated and maintained in accordance with department  
12 standards or standards generally accepted in the transportation industry.

13 C. The agreement must include provisions governing changes in tolls or fares.

14 D. The department may require provisions in the agreement that ensure that a  
15 negotiated portion of revenues from a toll-generating or a fare-generating  
16 transportation facility is returned to the department over the life of the agreement.

17 **7. Exercise of powers.** If the department exercises its power of eminent domain for  
18 the development and construction of a transportation facility pursuant to this subchapter,  
19 the department must retain ownership rights and interests taken. The State may provide  
20 maintenance, law enforcement and other services with respect to a transportation facility  
21 owned by a private entity when the agreement provides for reasonable reimbursement for  
22 such services.

23 **8. Term of agreement.** An agreement may not exceed a term of 50 years unless the  
24 Legislature, upon the recommendation of the Commissioner of Transportation, approves  
25 a longer term.

26 **9. Legislative approval.** If the department determines that a public-private  
27 partnership proposal and draft agreement meets the standards of this subchapter, the  
28 department shall submit to the Legislature a bill that authorizes the agreement. The bill  
29 must include a statement that the proposal meets the standards in subsection 4, a  
30 summary of the substance of the draft agreement and a description of the nature and  
31 amount of state investment, if any, including effects on programmed capital work.

32 **10. Confidentiality of proposals and negotiations.** All records, notes, summaries,  
33 working papers, plans, interoffice and intraoffice memoranda or other materials prepared,  
34 used or submitted in connection with any proposal considered under this subchapter are  
35 confidential and not subject to public review until the department determines that the  
36 proposal meets the standards of this subchapter or until the proposal is finally rejected by  
37 the department.

38 **11. Report of proposals.** By February 1st, annually, the department shall provide to  
39 the joint standing committee of the Legislature having jurisdiction over transportation  
40 matters a report summarizing all proposals that the department has determined meet the  
41 standards of this subchapter or that have been finally rejected during the previous  
42 calendar year.

1 12. Rules. The department may adopt rules to implement this subchapter. Rules  
2 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
3 chapter 375, subchapter 2-A.

4 **PART B**

5 **Sec. B-1.** 23 MRSA §753-A, as amended by PL 2007, c. 306, §3, is repealed.

6 **Sec. B-2.** 23 MRSA §4244 is enacted to read:

7 **§4244. Design-build contracting**

8 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
9 following terms have the following meanings.

10 A. "Best value" means the highest overall value to the State, considering quality and  
11 cost.

12 B. "Design-build contracting" means a method of project delivery whereby a single  
13 firm is contractually responsible for performing design, construction and related  
14 services.

15 C. "Major participant" means a firm that would have a major role in the design or  
16 construction of a project as specified by the department in its procurement  
17 documents.

18 D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel,  
19 building or other improvement being constructed or rehabilitated, including all  
20 professional services, labor, equipment, materials, tools, supplies, warranties and  
21 incidentals needed for a complete and functioning product.

22 E. "Proposal" means an offer by the proposer to design and construct the project in  
23 accordance with all request-for-proposals provisions.

24 F. "Proposer" means an individual, firm, corporation, limited liability company,  
25 partnership, joint venture, sole proprietorship or other entity that submits a proposal.

26 G. "Public notice" means notice given electronically through the department's  
27 publicly accessible website or through advertisements in newspapers. If notice is to  
28 be given exclusively in newspapers, the notice must appear in 2 or more public  
29 newspapers circulated wholly or in part in the State and in one public newspaper  
30 circulated wholly or in part in the county where the proposed project is located if any  
31 such newspaper is circulated in that county.

32 H. "Quality" means those features that the department determines are most important  
33 to the project. Quality criteria include design, constructability, long-term  
34 maintenance costs, aesthetics, local impacts, traveler and other user costs, service life,  
35 time to construct and other factors that the department considers to be in the best  
36 interest of the State.

37 **2. Authorization.** Notwithstanding section 4243 or any other provision of law, the  
38 department may use design-build contracting to deliver projects. The department may  
39 evaluate and select proposals on either a best-value or low-bid basis. If the scope of work

1 requires substantial engineering judgment, the quality of which may vary significantly, as  
2 determined by the department, then the basis of award must be the best value.

3 The department retains the authority to terminate the contracting process at any time, to  
4 reject any proposal, to waive technicalities or to solicit new proposals if the department  
5 determines that doing so is in the best interest of the State.

6 **3. Prequalification.** A proposer must be prequalified to be eligible to submit a  
7 proposal. A proposer must be prequalified by a project-specific request-for-qualifications  
8 process described in this subsection, or a proposer may be a team formed of contractors  
9 and designers that are each prequalified separately for design-build contracting in  
10 accordance with ongoing prequalification procedures established by the department. The  
11 department shall specify the method of prequalification in its discretion, except that if the  
12 basis of award is the best value, then prequalification must be through a project-specific  
13 request-for-qualifications process.

14 The department shall give public notice of a project-specific request-for-qualifications  
15 process. The department shall issue a request-for-qualifications package to all firms  
16 requesting one in accordance with the notice. Interested firms shall supply, for  
17 themselves and all major participants, all information required by the department. The  
18 department may investigate and verify all information received. All financial  
19 information, trade secrets or other information customarily regarded as confidential  
20 business information submitted to the department is confidential. The department shall  
21 evaluate and rate all firms submitting a conforming statement of qualifications and select  
22 the most qualified firms to receive a request for proposals. The department may select  
23 any number of firms, except that, if the department fails to prequalify at least 2 firms, the  
24 department shall repeat the request-for-qualifications process or select a different project  
25 delivery method.

26 **4. Request for proposals.** If prequalification is through project-specific  
27 prequalification, the department shall issue a request for proposals to those firms  
28 prequalified. If prequalification is through ongoing prequalification procedures  
29 established by the department, the department shall give public notice of the request for  
30 proposals. The request for proposals must set forth the scope of work, design parameters,  
31 construction requirements, time constraints and all other requirements that have a  
32 substantial impact on the cost or quality of the project and the project development  
33 process, as determined by the department. The request for proposals must include the  
34 criteria for acceptable proposals and must include a request-for-information process that  
35 allows for clarification of such criteria. For projects to be awarded on a best-value basis,  
36 the scoring process and quality criteria must also be contained in the request for  
37 proposals. The request for proposals may also provide for a process for the department to  
38 meet with each proposer individually to review conceptual technical elements of each  
39 proposal before full proposal submittal for the purposes of identifying design or other  
40 technical elements that are unacceptable to the department or that obviously would cause  
41 rejection of the proposal as nonresponsive. All such conceptual technical meetings,  
42 including submittals and responses, are confidential until award of the contract, but the  
43 department may issue addenda to all proposers to clarify design or other technical  
44 elements that will or will not be allowed. Upon award of the contract and after resolution  
45 of any procurement disputes, the department shall return documents submitted by  
46 unsuccessful proposers upon request. The request for proposals may also provide for a

1 stipend upon specified terms to unsuccessful proposers that submit proposals conforming  
2 to all material request-for-proposals requirements as determined by the department.

3 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must  
4 be submitted by the proposer to the department in 2 separate components, a sealed  
5 technical proposal and a sealed price proposal. These 2 components must be submitted  
6 simultaneously. The department shall first review technical proposals for responsiveness.  
7 The department shall award the contract to the proposer that submits a responsive  
8 proposal with the lowest price, if the proposal meets all material request-for-proposals  
9 requirements as determined by the department.

10 6. Best-value award. If the basis of the award is best value, then each proposal  
11 must be submitted by the proposer to the department in 2 separate components, a sealed  
12 technical proposal and a sealed price proposal. These 2 components must be submitted  
13 simultaneously.

14 The department shall open first each technical proposal and evaluate and score it based on  
15 the quality criteria contained in the request for proposals. The request for proposals may  
16 provide that the range between the highest and lowest quality score of responsive  
17 technical proposals must be limited to an amount certain. During this evaluation process,  
18 the price proposals must remain sealed and all technical proposals are confidential.

19 After completion of the review for responsiveness, the department shall publicly open  
20 and read each price proposal associated with each responsive technical proposal. The  
21 department shall calculate the overall value rating for each proposal, which is the total  
22 price divided by the quality score. The department shall award the contract to the  
23 proposer with the lowest price per quality score point, if the proposal meets all material  
24 request-for-proposals requirements as determined by the department.

25 7. Procurement disputes. The request for proposals must provide for resolution of  
26 disputes that may arise before award of the contract by including a dispute review board  
27 procedure in accordance with the department's standard specifications. Except in  
28 extraordinary circumstances as determined by the department, including emergency work  
29 or situations in which delay could result in the loss of funding, the request for proposals  
30 must include a provision that requires that the procurement process be suspended pending  
31 final resolution of such disputes. In cases involving such extraordinary circumstances  
32 when suspension of the procurement process does not occur, proposers that are not  
33 selected may seek monetary damages directly related to such nonselection.'

## 34 SUMMARY

35 This amendment replaces the bill.

36 The purpose of Part A of this amendment is to stimulate the Maine economy by  
37 allowing the Department of Transportation to receive and solicit proposals and, with  
38 legislative approval, enter into agreements with private entities for the building,  
39 ownership, leasing or financing of certain transportation facilities.

40 Part B makes changes to the design-build procurement statutes for the Department of  
41 Transportation.

FISCAL NOTE REQUIRED  
(See Attached)

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# COMMITTEE AMENDMENT

16



Approved: 03/05/10 *MAC*

# 124th MAINE LEGISLATURE

LD 1639

LR 2033(02)

**An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority  
Transportation Infrastructure Needs**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Transportation**

**Fiscal Note Required: Yes**

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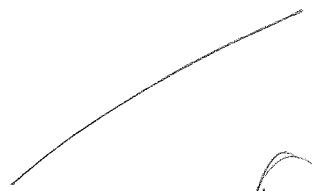
## Fiscal Note

Potential current biennium cost increase - Highway Fund

Potential current biennium cost increase - Federal Expenditures Funds

### Fiscal Detail and Notes

This legislation allows the Department of Transportation, with Legislative approval, to enter into agreements with private entities for the building, ownership, leasing or financing of certain transportation facilities. Until potential proposals from private entities are received, it is not possible to determine whether or not there would be a cost to the State.



RECEIVED

SEP 22 2010

**Statute: 23 MRSA 4251**

**Agency: MaineDOT**

**Contact Person: Toni Kemmerle**

**Contact Person's E-Mail Address: Toni.kemmerle@maine.gov**

**1. Agency's experience in administering or applying this public records exception.**

Legislation containing this exception became effective on July 12, 2010. To date, MaineDOT has had no experience administering or applying this public records exception.

**2. Does your agency support or oppose the exception?**

MaineDOT supports this exception because we believe that a law guaranteeing the confidentiality of the concept and details of such proposals will encourage the development and submission of innovative, well conceived proposals by providing a means to protect the necessary investment in time, resources and talent by the submitter(s) from unjust appropriation by others.

**3. Identify any problems that have occurred in application of this exception. Is the exception clear?**

No problems in application have occurred. We believe the exception is articulated clearly.

**4. Does agency recommend changes to this exception?**

No.

**5. Identify stakeholders whose input should be considered in the evaluation of this exception?**

We are unaware of any stakeholders whose input should be considered.

**6. Please provide any further relevant information.**

No further information is available.

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**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA

July 19, 2012

9:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Judy Meyer, Chair
2. Projects
  - A. Application of FOA laws to Maine Public Broadcasting Network  
Mark Vogelzang, President & CEO  
Maine Public Broadcasting Network
  - B. Status of e-mail addresses collected by schools and towns (Letter from Rep. Nelson related to parental privacy in Maine schools; Falmouth experience)
  - C. PL c. 264: email and other communications of elected/public officials (2011)
  - D. Use of technology in public proceedings (participation from remote locations)
  - E. Templates for drafting specific confidentiality statutes
3. Scheduling future meetings
4. Other?

**Adjourn**



A

RECEIVED  
APR 12 2011

APRIL 12, 2011

Margaret Reinsch  
Senior Legal Analyst  
Judiciary Committee  
Right to Know Advisory  
Committee

The Maine Public Broadcasting Network is Maine's largest statewide news and public affairs organization with administrative offices and production facilities for radio and television in Lewiston, Bangor, Augusta and Portland. The station's transmitters and translators are located throughout the state delivering programs to nearly all of Maine citizens. The organization employs 119 staff members. According to the organization's IRS 990 Form ending 6/30/10, MPBN net assets were \$15,473,227. According to MPBN's own audit ending June 30, 2010 it received government support of \$1,954,235 from the State of Maine, \$1,574,366 from the Corporation for Public Broadcasting and government grants of \$33,016.

MPBN comes under the FOA Act as "the board of directors of a non-profit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any

of its committees and subcommittees” and as such under FOA’s public proceedings “means the transaction of any functions affecting any and all citizens of the state.”

Cove Writers, Inc. and Hometown News Service are news companies producing columns for Maine and other state’s newspapers. Hometown News Service is the longest serving continuous member of the State House Newspersons, the press corps with offices in the Cross Building. Both news organizations have as its president and chief journalist, Allen D. (Mike) Brown.

On December 15, 2010, Cove Writers, Inc. filed a FOA request to MPBN President James Dowe for certain financial information. (See Copy Enclosed). A FOA request is mandated by a reply within five working days. No reply came within that period or in subsequent weeks although several attempts to reach President Dowe were futile until February 2011 with a phone call from John F. Isacke, Vice President and Chief Financial Officer which was 45 days from the original request and 40 days in violation of the FOA Act. I requested of Mr. Isacke to put his response in writing which he did with letter dated 2/3/11. (See Copy Enclosed). Although certain MPBN financials were forwarded, two items (1) a copy of MPBN’s current roster of full-time employees with their job titles and ranges for pay grades, and (2) a current copy listing part-time and/or contract employees who received IRS Form 1099 including the amounts they received were omitted.

According to Mr. Isacke the two omitted items do not apply under the FOA Act.

On March 25, 2011, Cove Writers, Inc. filed a FOA to P. James Dowe, President, MPBN, requesting a copy of MPBN's IRS Form 1099-Misc. listing persons and/or companies or other individuals /entities including the amounts received. There was no response after five days. In fact, there was no response at all.

After searching the relevant history files of the FOA Act and the Right to Know Advisory Committee which was created by Public Law 2005, chapter 631, and which has the oversight and responsibility of recommending changes to the Judiciary Committee, I can find no exception that any of the requests in the original letter of December 15, 2010 to Mr. Dowe are confidential and therefore exempt as stated by Mr. Isacke.

However, if Mr. Isacke's presumption is correct, then there is a gross conflict in that although MPBN comes under FOA's "Proceedings" as Mr. Isacke admits, it does not under "Public Records." Therefore, it challenges the general purpose of the Maine FOA as "transactions of any functions affecting any and all citizens of the state" and specifically and effectively labeling all MPBN public records as confidential. Mr. Isacke did respond to requests for some information under "Public Records" but chose to withhold other information under "Public Records" therefore "picking and choosing" what public records to reveal to the public.

MPBN is Maine's only "non-profit corporation that provides statewide noncommercial public broadcasting services" and therefore specifically under Maine's Freedom of Access Act.

The Right to Know Advisory Committee should review MPBN's proprietary stance on Public Records in view of its tremendous media influence in Maine and as the recipient of nearly two million annually of taxpayer funds. If Mr. Isacke is correct then MPBN is under Maine's FOA Act in name only and escapes public access to all of its public records or whatever it chooses to reveal.

On February 17, 2011 a column bylined by Mike Brown was printed in the Ellsworth American (See Copy enclosed) revealing financials of MPBN ending June 2009 with the questions of MPBN's cavalier illegal time responses and why if the State of Maine taxpayers were contributing nearly \$2 million to a non-profit, private news corporation then why it did not come fully under the FOA Act?

Efforts are current and continuing to obtain full compliance from MPBN but so far it refuses to release requested information under Maine's Freedom of Information law claiming confidentiality of personnel records.

**Enclosures:**

*Allen D. Brown*

Allen D. (Mike) Brown, President

Hometown News Service

State House Station 162

Augusta, ME 04333

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Phone 287-4899

E-mail [brown@midcoast.com](mailto:brown@midcoast.com)

COVE WRITERS, INC.  
INDEPENDENT SYNDICATION  
78 CLIFF ROAD, SATURDAY COVE  
NORTHPORT, MAINE 04849

TELEPHONE (207) 338-3419

FAX (207) 338-4992

December 15, 2010

Jim Dowe, President  
Maine Public Broadcasting Network  
1450 Lisbon Street  
Lewiston, Maine

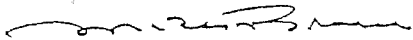
Dear Mr. Dowe:

Pursuant to Title 1, MRSA, Chap. 13, Maine's Freedom of Access Law, I am requesting the following information:

- 1.) The most recent audited financial statement of MPBC.
- 2.) A copy of MPBC's latest filed IRS 990 form.
- 3.) A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
- 4.) A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
- 5.) The names of current MPBC Board of Trustees and their terms of office.

Thank you Mr. Dowe for your past cooperation and prompt reply to the above requests. Also if you have any comment on content and activity of your organization please include it your reply.

Sincerely,



Allen D. (Mike) Brown, President  
Cove Writers, Inc.  
Hometown News Service





Maine Public Broadcasting Network

1450 Lisbon Street, Lewiston, Maine 04240-3595 · 800-884-1717 · 207-783-9101 · Fax 207-783-5193

February 3, 2011

Allen D. Brown  
Cove Writers, Inc.  
78 Cliff Road, Saturday Cove  
Northport, Maine 04849

Re: Your request of December 15, 2010

Dear Mr. Brown,

It was nice speaking with you on the phone yesterday. As I stated during our conversation, I do not believe that the items you have requested are all subject to Title 1, MRSA, Chapter 13 – Maine's Freedom of Access law. My beliefs in that regard are as follows:

- As I told you, I am not a lawyer, but my simple reading of Chapter 13 is that it pertains to Public Proceedings and to Public Records.
- With respect to Public Proceedings, the work of MPBN's Board of Directors, its committees and subcommittees are specifically included in §402 2. E. MPBN maintains a public file of all such meetings and those files are available for review, upon request, in our Lewiston office as provided under the Freedom of Access law.
- As it pertains to Public Records, it is my belief that MPBN is neither an agency of the state nor are its employees public officials. As such, it is my belief that the Public Records provisions of Chapter 13 do not apply to MPBN.

Within that context, my response to each of your questions follows:

1. Enclosed, for your convenience, is a copy of MPBN's audited financial statements for the years ended June 30, 2010 and 2009. This document is made available to the public on our website, [www.mpbnet.net](http://www.mpbnet.net).
2. Enclosed, for your convenience, is a copy of MPBN's draft Form 990 for the year ended June 30, 2010. I will let you know if any substantive changes are made prior to its filing which is due February 15, 2011. This document is also made available to the public through both the IRS website and on MPBN's website, [www.mpbnet.net](http://www.mpbnet.net).
3. The roster of full-time employees, their job titles and salary ranges is not a document we normally share and is not enclosed. However, the Form 990

Television • Radio • Education • Internet

With offices and studios in Bangor, Lewiston and Portland

[mpbn.net](http://mpbn.net)



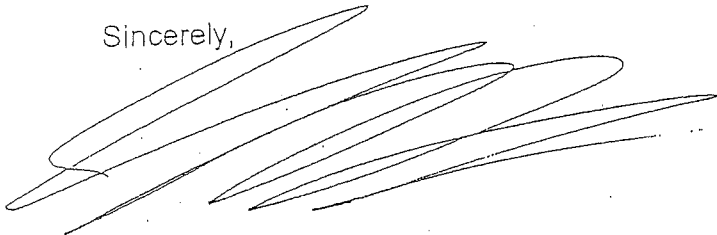
- referred to above discloses for all employees who are compensated at \$100,000 or higher, their name, title and total compensation.
4. The listing of part-time and/or contract employees who received an IRS Form 1099 and the amounts they received is not a document we normally share and is not enclosed.
  5. A listing of our Board of Trustees is also made available to the public on our website, [www.mpbn.net](http://www.mpbn.net). A listing, including their terms of office is enclosed for your convenience.

I again apologize for the tardiness of my reply to your request.

If there is anything else I can do for you, do not hesitate to contact me directly. I have enclosed one of my business cards. It contains my direct contact information.

When and if an article results from this information response, I would appreciate receiving a copy. Thank you.

Sincerely,



John F. Isacke  
Vice President and Chief Financial Officer

Cc: Alan L. Baker, Publisher, The Ellsworth American (w/o Enc)  
P. James Dowe, President, Maine Public Broadcasting Network (w/o Enc)

MPBN's Violation of the Maine FOA Act

The Maine Freedom of Access Act lies at the heart of a democratic government. It grants the people of this state a broad right of access to public records with transparency, a fundamental principle of the Act. Within its many statute definitions is the right to a filer's response within five days.

On December 15, 2010 filer Hometown News Service requested of James Dowe, president of Maine Public Broadcasting Network, certain financial records of MPBN under the Freedom of Access Act. The response date was overdue on January 7, 2011 and the filer contacted the MPBN office and was informed that the request had been forwarded to the financial department. On January 17, there was still no response. As the filer contemplated court action under the Act there was a phone response on 2/3/11/ from John F. Isacke, MPBN vice president and chief financial officer, which was 45 days from the original response and some forty days in violation of the Freedom of Access Act.

MPBN comes under the Act's public proceedings definitions as "the board of directors of a non-profit, non-stock, private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees?"

Although VP Isacke provided hard copy duplicates of certain financials—IRS 990 for 2009 and Audited Report, 2010 - he wrote in a cover letter that, "I do not believe that all the items requested are subject to the FOA Act." He further stated, "I am not a lawyer, but my simple reading of Chapter 13 as it pertains to Public Records is that neither is MPBN an agency of the state nor are its employees public officials."

What VP Isacke was referring to in the filer's request was (1) a copy of MPBN's full-time employees with their job titles and ranges for pay grade and (2) a listing of contract employees who received IRS Form 1099 and the amounts they received. These two items have been in the filer's request to MPBN for nearly a decade and fully furnished even with specific names and specific salary although only a salary range was requested.

MPBN is one of the largest media corporations in Maine employing 119 employees and therefore has considerable impact on information, ideas and news content in programs provided to nearly all of Maine citizens through transmitters throughout the state.

MPBN is a \$15.5 million tax-exempt corporation according to its 2009 IRS report. A substantial revenue stream is public support, that is, taxpayer funds. In its 2010 revenue, the State of Maine, via taxpayers, contributed \$1,954,235 and the Corporation for Public Broadcasting, via taxpayers, \$1,574,366, other government grants of \$33,016, via taxpayers, for a total of \$3,561,617. The MPBN membership revenue was \$3,566,370 or only \$4,753 more than public taxpayer support.

According to its 2010 audit, the reported 118 anonymous (so stated VP Isacke) employees received \$5,001,699 in salaries and benefits. The only employee identified in the IRS 990 Form was President James Dowe with a salary of \$156,325 plus \$7,328 in retirement and other deferred compensation.

Phone conversations with VP Isacke indicated that the reason for the "delay" of response - he did not admit to violation of the Act - was that he was "too busy." Also, he objected to sending hard copy data when the internet was available. However, in its self-praising organization overview on its IRS 2009 Form it states precisely, "Any member of the general public can also request either verbally or in writing that these documents be sent to them."

As to VP Isacke's "simple reading" of the FOA Act that MPBN is not subject to Public Proceedings and Public Records under the Act in regard to employee salaries and pay ranges - that private opinion appears to be in conflict with the term "public proceedings meaning the transactions of any function affecting any and all citizens of the state." The fact that Maine citizens contributed \$1,954,235 to support MPBN salaries and benefits in 2010 should be considered a function.

Apparently there has been some shading in the transparency of MBPN since the open and full cooperation of MPBN President Jim Dowe through the years. The fact that MPBN was 45 days late and in violation of the FOA Act should be of considerable concern of all citizens and

especially the state legislature which appropriates millions in support of MPBN programming when the state itself has financial concerns of providing its citizens with basic needs of subsistence livability with the challenge of declining revenues.

Nothing so darkens the transparency of government and its ancillary providers of public information than the shadows of silence.

-30-

James B. Zimpritch

Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101

207-791-1270 voice  
207-791-1350 fax  
jzimpritch@pierceanwood.com  
pierceanwood.com

June 26, 2012

Senator David R. Hastings, III  
Chair, Right to Know Advisory Committee  
c/o Office of Policy & Legal Analysis  
13 State House Station  
Augusta, ME 04333-0013

Re: Maine Public Broadcasting Corporation

Dear Senator Hastings:

We understand that the applicability of the Freedom of Access Act to our client Maine Public Broadcasting Corporation may be on the Right to Know Advisory Committee's agenda for an upcoming meeting of the Committee, as a result of a 2010 request for information by Allen D. (Mike) Brown (now deceased) on behalf of Cove Writer's, Inc. and Hometown News Service.

That request sought five items:

1. The most recent audited financial statement of MPBC.
2. A copy of MPBC's latest filed IRS 990 form.
3. A copy of MPBC's current roster of full-time employees with their job titles and ranges for pay grades.
4. A current copy listing MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.
5. The names of current MPBC Board of Trustees and their terms of office.

MPBC provided items 1, 2 and 5, all of which MPBC regularly makes public. It did not provide items 3 and 4 since, as noted below, the "public records" definition in the Freedom of Access Act does not extend to the records of a private corporation such as MPBC.<sup>1</sup>

<sup>1</sup> Separately, we point out that disclosure of the information requested in items 3 and 4 would be a violation of Maine law. Maine's personnel file law, 26 MRSA Section 631, requires employers to keep confidential the contents of personnel files. Employee compensation falls squarely within the definition of materials within a "personnel file." The statute provides in pertinent part as follows:

On behalf of our client, Maine Public Broadcasting Corporation, we would like to address the application of the Maine Freedom of Access Act, 1 MRS §§ 400 *et seq.* (the "Act") to Maine Public Broadcasting Corporation in greater detail, as set forth below.

**I. Maine Public Broadcasting Corporation is a private non-profit corporation; its officers are not "public officials"**

Maine Public Broadcasting Corporation ("MPBC") is a private, non-profit, tax-exempt corporation that carries out its mission as a charitable entity similar to thousands of other non-profits here in Maine. It does business under the assumed names "Maine Public Broadcasting Network" and "MPBN."

MPBC has a state-wide public board of trustees who provide volunteer lay leadership and governance for the organization. And its mission is clear:

*Every day, the Maine Public Broadcasting Network connects the people of Maine to each other and to the world through the open exchange of information, ideas and cultural content. As Maine's premier independent media resource, we create exceptional opportunities for the communities we serve to engage with critical issues, compelling stories and quality entertainment.*

MPBC was incorporated on February 7, 1992 by the filing of Articles of Incorporation with the Secretary of State pursuant to the Maine Nonprofit Corporation Act, Title 13-B. It sought and obtained a determination from the Internal Revenue Service (IRS) that it qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

But MPBC is not, and never has been, an "agency" or "political subdivision" of the State or a governmental entity, and its officers are not, and never have been, "public officials" of the State of Maine. That is clear.

**II. Background on the 1992 Unification of Public and Private Noncommercial Educational Broadcasting in Maine**

In 1961 Colby-Bates-Bowdoin Educational Telecasting Corporation, known as "WCBB," was founded as an independent, private, non-profit organization. In 1992, it was a free-standing private tax-exempt organization.

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For the purpose of this section, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits and nonprivileged medical records or nurses' station notes relating to the employee that the employer has in the employer's possession. Records in a personnel file may be maintained in any form including paper, microfiche or electronic form. The employer shall take adequate steps to ensure the integrity and confidentiality of these records. (Emphasis added.)

Disclosing such confidential personnel file information to a news outlet would clearly be inconsistent with, and in violation of, the personnel file law, and would be the polar opposite of MPBC taking "...adequate steps to ensure the ...confidentiality of [employee personnel] records."



Commencing in 1963 the University of Maine System ("UMS") established a public broadcasting network known as Maine Public Broadcasting Network or MPBN. Unlike WCBB, it was not a separate entity, but rather a functional "division" of UMS. (The former MPBN, operated as a division of UMS, is referred to in this letter as "MPBN-UMS.")

In 1992 WCBB and MPBN-UMS were unified in a public and private noncommercial educational broadcasting entity. The unification was authorized by Chapter 848 of the Public Laws, Second Regular Session, 1991 (the "Enabling Act"), which became effective on April 9, 1992. The Enabling Act stated:

"[UMS] may transfer the assets and liabilities associated with [MPBN-UMS]...to a Maine **nonprofit, nonstock, private corporation**, referred to in this Act as 'the transferee corporation,' formed pursuant to the Maine Revised Statutes, Title 13-B for the purpose of unifying the operations of [MPBN-UMS] and WCBB, operated by the Colby-Bates-Bowdoin Educational Telecasting Corporation, into a noncommercial statewide public broadcasting network." (Emphasis added.)

The combination was accomplished as follows: (1) MPBC was formed, (2) the assets and liabilities of MPBN -UMS were transferred to MPBC, and (3) WCBB merged into MPBC. As a result, the broadcasting assets and liabilities of MPBN-UMS and WCBB were combined in a new private corporation, MPBC. MPBC then adopted the name "Maine Public Broadcasting Network" as an assumed name for operational purposes.

The Enabling Act, by permitting UMS to dispose of the assets and associated liabilities of MPBN-UMS, relieved the State of funding obligations for MPBN-UMS, which had formerly been part of the annual educational appropriation for UMS. To complete this financial shift, the Enabling Act stated:

"An annual appropriation for operating, constructing, equipping, maintaining, improving and replacing facilities of the corporation [Maine Public Broadcasting Corporation] must be made in amounts sufficient to insure delivery of the broadcast services throughout the state." Enabling Act §3.

Parenthetically, we would point out that the Legislature has not fully honored this obligation. In the most recent legislative session, after the Administration proposed eliminating the entire amount of MPBC's appropriation, the Legislature voted to restore funding for next year, albeit at a lower level, \$1.7 million, significantly less than the \$2.5 million it will cost MPBC to provide statewide non-commercial public broadcasting services as contemplated by the Enabling Act.

In MPBC's current fiscal year, MPBC's budget is \$11.2 million, of which only \$1.9 million, or 17%, was received from the state of Maine.

### III. Applicability of the Freedom of Access Act to MPBC

In recognition of the fact that MPBC was to receive financial support from the State, and was the transferee of public assets (subject to related liabilities), Section 1 the Enabling Act also amended Section 402(2) of the Freedom of Access Act to expand the definition of "public proceedings," to include transactions by the following:

"E. The Board of Directors of a nonprofit, nonstock private corporation that provides statewide non-commercial public broadcasting services and any of its committees and subcommittees." (Emphasis added.)

As you know, the Freedom of Access Act generally covers legislative committees and subcommittees, boards or commissions of state agencies or authorities; boards, commissions, agencies, or authorities of any county, municipality, school district or regional or other political or administrative subdivision; and associations, the membership of which is composed of exclusively of the foregoing entities. In contrast, MPBC is the only private corporation that is subject in any way to the Freedom of Access Act.

However, Section 1 of the Enabling Act amended the Freedom of Access Act only in Section 402(2) ["Public Proceedings"], leaving untouched the definition of "public records" in the Freedom of Access Act. Thus, "Public Records" continue to be defined to mean:

"... any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains info related to the transaction of public or governmental business...." 1 MRSA §402(3). (Emphasis added.)

The Freedom of Access Act was carefully amended to reach the proceedings of the board of directors (and committees and subcommittees) of MPBC, but omitted any change to the definition of "public records." As a result, the "public records" aspect of the Freedom of Access Act was, and remains today, limited to agencies or public officials of the State or its political subdivisions, and does not apply to MPBC.

Section 8 of the Enabling Act included a further "general" provision relating to the Freedom of Access Act, stating:

"In recognition of the fact that the transferee corporation will receive public funds and public assets the transferee corporation [MPBC] is subject to the Maine Revised Statutes, Title 1, Chapter 13, and must adopt bylaws and policies to implement the requirements of that chapter."

MPBC promptly adopted, on June 24, 1992, (a) Bylaw provisions expressly requiring meetings of the Board and of any committee of the Board to be open to the public and requiring notice to the public of all such meetings, and (b) a "*Freedom of Access Policy*" (copy attached) to implement the Freedom of Access provisions of the Enabling Act.

MPBC's *Freedom of Access Policy* expressly specified public access to certain documents as follows:

"Public Records: All documents distributed to the Board of Trustees which are not the subject of discussion in executive session shall be made available to members of the public upon request. Requests for copies shall be handled expeditiously and with courtesy. All such documents, in addition to other materials required by the Federal Communications Commission, shall be available for public inspection in the Public File that shall be maintained at MPBC's general offices." (Emphasis added.)

The Bylaws and Policy appropriately implemented and respected Section 8 of the Enabling Act, while also honoring the limited and specific changes the Enabling Act made in the definition of "public proceedings" (and not "public records") in the Freedom of Access Act.

This different treatment of proceedings and records was clearly intentional, and purposeful.

First, treating all records of MPBC as "public records" would clearly be overkill because MPBC is simply not a state agency. It is a non-profit organization formed as a private corporation.

Second, bear in mind the unique journalistic role of MPBC. It is a highly visible, non-commercial, public broadcasting news organization. Its radio and tv stations have hundreds of thousands of Mainers who tune in each week for its national programming from NPR and PBS and its regional news stories. Its reporters regularly engage in independent investigative journalism, interview individuals involved in matters of public interest, maintain journalistic notes and work papers, and prepare reports for broadcast. It would turn MPBC's mission upside down if, for example, its journalistic notes and work papers constituted "public records" that could be obtained by any person. It would have a dramatic chilling effect on the ability of MPBC to carry out its journalistic mission. It would curb, rather than enhance, MPBC's ability to engage in transparent journalism.

And, as you know, MPBC's own reporter, AJ Higgins serves as a member of the Right to Know Advisory Committee, and MPBC has a history of supporting freedom of the press and efforts to strengthen public media in the State.

In legal and statutory construction terms, the "specific" provisions of Section 1 of the Enabling Act, amending only the definition of public "proceedings," control over the "general" provisions of Section 8 of the Enabling Act. Against that backdrop, MPBC's Bylaws and Policy

clearly bridge the two, and harmonize the two provisions. Any other construction would be illogical and unsupported.

Put differently, if Section 8 of the Enabling Act were read literally to make the entire Freedom of Access Act applicable to MPBC, treating all its records as "public records," treating its employees (or perhaps only its officers and directors) as "public officials," and treating MPBC as an "agency" of the state, then there would have been no reason whatsoever to adopt Section 1 of the Enabling Act.

As noted above, the Enabling Act's amendment of the "public proceedings" definition in the Freedom of Access Act, and failure to similarly amend the "public records" definition in that Act, was intentional, purposeful, and wise.

#### **IV. Other publicly available information and public access**

We would also point out that MPBC already has a high standard for transparency to the public and its donors in place, in part because it is a recipient of federal funds through the Corporation for Public Broadcasting. 47 U.S.C §§ 396 *et seq.* requires all recipients of funding from the Corporation for Public Broadcasting to certify their continued compliance with federal open access in rules in five specific areas:

1. Meetings which must be open to the public (Section 396(k)(4);
2. Financial information which must be made available to the public (Section 396(k)(5);
3. Community advisory boards which must be established by (Section 396(k)(8);
4. Equal Employment Opportunity ("EEO") regulations and reporting requirements which must be observed (section 396(k)(11); and
5. Donor list and public activities requirements (Section 396(k)(12).

The Corporation for Public Broadcasting requires station grant recipients to certify their continued compliance with the requirements of these sections prior to receiving any grant funds. See generally <http://cbc.org/stations/certification>. MPBC fully complies with these requirements.

In addition, MPBC offers its financial information online, giving easy access to members of the public to its annual IRS Form 990 tax return (Return of Organization Exempt from Income Tax), as well as its audited financial statements and operating budgets for the current and past years. <http://www.mpbn.net/About/MPBNFinancialReports/MPBNBudget.aspx>

#### **V. Conclusion**

As a private, non-profit, tax-exempt organization engaged in noncommercial educational broadcasting and an important independent journalistic voice, MPBC is committed to compliance with all applicable federal and state laws governing its open access and publicly available information.

June 26, 2012

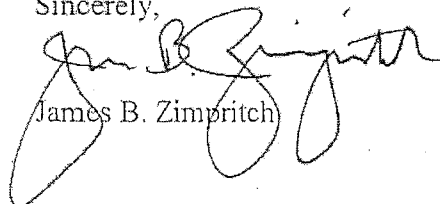
Page 7

MPBC believes that it has a long and honorable track record of complying with these requirements.

MPBC further believes that, for the reasons set forth above, MPBC was not required to comply with Mr. Brown's 2010 request for information regarding MPBC's roster of full-time employees with their job titles and ranges for pay grades and listing of MPBC's part-time and/or contract employees who received IRS Form 1099 including the amounts they received.

And at a broader level, MPBC strongly believes that any attempt to alter the delicate balance that was struck in 1992 over the applicability of the Freedom of Access Law to MPBC would be bad public policy, would interfere with MPBC's devotion to Freedom of the Press, and would be unalterably opposed by MPBC. Given MPBC's role and its track record of transparency, such an exercise would be tantamount to "a solution in search of a problem."

Sincerely,



James B. Zimpritch

JBZ/mka

cc: Members of the Right to Know Advisory Committee  
Mark Vogelzang, President and CEO  
Henry Schmelzer, Chairman of the Board

6/24/92

## MPBC FREEDOM OF ACCESS POLICY

### Background:

The legislation authorizing the transfer of MPBN assets to MPBC included the requirement that MPBC be subject to Maine's Freedom of Access Law. These policies are proposed to implement that requirement.

### Policy:

Public Meetings: In accordance with 1 MRSA Chapter 13, Subchapter 1, the meetings of the Maine Public Broadcasting Corporation Board of Trustees shall be open to the public. Public notice of such meetings shall be given over the public radio and television stations of MPBC no less than three days prior to the meeting.

Executive Sessions: Executive Sessions are limited to deliberations on subjects which are allowed by law and shall not otherwise be used to defeat the purposes of the Freedom of Access Law.

In accordance with 1 MRSA s/s 405, Executive Sessions of the MPBC Board of Trustees may be called by a motion indicating the precise nature of the business of the executive session and approved by three-fifths of the Trustees present and voting.

Public Records: All documents distributed to the Board of Trustees which are not the subject of discussion in executive session shall be made available to members of the public upon request. Requests for copies shall be handled expeditiously and with courtesy. All such documents, in addition to other materials required by the Federal Communications Commission, shall be available for public inspection in the Public File that shall be maintained at MPBC's general offices.

**CHAPTER 847**

**H.P. 1684 - L.D. 2364**

**An Act to Clarify the Funding of State Mandates**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the breadth of the present law that requires the State to fund state mandates is having a negative impact on legislation requested by municipalities; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 20-A MRSA §2, sub-§3,** as amended by PL 1991, c. 429, §1 and c. 591, Pt. III, §23, is repealed.

**Sec. 2. 20-A MRSA §2-A, first ¶,** as enacted by PL 1991, c. 429, §2, is amended to read:

A school administrative unit may seek a waiver allowing the unit to delay compliance with a state mandate, as defined in section 2, subsection 3 Title 30-A, section 5684, as follows:

**Sec. 3. 20-A MRSA §2-A, sub-§6,** as enacted by PL 1991, c. 429, §2, is amended to read:

**6. Application; repeal.** This section is repealed on July 1, 1992. Until that time, notwithstanding any other provision of law, this section governs the waiver or deferral of state mandates as defined in section 2, subsection 3 Title 30-A, section 5684.

**Sec. 4. 30-A MRSA §5684, last ¶,** as enacted by PL 1989, c. 922, is amended to read:

For the purposes of this section, "state mandate" means any state regulatory or statutory action that requires county or municipal government, or a unit of county or municipal government, to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues, excluding any order issued by a state or federal court or any legislation necessary to comply with a federal mandate. The State is not required to fund any state mandate that is necessary to comply with the Maine Human Rights Act; ensures due process; creates, expands or amends criminal laws or civil infractions or penalties enforced by municipalities; increases the minimum wage; results from en-

actment of legislation introduced at the official request of a municipality or municipalities; or imposes routine obligations, when the combined statewide cost of all such mandates in any calendar year is less than .001 of the total amount of property taxes collected in the State during the previous year.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 9, 1992.

**CHAPTER 848**

**S.P. 945 - L.D. 2409**

**An Act to Improve Educational Public Broadcasting Statewide**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the further development and enhancement of educational noncommercial radio and television programming for Maine people throughout the State is vital to the State's interest; and

**Whereas,** there exist present opportunities to unify public and private noncommercial educational broadcasting in this State; and

**Whereas,** encouragement and assistance to take advantage of these opportunities is essential to the advancement of educational noncommercial radio and television broadcasting in this State; and

**Whereas,** legislation is necessary to authorize the University of Maine System to take advantage of the opportunity to unify public broadcasting in this State for the benefit of all the citizens of Maine; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 1 MRSA §402, sub-§2,** as amended by PL 1989, c. 878, Pt. A, §1, is further amended to read:

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

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

B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;

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

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities; and

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide non-commercial public broadcasting services and any of its committees and subcommittees.

**Sec. 2. 20-A MRSA §852, sub-§3** is enacted to read:

**3. Transfer of assets and liabilities.** The University of Maine System may transfer any assets and liabilities acquired pursuant to this section in order to unify operation in a nonprofit, nonstock private corporation. The University of Maine System retains a reversionary interest in the university's assets as provided for in the articles of incorporation of that corporation. An annual appropriation for operating, constructing, equipping, maintaining, improving and replacing facilities of the corporation must be made in amounts sufficient to ensure delivery of broadcast sources throughout the State.

**Sec. 3. Transfer authorized.** Pursuant to the Maine Revised Statutes, Title 20-A, section 852, subsection 3, the University of Maine System may transfer the assets and liabilities associated with the Maine Public Broadcasting Network, operated by the system, to a Maine nonprofit, nonstock private corporation, referred to in this Act as "the transferee corporation," formed pursuant to the Maine Revised Statutes, Title 13-B for the purpose of unifying the operations of the Maine Public Broadcasting Network and WCBB, operated by the Colby-Bates-Bowdoin Educational Telecasting Corporation, into a noncommercial statewide public broadcasting network.

The transfer may occur only if the transferee corporation has a board of trustees that includes the chan-

cellor of the University of Maine System; 3 members representing the Board of Trustees of the University of Maine System; the President of Bates College; the President of Bowdoin College; the President of Colby College; and not fewer than 8 nor more than 12 public trustees elected by the board in the manner prescribed in the corporation's bylaws. The president of the transferee corporation is a nonvoting member of the board.

The Maine Revised Statutes, Title 13, section 3062 does not apply to the transfer of assets authorized in this section. The Treasurer of the University of Maine System may execute and deliver any document or instrument and take any action necessary or convenient to carry out the transfer of assets and liabilities authorized in this section.

**Sec. 4. Budget estimates.** The transferee corporation shall prepare and submit its appropriations requirements for consideration pursuant to the Maine Revised Statutes, Title 5, section 1665 in the same manner as public higher education institutions of the State. The appropriation requirements are limited to the costs of constructing, equipping, maintaining, improving and replacing the buildings and equipment for its transmitting facilities, production facilities, master control centers and interconnection equipment that provide signals to its transmitters or other distribution systems, and of operating its transmitting facilities so that the Legislature may appropriate sufficient funds to that corporation for those purposes. Appropriations must be made in amounts to be determined by the Legislature for those purposes.

**Sec. 5. Personnel.** The transferee corporation shall protect certain rights of Maine Public Broadcasting Network employees covered by collective bargaining agreements as of March 1, 1992 as follows.

For those Maine Public Broadcasting Network employees who were employed on March 1, 1992 and who are employed on June 30, 1992, each individual must be offered an individual employment contract by the transferee corporation at the employee's fiscal year 1991-92 salary for a period of one year beginning July 1, 1992. Unless the employee voluntarily leaves the position or is subject to termination for cause, the transferee corporation shall pay the balance of the employee's annual salary for the year ending June 30, 1993 if the employee is laid off. The transferee corporation shall offer this group of employees a benefit package, including health insurance, retirement benefits, Federal Insurance Contributions Act benefits, workers' compensation insurance, disability insurance, or other benefits that the transferee corporation's board of trustees approves equal to at least a value of 20% of the annual salaries and wages of that employee group.

For those Maine Public Broadcasting Network employees who were employed on March 1, 1992 and who are not employed on June 30, 1992 and who have not left their positions voluntarily or been terminated for cause,



1992-93

the transferee corporation shall offer those individuals any vacant positions within their job classifications that are filled prior to June 30, 1993.

**Sec. 6. State support; intent.** The Legislature intends that the State support and provide funding in accordance with section 3 to meet the costs of delivering broadcast services so that all the people of the State may share equitably in the advantages of public broadcasting, regardless of geographic location or economic circumstances.

**Sec. 7. Transfer; findings; intent.** The Legislature finds that it is in the best interest of the people of the State in all regions to develop, maintain and support a structure of public broadcasting that will ensure the most cohesive and efficient system possible. The Legislature finds that it is desirable to unify the operations of the Maine Public Broadcasting Network, or MPBN, operated by the University of Maine System, and WCBB, operated by the Colby-Bates-Bowdoin Educational Telecasting Corporation, in a nonprofit corporation that will provide public noncommercial radio and television programs for audiences throughout the State, using broadcast systems and other delivery mechanisms that new technological developments may allow. The Legislature further finds that unifying of the operations of MPBN and WCBB will provide a unique and more valuable service to the people of Maine, producing, promoting and delivering more high-quality programs to all Maine residents; unify the people of this State in all geographic areas by increased public awareness of matters of statewide importance; protect public broadcasting's free press function; offer greater efficiency in delivering the best possible service for the lowest possible cost; retain flexibility for combining federal, state and private financial assistance; and develop the independent fundraising potential that public broadcasting has demonstrated.

The Legislature intends that this Act will bring about the orderly transfer of licenses and operational responsibilities for state-owned educational noncommercial radio and television stations to a nonprofit, nonstock private corporation that will combine the broadcasting facilities and capabilities of MPBN and WCBB.

**Sec. 8. Freedom of access.** In recognition of the fact that the transferee corporation will receive public funds and public assets the transferee corporation is subject to the Maine Revised Statutes, Title 1, chapter 13 and must adopt bylaws and policies to implement the requirements of that chapter.

**Sec. 9. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**UNIVERSITY OF MAINE SYSTEM,  
BOARD OF TRUSTEES OF THE**

**Maine Public Broadcasting Network**

All Other (\$80,258)

Deappropriates funds not needed.

**Maine Public Broadcasting Network**

All Other \$80,258

Provides funds for the construction of a radio transmitter to serve the St. John Valley.

**BOARD OF TRUSTEES OF THE  
UNIVERSITY OF MAINE SYSTEM  
TOTAL**

\$ -0-

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 9, 1992.

**CHAPTER 849**

**H.P. 1708 - L.D. 2389**

**An Act to Implement the Jobs Creation  
Bond Package**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the State is in a severe economic downturn and tens of thousands of jobs have been lost in the State during that downturn; and

**Whereas,** bond issues for infrastructure construction projects are a proven method of creating jobs; and

**Whereas,** many of the State's infrastructure facilities are in need of immediate improvement; and

**Whereas,** numerous infrastructure construction projects could begin this summer if funding were available; and

**Whereas,** those projects are urgently needed to create jobs within the State and to make needed repairs and improvements; and

23



# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

Legislative Document

No. 2409

S.P. 945

In Senate, March 10, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.  
Reference to the Committee on Education suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland  
Cosponsored by Senator FOSTER of Hancock, Representative CROWLEY of Stockton  
Springs and Representative NORTON of Winthrop.

### STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-TWO

An Act to Improve Educational Public Broadcasting Statewide.



(AFTER DEADLINE)

(EMERGENCY)

Printed on recycled paper

2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4  
6           Whereas, the further development and enhancement of  
educational noncommercial radio and television programming for  
Maine people throughout the State is vital to the State's  
8 interest; and

10           Whereas, there exist present opportunities to unify public  
and private noncommercial educational broadcasting in this State;  
12 and

14           Whereas, encouragement and assistance to take advantage of  
these opportunities is essential to the advancement of  
16 educational noncommercial radio and television broadcasting in  
this State; and

18           Whereas, legislation is necessary to authorize the  
20 University of Maine System to take advantage of the opportunity  
to unify public broadcasting in this State for the benefit of all  
22 the citizens of Maine; and

24           Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
26 Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
28 safety; now, therefore,

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

32           **Sec. 1. 20-A MRSA §852, sub-§3 is enacted to read:**

34           3. Transfer of assets and liabilities. The University of  
36 Maine System may transfer any assets and liabilities acquired  
pursuant to this section in order to unify operation in a  
38 nonprofit, nonstock private corporation. The University of Maine  
System retains a reversionary interest in the university's assets  
40 as provided for in the articles of incorporation of that  
corporation. An annual appropriation for operating, constructing  
42 equipping, maintaining, improving and replacing facilities of the  
corporation must be made in amounts sufficient to ensure delivery  
44 of broadcast sources throughout the State.

46           **Sec. 2. Transfer authorized.** Pursuant to the Maine Revised  
Statutes, Title 20-A, section 852, subsection 3, the University  
48 of Maine System may transfer the assets and liabilities  
associated with the Maine Public Broadcasting Network, operated  
by the system, to a Maine nonprofit, nonstock private  
50 corporation, referred to in this Act as "the transferee

2 corporation," formed pursuant to the Maine Revised Statutes,  
3 Title 13-B for the purpose of unifying the operations of the  
4 Maine Public Broadcasting Network and WCBB, operated by the  
5 Colby-Bates-Bowdoin Educational Telecasting Corporation, into a  
6 noncommercial statewide public broadcasting network.

7 The transfer may occur only if the transferee corporation  
8 has a board of trustees that includes, among others, the  
9 chancellor of the University of Maine System; 3 members  
10 representing the Board of Trustees of the University of Maine  
11 System; the President of Bates College; the President of Bowdoin  
12 College; and the President of Colby College.

13 The Maine Revised Statutes, Title 13, section 3062 does not  
14 apply to the transfer of assets authorized in this section. The  
15 Treasurer of the University of Maine System may execute and  
16 deliver any document or instrument and take any action necessary  
17 or convenient to carry out the transfer of assets and liabilities  
18 authorized in this section.

19  
20 **Sec. 3. Budget estimates.** The transferee corporation shall  
21 prepare and submit its appropriations requirements for  
22 consideration pursuant to the Maine Revised Statutes, Title 5,  
23 section 1665 in the same manner as public higher education  
24 institutions of the State. The appropriation requirements are  
25 limited to the costs of constructing, equipping, maintaining,  
26 improving and replacing the buildings and equipment for its  
27 transmitting facilities, production facilities, master control  
28 centers and interconnection equipment that provide signals to its  
29 transmitters or other distribution systems, and of operating its  
30 transmitting facilities so that the Legislature may appropriate  
31 sufficient funds to that corporation for those purposes.  
32 Appropriations must be made in amounts to be determined by the  
33 Legislature for those purposes.

34  
35 **Sec. 4. State support; intent.** The Legislature intends that the  
36 State support and provide funding in accordance with section 3 to  
37 meet the costs of delivering broadcast services so that all the  
38 people of the State may share equitably in the advantages of  
39 public broadcasting, regardless of geographic location or  
40 economic circumstances.

41  
42 **Sec. 5. Transfer; findings; intent.** The Legislature finds that  
43 it is in the best interest of the people of the State in all  
44 regions to develop, maintain and support a structure of public  
45 broadcasting that will ensure the most cohesive and efficient  
46 system possible. The Legislature finds that it is desirable to  
47 unify the operations of the Maine Public Broadcasting Network, or  
48 MPBN, operated by the University of Maine System, and WCBB,  
49 operated  
50 by

2 the Colby-Bates-Bowdoin Educational Telecasting Corporation, in a  
3 nonprofit corporation that will provide public noncommercial  
4 radio and television programs for audiences throughout the State,  
5 using broadcast systems and other delivery mechanisms that new  
6 technological developments may allow. The Legislature further  
7 finds that unifying of the operations of MPBN and WCBB will  
8 provide a unique and more valuable service to the people of  
9 Maine, producing, promoting and delivering more high-quality  
10 programs to all Maine residents; unify the people of this State  
11 in all geographic areas by increased public awareness of matters  
12 of statewide importance; protect public broadcasting's free press  
13 function; offer greater efficiency in delivering the best  
14 possible service for the lowest possible cost; retain flexibility  
15 for combining federal, state and private financial assistance;  
16 and develop the independent fundraising potential that public  
broadcasting has demonstrated.

18 The Legislature intends that this Act will bring about the  
19 orderly transfer of licenses and operational responsibilities for  
20 state-owned educational noncommercial radio and television  
21 stations to a nonprofit, nonstock private corporation that will  
22 combine the broadcasting facilities and capabilities of MPBN and  
23 WCBB.

24 **Sec. 6. Appropriation.** The following funds are appropriated  
25 from the General Fund to carry out the purposes of this Act.

28 1992-93

30 UNIVERSITY OF MAINE, BOARD OF  
31 TRUSTEES OF THE

32 **Maine Public Broadcasting Network**

34 All Other (\$80,258)

36 Deappropriates funds not needed.

38 **Emergency clause.** In view of the emergency cited in the  
40 preamble, this Act takes effect when approved.

42 **STATEMENT OF FACT**

44 This bill authorizes the University of Maine System to  
45 transfer the assets of the Maine Public Broadcasting Network to a  
46 nonprofit, nonstock private corporation to unify its operations'  
47 with those of the Colby-Bates-Bowdoin Educational Telecasting  
48 Corporation into a statewide noncommercial public broadcasting

2 network. A reversionary interest is retained by the University  
of Maine System. The bill further provides that it is the intent  
of the State to fund the delivery of public broadcast services  
4 statewide.

JOHN D. WAKEFIELD  
Director

Date: 03/10/92 ORIGINAL  
Hearing Date:  
Committee: Education

JAMES A. CLAIR  
Deputy Director

Maine State Legislature  
**OFFICE OF FISCAL AND PROGRAM REVIEW**  
Augusta, Maine 04333

TO: Senate Chairman - Sen. S. Estes  
House Chairman - Rep. N. Crowley  
Sponsor - Sen. Brannigan of Cumberland

FROM: Grant T. Pennoyer, <sup>ATP</sup> Principal Analyst

SUBJECT: FISCAL NOTE INFORMATION FOR LD 2409

**An Act to Improve Educational Public Broadcasting Statewide**

**I. The estimated increase (decrease) of Appropriations and Allocations required if this Legislative Document is approved.**

<b>A. Line Item Summary</b>	<b>1991-92</b>	<b>1992-93</b>
Positions		
Personal Services		
All Other		
Capital Expenditures		
Unallocated		
<b>TOTAL</b>		

<b>B. Fund Summary</b>	<b>1991-92</b>	<b>1992-93</b>
General Fund		
Highway Fund		
Other Funds		

**II. The estimated increase (decrease) of Revenues for the biennium is as follows.**

	<b>1991-92</b>	<b>1992-93</b>
General Fund		
Highway Fund		
Other Funds		

**III. Remarks:**

This bill limits the funding for the new public broadcasting corporation to certain costs including construction and maintenance and includes a General Fund deappropriation of \$80,258 in fiscal year 1992-93 to the University of Maine. The amount of the deappropriation may require adjustment depending on the fiscal year 1992-93 budget enacted by the Legislature.

This bill should be amended with a fiscal note.

R. of S.

L.D. 2409

(Filing No. S-666 )

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STATE OF MAINE  
SENATE  
115TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 945, L.D. 2409, Bill, "An Act to Improve Educational Public Broadcasting Statewide"

Amend the bill in section 2 in the 2nd paragraph in the 2nd line (page 2, line 8 in L.D.) by striking out the following: " , among others,"

Further\* amend the bill in section 2 in the 2nd paragraph in the last line (page 2, line 12 in L.D.) by striking out the following: "and"

Further amend the bill in section 2 in the 2nd paragraph in the last line (page 2, line 12 in L.D.) by inserting after the following: "Colby College" the following: ' ; and not fewer than 8 nor more than 12 public trustees elected by the board in the manner prescribed in the corporation's bylaws'

Further amend the bill by inserting after section 3 the following:

**Sec. 4. Personnel.** The transferee corporation shall protect certain rights of Maine Public Broadcasting Network employees covered by collective bargaining agreements as of March 1, 1992 as follows.

For those Maine Public Broadcasting Network employees who were employed on March 1, 1992 and who are employed on June 30, 1992, each individual must be offered an individual employment contract by the transferee corporation at the employee's fiscal year 1991-92 salary for a period of one year beginning July 1, 1992. Unless the employee voluntarily leaves the position or is subject to termination for cause, the transferee corporation shall pay the balance of the employee's annual salary for the year ending June 30, 1993 if the employee is laid off. The transferee corporation shall offer this group of employees a



R. of S.

COMMITTEE AMENDMENT "A " to S.P. 945, L.D. 2409

benefit package, including health insurance, retirement benefits,  
2 Federal Insurance Contributions Act benefits, workers'  
4 compensation insurance, disability insurance, or other benefits  
6 that the transferee corporation's board of trustees approves  
equal to at least a value of 20% of the annual salaries and wages  
of that employee group.

8 For those Maine Public Broadcasting Network employees who  
were employed on March 1, 1992 and who are not employed on June  
10 30, 1992 and who have not left their positions voluntarily or  
been terminated for cause, the transferee corporation shall offer  
12 those individuals any vacant positions within their job  
classifications that are filled prior to June 30, 1993.

14 Further amend the bill by striking out all of section 6 and  
16 inserting in its place the following:

18 'Sec. 6. Appropriation. The following funds are appropriated  
from the General Fund to carry out the purposes of this Act.

19 1992-93

22 UNIVERSITY OF MAINE SYSTEM,  
24 BOARD OF TRUSTEES OF THE

26 Maine Public Broadcasting Network

28 All Other (\$80,258)

30 Deappropriates funds not needed.

32 Maine Public Broadcasting Network

34 All Other \$80,258

36 Provides funds for the construction of a  
38 radio transmitter to serve the St. John  
Valley.

40 BOARD OF TRUSTEES OF THE  
42 UNIVERSITY OF MAINE SYSTEM  
44 TOTAL

\$ -0-

46 Further amend the bill by renumbering the sections to read  
consecutively.

48 Further amend the bill by inserting at the end before the  
statement of fact the following:

R. of S.

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FISCAL NOTE

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This bill limits the funding for the new public broadcasting corporation to certain costs, including construction and maintenance, and includes a General Fund deappropriation of \$80,258 in fiscal year 1992-93 to the University of Maine System for operating costs no longer needed. The bill reappropriates those savings to the University of Maine System to be used for the construction of a radio transmitter to serve the St. John Valley. The amount of the deappropriation and subsequent reappropriation may require adjustment depending on the fiscal year 1992-93 budget enacted by the Legislature.'

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STATEMENT OF FACT

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This amendment clarifies that the University of Maine System may transfer the assets of the Maine Public Broadcasting Network, or MPBN, to the transferee corporation only if the corporation has a board of trustees that includes between 8 and 12 public trustees elected by the board in the manner prescribed in the corporation's bylaws.

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The amendment requires the transferee corporation to offer one-year individual employment contracts at fiscal year 1991-92 salary levels to MPBN employees who were employed on March 1, 1992 and who are employed on June 30, 1992. It guarantees that, unless employees in that group voluntarily leave their employment or are terminated for cause, the transferee corporation shall pay the balance of the employee's annual salary for fiscal year 1992-93 if the employee is laid off. It also guarantees that, the transferee corporation will offer that group of employees a benefit package equal to at least 20% of the group's annual salaries and wages.

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The amendment requires that, for fiscal year 1992-93, the transferee corporation shall offer vacant positions within an employee's job classification to MPBN employees who lose their jobs between March 1, 1992 and June 30, 1992 unless they have left their position voluntarily or been terminated for cause.

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The amendment adds an appropriation section that provides \$80,258 as a portion of the state match needed to build a radio transmitter to serve the St. John Valley.

The amendment also adds a fiscal note.

Reported by Senator Estes for the Committee on Education.  
Reproduced and Distributed pursuant to Senate Rule 12.  
(3|23|92) (S-666)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 945,  
L.D. 2409, Bill, "An Act to Improve Educational Public  
Broadcasting Statewide"

Amend the amendment in the 3rd paragraph in the last line  
(page 1, line 28 in amendment) by striking out the following:  
"bylaws" and inserting in its place the following: 'bylaws. The  
president of the transferee corporation is a nonvoting member of  
the board'

STATEMENT OF FACT

This amendment clarifies that the president of the  
transferee corporation is a nonvoting member of the board.

Filed by Rep. Crowley of Stockton Springs  
Reproduced and distributed under the direction of the Clerk of the  
House  
3/23/92 (Filing No. H-1200)

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

HOUSE AMENDMENT "F" to COMMITTEE AMENDMENT "A" to S.P. 945,  
L.D. 2409, Bill, "An Act to Improve Educational Public  
Broadcasting Statewide"

Amend the amendment by inserting after the title the  
following:

Amend the bill by inserting after the enacting clause the  
following:

Sec. 1. 1 MRSA §402, sub-§2, as amended by PL 1989, c. 878,  
Pt. A, §1, is further amended to read:

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

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

B. Any board or commission of any state agency or  
authority, the Board of Trustees of the University of Maine  
System and any of its committees and subcommittees, the  
Board of Trustees of the Maine Maritime Academy and any of  
its committees and subcommittees, the Board of Trustees of  
the Maine Technical College System and any of its committees  
and subcommittees;

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

2 D. The full membership meetings of any association, the  
membership of which is composed exclusively of counties,  
4 municipalities, school administrative units or other  
political or administrative subdivisions; of boards,  
6 commissions, agencies or authorities of any such  
subdivisions; or of any combination of any of these  
8 entities; and

10 E. The board of directors of a nonprofit, nonstock private  
corporation that provides statewide noncommercial public  
broadcasting services and any of its committees and  
12 subcommittees.'

14 Further amend the amendment in the first paragraph after the  
title in the first line (page 1, line 16 in amendment) by  
16 striking out the following: "Amend" and inserting in its place  
the following: 'Further amend'

18 Further amend the amendment by inserting before section 6  
20 the following:

22 'Sec. 6. Freedom of access. In recognition of the fact that  
the transferee corporation will receive public funds and public  
24 assets the transferee corporation is subject to the Maine Revised  
Statutes, Title 1, chapter 13 and must adopt bylaws and policies  
26 to implement the requirements of that chapter.'

28 Further amend the amendment in section 6 in the first line  
(page 2, line 18 in amendment) by striking out the following:  
30 "Sec. 6." and inserting in its place the following: 'Sec. 7.'

32 **STATEMENT OF FACT**

34 This amendment makes the transferee corporation that  
36 provides statewide noncommercial public broadcasting subject to  
the freedom of access laws.

Filed by Rep. Handy of Lewiston  
Reproduced and distributed under the direction of the Clerk of the  
House  
(3/26/92) (Filing No. H-1290)



MEMO FROM

STATE OF MAINE  
LEGISLATIVE COMMITTEE  
ON  
EDUCATION

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NOT ADVERTISED

SENATE

STEPHEN C. ESTES, DISTRICT 35, CHAIR  
DALE McCORMICK, DISTRICT 13  
LINDA CURTIS BRAUN, DISTRICT 21

MICHAEL HIGGINS, LEGISLATIVE ANALYST  
JULIE FORTIN, COMMITTEE CLERK



HOUSE

NATHANIEL J. CROWLEY, SR., STOCKTON SPRINGS, CHAIR  
JAMES R. HANDY, LEWISTON  
WILLIAM B. O'GARA, WESTBROOK  
JAMES V. OLIVER, PORTLAND  
JOHN J. O'DEA, ORONO  
MARY F. CAHILL, MATTAWAMKEAG  
SOPHIA DOUGLAS PFEIFFER, BRUNSWICK  
OMAR P. NORTON, WINTHROP  
WENDY L. AULT, WAYNE  
ALVIN L. BARTH, JR., BETHEL

STATE OF MAINE  
ONE HUNDRED AND FIFTEENTH LEGISLATURE  
COMMITTEE ON EDUCATION

February 26, 1992

The Honorable Charles P. Pray  
Chair, Legislative Council  
Maine State Legislature  
State House  
Augusta, Maine 04333

Dear Chairman Pray:

The Joint Standing Committee on Education requests permission to report out two bills:

1. LR 3781, An Act to Consolidate Noncommercial Public Broadcasting Statewide. This LR has been submitted to the Legislative Council as an after deadline request.
2. A bill consisting of legislation proposed by the report of the Advisory Committee on Medical Education. The report has been submitted in compliance with PL 1991, c. 612, §19 which required the Finance Authority of Maine to report to the Joint Standing Committee on Education on the existing programs for financial assistance for postgraduate medical education and to include suggested changes.

The Education Committee views action on these two bills as a priority. Work on both bills can be completed by March 6.

Sincerely,

Handwritten signature of Stephen C. Estes in cursive.

Sen. Stephen C. Estes  
Senate Chair

Handwritten signature of Nathaniel J. Crowley, Sr. in cursive.

Rep. Nathaniel J. Crowley, Sr.  
House Chair

3898GEA

MTA

3/8/92

WHEN I PLAN TO BUILD SOMETHING I HAVE AN IDEA OF WHAT IT WILL LOOK LIKE. I SKETCH A BLUEPRINT OR DRAW A SCHEMATIC OR MAKE A DRAWING OF THE IDEA. I TAKE THAT IDEA AND BEGIN MAKING A LIST OF WHAT THIS IDEA WILL NEED TO BE BUILT. THIS LIST WILL INCLUDE HOW I WILL BUILD IT, HOW I WILL ARRANGE THE PARTS THAT WILL BE INCLUDED, WHAT PARTS WILL BE NEEDED, HOW MANY PARTS, WHAT THE SIZES WOULD BE OF THESE PARTS. WHAT THE COST WILL BE AND HOW IT WILL GO TOGETHER.

I DO NOT JUST ENVISION THE FINISH<sup>ed</sup> PRODUCT, I HAVE ACTUAL PLANS THAT I CAN LOOK AT AND REVISE AS I PROGRESS IN MY BUILDING ENDEAVOR. WHEN I LAY MY PLANS ON PAPER I CAN GET A BETTER OVER ALL PICTURE AS TO WHAT MY FINAL GOAL FOR THE PROJECT WILL BE. I WILL HAVE A BETTER UNDERSTANDING OF THE COST FOR MATERIAL AND LABOR FOR THE PROJECT. I CAN PLAN MY BUDGET AND BE BETTER PREPARED FOR UNEXPECTED COSTS AND DELAYS. I CAN SEEK HELP FROM OTHERS TO HELP ME REFINE MY PLAN AND SEE IT TAKE SHAPE INTO WHAT I HAVE ENVISIONED.

THE ENVISIONED MERGER OF MPBN AND WCBB HAS NOT PRODUCED A PLAN THAT CAN BE SHARED BY THE STATE OF MAINE, THE VIEWERS, THE EMPLOYEES OF BOTH COMPANIES OR ANYONE CONCERNED WITH PUBLIC BROADCASTING. WHAT ARE THE COST SAVINGS OR POSSIBLE ADDED EXPENSES THAT WILL BE REALIZED? WHERE IS THE STUDY THAT SHOWS THE SAVINGS OR EXPENSES THAT WILL BE INCURRED AND HOW WILL THESE SAVINGS OR EXPENSES BE REALIZED? HOW WILL THE COMBINED STATIONS PROGRAMMING BENEFIT THE STATE OF MAINE AND CANADIAN VIEWERS? WHERE IS THE STUDY SHOWING HOW A BETTER PUBLIC BROADCASTING STATION WILL EVOLVE? HOW WILL THE MERGER AFFECT THE PRESENT EMPLOYEES OF BOTH CONCERNS? WHERE IS THE PLAN FOR THE COMBINING OF BOTH GROUPS OF EMPLOYEES AND HOW WILL THEIR BENEFITS, WORK LOADS, POSSIBLE RELOCATION, BE AFFECTED?

I REALIZE THAT GROUND WORK HAS BEEN ACCOMPLISHED: BY-LAWS AND LEGALITIES FOR TURNING OVER ASSETS AND LIABILITIES, A VISION OF THE COMBINED STATIONS HAS BEEN DISCUSSED. BUT WHERE ARE THE PLANS TO SHOW HOW THIS IS TO BE BUILT? ASSURANCES AREN'T ENOUGH! ANY PRACTICAL BUSINESSMAN OR WOMAN WOULD HAVE SOME KIND OF A DRAFT (NOT LEGISLATIVE DRAFT) TO WORK FROM. THIS DRAFT OR PLAN WOULD BE THE FOUNDATION, ALONG WITH THE VISION, TO BUILD THE NEW PUBLIC BROADCASTING NETWORK. THIS DRAFT OR PLAN COULD THEN BE SHARED WITH ALL INVOLVED AND INPUT COULD THEN BE ADDED TO IMPROVE AND STRENGTHEN THE OVERALL NEW NETWORK.



-2-

PLEASE CONSIDER THE ABOVE CONCERNS AND ASK THE SAME QUESTIONS THAT I HAVE BROUGHT FORTH. I WANT TO SEE A SUCCESSFUL MERGER AND SUCCESSFUL NEW PUBLIC BROADCASTING NETWORK FOR THE STATE OF MAINE. I WANT TO SEE THE ENTHUSIASM THAT HAS BEEN SHARED BY ED WINCHESTER AND ROB GARDINER PASSED ON TO THE REST OF THE EMPLOYEES OF MBPN AND WCBB. I WANT ALL OF US TO LOOK FORWARD TO THIS NEW AND EXCITING ADVENTURE AND TO BE CONFIDENT THAT WE WILL ALL HAVE A PART IN CREATING WHAT COULD BE A GREAT PUBLIC BROADCASTING NETWORK FOR THE STATE OF MAINE.

THANKS.

ENC. 2

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3/8/92  
UNIFICATION OF MPBN/WCBB

WHAT ARE THE OVER ALL GOALS OR OBJECTIVES FOR THE NEW CORP?  
WHAT OR WHERE ARE THE PLANS TO REACH THESE GOALS OR  
OBJECTIVES?

FINANCIAL: ACTUAL FIGURES

ACTUAL VS. PROJECTED INCOMES  
ACTUAL VS. PROJECTED EXPENSES

BREAK DOWN FOR OPERATION OF THE NEW CORP.

1. PLANT OPERATION (BANGOR/LEWISTON)
2. PROGRAMMING
3. EMPLOYEE (SALARIES/BENEFITS)

A. PLANT OPERATIONS

1. BUDGET-ACTUAL VS. PROJECTED  
BANGOR AND LEWISTON
2. WHAT SAVINGS OR EXPENSES MIGHT BE INCURRED?
3. GOALS OR OBJECTIVES
  - A. STEPS TO REACH THESE GOALS
  - B. MEDIATOR TO HELP W/TRANSITION

B. PROGRAMMING

1. BUDGET-ACTUAL VS. PROJECTED  
WHOLE STATE AND CHANNEL 26
2. WHAT SAVINGS OR EXPENSES MIGHT BE INCURRED?
3. GOALS OR OBJECTIVES
  - A. STEPS TO REACH THESE GOALS
  - B. MEDIATOR TO HELP W/ TRANSITION

C. EMPLOYEES

1. BUDGET-ACTUAL VS. PROJECTED  
SALARIES AND BENEFITS
2. WHAT SAVINGS OR EXPENSES MIGHT BE INCURRED?
3. GOALS OR OBJECTIVES
  - A. STEPS TO REACH THESE GOALS
  - B. MEDIATOR TO HELP W/ TRANSITION
4. BREAK DOWN OR NEW PLAN FOR VARIOUS DEPARTMENTAL  
POSITIONS.
  - A. STEPS TO REACH THESE GOALS
  - B. MEDIATOR TO HELP W/TRANSITION

Senator Estes, Representative Crowley, members of the Education Committee, my name is Rolf Tallberg. I represent the Maine Teachers Association and appear before you today on behalf of the classified and professional staff of MPBN.

The employees want to ensure that this proposed unification is accomplished with little or no disruption to the viewers and listeners of public broadcasting. In that vein, it is my responsibility to see that it takes place with a minimum of disruption to their professional and personal lives.

They will tell you that certain things must be done to preserve the integrity of broadcasting through this transition. I will tell you that before this bill leaves this committee, we must be sure that the integrity of the employees, the network's most valuable asset, is also protected.

It is the task of this committee to ensure that the employees responsible for the high level of quality that public broadcasting enjoys, do not become the big losers, the only losers as a result of this merger. We ask you to provide reassurance that the gains made by MPBN employees as

a result of twelve years of collective bargaining, will not be erased by legislative mandate.

These employees demonstrate their commitment every day. You have all heard and seen their commitment in the quality of programming they provide. They are eager to continue that commitment to quality. All they ask is that it not cost them personally or professionally.

What these employees expect from this committee is a careful and thoughtful review of the issue before you, and serious consideration of the potential impact this will have on their lives. They have a right to expect that the time they have dedicated to providing education, culture, and information to Maine's citizens will not be lost or devalued in this frankly baffling scramble for consolidation.

If one goal of this proposed unification is to preserve the icon of public broadcasting, this committee must send a bill to the floor of the Legislature which insures that everyone benefits. Anything less is a disservice to the state and will most certainly damage Maine's public broadcasting reputation.

Thank you for your time. I'd be happy to answer any questions.

MAINE PUBLIC BROADCASTING CORPORATION  
STATUS REPORT, FEBRUARY 13, 1992

During the past year, discussions between Maine's two public broadcasting organizations, the Maine Public Broadcasting Network (MPBN), licensed to the Board of Trustees of the University of Maine System, and the Colby-Bates-Bowdoin Educational Telecasting Corporation (WCBB-10), licensed as an independent non-profit corporation, have led to a plan consolidating ownership and operations of these two systems. Both Boards of Trustees have approved transfer of their licenses and systems to a newly formed non-profit entity, The Maine Public Broadcasting Corporation. The Boards of Trustees of Colby, Bates, and Bowdoin Colleges have also indicated their approval of the plan. Now the Maine State Legislature will be asked for its approval. If given, the new institution will assume all public broadcast operations statewide on July 1, 1992.

This status report provides an explanation of the background issues leading to the consolidation plan, a report on progress to date, a description of the anticipated effects on programming, fund raising, and future opportunities, and an outline of the remaining steps required before the plan can be implemented.

History

In the late 1950's, visionary educators at the University of Maine and at Colby, Bates, and Bowdoin Colleges agreed upon the potential use of non-commercial television to meet the educational and cultural needs of Maine citizens. Public understanding and support were essential for the dream to be realized. The initial plan to finance development of educational television through a state bond issue was rejected by voters. The Presidents of Colby, Bates, and Bowdoin, however, decided to use private funds to establish the first non-commercial television station, WCBB-10. This station began broadcasting in November 1961, serving southern Maine from Portland to Waterville. In 1962, Maine voters passed a bond issue enabling the University of Maine to launch Maine ETV with Station WMEB in Orono, serving eastern Maine. WMEM-Presque Isle, serving Aroostook County, and WMED-Calais, serving Washington County and the Maritime Provinces of Canada, followed. In the 1970's and 80's, with the addition of WMEA-Biddeford, serving York County, and five radio stations in Bangor, Portland, Presque Isle, Calais, and Waterville, Maine ETV became the Maine Public Broadcasting Network (MPBN).

During the decade of the 1980's, broadcasting was dramatically changed by the growth of cable TV. Cable became the means by which two-thirds of all Maine households now receive TV signals; over half of all Maine households receive two or more public television stations. Where both stations are available, MPBN and WCBB have increasingly heard viewers ask, "Why are there two public television systems in Maine?"

By 1991, the two stations were clearly pursuing nearly identical missions, and had developed similar program schedules, fund raising strategies, and local programming efforts. As the differences between the two systems diminished, the logic of consolidation to achieve statewide unity, enhance service, and make more efficient use of resources appeared inescapable. Representatives of both

stations met in the spring of 1991 to explore the creation of a new statewide system meeting the common goals of both broadcasting organizations and providing better service to audiences.

### The Goal of Unification

During the discussions between MPBN and WCBB, a vision of the potential advantages of consolidation began to emerge. A committee, made up of trustee representatives and both station managers, was charged with the responsibility for exploring the idea of consolidation. The committee concluded that while both systems had been successful in fulfilling their missions, the future for a unified system looked dramatically brighter. The entire broadcast industry is under severe competitive pressures and is limited in its potential to improve programming using traditional approaches. By joining the two public systems, the result will be substantially greater than the sum of the two parts. The committee chose the term "unification" to describe the process it envisioned. Unification carries no implication of shrinking resources or program cut-backs. While Maine has a relatively small population and limited resources, unification of MPBN and WCBB, and the consolidation of their resources, allows continued technological improvement, more diversified programming and more effective private fund raising. Specifically, the following enhancement opportunities were identified:

1. Each station produces local programs that the other does not carry. The combined local production resources, when used in a coordinated manner statewide, will significantly increase and improve television coverage about Maine. By broadcasting such programs to all parts of Maine, viewers' understanding of our entire state will be enhanced.
2. A second, completely differentiated television program schedule could be offered using Channel 26 in southern Maine and cable systems in other areas to reach more than half of all Maine households. While such a proposal needs further development and Board review, it is an example of how currently redundant equipment and other resources can be redeployed to achieve impressive improvements in services.
3. Currently public radio and television are not coordinated for maximum impact in the parts of southern and central Maine that are served by WCBB. Combining the power of public radio and public television statewide will greatly enhance the news and cultural programming, program information and other public services.
4. Public confidence in and appreciation of public broadcasting is expected to increase as a result of improved services and more efficient operations. Supporters of public broadcasting will therefore, get more value for their contributions. A combined organization will also have more fund raising power and efficiency.

### The Decision Process to Date

As the committee identified the benefits that could emerge from unification, it considered the complex process that would be required to achieve it. A proposal was developed in very rough outline during the summer and early fall, leading to discussions with the full WCBB and University Boards of Trustees in September. These public discussions triggered a major feature story in the Maine Sunday Telegram in October. In November, both station managers officially informed the more than 60,000 supporting members who receive MPBN's and WCBB's program guides about the idea and invited public response. Their reaction has been very positive. Additionally, early in the process the Governor and legislative leadership were consulted, as any plan would ultimately need the active approval of state government for unification and continued state funding.

### The Proposal

The new entity, the Maine Public Broadcasting Corporation (MPBC) inherits the mission shared by both MPBN and WCBB: to provide high quality non-commercial broadcast services for viewers and listeners statewide. Technically, both MPBN and WCBB will be absorbed by MPBC.

The new corporation will initially have a governing board comprised of seven Institution Trustees: the Chancellor of the University of Maine System, three UMS Trustees, and the Presidents of Colby, Bates, and Bowdoin Colleges. Eight to twelve Public Trustees will be selected later. The Institution Trustees have completed action to formally create the new corporation and have elected Robert Woodbury (Chancellor of UMS) as Chair, William Cotter (President of Colby College) as Vice-Chair, and Robert Gardiner (President of WCBB) as President.

The current proposal for the new corporation envisions continuing the production centers and other current activities in Bangor, Lewiston and Portland. Unification will allow resources that were previously consumed in providing duplicated activities to be used to improve and expand public services. Preliminary estimates for revenues anticipate no further reductions in state funding or any significant reductions in support from members or corporations. The Trustees have made a commitment to retain all current employees; this commitment has been given because the preliminary plans indicated that, in the wake of significant staff reductions at MPBN during 1991, all current staff will be needed to fulfill the operating objectives of a unified service.

The formal unification agreement covers the complex legal processes of transferring ownership of assets, allocating liabilities, and connecting the actions of the six different entities (UMS, WCBB, Colby, Bates, Bowdoin, and the Maine State Legislature) that must approve the agreement. The first five of those have now voted approval. Legislation to complete the last step in the process has been drafted and submitted for action during this legislative session.

What Remains to be Done

If the draft legislation is approved by the Maine State Legislature and the Governor, the unification process will continue. Specific plans for operating the stations in a coordinated fashion in order to achieve potential improvements will be developed by the staffs of both MPBN and WCBB. Ten staff task forces have already been formed to address the more urgent matters.

It is imperative to communicate these unification plans to the hundreds of thousands of public broadcasting's viewers and listeners throughout Maine. The 60,000 members, hundreds of businesses, 120 corporate underwriters, and 30 foundations currently supporting MPBN and WCBB must be encouraged to transfer their loyalty and their essential financial contributions to the new Maine Public Broadcasting Corporation.

Conclusion

A former Chairman of the Federal Communications Commission has described public television as "the most important educational institution in America." The proposal to unify Maine's public broadcasting organizations has been developed to further the ideal of excellence in providing this most important educational service. It should enable public television and public radio to increase public confidence in the system, purchase and produce higher quality programs, raise funds more effectively, operate more efficiently, help unify the people of Maine, and reduce the long term costs of service. The Maine Public Broadcasting Corporation is built upon the traditions that for 30 years have developed public broadcasting in this state. It looks toward a future filled with promise for the hundreds of thousands of Maine people who rely on radio and television to bring information, education, inspiration, and entertainment into their daily lives.



VOTING TALLY SHEET

Committee: EDUCATION

Date: March 13, 1992

Question: L.D. 2409 - An Act to Improve Educational Public Broadcasting Statewide (EMERGENCY)

Motion by: Rep. Barth second Rep. Handy - OTP-AM

No.		Yea	Nay	Absent	Abstained
1	REP. OMAR NORTON	✓			
2	REP. MARY CAHILL	✓			
3	REP. JOHN O'DEA	✓			
4	REP. JAMES OLIVER	✓			
5	REP. JAMES HANDY	✓			
6	REP. NATHANIEL CROWLEY	✓			
7	SEN. STEPHEN ESTES	✓			
8	SEN. DALE McCORMICK	✓			
9	SEN. LINDA BRAWN	✓			
10	REP. WILLIAM O'GARA	✓			
11	REP. SOPHIA PFEIFFER	✓			
12	REP. ALVIN BARTH	✓			
13	REP. WENDY AULT	✓			
TOTAL		13			

COMMITTEE ON: EDUCATION

LD#: 2409

TITLE: An Act to Improve Educational Public Broadcasting  
Statewide.

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HEARING DATE: March 10, 1992

WORK SESSION DATE: March 11, 1992  
March 12, 1992  
March 13, 1992

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REPORTED OUT DATE: 3-<sup>23</sup>~~20~~92

COMMITTEE REPORT: OTP-AM

ABSENT - Bowers, Carroll, J.; Gurney, Hichborn, Richens, Lipman, Paradis, P.; Parent, Richardson, Sheltra, Whitcomb, The Speaker.

Yes, 55; No, 84; Absent, 12; Paired, 0; Excused, 0.

55 having voted in the affirmative and 84 in the negative with 12 being absent, the motion to indefinitely postpone did not prevail.

Subsequently, the bill was passed to be engrossed as amended by Committee Amendment "A" (H-1223) as amended by House Amendment "A" (H-1289) thereto in non-concurrence and sent up for concurrence.

The Chair laid before the House the following matter: (S.P. 945) (L.D. 2409) Bill "An Act to Improve Educational Public Broadcasting Statewide (EMERGENCY) which was tabled earlier in the day and later today assigned pending adoption of Committee Amendment "A" (S-666).

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: What this bill does is it creates the Maine Public Broadcasting Corporation by combining the Maine Public Broadcasting Network, which is a part of the University of Maine and the WCBB; that's the Colby, Bowdoin, and Bates Television Channel 10 to improve educational public broadcasting statewide. The reasons we are doing this is that we feel by melding these two educational television stations doing the same thing, we feel that by putting them together and folding them and making them one, it isn't a matter of one going to the other, it is a matter of WPBN and WCBB going into the Maine Public Broadcasting Corporation. The bill authorizes the University of Maine System to transfer the assets of the Maine Public Broadcasting Network to the non-profit/non-stock private corporation to unify its operations with those of Colby, Bates and Bowdoin Educational Telecasting Corporation into a statewide, non-commercial public broadcasting unit.

It also establishes a board of trustees made up of the chancellor and three trustees from the University of Maine and also the three presidents of the Colby, Bates and Bowdoin colleges which would make a seven member board and the chancellor would be the chairman of that board. Then later, there would be not fewer or more than 12 public trustees elected by that board according to the corporation bylaws. The personnel rights were protected for both the employees from MPBN and WCBB in the bill.

There is also an \$80,258 deappropriation by this melding from MPBN to construct a radio transmitter to serve the northern part of the state, an underserved area in the radio corporation. As you understand, this is a Maine Public Television and then there will be the other unit of the Maine Public Radio and they may do business under those names.

Representative Crowley of Stockton Springs offered House Amendment "A" (H-1200) to Committee Amendment "A" (S-666) and moved its adoption.

House Amendment "A" (H-1200) to Committee Amendment "A" (S-666) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: This amendment simply changes the bylaws as we have them written in the original bill so that the president of the transferee corporation becomes a non-voting member of the board. We felt that where a person would be hired and paid \$70,000 or \$80,000 to run this corporation that he should be working for the board of directors rather than being a voting member. So, this amendment makes him a non-voting member of the board and we have run this by both of the television organizations and they agreed that it is a good idea.

Subsequently, House Amendment "A" (H-1200) to Committee Amendment "A" (S-666) was adopted.

Representative Handy of Lewiston offered House Amendment "F" (H-1290) to Committee Amendment "A" (S-666) and moved its adoption.

House Amendment "F" (H-1290) to Committee Amendment "A" (S-666) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Members of the House: This amendment that I am offering this evening puts this new entity under the Freedom of Access provisions of Chapter 13 in Title I. Because this entity will be receiving \$2 million, assuming they will be receiving \$2 million per year, as currently MPBN does from the General Fund, and because of the transfer of the assets from Maine Public Broadcasting Network to this new entity, it seems to me only appropriate that the Freedom of Access provisions apply to this new entity.

I hope you support the amendment.

Subsequently House Amendment "F" (H-1290) to Committee Amendment "A" (S-666) was adopted.

Representative O'Dea of Orono offered House Amendment "B" (H-1202) to Committee Amendment "A" (S-666) and moved its adoption.

House Amendment "B" (H-1202) to Committee Amendment "A" (S-666) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative O'Dea.

Representative O'DEA: Mr. Speaker, Men and Women of the House: House Amendment "B" is permissive language that affects the board of trustees for the new corporation. What it does is say that the presidents of Bowdoin, Bates and Colby who serve on the board in the bill may now appoint a designee to serve on the board. It also allows the chancellor to appoint the designee to serve in his place. It also allows the board of trustees at the University of Maine System to select members of the general public to serve on the board.

What this does is it keeps the members of the board of trustees at the University and the chancellor from being tied up with this board. It is designed to encourage the board to be a more of an activist board. It also provides for the election of two public members, one from the first congressional district and one from the second congressional district, thus providing a measure of geographic representation that might not otherwise be there. It also provides for an appointee by the Governor and also removes the CEO of the corporation from the board of trustees as a voting member.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, I move the indefinite postponement of this amendment.

In the Articles of Incorporation of the boards of Colby Bates and Bowdoin and the University of Maine Systems, they have written into the Articles of Incorporation a plan for dissolution. If they want to dissolve this corporation, either the University of Maine Board of Trustees and the chancellor or the three college presidents of Bates, Bowdoin and Colby, have the right to dissolve this any time between now and December 31st, the year 2001. In talking with the various college presidents and trustees and the chancellor, they said, if this were to go through, that they would just dissolve it now and the merger would never take place. I am afraid that this would destroy it. I hope you vote against this amendment.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative O'Dea.

Representative O'DEA: Mr. Speaker, Men and Women of the House: This amendment has nothing to do with the dissolution of the corporation, it merely allows the presidents for these institutions to designate other people to serve on the board. It does nothing to jeopardize the bill. If you look at House Amendment "B" and read through it, you will see that that is the case.

I believe it is an idle threat on the part of some of the WCBB people to walk away from this deal. There is nothing in here that is harmful or threatening and all it does is ensure that the board is an activist board and committed to the cause. The last thing we need in this state is another board similar to the board of trustees at the University of Maine system, a board that is comprised of very busy people who are held hostage to a system where they show up for a monthly trustees meeting and move through an agenda that has been set by somebody else. I would really hope that you would adopt this amendment.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, Men and Women of the House: Because I know you would rule me out of order, I will respond to the comment about the University of Maine Board of Trustees and being held captive another day and another time. I do urge you to vote against this amendment.

The comment was made by the proponent of it that he doesn't want the president to be tied up — the trustees are already on the board now, they are serving on the board now very effectively, doing a good job and there is no need for this amendment. I urge you to vote against it.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Men and Women of the House: I urge you to vote against the indefinite postponement of this amendment. I think this amendment adds an extra safeguard and provides for more accountability on the board.

I must just express my deep concern because this bill was only printed March 9th. The Education Committee has done a commendable job but I think it is very clear that we are already having debate on this bill from different members of the Education Committee who disagree on these amendments and that worries me a lot.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I truly didn't intend to rise, usually I do. However, on this particular

amendment, I feel the safeguards are in and I am getting up only to prove to a degree that this committee is together on this for the most part. I urge the indefinite postponement based on facts already mentioned.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Dore.

Representative DORE: Mr. Speaker, Men and Women of the House: Let me be frank, I rise because I am from the community of Auburn and WCBB is located in Lewiston, a neighboring town and I have a personal interest in this. As they say, all politics is local.

I would like to request from anyone who cares to answer, what the committee report was on the original bill?

The SPEAKER: Representative Dore of Auburn has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Members of the House: The bill as reported out of committee with the Committee Amendment was a unanimous Committee Report.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Crowley of Stockton Springs that House Amendment "B" (H-1202) to Committee Amendment "A" (S-666) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

62 having voted in the affirmative and 22 in the negative, the motion did prevail.

Subsequently, Committee Amendment "A" (S-666) as amended by House Amendments "A" (H-1200) and "F" (H-1290) thereto was adopted.

Under suspension of the rules, the bill was read the second time and passed to be engrossed as amended by Committee Amendment "A" (S-666) as amended by House Amendments "A" (H-1200) and "F" (H-1290) thereto in non-concurrence and sent up for concurrence.

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

The following item appearing on Supplement No. 25 was taken up out of order by unanimous consent:

#### SENATE PAPER

#### Non-Concurrent Matter

Bill "An Act to Expand the Membership of the Animal Welfare Board" (S.P. 696) (L.D. 1861) which was passed to be engrossed as amended by Committee Amendment "A" (S-639) as amended by Senate Amendments "A" (S-647), "D" (S-681) and "E" (S-685) and House Amendments "A" (H-1247) and "B" (H-1278) thereto in the House on March 25, 1992.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (S-639) as amended by Senate Amendments "A" (S-647), "D" (S-681), "E" (S-685) and "F" (S-689) and House Amendments "A" (H-1247) and "B" (H-1278) thereto in non-concurrence.

**Later Today Assigned**

An Act to Amend the Animal Welfare Laws (S.P. 696) (L.D. 1861) (S. "A" S-647; S. "D" S-681; S. "E" S-685; H. "A" H-1247; and H. "B" H-1278 to C. "A" S-639)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative Gwadodsky of Fairfield, tabled pending passage to be enacted and later today assigned.

**PASSED TO BE ENACTED**

**Emergency Measure**

An Act to Improve Educational Public Broadcasting Statewide (S.P. 945) (L.D. 2409) (H. "A" H-1200 and H. "F" H-1290 to C. "A" S-666)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Handy.

Representative HANDY: Mr. Speaker, Members of the House: It has been kind of a long process in a short period of time for the Education Committee to work out this piece of legislation for any number of reasons. For the Record, I think it is important to have the historical perspective of on how far the Education Committee has come with this bill which would cause the unification of the Maine Public Broadcasting and WCBB Channel 10 in Lewiston.

We received the bill and the bill, in my estimation and I think the estimation of a number of our colleagues, was very, very poorly drafted. In the very short period of time the Education Committee had to work on this bill with very little information and what information we had to start with and what additional information we needed was very difficult for us to obtain. We did not receive, unfortunately, the cooperation that we would normally expect from individuals involved with a particular piece of legislation but, due to the diligence of a number of the committee members, in fact all the committee members, as well as employees of both Channel 10 and Maine Public Broadcasting, we were able to get the necessary information to move this bill forward in the legislative process and bring it to the floor for you.

In the bill, we have taken what the committee deems to be necessary safeguards for those employees of Maine Public Broadcasting. I think it is important to recognize that the employees of MPBN through the sacrifices that they have made and the sacrifices that they will make to make this unification a reality. Without their dedication to public broadcasting in this state, this merger may not have taken place. I believe that we and all the citizens of the state owe them a great deal of thanks for their willingness to help improve public broadcasting in the State of Maine and help this bill come to fruition.

Unfortunately, the employees of Channel 10 in Lewiston were not afforded the same opportunity of

information and exchange with the Education Committee. What information we got from them came about through meetings with myself and other members of the Education Committee. I spoke to employees who work in any number of departments at Channel 10. I spoke to a member of the trustees, I spoke also to management at Channel 10.

Channel 10 employees were called to a staff meeting a week after the Education Committee had met on this legislation. I must say it came back to me about some information — in fact, misinformation and misrepresentations of my position particularly on this legislation by Mr. Russ Peotter, the Director of Production at Channel 10. Mr. Peotter has every right to say what he wants to say but, never during the course of our deliberations or since then, has he ever come to me to ask for clarification of my position on this. I have always encouraged the merger of these two entities as far back as 1966. At the very least, I think Mr. Peotter could have addressed his concerns to me directly instead of presenting this misinformation to his staff at a staff meeting of Channel 10. I think that is important to state for the Record that that has gone on.

I am in favor of this merger and for the Record, I think some of these safeguards have to be put into the Legislative Record because there was resistance to putting similar safeguards into the law for the Channel 10 employees, I think having on the Legislative Record will go a long way to addressing the situation.

Representative Oliver from the Education Committee wrote a letter to Mr. Rob Gardiner, the General Manager of Channel 10, asking a number of questions. I would like to read into the Record the questions and responses from him, in part, from the letter that he has responded to dated March 24, 1992:

"What is the proposed level of staffing for MPBC?" That is the Maine Public Broadcasting Corporation, the new corporation that will come into existence upon the effective date of this legislation and the merger of the two entities. "The staffing level will be the same as today's combined staffs. The current staff level at WCBB is 42 full-time and 11 regular part-time personnel; at MPBN the levels are 64 full-time and 9 regular part-time personnel. The MPBC Trustees have publicly committed to guaranteeing all of those individuals employment for the first year. This guarantee is firm and is based on the fact that the MPBN staff has been reduced by fifteen positions over the last eighteen months; that organization is now operating very short-handed.

Combining the staffs will result in only a few redundant positions. We believe only about six individuals will be required to assume new job assignments as a result of unification and we have plans to assign all six to closely related positions for which they are well qualified. One reason the number of redundant positions is not larger is that we plan to operate WMEA-TV (Channel 26) as the beginning of a second, unduplicated program service so that viewers will gain a choice of public television programs every hour of the day. All the positions in programming and operations will, therefore, continue to be needed. Experience in operating the unified system may lead to other changes that we cannot forecast accurately today, but we are certain that all current employees will be needed for as long as they want to stay with MPBC.

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the student loan program, bring it all under one umbrella. At that time, everything was sailing along fine until the chief person in that issue became the focal point and a riff divided us all over (in my judgment) not the issue but the key person, a former member of another body of this legislature and it was a personality clash. I know that there are many who have been following this that will agree with me that it is pretty much the same thing that has happened here. If another gentleman, other than Rob Gardiner, had been the spokesman, if Mr. Winchester had been the spokesman, a very quiet, calm, unassuming, unlike Mr. Gardiner who is very brash at times, very self-confident and did not make a good impression on certain members of the Education Committee, as a matter of fact, he offended one of our chairs and I think she had a right to be offended at the time, I don't think we would be where we are now. A lot of the little problems are technical problems that can be worked out. If you as legislators in the State of Maine are looking for an item that, when you look back upon your services here in the House of Representatives and want to find something that you did that made a lot of sense, was good for the State of Maine, in my judgment, this is that issue.

The proposal to unify Maine Public Broadcasting organization has been developed to further the ideal of excellence in providing this most important educational service. It will enable public television and public radio to increase public confidence in the system. It will enable them to purchase and produce higher quality programs. It will help them raise funds more effectively and operate more efficiently and help unify the people of Maine and reduce the long-term cost of service.

I agree that there are some minor technical problems that still have to be worked out. I am confident that two boards have thought all that over. I am confident that the new board will work those out.

The University itself has been brought in occasionally and some feel that they have to be protected. I talked to former Representative Lisnik, the University isn't asking to be defended here, the University understands what it is doing, knows what it is doing. When we talk about one of those agencies giving up their real property and whatever, both are giving up their real property to this new board and this new organization.

I urge you to support this as you did the other day. Mr. Speaker, I request a roll call.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Men and Women of the House: I rise to ask you to vote against the enactment of this legislation because I believe that this is too much, too soon. I suspect that in the long run, I may believe that the merger is a good idea, but there are too many questions that have not yet been answered. I have too many concerns among my constituents for me to support this.

The employees of MPBN, as you know, were told last summer that this might happen in two year's time and now less than a year later, we are about to vote it into existence. They have had no say in this and they have not been kept informed of what is going on. They were not notified that there would be a public hearing on the bill and feel that they have had no chance to approach the legislature. So, I am trying to represent them as well as other

constituents, mostly University of Maine faculty, who have told me that they are really concerned and would like to see this studied before it is done.

There was an editorial that I read a couple of days ago, I believe it was in the Lewiston paper and the editorial writer accused the Education Committee of this legislature of trying to block this legislation, of stalling, of holding it up and I couldn't believe that because the legislation was only printed two and half weeks ago on March 9th. I think the Education Committee has done an excellent job with a complicated piece of legislation. They insisted on having more information even though the people pushing for the merger were reluctant to give that information. It is not that I don't trust the committee, I just think that there are still questions. I have concerns, it seems like in a way it is a north/south issue. I heard that most of the fund raising money comes from southern Maine and yet the station I care about is in northern Maine. I want to be sure my people up north get equal time and equal representation in public broadcasting. So, I would urge, for those reasons, that we vote this down so it can be studied and brought back to us at a later date.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative O'Dea.

Representative O'DEA: Mr. Speaker, Men and Women of the House: I would ask you to join in voting against enactment of this bill today. As my good friend Representative O'Gara from Westbrook pointed out, there are some minor technical concerns with this bill. I share some of those minor technical concerns especially since the original L.D. is three pages long. We were told that the answer to our concerns, why in the bylaws and in the articles of incorporation, I would suggest that if you look through them, you would find that there is nothing in there that is binding and that it is all subject to change at any time in the future.

The major issue here for me, as one representative, is whether or not we should be turning these assets over and they are sizeable assets, \$8 million to \$10 million worth of state assets, and a substantial appropriation to a private corporation. There is some question existing in the minds of at least a few of us as to whether or not this shouldn't have been turned over to a public corporation, a public non-profit corporation as opposed to a private one. For that reason, I would ask you to please vote against enactment of this today so that we can put this thing on the slow track and do it the right way.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Lebowitz.

Representative LEBOWITZ: Mr. Speaker, Ladies and Gentlemen of the House: I wish to concur with my two colleagues from Orono in what they have just said. In effect, the employees at MPBN in Orono were not aware of what was taking place until shortly before the trustees met on this matter. It seems to me that, even though it might have been discussed, it was not discussed in the light that it should have been. I really feel that it would not be in the best interests of this body to enact legislation with not enough information.

In addition to that, I think that the northern part of the state is well served by the MPBN station and I feel that it might not get the same criteria as the station in Lewiston if the merger goes through.

I really feel that it needs a lot more work before we put our stamp of approval on it. I urge you not to vote for this piece of legislation.

The SPEAKER: The Chair recognizes the Representative from Winthrop, Representative Norton.

Representative NORTON: Mr. Speaker, Ladies and Gentlemen of the House: I was on the subcommittee, let alone the committee, that worked on this legislation and from what I put together after lengthy, lengthy, lengthy discussions and wanting to know those same basic questions that the other committee members needed to know, after all was said and done, I am convinced that the employees in the public sector of this merger are in more danger of losing their jobs without the merger than they are with it because the budget situation at the University isn't exactly overflowing with money. I have known the gentlemen on both sides of the fence for years and I would trust either one with anything of importance that I have and be entirely confident of their honesty and their ability. The Director at MPBN is a long time friend of mine and he says this merger is 25 years overdue. The process is worthy of consideration.

Employees in a situation where they don't know those details are bound to be nervous and I feel that they have every right to be that way. I can't vouch for how they were dealt with or what went on but I can say that I have the utmost confidence that the public interest is also maintained in the bylaws of this organization. You do not have to worry about the public assets. The Chancellor of the University of Maine is on that board, there are other public members. This legislature can intercede if it had to. This is a law, we do not lose contact forever although we don't want to ever micromanage. I was convinced that the interest of northern Maine, where I grew up, in southern Maine where I have an interest, in central Maine where I live, are met in this legislation. I would urge passage of it with confidence.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Men and Women of the House: I had originally no intention of speaking on this piece of legislation. I would simply like to point out that this is a perfect example in my judgment of why we should not say one thing to the employees, as evidently management did, telling them at first it would be two years and then going ahead and disregarding that statement to them and creating all kinds of uneasiness and maybe some mistrust by simply (in a sense) not taking a promise to them which at least they perceived as a promise, not taking it seriously and pushing ahead to get this piece of legislation passed sooner than they had expected. They probably feel left out of the process.

While I probably will vote for this piece of legislation, I am going to listen to the rest of the debate, I think that is a practice, namely the practice of kind of placating employees and then proceeding to ignore them, that is a practice which gets us into a situation like this, which we really need to avoid.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Boutilier.

Representative BOUTILIER: Mr. Speaker, Men and Women of the House: I just want to state that I am in favor of this bill and I think the title is

implematic of what is being done here and it is an Act to Improve Educational Public Broadcasting Statewide. I think that is going to happen, it is going to involve a better and more efficient use of existing resources and the elimination of duplication of services, fact fund raising and all of those improvements will be done to the betterment of public educational television in the State of Maine. I urge you to vote in favor of this measure.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative O'Gara.

Representative O'GARA: Mr. Speaker, Ladies and Gentlemen of the House: First of all, I want Representative Mahany to know that I agree with her. I thought it was handled badly, it was an unfortunate situation, it shouldn't have been done that way. I do hope that will not serve to cause her or anybody else to vote against this.

Two things I want to make sure you understand about going from public to private. First of all, this new board will be subject to the FCC and all other regulatory boards that the two boards now serving you are subject to. So, I don't believe there is any concern over how that board will be run, it will have to follow those particular guidelines.

One of the questions that I don't recall Representative Handy addressing when he went on with the length of items from the letter back to Representative Oliver. Perhaps he just forgot to mention this one. I would like to share a bit of it with you. "Would there be any problem with studying this and putting together a comprehensive proposal for unification to be submitted to the legislature next January?" The question was answered thusly. "We are both extremely concerned" (both, the board that we are talking about) "that extended discussion of such a major change would have a severe negative effect on our contributors. By putting the future of both stations in question for another year, we would undermine the viewers sense of commitment. Reduced revenues would be an inevitable result."

Second, WCBB was on the verge of launching a major capital campaign when the unification agreement began to come together last summer and fall. WCBB's Board of Trustees" (if this doesn't go through) "will probably want to launch their campaign this spring. Because capital campaigns of this magnitude normally takes three years to complete, unification would have to wait until 1995 or later.

Another problem with delay" and this has to do with staff that you have been hearing about today, "we know our employees are concerned about change - understandably, since they have devoted their career to these organizations. We are also concerned for their welfare. Recently, some staff have expressed concern that a one year study would stretch out the process and make their lives more difficult. A study would create significant uncertainty for them and they recognize that there could be serious negative effects on the fundraising efforts. Most of the staff are coming to realize that the employment assurances are sufficient protection and, as you saw at the work session when the MPBN staff members were asked what they thought of unification in general, there is very broad support for what we are proposing."

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and

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Gentlemen of the House: I hesitate to get up here because I spoke to this the other day and we had complete agreement on it and I thought we were moving along finally.

Just to assure you of one thing — we are going to take Channel 10 and Channel 12 and we are going to put them together and make them the Maine Public Broadcasting Corporation. This is what the bill does, something that should have been done years ago to have competing educational television stations in Maine is not sensible. New Hampshire doesn't do it and we shouldn't do it either.

As for the idea on the thoughts on the personnel, we met with some of the personnel, I met with personnel from both sides and to say that they weren't considered — we even wrote an amendment to take care of the personnel so that they would be assured of their jobs. It is right here in the bill if you read Section 4 of the amendment. So, I think we have covered all the ground.

It was a very unhappy experience the way the bill came to us and they tried to ram it through because they didn't understand the process, probably. We straightened all that out and I think now with the amendment that I put on and that Representative Handy put on and the Committee Amendment, this bill is in very good shape. I hope you will vote for it.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Oliver.

Representative OLIVER: Mr. Speaker, Ladies and Gentlemen of the House: This was one of those situations which was very difficult before the committee. A major transition, a major merger was taking place. We had a bill that was not too thick and not too complicated. There certainly was a percentage of elitism in the presentation from the management end and all of us recognized, as we do in other bills, that there was a slowness in presenting information that was needed. We had to go back and ask for transitional plans, the Charter, the bylaws, flow charts, but that doesn't negate the fact that the concept was correct, that personalities were getting in the way as they do sometimes, that some of the presenters did not know the process, that one of the presenters even insulted our distinguished chair, Representative Crowley. But, as you saw, Representative Crowley has gone past that and is supporting this legislation. Crucial and important questions had to be asked, especially on protection and guarantee to workers and they were asked. I had written a letter, we had a subcommittee formed, management and labor got together and came back with new suggestions. So, I am satisfied because I am satisfied with the concept. In talking to the workers and the management, everyone is buying in to the inevitable need to consolidate and save money, to consolidate and combine technology — just the cost of programming — two public broadcasting entities in the State of Maine paying duplicative costs for national programming makes no sense. So, I am hoping with the slowness of getting information, some of the elitism, some of the factors that had to be asked, that we go beyond that because what we have now, thanks to asking additional questions, thanks to the union negotiating very strongly with management and coming back with new plans and thanks to the amendments offered in this body, we have a very tight plan, a merger that makes sense.

I would also remind you that we are a committee that takes labor to heart. When it comes to the

working person, we ask a lot of questions and we demand answers. We got a guarantee from labor, MTA negotiating a one year guarantee that would guarantee the workers' jobs for a year but more than that would guarantee a 20 percent benefit package that could be negotiated up but could not be negotiated down. I hope you can support this merger.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Mr. Speaker, could the Clerk please read the Committee Report?

Subsequently, the Report was read by the Clerk in its entirety.

Representative O'Dea of Orono requested a roll call vote.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Men and Women of the House: I am going to support this piece of legislation because I have been convinced by the arguments in favor of it here today, but I am somewhat uneasy. I have heard here today something that comes very close to arrogance on the part of some members of management, I assume it is management, involved in getting this piece of legislation passed.

First of all, the employees were rendered uneasy and mistrustful by the fact that the schedule that they thought was going to be held to was ignored and they were not part of the process evidently. In addition to that, I have heard the House Chair of the Education Committee say that they came in and tried to ram through a piece of legislation because they didn't understand the process. Well, that may be a partial excuse for them but I don't think it excuses them entirely. My concern is this, have they learned their lesson or will they continue to try and push their will over on other entities that are there supposedly to keep them (in a sense) in line and under control? Will the board, in other words, simply rubber stamp the will of management in the future or will the board really scrutinize what is going on? I would hope that the board would take its responsibility very seriously and be very careful to make sure that management does not do something because it thinks it knows better, something that might work to the disadvantage, for example, in my area of the state or anybody else's area of the state.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Men and Women of the House: As an avid listener of MPBN and both public stations, no matter where I am in Maine because I find it the most delightful station we have on the radio dial, it amazes me that this hasn't occurred a long time ago. From my thinking from just reading the bill and the amendments that have come out of the Education Committee, it seems to me the issues that I hear being debated today are taken care of as to what happens to the property in the event of dissolution, what happens to the employees and how this is going to be managed. To my thinking, it's something too late, long needed, and hopefully, will give to all of us better listening and better viewing. I am for this and hope that all of you are.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.



A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is passage to be enacted. This being an emergency measure, a two-thirds vote of all the members elected is necessary. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 409

YEA - Aikman, Aliberti, Anderson, Anthony, Ault, Bailey, R.; Barth, Bell, Bennett, Boutilier, Butland, Cahill, M.; Carleton, Cashman, Chonko, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Dore, Erwin, Farnsworth, Farnum, Farren, Foss, Gean, Gould, R. A.; Graham, Greenlaw, Gwadosky, Hale, Handy, Hastings, Heeschen, Heino, Hepburn, Hichens, Hوجلund, Holt, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Larrivee, Lawrence, Lemke, Libby, Lipman, Lord, Luther, MacBride, Macomber, Mahany, Manning, Marsano, Marsh, Martin, H.; Mayo, McHenry, McKeen, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Nash, Norton, Nutting, O'Gara, Oliver, Ott, Paradis, J.; Parent, Paul, Pendexter, Pendleton, Pfeiffer, Pineau, Pines, Plourde, Poulin, Pouliot, Powers, Rand, Reed, G.; Richards, Ricker, Rotondi, Ruhlin, Rydell, Saint Onge, Salisbury, Savage, Simonds, Skoglund, Spear, Stevens, A.; Stevenson, Strout, Townsend, Tracy, Treat, Vigue, Waterman, Wentworth, Whitcomb, The Speaker.

MAY - Adams, Carroll, J.; Cathcart, Duffy, Dutremble, L.; Garland, Gray, Hanley, Hussey, Lebowitz, Look, Merrill, Murphy, O'Dea, Reed, W.; Stevens, P.; Tammaro, Tardy, Tupper.

ABSENT - Bailey, H.; Bowers, Carroll, D.; Clark, M.; Donnelly, Duplessis, Goodridge, Gurney, Hichborn, Kutasi, Paradis, P.; Richardson, Sheltra, Simpson, Small, Swazey.

Yes, 116; No, 19; Absent, 16; Paired, 0; Excused, 0.

116 having voted in the affirmative and 19 in the negative with 16 absent, the bill was passed to be enacted, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

Emergency Measure

An Act Regarding Advisory Boards and Occupational and Professional Licensing Boards (H.P. 1664) (L.D. 2341) (H. "B" H-1288 to C. "A" H-1180)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following matter: An Act to Amend the Animal Welfare Laws (S.P. 696) (L.D. 1861) (S. "A" S-647; S. "D" S-681;

S. "E" S-685; H. "A" H-1247; and H. "B" H-1278 to C. "A" S-639) (Emergency) which was tabled earlier in the day and later today assigned pending passage to be enacted.

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 120 voted in favor of the same and 1 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The following item appearing on Supplement No. 1 was taken up out of order by unanimous consent:

CONSENT CALENDAR

First Day

In accordance with House Rule 49, the following item appeared on the Consent Calendar for the First Day:

(H.P. 1531) (L.D. 2160) Bill "An Act to Maintain the Functioning of the Uniform Commercial Code and Corporate Sections of the Department of the Secretary of State" (EMERGENCY) Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (H-1310)

Under suspension of the rules, Second Day Consent Calendar notification was given, the House Paper was passed to be engrossed as amended and sent up for concurrence.

PASSED TO BE ENACTED

Emergency Measure

An Act Concerning Technical Changes to the Tax Laws (H.P. 1716) (L.D. 2401) (C. "A" H-1184; H. "A" H-1283; and H. "B" H-1291)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 111 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

The Chair laid before the House the following matter: Bill "An Act to Establish Economic Recovery Tax Credits" (EMERGENCY) (S.P. 960) (L.D. 2430) which was passed to be engrossed as amended by House Amendment "A" (H-1299) in the House on March 27, 1992; came from the Senate with that Body having insisted on its former action whereby the Bill was

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Sagadahoc, Senator Cahill, population fluctuation would not be the determining factor as to how many seats there would be. It would be the House that would make the determination as to whether or not they would want to reduce. Currently, they do not have that option available to them because the Constitution sets them at 151 members. This would provide a flexibility if they would so desire to reduce on their own they could do so. Thank you.

On further motion by same Senator, Senate Amendment "A" (S-702) **ADOPTED**.

Which was **PASSED TO BE ENGROSSED, As Amended in NON-CONCURRENCE**.

Under suspension of the Rules, ordered sent down forthwith for concurrence.

The President Pro Tem requested the Assistant Sergeant-at-Arms escort the Senator from Penobscot, Senator PRAY to the Rostrum where he resumed his duties as President.

The Assistant Sergeant-at-Arms escorted the Senator from Penobscot, Senator BOST to his seat on the Floor.

Senate called to Order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on JUDICIARY on Bill "An Act to Ensure Continuing Knowledge of the Identity and Whereabouts of Convicted Sex Offenders"

H.P. 1652 L.D. 2315

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1271)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1271)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1271) **READ** and **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

**ORDERS OF THE DAY**

The Chair laid before the Senate the Tabled and Later Today Assigned matter:

Bill "An Act to Improve Educational Public Broadcasting Statewide" (Emergency)

S.P. 945 L.D. 2409

Tabled - March 25, 1992, by Senator ESTES of York. Pending - **ADOPTION** of Committee Amendment "A" (S-666)

(In Senate, March 24, 1992, Committee Amendment "A" (S-666) **READ**.)

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Bost.

Senator BOST: Thank you Mr. President. Ladies and Gentlemen of the Senate. It's very seldom that the good Senator from York, Senator Estes, who is a very good friend of mine and I disagree on an issue. I notice he's shaking his head. We've fought a number of very good battles together and I've been

around this legislature long enough to know when I'm engaging in an uphill fight of sort. The issue of public private merger has been lobbied intensely in this legislature by a very expensive, high powered lobbying firm. I'm sure you've all been approached in one form or another over the last two or three weeks. I could only think of the good Senator from Aroostook, Senator Theriault, who likened his position on an issue last session to being engaged in a fight between David and Goliath and I think this situation is quite similar.

I hope members of this body will think very carefully before endorsing this proposed merger of WCBB and MPBN. I believe that this initiative raises more question than answers, among them: Why were the employees of both entities deliberately excluded from discussions about the merger and denied an opportunity, for the most part, to participate in the process? Why are the staff, who are calling me and a number of my colleagues from both WCBB and WPBN, voicing legitimate concerns about the merger afraid to go public for fear of retribution? That's very real and was reiterated to me tonight by a number of people who are involved. Why would the University of Maine system be so enthusiastic about relinquishing one of its greatest assets, a broadcasting system, which reaches into hundreds of thousands of Maine homes? Why would the University promote the dilution of one of its greatest outreach tools? Why would WCBB hire the services of a prestigious firm to lobby this bill full time at great expense? Who's picking up the tab? Why the intense interest in the sudden passage of this bill? Why is this bill being rushed through the process? Why should we be compelled to adhere to an arbitrary time frame set by the management at WCBB? Why does the Chancellor indicate that if this bill doesn't pass that the concept is dead for another five or ten years? What safeguards are in place for existing employees after the first year of operation? And, finally, in my estimation the most important question, Why would we, as a Legislature, approve dissolving a public broadcasting system funded in large part by a general appropriation and send that same appropriation to a private corporation when we don't have sufficient funds available to insure the solvency of some of our most basic programs in State Government? Why should we be earmarking millions of dollars to a private, essentially autonomous entity? What's going on here? I don't know. I've been trying to find out, it's very difficult to get information. You have to ask the right questions in order to get the answers that you want. And that's been a very frustrating exercise. I know that it's been frustrating for the Education Committee because they've been placed in a situation where they've had to deal with a bill of tremendous significance and substance in a very compressed time period. And much of what I think has needed to take place, in terms of discussion and thoughtful deliberation about this proposal, has not taken place simply because of the time element. I know that's been frustrating for a number of people that have been involved in this discussion. As far as I'm concerned these questions need to be resolved before I can vote for this measure. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Estes.

Senator ESTES: Thank you Mr. President. Ladies and Gentlemen of the Senate. I wish that I had had the opportunity to have gone up to the lounge earlier

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this evening to flex my muscles and pump me up for this debate but I will try my best to give you some points that I think are important and I know that the good Senator from Penobscot, Senator Bost, does have some serious concerns.

We have literally debated this for hours and hours over the last several days. We have even tried flipping coins and arm wrestling and have come to no agreement on this issue. This is, I think, a very important step that the State Legislature is taking in approving this unification. I think it's an important step that is really going to have significant benefits for the people of Maine, not only in the near future but in the long run. The idea of unifying Maine's two public broadcasting organizations actually rose to serious discussion last spring. It became more of a public issue last October when there was an article in the Maine Sunday Telegram, I believe, and since then there's been considerable press coverage in both the station's program guides which are sent to more than 60,000 Maine households have reported about the plan. The public comments that have been received by both stations have been very favorable. You also may note that there's been many editorial endorsements that have been given by major newspapers. I would like to return to that in just a minute because I have had a little bit of frustration with the way that this was reported.

The idea of the merger has been on the minds of people at both organizations for many years. It is the consensus of management and the boards that oversee these two institutions that unification is inevitable and that it is time to get on with it. The Boards of Trustees of the University of Maine system and WCBB have endorsed the plan and the Colby, Bates and Bowdoin College boards have also approved.

I want to talk just a little bit about the convoluted schedule because it has been very frustrating for the Education Committee. We knew that there was going to be a merger bill coming at some point in time this session and during the month of February there was a title that was before legislative council but unfortunately the legislative council did not act on it until the 2nd of March. They approved it, I believe it was a unanimous vote, and the bill had to go through its final drafting. It was on the 9th of March that the bill was referred to Committee. Because of the deadline for reporting bills out the Committee was facing, we held a very quick public hearing the following day and began extensive work sessions on the bill to get it out on time to meet the 5:00 deadline on the March 13th. Since that time, when a unanimous report came out of the Education Committee, the bill has been downstairs for final drafting and then finally appeared on Monday on the calendar for our consideration. In the meantime I've been a little dismayed with some of the coverage in the press which I think has really confused the situation.

There's been some speculation of what's happened to the bill, why has it dragged on, why has it been hidden from time to time. I have myself called one editor of one of our daily newspapers and another columnist from another paper to set the record straight and I hope that those corrections will be coming shortly in the paper in those respective papers. Also, I do want to bring your attention to information that I did pass out which I think gives you some substantial background. Yesterday I had

distributed to the body a letter to Representative Jim Oliver from the President and General Manager of WCBB answering some outstanding questions that certain members of the committee felt were in need of a fuller response. I've also submitted to you a status report dated March 14 which gives you the history, the goal of the unification, the proposal, the legislation and the legislative process and then what remains to be done over the next several months in order for the unification to take place on July 1.

One of the questions that has been raised is the question of public accountability, by allowing this bill to pass we, the legislature, will neither be giving up accountability of public broadcasting nor losing the value of the existing MPBN assets. The new organization will be required, through the Committee Amendment, to report to the legislature about the transition in the merger in April of '93 and in February a final report in '94 on what the effects of the transition have been. Also the Chancellor of the University and 3 University of Maine system trustees will serve on the new organization's board of trustees along with the Presidents of Bates, Bowdoin and Colby Colleges. The new corporation will depend on tens of thousands of individual contributions for the largest share of its financial support. Thus retaining the public accountability for programming and other activities which has guided both MPBN and WCBB management over the last 30 years. Finally, the new organization will depend on the State for approximately one quarter of its total budget. Public accountability is clearly a cornerstone of this new organization. The University has invested heavily in developing a sophisticated broadcasting network as has Colby, Bates, Bowdoin Educational Telecasting Corporation. The University, under this unification agreement, retains forever its financial interests in the assets of the new organization. There will be no loss of assets under this plan any more than there will be any loss of accountability.

I believe that this is an extremely responsible plan that fully protects the public investment and the public interest that we have made in public television. I would also call your attention to the articles of incorporation which specify what will happen if there is to be a dissolution or termination. The assets that were transferred will return to the University of Maine system and the State and that the appropriations that would be coming from the State would go for the maintenance and expansion of the infrastructure and those assets would also be returned on the event of a termination of the agreement or a dissolution. Finally, you have to keep in mind that the cost of television broadcasting and production are very expensive. By maintaining two entirely separate systems to serve the relatively small population of Maine we are not making the best use of public resources.

Take for example the current pledge week operations that are being broadcast separately from Lewiston and Bangor. One half of the expense of these separate operations is unnecessary. By unifying the stations only one pledge week operation would be needed, remaining resources could be used to produce more programs like Made In Maine or Kiosk or one of the other fine productions about Maine's culture, work places or public affairs. Certainly all viewers would benefit from such a change. I believe that other advantages will be found in the

future as the cost of replacing extremely expensive equipment will be reduced after unification. I believe that long term savings are an important goal in approving this legislation. I urge your support. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCII:** Thank you Mr. President. Ladies and Gentlemen of the Senate. One of the things that concerns me about this merger is the fact that the University, is going to be allowing an asset, a six million dollar asset, to be utilized by a private, non-profit corporation and the State is not receiving any type of a fee for the utilization of that asset. I'd like to know if the State is receiving any fee at all for the utilization of that asset.

The other thing in the letter that Mr. Gardiner has sent to Mr. Oliver, talks about the proposed expenses but it doesn't say anything about the revenues. I would be interested to know if there is any projected revenues from this proposed merger? I get conflicting information in the letter that Mr. Gardiner sent to Mr. Oliver where he says that "because the legislation hasn't taken effect, they haven't worked on any organizational charts" and then further in the letter talks about they've got a membership director, new entities may choose to have a director of membership or renewal director and he talks about particular positions. He has either worked on it or he hasn't worked on it.

I think as a further commitment to the members of this body that you would not have as many people here that are under that particular organization and concerned about what was going to be happening and to be staying here morning, noon, and night to watch what was going on if there was communication from Mr. Gardiner in the organization at WCBB and MPBN. Something that's been talked about for 20 years and then all of a sudden two years ago, or a year ago, they said it was going to be done in a couple of years. All of a sudden they're told that under the gun it's going to happen in six months. Nobody's told them anything, and this shows that there's going to be a lot of problems down the road. Before the ship is leaving the port I think it's very important to make sure that it doesn't have any holes in it, because it would be lucky to get out to sea. In this letter Mr. Gardiner states that they're undergoing a big voluntary contribution effort and they don't want the cloud of no legislation. Mr. Gardiner doesn't seem to realize that the University and MPBN relies 43% on a state appropriation and 29% on voluntary contributions. He doesn't seem to be aware of those facts.

This communication hasn't been both ways, I'm not opposed to a merger, what I am opposed to is not receiving anything for an asset utilization only as the Good Senator from York, Senator Estes, has pointed out that we will make sure we still have that, we're not giving up that asset. We're not receiving any fee for the use of that. To me that's a loss, the other thing is that we're talking about a private non-profit corporation who, under my reading of the statutes and I'm not an attorney and there are many here and they can correct me, but they're not susceptible to the public's right to know. The books are not open. I think that as far as the public's concerned that we should have a few of these things answered before we go any further down this road. Thank you Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Brannigan.

Senator **BRANNIGAN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I am delighted to be the sponsor of this bill. I think that it is a wise move on the part of the state and the University to begin to pool their assets in this endeavor with the very successful operation of WCBB. I don't see it as a loss at all but an enhancement of the money we spend, and enhancement of the assets that we have been able to build up. There will be no fee, this is a merger. The good that will come from this is a much better use of public television and radio.

We certainly are unfortunate we have been unable to support this effort as well as we would like to have, as well as we have in the past. We have had to cut back on MPBN in the same way we've cut back on other parts of State Government. It hurts their program. I believe that this merger is a very valuable way to use our assets. In any merger both parties give. We're giving our assets and future contributions and we are getting a great deal of the strength that MPBN has, that WCBB has, and the trustees will be a solid partner in this merger group. I'm delighted that we're moving in this direction and I hope that the questions that people have are not sufficient to keep them from helping us get on with this important matter. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. I would like to respond to the questions that were asked by the good Senator from Penobscot, Senator Baldacci. The first question was is there going to be any fee transmitted from the corporation for the use of the assets from the University system. The answer is no, there's not going to be any money up front. You have to keep in mind that both corporations are giving up their assets, WCBB and MPBN, to the new corporation which will be called the Maine Public Broadcast Corporation. Both of them in the event of a termination of the agreement or a dissolution would receive back any of the assets that they originally came into the new agreement with.

The other thing that you have to keep in mind is that one of the reasons we do not see this finely structured, in terms of what will take place on July 1, is that the first year is going to be a transition year and we will have set up under this legislation a transition board of directors comprised of the Chancellor as Chair, 3 members of the Board of Trustees of the University of Maine system and the 3 Presidents of Colby, Bowdoin and Bates. There will be the addition of 8 to 12 public members, those public members will actually come from names that are recommended by the subscribers to the new corporation. It will be the transition board that will be setting up the structure and determining what will be happening with the employment and positioning within the new entity.

One of the things that is planned at this time is to run not just one public television station but a second station with additional programming, not duplicate programming, which will mean that employment will stay at a relatively high level. We will need to have people doing duplicative work within the two stations that will be operating in terms of television broadcast. In terms of the amount of money that the corporation will need for operation, it is an estimated budget of approximately

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\$8.3 million. 25% of that, excuse me \$8.3 million over a biennium period, 25% of that would come from the State appropriation, the remainder of that would come from voluntary contributions, corporate contributions and there would be federal money for public television that would also be coming in. I do not have the exact breakdown on those figures.

We have seen public and private partnerships in education work successfully in a lot of other areas. Library services is a good example, course offerings between the public University system and the Private Colleges to eliminate duplication, and to make the most effective use of public and private resources. Cooperation between the new corporation and the University of Maine system interactive television system will continue, I think that Maine's Public Broadcasting Corporation can be and will be an outstanding example of how various types of institutions can benefit from new partnership arrangements. I hope those have answered some the questions.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Bost.

**Senator BOST:** Thank you Mr. President, Men and Women of the Senate. I appreciated listening to the exchange between the good Senator from Penobscot, Senator Baldacci and the Senator from York, Senator Estes, however I would respectfully submit that all of the alleged safeguards that the good Senator from York referenced have been put in place rather hastily over the last few days to make certain that there's some measure at least some measure of accountability are insufficient. What we need as a safeguard ultimately is to put a hold on this freight train that's leaving the station and think it out and put the onus back on WCBB and on MPBN to work out an agreement to flesh out something that's tangible.

To look at a structure that we can analyze, to look at some financial data and as the Senator from Penobscot, Senator Baldacci so appropriately indicated, look at revenue projection, look at things like this that are so important to us in the public domain on virtually every other issue why should this issue be an exception? Why are we rushing this issue through the process? I truly believe that this is a sweetheart deal, this bill represents a sweetheart deal for certain people that are involved in the merger design, not the least of which is an individual by the name of Rob Gardiner. Let's put it all out on the table Ladies and Gentlemen, we're about ready to adjourn Sine Die in a couple of days and this is either going to be cum laude or postponed. Let's put it out on the table, let's call a spade a spade.

I ask you, if we were to create a new department within State Government now, today, if we had the resources and obviously we don't, would we write into the enabling legislation who the commissioner is going to be? I don't think so. That's precisely what we're doing by passing this legislation. There is an heir apparent to the throne at the new entity called Maine Public Broadcasting Corporation, he has the job, it's all ready for him. Now I have no objections to the individual, I don't know him but I object to the process. The Senator from Penobscot, Senator Baldacci, read to you or referenced rather the letter that we've been all waiting for with baited breath from Mr. Gardiner which presumed to answer the questions that were asked of him by a

couple of legislators from the other body. The letter which I had high hopes of answering some of my concerns is riddled with inaccuracies and assumptions.

It indicates on the first page that MPBN staff has been reduced by 15 positions it's been reduced by 22 positions. That's an easy answer to find. I'm surprised that the mistake was made. There is an indication that there will be no headquarters for this new entity, please that's like saying there will be a State Government but there will be no headquarters, there will be no State House. I don't think we're being intellectually honest here ladies and gentlemen. We're talking about the MPBN and CBB investing in a large amount of production time and resources in producing station break materials etc.. The inference here is that this is a sizable chunk of their time at WCBB and if we merge we can better manage our time etc. etc. I'm told at MPBN that they spend approximately one day a week on this. Is that a burden? You ask yourself. One of the most disturbing things that I've come across over the last 24 hours is what I consider to be some of the rather deceptive ways in which this has been introduced to the very people that are going to be asked to carry out this new entity, this new program, this new corporation. Supposedly the framework is not there the organizational chart has not been fleshed out, however, when the question was asked what are you going to do with such positions as the membership director a very clear answer came back in the form of this letter which said we may consider revamping the membership director position. A call was placed last night to the existing membership director at MPBN, she had never heard of this. So I ask myself, as I posed earlier to this body, is it now a case of just asking the right questions. I don't have time to familiarize myself with this issue to the point where I know all the right questions to ask to get the appropriate answers. I don't think that we should be put in a position like that.

Another inaccuracy was that both the stations receive the largest part of their revenues from voluntary contributions, the good Senator from Penobscot appropriately pointed out that this is another inaccuracy. MPBN receives 43% of its operating revenue from general appropriation, 29% from members and 7% from business supporters, I'm not clear on what WCBB garners, but I'm sure they have that information available. Once in a while we get a glimpse at the thought process that goes on beyond the public view, if you will, and I was, I became privy to minutes of a staff meeting at WCBB which I think that in order for you to be better educated on this topic you need to hear. On March 19 a staff meeting was held at the request of management at WCBB at headquarters to discuss an article that appeared in the Bangor Daily News that obviously someone over there felt was unfavorable. Somebody actually questioned the validity of this project. So a major staff meeting was called and the minutes were furnished to a number of members of this body and I will quote from some of the more eloquent conversation that went on in that room, I wish I'd been there. Russ continues, "Rob Gardiner didn't want to put mention of WCBB in the legislation because it will make MPBC a public institution. The legislature wants to have control for the next three years," Russ explained how that control angers him. Now what Mr. Pieter, and again an individual I have not met, I do not know, what it appears to be he is

implying here is that every effort was made to straddle the public/private fence and that while management at WCBB courts the legislature for its blessing AND it's appropriation, the most important part, it wants nothing to do with anything that could place it in the public domain. Open to public scrutiny. But more bluntly, it wants to reorganize privately with public monies. If legislative control angers this gentleman perhaps he and his colleagues should look to the private sector for full funding because I believe the scrutiny of this merger, or as they prefer to refer to it as consolidation, will only intensify with time. It goes on, Russ Pieter continues, "The part that bothers me the most is that this isn't a public organization what is implied is that the state is giving up equipment and giving it to a private company like Dow Chemical, they want to talk about public accountability and that" expletive deleted, I'll replace it with "that really gets my blood boiling." for the purpose of the legislative record.

Now we move from concern about control to anguishing about accountability. MPBN must be accountable for their funds, they have a separate line in the budget as we're all aware, they have a separate line and we should expect no less from this new entity. Russ continues talking about what will happen if this bill doesn't pass, "if it doesn't fly you're looking at two very wounded organizations, we'll be out there trying to raise funds and looking like losers. Not only will we be competitors, we'll have to tell people why this didn't work. You can almost bet this bill will get on the floor but it will be amended. It will be a bill that we don't want." Now let's look at that statement carefully. If the merger doesn't occur there should be no wounded organization, it should be business as usual. Unless, everything has taken place, all the mechanisms are in place, all the movement has taken place and all this is is merely a stamp of approval. If that's been done there may be some wounded organizations, but if we're taking them at their word there should be no wounded organizations.

Maybe there are issues that we aren't aware of, is WCBB financially solvent? I don't know, the question needs to be asked. Has there been commitments made by groups involved in this discussion that they somehow can't back out of? I don't know. The questions need to be asked. Why would there be wounds if this failed passage except for maybe a few egos? Why would they feel like losers when fundraising? I don't understand that. MPBN's corporate and individual contributors will still be there. WCBB's individual and corporate contributors will still be there. Where are they going to go in the interim? Why would failure to approve this merger suddenly make the two stations competitive? And lastly he says "an employee then stated that if this falls apart we'll be in oblivion". Russ states "I have a feeling if it doesn't happen now we'll die for five or ten years, then the legislature will take the heat, there will be lots of layoffs at MPBN because the legislature hasn't budgeted for MPBN next year." Well, I appreciate the political analysis that this gentleman has provided, however, he obviously hasn't spent much time talking with legislators. If he had he would learn that rather than having to wait five or ten years to try again all WCBB and the University of Maine system need to do is formulate a well thought

out plan for implementation, how people would be impacted. Many of these staff have worked for Maine Public Broadcasting Network and WCBB for years, they deserve to know what's going to happen to them. And some sort of meaningful cost analysis, these kinds of things need to take place. And it hasn't been done and it's not the fault of the Education Committee.

They had only three days to hammer this bill out it's the fault of the people that have kept this plan essentially to themselves until it got to this point in the legislative process. I will close with what I believe to be an appropriate analogy, approximately three years ago when I had the good fortune of serving on the Joint Stating Committee on Education with the Senator from York, Senator Estes, we had before us a bill which surfaced very much like the bill we are debating tonight. It was a bill which appeared in the latter days of the legislative session to create a Maine Education Authority, which would funnel student aid services and consolidate virtually every student loan fund available currently to students in the state. But ladies and gentlemen, most of the members of the Education Committee, they couldn't quite put their finger on it but something was wrong with that picture. There was an individual who was prepared to assume the mantle of this new authority and it was preordained, once the authority was in place, received legislative approval, this individual would take the helm. Something wasn't right with the proposal, and fortunately the education committee at that point had more time than it had this time, and looked into the matter and found out that no in fact it wasn't a good deal for the people of this state and provided an alternative to that authority which, in my estimation, would have been a fiscal albatross, and placed instead those functions under the Finance Authority of Maine, where they sit today and I might add, very successfully. I think that situation is analogous to this issue that we are debating here tonight. There's something wrong here, and I simply can't put my finger on it. But I think the questions need to be asked and we need more time. This is simply not the point in which to move.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President, Ladies and Gentlemen of the Senate. There have been again a series of questions and comments that I think need to be reacted to on the record. And I would like to say to the good Senator from Penobscot that I firmly believe that there is not a boogey man in every closet. I know that the process has been the problem with this bill coming before this legislature on this day. I am convinced that it has not been the people who have been involved in the discussions for almost a year now on what they could be and how they could become what they wanted to be.

I will say that I have known Mr. Gardiner, the general manager, for probably three years now and have served with him as a member of the Commission on the Common Core of Learning, and also on the Coalition on Education Excellence. At some of the meetings for the Coalition back in the fall, we talked about the possibility of this legislation coming up in this particular session. I think what is particularly troublesome is the fact that the Committee was put in an awkward situation of having to consider this in such a short period of time. It was difficult getting specific answers to questions.

Some of that I think was due to individual's lack of familiarity with the process, the fact that the process had been sped up to an incredible pace, where the bill was referred on a Monday night and a hearing is held on Tuesday afternoon and the work sessions to hammer the bill out take place over those next several following days.

In instances where concessions had to be made by WCBB, they did so and did so willingly. They supplied us with the papers of incorporation that were filed with the Secretary of State's Office on February 7, they supplied us with the draft copies of the bylaws dated February 4, we were able to resolve some outstanding situations as they pertain to personnel at WCBB and protection of their rights currently covered by collective bargaining agreements. Guaranteed job security, and salary and benefit provisions during the first year of transition. Assurances were also given by MPBC leaders that all other employees would be offered similar guarantees.

In terms of the organization, there were certain aspects of the bylaws pertaining to the composition of the Board of Trustees, and the President of the corporation that were cottified in the committee amendment. I also have mentioned the fact that there will be transition reports coming in both in '93 and in '94. In terms of the letter that is dated March 24, that happens to by yesterday, this was in response to a letter that went out on March 23. And I don't think one day is to much time to turn around on a total of 9 questions, and fairly intricate questions. I guess my problem with the funny feelings that a number of legislators have had about this is that this bill was reported out of committee on the 13th of March, a unanimous report of the committee, not a divided report, there could have been a divided report and then I think the debate here tonight could have been fair game.

I sat up here last week with all of our committee work done with time on my hands, time on my committee members hands, twiddling our thumbs; no one mentioned what about the boogey man, we should talk about this some more. It really wasn't until I arrived here late Monday morning that there were all sorts of stirrings that had gone on. In fact I made mention in caucus today that not only on this bill but on a couple of other bills that came out of the Education Committee, people have had opportunities to talk about problems that they've had with the bills and whether those problems could be fixed or should be fixed and it's almost as if I've been ignored, and I find that rather strange, rather troublesome. I would also like to put on the record, because I know this is a question that has come up, about the public right to know, the good Senator from Penobscot, Senator ~~Bost~~, talked about financial disclosure and being able to look at their records, those are available, by state and federal law those are available.

Under Maine's Charitable Solicitation Act for non-profit corporations the station and the new corporation must file an annual report of revenues and expenditures, including the types of expenditures. This assures the public a disclosure of how much money is spent on everything, including administration. The station is also required to disclose salaries of all of its top management who earn over \$30,000.00 a year. The FCC requires the station to maintain an extensive public file at the

station which must be available on demand. This file contains information about programming, correspondence from the public, records and information about the station. As the station currently now, and in the future, the new entity will receive money from the corporation for public broadcasting i.e. the Feds, WCBB now files, and the new corporation will have to file, an extensive detailed report containing information on such matters as financing, public access, and equal employment. In addition, the station is required to provide public notice of all trustee meetings which are now open to the public and will continue to be open to the public, that notice is by advertising of the upcoming meeting by on-air notices with the television station. The minutes of these meetings are also available in the public file for public access. So the FCC, the Corporation for public broadcasting, the Maine law, IRS regs, all require extensive disclosure of information. And I believe that that should be satisfactory in terms of people getting whatever it is that they want to know. The last thing that I would say is that we have an interim board of trustees, 7 members, 4 from the University system, 3 from the 3 private colleges. They will be the ones that will be overseeing this merger and setting up the organization. The President of the Corporation is chosen by the Board of Trustees for a one year term and must be reappointed at each annual meeting. At the first annual meeting you will have all board members, public as well as the 7 designated in statute, and they will choose the President who has the responsibility of the operation and management of the corporation's facilities and activities, is responsible for supervising all personnel employed by the corporation and reports directly to the Board. I hope that those answer some of the other concerns that were out there and I urge you again to support this legislation. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Knox, Senator Brawn.

Senator **BRAWN:** Thank you Mr. President. Ladies and Gentlemen of the Senate. I did not plan to rise on this issue but after listening to the tone of some of the debate, I made some notes and feel compelled to speak briefly. I want to commend, publicly here on the floor of the Senate, our good Chairman the Senator from York, Senator Estes who, if I was tired and could do a job like you just did you should be patted on the back. Senator Estes has always been professional and above board in our Committee and as he has stressed and I can't stress it enough, this was a unanimous committee report, unanimous.

I was at that public hearing and I was there all morning, I thought it was very professional, there were many questions asked, they all would be on the record downstairs. I also applaud him this morning for getting this letter and everything on our desks to answer questions. I think there's no doubt that I'm concerned about the tone when I've made such notes as "we waited with baited breath" or "financially solvent" or I mean is this a set up or vendetta or what's going on here? I'm really concerned about this. I want to just make a couple more points that Rob Gardner has always been, I don't know him either, I wouldn't know him if he walked in here, and he might have been one of the men there that morning. I listen to people, I don't put a name with a person, I listened to every person that was

there, but everything in this, if you read it again, is right up front, he's already in here twice said he'd be glad to answer any more questions. They have been right up front as far as I'm concerned. And you know, we have to be patient when we understand this has been a very packed in session. And if you're given a notice that you've got a public hearing the next day and you show up and you're there you can't expect miracles of having everybody to know. I just want to, for the record, say that I feel very comfortable with this merger, I never for one minute felt it was a sweetheart deal of any type. I don't feel a bit uneasy. I urge you to support this and Mr. President I would ask for a roll call.

On motion by Senator **BROWN** of Knox, supported by A Division of one-fifth of the members present and voting, a Roll Call was order.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Bost.

Senator **BOST:** Thank you Mr. President and men and women of the Senate. I'm pleased to know that I'm so quotable. There are a couple of other issues that I think at least need to be discussed, I know that the members are growing weary of this debate, but we are on the threshold of moving into a new era in public broadcasting and I think these, potentially anyways, I think that these issues need to come to the surface.

One of them is that it is my understanding and I would pose this in the form of a question to my good friend and colleague from York, Senator Estes. If the employees, current employees of MPBN, move from essentially employees of the University of Maine system into the new entity, are they, is the University obligated under contractual agreement to provide them with severance pay? If they are required, how much? Is the severance pay, how much would it be worth, the information that I've been provided is that it would be roughly \$500,000.00. That figure may be wrong, up or down somewhat, but if we could get some clarification on that issue that would be helpful.

Secondly is the issue of cost effectiveness and efficiency. I was told about an instance, not long ago, where a number of engineers from WCBB traveled to the Bangor studios of MPBN to share with them the new plan, the new transmitting plan. And did so less with any inclination toward getting input but more to provide them with the plan and tell them that this is essentially the way it was going to be. The plan as it was described to me, and I will share it with you in laypersons terms because I'm not entirely knowledgeable about this, but the plan was to feed the northern Maine area from southern Maine and to feed southern Maine from northern Maine. And the engineers at MPBN were left scratching their heads, they said wouldn't it be more efficient to have northern Maine service northern and central Maine and southern Maine service southern Maine? That was dismissed, that idea was apparently novel.

In a supervisory staff meeting back on October 7 of 1991 at MPBN, present were the director, Ed Winchester and others, it was shared in the staff minutes that Tony Paine of Maine Media was here last week for a meeting with Barb, Mary Lou etc. etc., Mr. Paine's specialty is crisis management, he discussed the importance of disseminating accurate information regarding the consolidation, will be preparing a report etc. He stressed the importance of using the word consolidation which is what is planned, and not

merger because people would get confused and there are perhaps weightier implications of the word merger instead of consolidation. But the most important part of this memo is the fact that it said "the following items were tentatively agreed upon at a meeting of the task force," and among them, "there will be no forced moves for two years," from a point, I'm assuming, from the point of the merger. Now obviously that has been scaled back to one year. What is to prevent that from being scaled back further at some point? I don't know. There are, I understand, adequate protections in the legislative language to make certain that most of this doesn't happen, but the communication that's going on and the credibility of some of the correspondence would lead one to believe that not necessarily everything is on the table. And my final question to the good Senator from York, Senator Estes, if he could be so kind to provide it, has there been any analysis of the impact on membership, whether it be at WCBB level or MPBN or as a combined unit. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Estes.

Senator **ESTES:** Thank you Mr. President. In regards to those multiple questions, I will try to hit on a response for each of them. Pardon me if I do forget, I did take down a few notes here. In terms of the employees and what is being done in regards to severance, those negotiations are currently going on. That is, the MPBN employees who are represented by the Maine Teachers Association and the non-unions are doing their negotiations with management at MPBN, they will be taken care of, I don't know what that figure is, I'm not involved in the collective bargaining at this time. Those employees that maintain employment after July 1, within the new corporation by their choice, are guaranteed employment and the agreed upon salary and benefits for the first year of the corporation. Undoubtedly, they are nervous about this move, anyone would be. If you had an organization that has existed for 30 years, or nearly 30 years, to come July 1 to a situation where there is a consolidation, and I think consolidation is a reasonable word to talk about the first year, because the first year is going to be a transition where the staff of both institutions are going to be getting to know each other and working with each other and planning what the structure is going to be for the future of the new corporation.

It's a nervous time out there for anyone in an employment situation, whether they're employed by State Government or whether they're employed by the University system or one of the private colleges or a private business out there. Everyone's been nervous because of the crisis in our State Government and because of the state of our economy. I do say, with some interest, that I was unaware that there was an MPBN meeting, staff meeting, on October 9 I believe it was with an individual by the name of Mr. Paine, but that seems to me to suggest that there have been some serious ongoing discussions about what if this merger, or consolidation, is allowed to take place by the legislature. In terms of cost effectiveness and efficiency, those are part of the bugs that are going to be worked out over the next year and it will be, undoubtedly, a struggle and there will be, undoubtedly, some false starts and corrective actions that may have to take place. I don't believe we can even expect that this new corporation will be able to

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hit the ground running on July 1 or August 1 or September 1, it is going to take time, it is going to take planning and that's, I believe, an essential part of this first year of transition.

In terms of membership support, I do know that from WCBB that the information they have gotten from their subscription membership is very positive to this consolidation, very positive to this consolidation. And it is the belief of individuals who have been working on this, and are supportive of this, is that with expanded potential of the new corporation will be reaching out to almost every corner of the state and providing more extensive programming that membership is very likely to grow over the early years of this corporation. I hope those answer the questions. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator **BALDACCII:** Thank you Mr. President, Mr. President and members of the Senate I'd like to thank the good Senator from York, Senator Estes, for answering questions and to have as much information at his fingertips and to be able to try to respond to some of the concerns that we do have. However, the concerns that I would have, very simply are, people were marching on the streets here in Augusta on Monday because we were asking people to have a cut in their pay, we're struggling to make ends meet financially, we're having a hard time. Is this being done to save money, I haven't heard it yet. The only thing I have heard is that we are possible going to be on the book for \$500,000.00 in severance pay. On top of the appropriation that's already going there.

I have heard people say, this is good, statewide coverage. Would you please tell me, even the good commissioner of Mental Health had the decency to talk about savings that were going to take place. Nobody has mentioned any savings from this merger. Senator from Penobscot, Senator Bost, he asked about some studies that have been done, there are other universities that have merged with private entities in Wisconsin, what happened? Nobody is opposed to this merger, we want it to happen. All we're saying is is it thought out? Are plans and structures established? There obviously is not a good working relationship in any school I've ever gone to if the top doesn't get the bottom involved there won't be anything to work on. It seems like everybody has to be working together. It doesn't seem to be very good teamwork, I mean the evidence is staring you in the face, it's been here all day. There have been no financial studies, there's been no studies on what happens to membership, there's been no studies of other entities, in other parts of the country what's been happening. And in spite of the comments by the good Senator from York, Senator Estes, there are several amendments that are going to be offered in as far as public right to know in regards to this particular matter.

I'm not sure as to the information on charitable solicitation and those laws which the committee on Business Legislation has jurisdiction over but I think that the concern that I have in the review by the people in legal profession is that this private, this private non-profit corporation is not subject to the public right to know laws. They're not subject, but maybe if I want to call the IRS and I want to tell them that I'm the State Senator from Bangor, Senator Baldacci, and I'd like a copy of that corporation's filings, if the right hand knows what

the left hands doing, I may be fortunate. If not I'm going to be somewhere, stuck in some office in IRS land, where ever that happens to be. But as far as any filings with the State of Maine, none of that information is available. There is no salaries over \$30,000.00, there is none of that information available under the charitable solicitation laws. None of that information is available. And I'm not looking, I'm not suggesting that Mr. Gardner's situation at WCBB, being a private non-profit corporation could possibly compare with the United Way and what took place with that private, non-profit corporation. I'm not suggesting that, all I'm suggesting that if there ever was a concern that the public would have the right to that information. Seeing that the public, the public who you were elected to represent, are handing over 6 million dollars in assets for them to use. We're supposed to be satisfied because the Chancellors on the Board and 3 trustees are. But you forget to look down at the bottom where it says 8 to 12 members other than those people will be appointed. Ladies and Gentlemen of the Senate, 8 to 12 vs. 4 looks like an overwhelming majority.

We're handing over two and a half million dollars of state appropriations. I'd just like to know, somebody maybe from the financial and appropriations committees could explain to me what dollar savings are we taking place with this particular merger. All I've heard here tonight is we're going to be on the hook for severance pay. Somebody point out some saving for the State for what we're going through. I'd be very interested to hear it. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Hancock, Senator Foster.

Senator **FOSTER:** Mr. President, men and women of the Senate. For the many years I've served on the appropriations committee, I've always had to look after Big Bird. And I will tell you the story of Maine public broadcasting and why I'm a co-sponsor of the bill, they have a separate line item in our budget and even the days when we had lots of money they never got their request, their full request, until the very last night, and if there was a little extra money I'd say "let's give it to Big Bird", because we were very enthralled in giving it to every other group in the State of Maine. Our answer was "you can get it with these shows, call in \$25, \$75 etc. etc." and I said to Ed Winchester, why don't you combine and get one public broadcasting system so that we can all have the same dollars going in together. Because we didn't have enough money for Ed to pay for his plumbing his heating, I mean he had a bare boned budget and he is the nicest man going and we really prevailed upon him to look at the big picture for all of Maine.

Why have 2 public radio stations buy one good program? I mean I sit there night after night and listen please call, and in this day when public dollars are fewer and where are the dollars coming from? Canada. Every night the Canadians call in. On that radio station night after night, I mean that's not a credit to the people of the State of Maine when we're getting all those dollars from Canada. And then again with the general dollars getting scarcer, now if you get squeezy feeling in your stomach about there's a big black boogey man out there the big black boogey man to me is that we might not have public dollars or general fund dollars to keep that radio station going. And I believe that the time is

to merge and if we can't rely on some people that know, now I respect your thinking about the employees and I got that very, that's a very strong message you have and I'm concerned and we should be, but I do believe that we first of all have got to look after preserving Maine public broadcasting and by doing the merger we will have one great public radio station for the state of Maine. And I think that's the number one priority. Let's think of that, number one priority is have one good public broadcasting system in the state of Maine. And we will have with this merger. Thank you very much.

Senator **BOST** of Penobscot moved that the Bill and Accompanying Papers be **INDEFINITELY POSTPONED**.

On motion by Senator **ESTES** of York, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is the motion of Senator **BOST** of Penobscot to **INDEFINITELY POSTPONE** Bill and Accompanying Papers.

A vote of Yes will be in favor of the motion to **INDEFINITELY POSTPONE** Bill and Accompanying Papers.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators **BALDACCI**, **BERUBE**, **BOST**, **BUSTIN**, **CONLEY**, **PEARSON**, **THE PRESIDENT** - **CHARLES P. PRAY**

**NAYS:** Senators **BRANNIGAN**, **BRAWN**, **CAHILL**, **CARPENTER**, **CLARK**, **CLEVELAND**, **COLLINS**, **DUTREMBLE**, **EMERSON**, **ESTES**, **ESTY**, **FOSTER**, **GAUVREAU**, **GILL**, **GOULD**, **HOLLOWAY**, **KANY**, **LUDWIG**, **MATTHEWS**, **MCCORMICK**, **MILLS**, **RICH**, **SUMMERS**, **THERIAULT**, **TITCOMB**, **TWITCHELL**, **VOSE**, **WEBSTER**

**ABSENT:** Senators None

7 Senators having voted in the affirmative and 28 Senators having voted in the negative, with No Senators being absent, the motion of Senator **BOST** of Penobscot, to **INDEFINITELY POSTPONE** Bill and Accompanying Papers, **FAILED**.

**THE PRESIDENT:** The pending question before the Senate is **ADOPTION** of Committee Amendment "A" (S-666).

A vote of Yes will be in favor of **ADOPTION** of Committee Amendment "A" (S-666).

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

**YEAS:** Senators **BERUBE**, **BRANNIGAN**, **BRAWN**, **CAHILL**, **CARPENTER**, **CLARK**, **CLEVELAND**, **COLLINS**, **DUTREMBLE**, **EMERSON**, **ESTES**, **ESTY**, **FOSTER**, **GAUVREAU**, **GILL**, **GOULD**, **HOLLOWAY**, **KANY**, **LUDWIG**, **MATTHEWS**, **MCCORMICK**, **RICH**, **SUMMERS**, **THERIAULT**, **TITCOMB**, **TWITCHELL**, **VOSE**, **WEBSTER**

**NAYS:** Senators **BALDACCI**, **BOST**, **BUSTIN**, **CONLEY**, **MILLS**, **PEARSON**, **THE PRESIDENT** - **CHARLES P. PRAY**

**ABSENT:** Senators None

28 Senators having voted in the affirmative and 7 Senators having voted in the negative, with No Senators being absent, Committee Amendment "A" (S-666) **ADOPTED**.

Which was, under suspension of the Rules, **READ A SECOND TIME**.

On motion by Senator **CLARK** of Cumberland, Tabled 1 Legislative Day, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **TAXATION** on Bill "An Act to Protect Taxpayer Rights by Amending the Taxpayer Bill of Rights and Making More Equitable Tax Penalty and Appeal Provisions"

H.P. 1583 L.D. 2233

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1260)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1260)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1260) **READ** and **ADOPTED** in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **STATE & LOCAL GOVERNMENT** on Bill "An Act to Restructure the Department of Administrative and Financial Services" (Emergency)

H.P. 1663 L.D. 2340

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-1267)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1267)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-1267) **READ** and **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

**PAPERS FROM THE HOUSE**

**Non-Concurrent Matter**

"An Act to Authorize Bond Issues for Transportation and Public Infrastructure Capital Improvements and Other Activities Designed to Create and Preserve Jobs for Maine Citizens"

H.P. 1707 L.D. 2388

In Senate, March 9, 1992, **FAILED OF ENACTMENT**.

**RECALLED** from the Legislative Files pursuant to Joint Order H.P. 1762, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "E" (H-1262)** in **NON-CONCURRENCE**.

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Draft February 4, 1992

MAINE PUBLIC BROADCASTING CORPORATION  
BYLAWS

ARTICLE I

The Corporation

Section 1. Name: The name of the corporation shall be the Maine Public Broadcasting Corporation ("Corporation"). The corporation may do business under the names Maine Public Television and Maine Public Radio and such other names as may be adopted from time to time by the Corporation.

Section 2. Corporate Powers: The corporate powers of Maine Public Broadcasting Corporation shall be vested in the Board of Trustees ("Board").

ARTICLE II

The Board of Trustees

Section 1. Classes of Trustees: Until the first election of Public Trustees as provided in Section 3 below, the Board shall consist of the seven Institution Trustees as provided in Section 2 below. Thereafter, the Board shall consist of not fewer than sixteen or more than twenty Trustees. Seven of such Trustees shall be Institution Trustees as provided in Section 2 below ("Institution Trustees"). The President of the Corporation shall also be a member of the Board of Trustees. The remaining Trustees shall be Public Trustees elected by the Board of Trustees as provided hereinafter ("Public Trustees").

(66)

Section 2. Institution Trustees: There shall be two categories of Institution Trustees.

- a. Four Trustees shall be those individuals holding the following offices from time to time: the Chancellor of the University of Maine System; the Presidents of Bates College, Bowdoin College, and Colby College.
- b. Three Trustees of the Corporation shall be elected by the University of Maine System ("University") Board of Trustees from among those currently serving as University Trustees, for staggered terms as that Board may designate.

Section 3. Public Trustees: At each Annual Meeting, the Board shall elect a class of not less than two or more than three Public Trustees, to serve for terms of four years, except the initial Public Trustees shall be elected as provided in Article VII, Section 1. Public Trustees shall be nominated and elected in accordance with the provisions of ARTICLE VII below.

Section 4. Limitation on Terms: Public Trustees may serve not more than two consecutive full terms, and thereafter may not stand again for election until one year has elapsed following the end of their second term.

Section 5. Vacancies: If a Public Trustee does not complete the term for which elected, for whatever reason, the Board, at any meeting, upon nomination of the Nominating Committee, may elect a new Trustee to fill the unexpired term. In like manner the Board may elect persons to fill any unfilled positions within a class of Public Trustees with less than its full complement. In all such cases, service for less than a full term shall not be included for purposes of the limitation of Section 4 respecting successive terms.

ARTICLE III

Meetings of the Board

Section 1. Regular Meetings: The Board shall hold at least four regular meetings each year, including the Annual Meeting, at such times and places as the Board may determine. The Annual Meeting of the Board shall be held in April.

Section 2. Special Meetings: Special meetings of the Board may be held at any time at the request of at least five Trustees or upon the call of the Chair of the Board or the President of the Corporation. Notice of the time, place and purpose of any special meeting shall be given to all Trustees at least seven days in advance of any such meeting.

Section 3. Telephone Conference Meetings: Members of the Board of Trustees or of any committee designated thereby may participate in a meeting of the Board or of such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participating in a meeting in such manner by any Trustee shall constitute presence in person at such meeting.

Section 4. Quorum: Except as provided in Article IX, a majority of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board, and the action of a majority of such Trustees present and voting at such meeting shall be the act of the Board. Once properly convened, a meeting of the Board shall not be terminated for lack of a quorum thereafter.

Section 5. Public Attendance: To the extent required by the Public Telecommunications Financing Act of 1978, as amended, all meetings of the Board shall be open to the public. Reasonable notice of Board meetings shall be given to the public, pursuant to said Act.



## ARTICLE IV

### Committees of the Board

Section 1. Executive Committee: There shall be an Executive Committee of the Board, which shall consist of the Chair of the Board, who shall serve as chair of said Committee, the Vice Chair, the President, and two other Trustees who shall be elected by the Board upon nomination by the Nominating Committee. The Chancellor of the University of Maine and at least one of the Presidents of Bates, Bowdoin, or Colby Colleges shall serve on the Executive Committee, either as holders of the offices of Chair and Vice Chair, or by election to the other Trustee positions on that committee.

The Executive Committee shall meet at the call of the Chair and shall exercise such powers with respect to the conduct and management of the Corporation's affairs as have been delegated to it by the Board, except the election of Trustees. A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business, and the action of a majority of such members present and voting shall be the act of the Committee.

Section 2. Nominating Committee: No less than 120 days before the Annual Meeting, the Chair shall appoint a Nominating Committee of not less than three or more than five Trustees, one of whom shall be designated as Chair of said Committee, for the purpose of nominating persons to be elected as Trustees, Officers and members of the Executive Committee of the Corporation. The Chair of the Board shall not be a member of the Nominating Committee.

Section 3. Additional Committees: The Chair of the Board may, from time to time, appoint additional committees with such powers and duties as the Board may prescribe, and the Board may delegate to any such committee or committees any or all of the powers of the Board which lawfully may be delegated. The Chair of the Board and the President shall be ex officio members of all such committees. Except as otherwise

provided in these Bylaws, members of a Committee need not be Trustees.

Section 4. Committee Meetings; Quorum: A majority of Committee members shall constitute a quorum for the transaction of business. The action of a majority of Committee members present and voting shall be the act of the Committee.

Section 5. Community Advisory Board: The Board shall establish a Community Advisory Board as required by the Public Telecommunications Financing Act of 1978, as amended, to advise it with respect to whether the programming and other policies of the Corporation are meeting the specialized educational and cultural needs of the communities served, and to make such recommendations as the Community Advisory Board considers appropriate to meet such needs.

Section 6. Auxiliary Bodies: The Board may establish from time to time such auxiliary bodies as it deems important to the general welfare of the Corporation, but may not delegate to any such body any of the powers of the Board.

## ARTICLE V

### Officers of the Corporation

Section 1. Designations: The officers of the Corporation shall be a Chair of the Board, a Vice Chair of the Board, a President, a Secretary, a Treasurer, and such assistant officers as the Board may from time to time deem proper. All of the above officers except the President shall be elected by the Board at its Annual Meeting and shall hold office for a term of one year or until their successors are elected and qualified. All officers except the President and any assistant officers shall be elected from among the members of the Board. The office of the President shall be filled as provided below in Section 4.

Section 2. Chair: The Chair of the Board shall preside at all meetings of the Board, and shall perform such other duties and have such other powers as may be prescribed by the Board or these Bylaws.

Section 3. Vice Chair: In the absence or disability of the Chair of the Board, the Vice Chair shall perform the duties of the Chair. The Vice Chair shall perform any other duties assigned by the Chair of the Board.

Section 4. President: The Board shall engage a President who shall serve at the pleasure of the Board upon such terms and conditions as may be agreed upon by the Board. The President shall be the chief executive officer of the Corporation, and shall exercise general supervision of the execution of the policies and objectives of the Corporation as determined by the Board. The President shall have the responsibility for the operation and management of the Corporation's facilities and activities, shall engage and supervise all personnel employed by the Corporation, and shall report directly to the Board. The President shall be a Trustee of the Corporation and shall attend all meetings of the Board and the Executive Committee except when excused therefrom by the Chair. The President shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 5. Secretary: The Secretary, or any Assistant Secretary in the absence of the Secretary, shall act as Secretary of and keep the minutes of all meetings of the Board and shall promptly submit copies to all Board members, shall cause notice of all such meetings to be given, shall have charge of the books, records and papers of the Corporation relative to its organization, shall affix the seal of the Corporation or cause it to be affixed to documents executed in behalf of the Corporation and shall attest to the same, and in general shall perform all duties incident to the office of Secretary and such other duties as may be prescribed by the Chairperson or the Board.



Section 6. Treasurer: The Treasurer, or any Assistant Treasurer in the absence of the Treasurer, shall have charge of the finances of the Corporation under the direction of the Board, shall approve the procedures for receiving and disbursing funds, and shall be responsible for the investment of funds in accordance with policies established by the Board. The Treasurer shall report the financial condition of the Corporation to the Board at each meeting.

Section 7. Other Duties and Powers: Officers of the Corporation shall perform such other duties and have such other powers as the Board from time to time may prescribe.

Section 8. Vacancies: A vacancy in any office may be filled by the Board for the balance of the term of such office, and the Executive Committee may fill any such vacancy on an interim basis until the next Board meeting.

Section 9. Compensation: Other than the President, Trustees and Officers of the Corporation shall receive no salary or compensation.

## ARTICLE VI

### Members

Section 1. Definition: Subject to Section 2, Members of the Corporation shall be those persons, including individuals and families (as the latter shall be defined by the Board), partnerships, associations and corporations, who are active subscribers to the programming service of the Corporation. "Active subscribers" shall be those who have paid the membership fee established from time to time by the Board.

Section 2. Member Status; Voting Rights: The Corporation shall have no "Members" within the meaning of Title 13-B of the Maine Revised Statutes. Members of the Corporation within the meaning of Section 1 shall have no voting rights.

ARTICLE VII

Election of Public Trustees

Section 1. Public Trustees: Eight initial Public Trustees shall be elected for staggered terms by a two-thirds vote of the founding Institution Trustees, who shall divide them into equal classes of two, with initial terms for such classes of one, two, three and four years. All subsequent terms and vacancies shall be filled by the following procedures: the Nominating Committee shall submit a list of nominees for Public Trustees to the Secretary at least five days prior to each Annual Meeting of the Board and any regular Board meeting at which election is proposed, and the notice of the meeting shall contain such list. A two-thirds vote of Trustees present and voting shall be necessary for election. To be eligible for nomination and election, a person must be a member of the Corporation.

Section 2. Membership Solicitation: Prior to submitting its list of nominees to the Annual Meeting of the Board, the Nominating Committee shall solicit from the Members suggestions for candidates suitable to serve as Public Trustees. The notice of such opportunity and the procedure to be followed shall be as determined by the Nominating Committee.

ARTICLE VIII

Miscellaneous Provisions

Section 1. Fiscal Year: The fiscal year of the Corporation shall commence on the first day of July and shall end on the thirtieth day of the following June.

Section 2. Authority for Disbursements: All checks, drafts, notes and orders for the payment of money shall be signed by such officers, employees or agents as the Board may designate from time to time.

Section 3. Audit: An annual audit of the Corporation's financial affairs shall be conducted by a certified public accountant to be designated annually by the Board.

Section 4. Seal: The seal of the Corporation shall be in such form as may be adopted by the Board.

Section 5. Non-Discrimination: The Corporation will comply in its activities with all Federal and State statutes governing non-discrimination.

Section 6. Indemnification: The Corporation shall, to the full extent of its power to do so provided by law, including without limitation Section 714 of Title 13-B of the Maine Revised Statutes Annotated, indemnify any and all present and former officers and Trustees of the Corporation against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by them in connection with any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of their being or having been officers or Trustees of the Corporation; except in relation to matters as to which any such person shall be finally adjudicated in any such action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interest of the Corporation, or, with respect to any criminal action or proceeding, where such person is finally adjudged to have had reasonable cause to believe that his or her conduct was unlawful. Such indemnification shall be made in accordance with the procedures set forth in Maine Revised Statutes Annotated, Title 13-B, Section 714, subsection 3, as the same may be amended from time to time. Such indemnification shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any other bylaw, agreement, or otherwise. Notwithstanding the foregoing provisions of this Section 6 or any other provision of these bylaws, however, the Corporation shall not, by granting any indemnity or otherwise, engage in any conduct which permits the inurement to any private individual

(within the meaning of Section 501 (c) (3) of the Internal Revenue Code of 1986, as amended from time to time, before or after the adoption of this Section 6) of any part of the net earnings of the Corporation.

#### ARTICLE IX

##### Amendment of Bylaws

Section 1. Amendment: Except as provided in Section 2, these Bylaws may be altered, amended or repealed by the Board at any regular or special meeting of the Board at which a quorum is present by the affirmative vote of Trustees constituting two-thirds of those then holding office, provided that notice of such purpose has been given and such notice sets forth the substance or text of the proposed alteration, amendment or repeal.

Section 2. Amendment of the Composition of the Board and Executive Committee: Amendment of this section, of Article II, Section 2 and of Article IV, Section 1, shall also require the concurrence of all seven Institution Trustees.



ATTACHMENT 1  
TO  
ARTICLES OF INCORPORATION  
OF  
MAINE PUBLIC BROADCASTING CORPORATION

A. Except as provided in paragraph B below, upon the dissolution of the Corporation or the termination of its activities, the assets of the Corporation remaining after the payment of all its liabilities shall be distributed exclusively as follows:

- (1) If said dissolution or termination occurs prior to December 31, 2001, the remaining assets of the Corporation that were transferred to it by the University of Maine System shall be distributed to the University of Maine System;
- (2) If said dissolution or termination occurs prior to December 31, 2001, the remaining assets of the Corporation that were formerly the property of Colby-Bates-Bowdoin Educational Telecasting Corporation shall be distributed in equal shares to Colby College, Bates College, and Bowdoin College; and
- (3) All other assets of the Corporation shall be distributed one-half to the University of Maine System and one-sixth to each of Colby College, Bates Collège and Bowdoin College, or successor institutions or if any or all of these said charitable and educational corporations are not in existence then the share of such extinct corporations shall be distributed to such charitable or exempt organizations (as defined in said Section 501(c)(3)) as the trustees of the Corporation may determine.

Amendment of subparagraphs (1), (2) and (3) of paragraph A shall require the concurrence of all seven "Institution Trustees" (as defined in the Corporation's Bylaws).

No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation in carrying out one or more of its purposes), and no member, director, or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

B. If at the time of the dissolution of the Corporation any entity identified in the foregoing paragraph A is not either (1) described in Section 501(c)(3) of the Code or (2) an instrumentality of the State of Maine, the assets otherwise distributable to such entity pursuant to the foregoing paragraph A shall, notwithstanding the foregoing paragraph A, be distributed to such organization or organizations described in Section 501(c)(3) of the Code as the Directors of the Corporation may, by majority vote, determine.





# HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

B

## Mary Pennell Nelson

213 Foreside Road  
Falmouth, ME 04105  
Residence: (207) 781-3750  
Fax: (207) 781-7130  
Cell Phone: (207) 831-6049  
E-Mail: [mpn3@maine.rr.com](mailto:mpn3@maine.rr.com)  
State House E-Mail:  
[RepMary.Nelson@legislature.maine.gov](mailto:RepMary.Nelson@legislature.maine.gov)

May 17, 2012

Sen. David R. Hastings, III  
Rep. Joan M. Nass  
Co-Chairs, Right to Know Advisory Committee

Re: Parental Privacy Issues in Maine Schools

Dear Sen. Hastings and Rep. Nass:

I understand that the Right to Know Advisory Committee will be convening this summer, to continue its consideration of matters relating to the Freedom of Access statute.

I would appreciate it if the Advisory Committee would consider an issue which has recently arisen in District 112. The Falmouth School Department has received a request from a citizen for the home e-mail addresses of all parents of students in the Falmouth school system. This request raises very serious confidentiality and privacy concerns for students, parents and their families.

As you may know, increasingly public schools are utilizing web-based student information systems, such as PowerSchool. These web-based portals connect students, teachers, administrators, and parents and provide parents and students with real-time information on grades, attendance, homework, scores, teacher comments, and school bulletins. Parents must provide their e-mail addresses so that they may gain access to their students' confidential education records through these portals and so that school officials may communicate electronically with parents about their children. These electronic communications are critical to providing parents with the opportunity to collaborate on their child's education by gaining access to student records and other important educational updates. The school department maintains parent e-mail addresses in the same secure, password-protected database used to maintain other confidential student/family information.



Because e-mail addresses and other electronic information are maintained in student education records, and are provided to enable parents to access those confidential records, the school department believes that they are confidential under the Federal Family Educational Rights and Privacy Act. However, this is not clear as a matter of Maine law, and I believe it is critical to clarify our statutes to ensure that the confidentiality of this and other sensitive parental information is maintained.

I intend to sponsor a bill in the upcoming legislative session to address this issue, but would also very much appreciate it if the Advisory Committee could consider the issue as part of its deliberations this summer.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary P. Nelson", with a long horizontal flourish extending to the right.

Mary Pennell Nelson  
State Representative

Judiciary Committee

June 13, 2012

RE: Request of Rep. Mary Nelson of Falmouth

I requested the email addresses of the parents in Falmouth because Superintendent Barbara Powers uses that set of addresses to promote a political agenda that is in opposition to others in the town that do not have access to that same list of Falmouth residents.

Powers has used the list to contradict paid political advertisements in the Forecaster newspaper at no cost to her and promoted answers that are believed to be intentionally incorrect to reinforce Powers political positions. This access reaches the parents of over 2,000 students and potentially over 4,000 voters in Falmouth. Last year the school's email system was used to alert recipients of "school friendly" candidates for the School Board election. Such access that has no counter weight is a danger to free and fair elections.

We know that technically it is possible to provide the addresses of the parents without including the student's addresses and this question posed by Rep. Nelson is a continuation of the ruse used by Falmouth that takes FOAA requests in directions that are not part of the request as an excuse to not provide the answer. We do not imply that Rep. Nelson is guilty of promoting the ruse but is being used by Falmouth due to her lack of knowledge of email technology and believing what Falmouth uses to mislead her.

A recent example of Falmouth's obstruction to the use of email addresses of Falmouth residents, we recently requested and received the list of town and police emails addresses. Instead of providing them in a digital format that would more easily lend itself to merging the lists and deleting duplicates and removing those addressees that didn't want to be on the list, Falmouth provided them on 55 printed pages.

If any adjustment to the FOAA law is made we ask that Maine School Systems be mandated to supply parents email address lists upon request.



## Reinsch, Margaret

---

**From:** Nathan Poore <npoore@town.falmouth.me.us>  
**Sent:** Wednesday, June 20, 2012 11:43 AM  
**To:** Reinsch, Margaret  
**Cc:** Harry R. Pringle  
**Subject:** FW: Web site news and notices posting [DWM-Client.FID389799]

Hi Peggy

It has been suggested that we forward this e-mail to the Advisory Committee. Can I rely on you to bring this to your next meeting and share with the group. It is another example of the abuse of FOAA. We hope that there can be some consideration for the proposed language developed by MMA that will exempt citizen e-mails which are used for important news alerts (one-way communication).

Best regards,

Nathan A. Poore, Town Manager  
Town of Falmouth  
271 Falmouth Road  
Falmouth Maine 04105

Telephone: 207-781-5253 ext 5314  
Email: [npoore@town.falmouth.me.us](mailto:npoore@town.falmouth.me.us)

Under Maine's Freedom of Access ("Right to Know") law, all e-mail and e-mail attachments received or prepared for use in matters concerning Town business or containing information relating to Town business are likely to be regarded as public records which may be inspected by any person upon request, unless otherwise made confidential by law.

-----Original Message-----

**From:** Tony Payne [<mailto:tpayne@clarkinsurance.com>]  
**Sent:** Tuesday, June 19, 2012 9:17 AM  
**To:** Nathan Poore  
**Subject:** RE: Web site news and notices posting

Nathan - May I suggest that you forward this with an explanation to Mal Leary and the FOIA advisory committee. Thanks.  
- Tony

Tony Payne | Business Development Director Clark Insurance | 2385 Congress St PO Box 3543 | Portland ME 04104-3543  
Tel: 207.523.2213 | Fax: 207.774.2994  
Cell: 207.807.5331

[www.clarkinsurance.com](http://www.clarkinsurance.com)  
Visit me on Linked In

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[info@clarkinsurance.com](mailto:info@clarkinsurance.com). You are further requested to help us protect the privacy of our customers and business partners by deleting all copies of this communication from your equipment and files. Thank you.

-----Original Message-----

From: Chris Orestis [<mailto:corestis@town.falmouth.me.us>]  
Sent: Monday, June 18, 2012 11:37 PM  
To: Nathan Poore; Council  
Cc: Jennifer Phinney; Edward J. Tolan; Amy Lamontagne; 'William L. Plouffe'  
Subject: RE: Web site news and notices posting

<http://www.falmouthtoday.me/>

WE HAVE A WINNER

June 18, 2012

By: Editor

We were looking for the most interesting request to be removed from the email list and we found a winner.

It was Allen Evans of 3 Fox Hall Rd., a 72 year-old resident of Falmouth, and he can be reached at 207.797.4571. His email is [ki4dhx@gmail.com](mailto:ki4dhx@gmail.com)<<mailto:ki4dhx@gmail.com>>, which is the use of his short wave radio call sign. He has used "not wanting to have any truck with you", which is something we haven't heard for some time, actually not in this century. So we give special kudos to Allen for the most inventive and angry request to get off the email list. Allen apparently is also in the radical far leftwing moon bat club with Pam Fenrich.

Now in our defense we have to disclose that Nathan Poore, Town Manager of Falmouth, supplied the email address list in a printed form instead of the digital format that would have allowed us to merge both lists and more easily delete those "Allen Evans" types that wanted to be deleted.

The printed list required a lot of work to get it into a useable format. That process will likely cause several more emails to be sent to people who already don't want to receive them because of what Nathan did to you. We are working at making these corrections to the problem caused by Nathan as quickly as we can and we apologize for the misconduct of the Town.

From: [ki4dhx@gmail.com](mailto:ki4dhx@gmail.com)<<mailto:ki4dhx@gmail.com>>  
To: [seller99@msn.com](mailto:seller99@msn.com)<<mailto:seller99@msn.com>>  
Subject: RE: UPCOMING ELECTION  
Date: Mon, 11 Jun 2012 20:36:05 -0400

Remove me from your list immediately! You are a fat ass, bumbling, gadfly . a pox on our fair town. I want no truck with you.

-----Original Message-----

From: Michael Doyle [<mailto:seller99@msn.com>]  
Sent: Monday, June 11, 2012 8:04 PM  
To: [seller99@msn.com](mailto:seller99@msn.com)<<mailto:seller99@msn.com>>  
Subject: UPCOMING ELECTION

Check [www.falmouthtoday.me](http://www.falmouthtoday.me)<<http://www.falmouthtoday.me>> and Comedy Corner

From: [seller99@msn.com](mailto:seller99@msn.com)<<mailto:seller99@msn.com>>  
To: [ki4dhx@gmail.com](mailto:ki4dhx@gmail.com)<<mailto:ki4dhx@gmail.com>>  
Subject: RE: UPCOMING ELECTION  
Date: Mon, 11 Jun 2012 21:19:07 -0400

You're removed. However because of the way the Town sent your address to me (not digital) you may get several more emails while we work on eliminating dups and deletes.

Congratulations, you're in the lead for the most interesting removal email. We're going to do a story about the winner with their email address, name, and all sorts of fun stuff.

Have a great night.

Michael Doyle




# The Portland Press Herald

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June 21

## Falmouth looking into breach of town website

SHARE 

Falmouth officials are investigating an Internet security breach that allowed a resident to post a public notice to the town's website this month.

The notice appeared on Falmouth's home page after town officials responded to a request for public information and released email addresses for all subscribers to the town's online notification system.

The incident has raised questions about Maine's Freedom of Access law and prompted calls for legislation that would allow people to prevent municipalities from releasing email addresses provided for similar services.

"It was a colossal goof," said Faith Varney, chairwoman of the Falmouth Town Council. "It never occurred to anyone that something like this would happen."

Town officials gave the subscribers' list to Michael Doyle on May 31, after he submitted a request under the Freedom of Access law, said Town Manager Nathan Poore.

Town officials believe the list included an email address that allows authorized people to post public notices about emergencies and special events, such as road closures and community gatherings.

The notice in question was posted June 9 in "News & Announcements" on the town's home page, Poore said. It encouraged readers to check out Doyle's controversial blog about Falmouth issues and events.

Poore saw the notice on June 10 and immediately blocked additional postings from that email address, which has since been changed.

"That email address was thought to be protected," Poore said. "It's not clear why it wasn't protected."

Doyle said he didn't intend to post a notice on the town's website. He acknowledged that it may have happened when he sent a notice about his blog to some of the more than 3,000 email addresses he received from the town's subscribers' list.

Doyle said he sought the subscribers' list because he's trying to gather and disseminate information about town government to Falmouth residents. "It's nothing nefarious," he said.

Poore said no other personal information from subscribers was released and no other aspects of the town's website were compromised, including links that allow business transactions through third-party administrators.

"We're confident nothing else got manipulated on the website," Poore said.





But the town's information technicians and its website provider, Virtual Towns and Schools, are reviewing the incident to determine exactly what happened, Poore said.

Poore also contacted the Maine Municipal Association to seek the group's support in pursuing legislation that would allow people to block cities and towns from releasing email addresses provided for municipal notification systems.

Poore said he has received dozens of questions and complaints about Doyle's unsolicited emails, though few have asked to be removed from the subscribers' list.

"People aren't signing up with us to get spammed," Poore said.

Poore said the exemption from the Freedom of Access law would apply only to email lists for public notification systems. It wouldn't restrict access to other communications received or sent by municipal officials, which are considered public information.

Geoff Herman, a lobbyist for the Maine Municipal Association, said Falmouth's website breach may have been the first of its kind in Maine.

However, he said, there is growing concern about commercial interests and advocacy groups accessing email lists held by public bodies.

In 2003, the Maine Department of Inland Fisheries and Wildlife got an exemption from the Freedom of Access law after receiving complaints that outside interests were using email addresses from hunting and fishing license applications to contact outdoorsmen. Now, the applications allow hunters and fishermen to indicate whether their email addresses are confidential.

Herman said the association's 70-member legislative policy committee will consider submitting a bill next year on behalf of Maine municipalities.

Doyle questions whether municipal email lists should be confidential.

"If you don't want your email address to be in the public domain, don't sign up for notifications from the town," he said.

*Staff Writer Kelley Bouchard can be contacted at 791-6328 or at:*

*kbouchard@pressherald.com*

Tweet 0

Recommend 0



## Judiciary Committee

June 21, 2012

### Committee Members:

This past week has been an interesting one for the FOAA law of Maine. I have discussed the proposed law that Rep. Mary Nelson will introduce this fall in an earlier memo.

This week there was considerable consternation in Falmouth when I requested and received the Town's email contact list for residents that wanted to be made aware of road closings, council meetings, etc. In the list of 3,129 email addresses was the all access email to post directly to the Town's notification site. This caused me to inadvertently send this notice through the Town's site to all addresses, "Check falmouthtoday.me and Comedy Corner." Nathan Poore, Town Manager, and his assistant Melissa Tyron specifically lied to me when I asked if such an all access address was available.

Poore was recently quoted in the Forecaster stating that the Maine Municipal Assoc. had been contacted to start a lobbying effort to bar access to these lists of emails in the State of Maine. When you couple that effort with the proposed Nelson legislation you will effectively close off communication with a large percentage of the population of the State. The only exception will be what the Towns, Cities, and Schools want to have disseminated to the citizens through their controlled outlets. This is contrary to transparency.

Forevermore this has become an information driven society and for democracy to work for everyone, access to the population through emails are crucial for the opposition to be heard and for both sides of an issue to be reviewed and considered by the voters.

Whatever false premises the proponents will use to promote this attack on the FOAA law, they must be rejected outright for what they are, an incremental reduction of the ability to insure we have as much transparency in government as possible.

Thank you for your time and consideration.

Michael Doyle  
3 Shady Ln.  
766.6644

(10)

C

APPROVED

CHAPTER

STATE OF MAINE

JUN 08 '11

264

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

H.P. 817 - L.D. 1082

**An Act Concerning the Protection of Personal Information in  
Communications with Elected Officials**

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

Sec. 1. 1 MRSA §402, sub-§3, ¶C-1 is enacted to read:

C-1. Information contained in a communication between a constituent and an elected official if the information:

(1) Is of a personal nature, consisting of:

(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(b) Credit or financial information;

(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;

(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or

(e) An individual's social security number; or

(2) Would be confidential if it were in the possession of another public agency or official;

**Sec. 2. Right To Know Advisory Committee.** The Right To Know Advisory Committee, as established in the Maine Revised Statutes, Title 1, section 411, subsection 1, shall examine the benefit of public disclosure of elected officials' e-mails and other records balanced with the availability of technology and other systems necessary to maintain the records and to provide public access. The Right To Know Advisory Committee's findings and any recommendations must be included in its 2012 annual report pursuant to Title 1, section 411, subsection 10.







Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Using technology to conduct public proceedings

**PART A**

**Sec. A-1. 1 MRSA § 403-A** is enacted to read:

**§403-A. Public proceedings through other means of communication**

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

**1. Requirements.** A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

**2. Voting.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

**3. Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

**4. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

**PART B**

Finance Authority of Maine

**Sec. B-1. 10 MRSA §971** is amended to read:

**§971. Actions of the members**

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

**1. Placement of call.** A conference call to the members must be placed by ordinary commercial means at an appointed time.

**2. Record of call.** The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

**3. Notice of emergency meeting.** Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission (any changes?)

**Sec. B-2. 21-A MRSA §1002** is amended to read:

**§1002. Meetings of commission**

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an



election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

- A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or
- B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

#### Emergency Medical Services Board

**Sec. B-3. 32 MRS §88, sub-§1, ¶D** is amended to read:

#### **§88. Emergency Medical Services' Board**

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

**1. Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

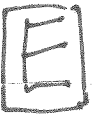
D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

**Sec. B-4. 39-A MRSA §151, sub-§5** is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

**§ XXX-X. Freedom of access; confidentiality of records**

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

## RTK AC General Agency Confidential Individual and Business Records Template

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, **except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

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F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
August 8, 2012  
1:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Shenna Bellows, Chair
  
2. Existing Exceptions Remaining from 125<sup>th</sup> Legislature  
Review drafts
  - Title 22, section 8754, reporting of sentinel events
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act (divided)Review letter
  - Title 22, section 3188, related to the Maine Managed Care Insurance Plan
  - Title 22, section 3192, related to the Community Health Access Program
  
3. Review of Existing Exceptions –Titles 26 through 39-A
  - A. Statutes tabled from July 16th meeting  
11, 12, 13, 14, 15, 16, 17, 37, 42, 43, 44, 45, 46, 47, 51, 52, 54, 55, 57
  - B. Additional statutes ready for review
  
4. Public-private partnership, DOT projects, exception review (23 MRSA §4251)
  
5. Scheduling future subcommittee meetings
  
6. Other?

**Adjourn**

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**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

Revised 8/7/2012 11:31 AM

shaded = tabled from 7/16/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	26	3	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM</li> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM?</li> <li>• DOL: no more than one or 2/year; NO CHANGE</li> </ul>		
2	26	43	Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Federal law prohibits release that would identify</li> <li>• NO CHANGE</li> </ul>		
3	26	665	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• Request very rare</li> <li>• NO CHANGE</li> </ul>		
4	26	685	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	<ul style="list-style-type: none"> <li>• ? (employer)</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
5	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
6	26	939	Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• 2 requests, final decision public</li> <li>• NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
7 26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	<ul style="list-style-type: none"> <li>DOL</li> </ul>	<ul style="list-style-type: none"> <li>Requests not uncommon</li> <li>Subject to court order</li> <li>Federal law prohibits release</li> <li>NO CHANGE</li> </ul>		
8 27	121		Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	<ul style="list-style-type: none"> <li>Maine State Library</li> <li>Law and Legislative Reference Library</li> <li>UMS library</li> <li>MCCS library</li> <li>MMA library</li> <li>Public libraries?</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
9 27	377		Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research	<ul style="list-style-type: none"> <li>Maine Historic Preservation Commission</li> <li>Maine State Museum</li> </ul>	<ul style="list-style-type: none"> <li>No FOA requests</li> <li>Access/release of info permitted for legitimate research purposes</li> <li>NO CHANGE</li> </ul>		
10 28-A	755		Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> <li>DAFS: BABLO</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
11	29-A	152	3	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 12-20 times per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	
12	29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 12 times per year</li> <li>• NO CHANGE</li> </ul>	
13	29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 6-10 times per year</li> <li>• NO CHANGE</li> </ul>	
14	29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	• SOS	<ul style="list-style-type: none"> <li>• No request</li> <li>• NO CHANGE</li> </ul>	
15	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 1-2 every couple of years</li> <li>• NO CHANGE</li> </ul>	
16	29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	• SOS	<ul style="list-style-type: none"> <li>• Estimate: daily</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
17	29-A	1401	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	• SOS	<ul style="list-style-type: none"> <li>• Estimate: handful per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	
18	30-A	503	1	Title 30-A, section 503, subsection 1, relating to county personnel records	• Counties – Joe Brown and Bob Howe?	•	
19	30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	• Counties – Joe Brown and Bob Howe?	•	
20	30-A	2702	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	• Municipalities	•	
21	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	• Municipalities	•	
22	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	• Municipalities	•	
23	30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	• Municipalities	•	
24	32	85	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board	• Emergency Medical Services Board	<ul style="list-style-type: none"> <li>• Estimate: Fewer than 4 requests per year</li> <li>• Records available to public through State Police Bureau of Identification</li> <li>• NO CHANGE</li> </ul>	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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25	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Emergency Medical Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 12 requests per year</li> <li>NO CHANGE</li> </ul>		
26	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Emergency Medical Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 12 requests per year</li> <li>NO CHANGE</li> </ul>		
27	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board	Emergency Medical Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 6 requests per year</li> <li>NO CHANGE</li> </ul>		
28	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Emergency Medical Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 4 requests per year</li> <li>NO CHANGE</li> </ul>		
29	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Emergency Medical Board	<ul style="list-style-type: none"> <li>No requests in many years</li> <li>NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
30	32	2105-A	3	Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Patient information also protected by federal law (HIPAA)</li> <li>Redacted information can make contents of a complaint difficult to read for board members</li> <li>NO CHANGE</li> </ul>	
31	32	2109		Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Health information protected by federal law also</li> <li>NO BOARD DISCUSSION OR POSITION; may be superfluous to protect address and telephone number given Internet and search engines</li> </ul>	
32	32	2599		Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	
33	32	2600-A		Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>	

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
34	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	<ul style="list-style-type: none"> <li>Medical Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
35	32	3300-A	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	<ul style="list-style-type: none"> <li>Medical Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
36	32	6115	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters	<ul style="list-style-type: none"> <li>DPFR: Consumer Credit Regulation</li> </ul>	<ul style="list-style-type: none"> <li>No requests; similar provision in other state licensing laws</li> <li>NO CHANGE</li> </ul>		
37	32	9418	Title 32, section 9418, relating to applications for private security guard license	<ul style="list-style-type: none"> <li>DPS</li> </ul>	<ul style="list-style-type: none"> <li>No experiences to discuss</li> <li>NO CHANGE</li> </ul>		
38	32	11305	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>No application of exemption</li> <li>NO CHANGE</li> </ul>		
39	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> <li>Real Estate Commission</li> </ul>	<ul style="list-style-type: none"> <li>No experience; applies to records of hearings held by professional trade associations</li> <li>NO POSITION: Why part of Real Estate Brokerage Act?</li> </ul>		

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
 Revised 8/7/2012 11:31 AM

shaded – tabled from 7/16/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
40	32	16607	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Seven requests: 5 denied to protect investigative records; 2 denied because only investigative records requested</li> <li>NO CHANGE</li> </ul>		
41	33	1971	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	<ul style="list-style-type: none"> <li>Treasurer</li> </ul>	<ul style="list-style-type: none"> <li>Requests infrequent</li> <li>NO CHANGE</li> </ul>		
42	34-A	1212	Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Approximately 10 times per year (during litigation)</li> <li>NO CHANGE</li> </ul>		
43	34-A	1216	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requests are frequent; can be released to some requesters</li> <li>NO CHANGE</li> </ul>		
44	34-A	1216	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested occasionally</li> <li>NO CHANGE</li> </ul>		



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45	34-A	5210	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• Requested 2-3 times per year</li> <li>• AMEND: clarify that applies regardless of entity advising Governor</li> </ul>		
46	34-A	9877	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
47	34-A	9903	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
48	34-B	1207	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client	• DHHS	<ul style="list-style-type: none"> <li>• DHHS does not collect data on requests</li> <li>• NO CHANGE</li> </ul>		
49	34-B	1223	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board	• DHHS	<ul style="list-style-type: none"> <li>• Relatively new board</li> <li>• One request</li> <li>• NO CHANGE</li> </ul>		

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50	34-B	1931	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>Few cases</li> <li>Legal opinion that does not comply with HIPAA</li> <li>NO CHANGE</li> <li>Overlapping responsibilities – may not be needed</li> </ul>		
51	34-B	3864	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch?</li> <li>DPS: State Police</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests</li> <li>NO CHANGE</li> <li>DPS: State Police:</li> </ul>		
52	34-B	3864	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests</li> <li>NO CHANGE</li> </ul>		
53	34-B	5005	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism	<ul style="list-style-type: none"> <li>DHHS/Maine Disability Rights Commission</li> <li>Replaced 8/12 by §5005-A, sub-§5 (PL 2011, c. 657)</li> </ul>	<ul style="list-style-type: none"> <li>DHHS: no data on requests</li> <li>NO CHANGE</li> <li>DHHS will be contracting with DRC</li> </ul>		
54	34-B	5475	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
55	34-B	5476	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		

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56	34-B	5605	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services	<ul style="list-style-type: none"> <li>• DHHS</li> </ul>	<ul style="list-style-type: none"> <li>• No data on requests</li> <li>• NO CHANGE</li> </ul>		
57	34-B	7014	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	<ul style="list-style-type: none"> <li>• Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
58	35-A	114	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
59	35-A	704	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
60	35-A	1311-A	Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• Rarely get requests</li> <li>• NO CHANGE</li> </ul>		
61	35-A	1311-B	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• Occasional requests</li> <li>• NO CHANGE</li> </ul>		
62	35-A	1316-A	Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
63	35-A	8703	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	<ul style="list-style-type: none"> <li>• PUC</li> </ul>	<ul style="list-style-type: none"> <li>• Does not come through PUC</li> <li>• Could be worded more clearly</li> </ul>		
64	35-A	9207	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> <li>• PUC</li> <li>• ConnectME Authority</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		

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64.5	36	191	Title 36, section 191, relating to tax returns	<ul style="list-style-type: none"> <li>Maine Revenue Services</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
65	36	575-A	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	<ul style="list-style-type: none"> <li>(added by PL 2011, c. 619)</li> </ul>		
66	36	579	Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li><i>Municipal assessors</i></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
67	36	581-G	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
68	36	841	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	<ul style="list-style-type: none"> <li><i>Municipal officers</i></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
69	36	1106-A	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li><i>Municipal assessors</i></li> </ul>	<ul style="list-style-type: none"> <li>(added by PL 2011, c. 618, §7)</li> </ul>		
70	36	4315	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	<ul style="list-style-type: none"> <li>Wild Blueberry Commission</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
71	36	4316	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture	<ul style="list-style-type: none"> <li>Wild Blueberry Commission</li> <li>Dept. of Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>WBC: Administration does not apply to WBC</li> <li>Dept. of Ag.:</li> </ul>		

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72	36	6760	Title 36, section 6760, relating to employment tax increment financing	<ul style="list-style-type: none"> <li>• DAFS –</li> <li>• Commissioner</li> <li>• State Tax Assessor</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
73	37-B	506	Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	DVEM: Bureau of Veterans' Affairs	<ul style="list-style-type: none"> <li>• NO CHANGE</li> </ul>		
74	37-B	708	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	DVEM: MEMA	<ul style="list-style-type: none"> <li>• NO CHANGE</li> </ul>		
75	37-B	797	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	DVEM: MEMA	<ul style="list-style-type: none"> <li>• NO CHANGE</li> </ul>		
76	38	100-A	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	<ul style="list-style-type: none"> <li>• DOT: Marine Pilotage Commission</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		

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77	38	345-A	4	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	<ul style="list-style-type: none"> <li>DEP</li> <li>BEP</li> </ul>	<ul style="list-style-type: none"> <li>DEP: subpoenas issued for trade secret info</li> <li>NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>	
78	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> <li>DEP</li> <li>BEP</li> </ul>	<ul style="list-style-type: none"> <li>DEP: 1-2 requests per year</li> <li>NO CHANGE</li> <li>BEP: No need to access info in proceedings</li> <li>NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>	
79	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests reported in aggregate</li> <li>NO CHANGE</li> </ul>	

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80	585-B	6	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	• DEP	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential</li> <li>REPEAL</li> </ul>		
81	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	• DEP	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential for at least 10 years</li> <li>REPEAL</li> </ul>		
82	1310-B	2	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>		
83	1610	6-A	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>		

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84	38	1661-A	4	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> <li>• 2 requests made for confidential info</li> <li>• DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>• NO CHANGE</li> </ul>	
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>• Only 1 request</li> <li>• Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>• CONTINUE; NO CHANGE</li> </ul>	
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• Average of 6 times per year</li> <li>• NO CHANGE</li> </ul>	
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	



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88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	<ul style="list-style-type: none"> <li>Workers' Compensation Board</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>	
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>Requests are rare</li> <li>NO CHANGE</li> </ul>	
91	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>AMEND; clarify that already included within § 403, sub-§ 15 exception</li> </ul>	



**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

**Sec. 1. 22 MRSA §8754** is amended to read:

**§8754. Division duties**

The division has the following duties under this chapter.

**1. Initial review; other action.** Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

**2. Procedures.** The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

~~**3. Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.~~

~~A. Privileged and confidential information under this subsection is not:~~

~~(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;~~

~~(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or~~

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

~~(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.~~

~~B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.~~

~~C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.~~

~~D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.~~

~~E. For the purposes of this subsection, "privileged and confidential information" does not include:~~

~~(1) Any final administrative action;~~

~~(2) Information independently received pursuant to a 3rd party complaint investigation conducted pursuant to department rules; or~~

~~(3) Information designated as confidential under rules and laws of this State.~~

This subsection does not affect the obligations of the department relating to federal law.

**3-A. Notifications and reports subject to Title 1, chapter 13.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are subject to public access under Title 1, chapter 13, except for:

A. Information designated as confidential under federal law; and

B. Data developed from the reports that identifies or permits identification of a patient of a health care facility.

*{Are there other types or categories of information reported to the department that should be designated as confidential??}*

**Public Records Exceptions Subcommittee**

Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

**4. Report.** The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

**Summary**

This draft amendment repeals the provision making confidential notifications, reports and other information filed with the department related to sentinel events. The amendment makes the information subject to public access pursuant to Title 1, chapter 13, except for information designated as confidential under federal law and information that identifies or permits identification of a patient of a health care facility.

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

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**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ information about chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ must include the identity of the chemical substance if it is not a trade secret, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director may withhold the identity of the chemical substance if it is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.



**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**22 §1696-E. Cooperation with state agencies**

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.

**22 §1696-F. Provision of information; trade secrets**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. The identity of a toxic or hazardous substance that is a trade secret is confidential; all other information provided is a public record. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public records, with the exception of the identity of substances when the identity is a trade secret. These amendments require the director to release the information that is public upon request.



**Public Records Exceptions Subcommittee**  
Proposed Draft #2  
(no protection for trade secrets)

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**

Proposed Draft #2

(no protection for trade secrets)

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ The director ~~may provide~~ information on must include the identity of the chemical substance, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

**22 §1696-E. Cooperation with state agencies**

**Public Records Exceptions Subcommittee**  
Proposed Draft #2  
(no protection for trade secrets)

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. ~~Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.~~

**22 §1696-F. Provision of information; trade secrets**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. All information about a toxic or hazardous substance is a public record.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public. These amendments require the director to release the information that is public upon request.

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**Public Records Exceptions Subcommittee**

Proposed draft letter to Department of Health and Human Services

**Re: Title 22, section 3188, related to the Maine Managed Care Insurance Plan  
Title 22, section 3192, related to the Community Health Access Program**

Mary C. Mayhew  
Commissioner  
Department of Health and Human Services  
221 State Street  
Augusta, Maine 04333-0040

Dear Commissioner Mayhew:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee reviews existing public records exceptions in the statutes. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review of exceptions in Titles 22 through 25 during 2011, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection 13 relating to medical data of the Community Health Access Program.

Last year, the Department of Health and Human Services and the Legislature's Health and Human Services Committee recommend to the Subcommittee that all of sections 3188 and 3192 be repealed, including the specific confidentiality provisions, because the statutes have never been used. However, the Subcommittee did not include language to repeal these sections in proposed legislation because the underlying policy issues are beyond the scope of the Subcommittee's charge. We are writing to inform you of the Subcommittee's decision so the department may consider whether to recommend that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed in any proposed legislation put forward by the department for consideration by the 126<sup>th</sup> Legislature.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.





Agenda item 4  
8/8/12

RECEIVED  
AUG - 7 2012

STATUTE: 23 MRSA §4251, sub§-10

CONTACT PERSON: Toni L. Kemmerle, Chief counsel, Maine DOT

CONTACT PERSON'S EMAIL ADDRESS: Toni.Kemmerle@Maine.gov

### ANSWERS TO QUESTIONS PERTAINING TO 23 MRSA §4251, sub§ 10

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**To date, we have had no experience with administering or applying this public records exception because no private entity has proposed a public-private partnership for a transportation project with an initial capital cost of \$25,000,000.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Maine DOT supports the continuation of this exception because a proposal of this magnitude will require that the proposer develop and share competitive strategies and confidential business information that could lead to a competitive disadvantage if made public prior to the acceptance or rejection of the proposal by the department. Without this exception, private businesses would be reluctant to share information necessary for the department to evaluate proposals for public-private partnerships under this section.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have had no experience applying this exception to date. We believe that the records described are intended to be confidential and that the language of the section is clear.**

4. Does your agency recommend changes to this exception?

**We do not recommend changes at this time.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**We cannot identify stakeholders at this time because we have had no proposals submitted under this section to date.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have no further information to submit at this time.**

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\*49329 23 M.R.S.A. § 4251

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 5. PUBLIC-PRIVATE PARTNERSHIPS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4251. Public-private partnerships; transportation projects**

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

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement.

2. Applicability. This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

3. Authorization. Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

\*49330 4. Standards for review. Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department.

B. The private entity must have the financial, technical and operational capacity to discharge the

responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting.

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department.

D. The proposal must be cost-effective in the long term.

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration.

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement.

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4.

**\*49331** I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures.

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility.

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department.

L. The proposal and transportation facility are in the best interest of the public.

5. Proposal and selection processes; solicited and unsolicited. The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal.

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations.

\*49332 C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal.

6. Tolls; fares. An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F.

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry.

C. The agreement must include provisions governing changes in tolls or fares.

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement.

7. Exercise of powers. If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

8. Term of agreement. An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

9. Legislative approval. If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

10. Confidentiality of proposals and negotiations. All records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under this subchapter are confidential and not subject to public review until the department determines that the proposal meets the standards of this subchapter or until the proposal is finally rejected by the department.

\*49333 11. Report of proposals. By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

12. Rules. The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [FN1]

**CREDIT(S)**

2009, c. 648, § A-1.

[FN1] 5 M.R.S.A. § 8071 et seq.

<General Materials (GM) - References, Annotations, or Tables>

\*49325 23 M.R.S.A. § 4244

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 4. CONTRACTS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4244. Design-build contracting**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Best value" means the highest overall value to the State, considering quality and cost.
- B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services.
- C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents.
- D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product.
- E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions.
- F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.
- G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county.
- H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State.

\*49326 2. Authorization. Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the

quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

3. Prequalification. A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals. The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

4. Request for proposals. If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

\*49327 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.





6. Best-value award. If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

7. Procurement disputes. The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

#### CREDIT(S)

2009, c. 648, § B-2.

<General Materials (GM) - References, Annotations, or Tables>

—

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JOSEPH C. PERRY, District 32  
WALTER R. GOOLEY, District 18

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State of Maine  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
COMMITTEE ON TRANSPORTATION

TO: Senator Lawrence Bliss, Chair  
Representative Charles R. Priest, Chair  
Joint Standing Committee on Judiciary

FROM: Dennis S. Damon, Senate Chair *[Signature]*  
Edward J. Mazurek, House Chair *[Signature]*  
Joint Standing Committee on Transportation

DATE: March 4, 2010

RE: Public Records Exception Review

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The Transportation Committee has voted unanimously in favor of an amended version of LD 1639, "An Act to Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs." The amendment includes provisions that provide for confidential treatment of certain information. Pursuant to Title 1, §434, we are requesting a review by your committee of those provisions.

Attached is the amendment. Part A of the amendment allows the Department of Transportation to receive and solicit proposals and enter into contractual agreements with private entities for the building, leasing or financing of certain transportation facilities. The amendment applies to proposals and agreements to form public-private partnerships when the initial capital cost of the project is at least \$25 million, or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls.

Part A of the amendment (or the proposed Title 23, §4251, sub-§10) proposes that all records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda, or other materials prepared, used or submitted in connection with any proposal considered under the public-private partnership provisions are confidential and not subject to public review until the department determines that a proposal meets the standards set forth in the public-private partnership statute, or until the department finally rejects the proposal. Upon the occurrence of either event, all records and other materials in connection with the proposal or agreement are no longer confidential and are subject to public review.

Part B of the amendment revises the current design-build procurement statute of the Department of Transportation and moves the statute to a new chapter within Title 23. Part B also includes confidentiality provisions; however, these provisions are in current law and simply moved to a new section of law. You will find those confidentiality provisions in the proposed Title 23, §4244, sub-§3 (prequalification) in the second paragraph; sub-§4 (request for proposals); and sub-§6 (best-value award) in the second paragraph.

If you have any questions, please don't hesitate to contact us.

9

2023  
COPY

L.D. 1639

Date:

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3 TRANSPORTATION

4 Reproduced and distributed under the direction of the Clerk of the House.

5 STATE OF MAINE  
6 HOUSE OF REPRESENTATIVES  
7 124TH LEGISLATURE  
8 SECOND REGULAR SESSION

9 COMMITTEE AMENDMENT " " to H.P. 1167, L.D. 1639, Bill, "An Act To  
10 Stimulate the Maine Economy and Promote the Development of Maine's Priority  
11 Transportation Infrastructure Needs"

12 Amend the bill by striking out everything after the enacting clause and before the  
13 summary and inserting the following:

14 PART A

15 Sec. A-1. 23 MRSA c. 410, sub-c. 5 is enacted to read:

16 SUBCHAPTER 5

17 PUBLIC-PRIVATE PARTNERSHIPS

18 §4251. Public-private partnerships; transportation projects

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

21 A. "Agreement" means a contract between the department and a private entity to  
22 create a public-private partnership that allows for private sector participation in the  
23 financing, development, operation, management, ownership, leasing or maintenance  
24 of a transportation facility and that sets forth rights and obligations of the department  
25 and the private entity in that partnership.

26 B. "Project" means the initial capital development of a transportation facility.

27 C. "Proposal" means a conditional offer of a private entity that, after review,  
28 negotiation, documentation and legislative approval, may lead to an agreement as  
29 provided in this subchapter.

**COMMITTEE AMENDMENT**

10

1 D. "Transportation facility" means a facility that is or if developed would be within  
2 the jurisdiction of the department including a highway, bridge, railroad line, pier,  
3 airport, trail, ferry vessel, building or other improvement.

4 2. Applicability. This subchapter applies to a proposal or agreement for a private  
5 entity to form a public-private partnership when the department estimates that the initial  
6 capital cost of a project is \$25,000,000 or more or when the proposal includes placing  
7 tolls on existing transportation facilities that were not previously subject to tolls. Nothing  
8 in this section is intended to prohibit or otherwise affect programs that do not meet the  
9 criteria of this subsection.

10 3. Authorization. Notwithstanding any other provision of law, the department is  
11 authorized to receive or solicit proposals to form a public-private partnership with respect  
12 to a transportation facility. Proposals must be reviewed in accordance with this  
13 subchapter. Upon approval of the Legislature as provided in this subchapter, the  
14 department may enter into an agreement.

15 4. Standards for review. Before submitting a proposal to the Legislature for  
16 approval the department must find that the proposal meets the following standards.

17 A. The purpose of and need for the transportation facility must be consistent with the  
18 long-term planning of the department.

19 B. The private entity must have the financial, technical and operational capacity to  
20 discharge the responsibilities set forth in the proposal cost-effectively and responsibly  
21 as determined by the department. This capacity must include, but is not limited to,  
22 meeting department prequalification standards for professional engineering services  
23 and general contracting.

24 C. The proposed transportation facility must be owned, controlled, operated and  
25 maintained in a manner satisfactory to the department.

26 D. The proposal must be cost-effective in the long term.

27 E. The proposal must limit the use of state capital funding to less than 50% of the  
28 initial capital cost of the transportation facility and to the extent practicable minimize  
29 the use of transportation funding sources such as the Highway Fund, general  
30 obligation bonds supported by the Highway Fund, the TransCap Trust Fund under  
31 Title 30-A, section 6006-G and program funding provided by the Federal Highway  
32 Administration.

33 F. If the proposed transportation facility is to be supported by tolls or other user fees,  
34 the private entity must provide a traffic and revenue study prepared by an expert  
35 acceptable to the department and national bond rating agencies. The private entity  
36 must also provide a finance plan consistent with the traffic and revenue study that  
37 identifies the proposal costs, revenues by source, financing, major assumptions,  
38 internal rate of return on private investments and whether any government funds are  
39 assumed to deliver a cost-feasible project and that provides a total cash flow analysis  
40 beginning with implementation of the project and extending for the term of the  
41 agreement.

- 1           G. The proposal must demonstrate safeguards adequate to ensure that no significant  
2           additional costs or service disruptions would be borne by the traveling public and  
3           residents of the State if the private entity defaults or cancels the agreement.
- 4           H. The proposal must include provisions guaranteeing performance by the private  
5           entity and payment of subcontractors, including, but not limited to, performance and  
6           payment bonds, letters of credit, parent company guarantees and lender and equity  
7           partner guarantees.
- 8           I. The proposal and the transportation facility must comply with all requirements of  
9           applicable federal, state and local laws and department rules, policies and procedures.
- 10           J. The proposal must identify the law enforcement jurisdictions and responsibilities  
11           relative to the transportation facility.
- 12           K. The proposal must provide that all reasonable costs of substantially affected local  
13           governments and utilities related to the transportation facility are borne by the private  
14           entity or are otherwise provided for to the satisfaction of the department.
- 15           L. The proposal and transportation facility are in the best interest of the public.
- 16           **5. Proposal and selection processes; solicited and unsolicited.** The department  
17           may request proposals from private entities for a public-private partnership for a  
18           transportation facility or may accept unsolicited proposals pursuant to this subsection.
- 19           A. If the department receives an unsolicited proposal and determines that it meets the  
20           standards in this subchapter, the department shall publish a notice of the receipt of the  
21           proposal on the department's publicly accessible website or through advertisements in  
22           newspapers. If a notice is published exclusively in newspapers, the notice must  
23           appear in 2 or more public newspapers circulated wholly or in part in the State and in  
24           one public newspaper circulated wholly or in part in the county where the proposed  
25           transportation facility is to be located if any such newspaper is circulated in that  
26           county. The notice must provide that the department will accept, for 120 days after  
27           the initial date of publication, proposals meeting the standards in subsection 4 from  
28           other private entities for transportation facilities that satisfy the same basic purpose  
29           and need. A copy of the notice must be mailed to each local government in the area  
30           affected by the proposal.
- 31           B. After the proposal or proposals have been received, and any public notification  
32           period has expired, the department shall rank the proposals in order of preference. In  
33           ranking the proposals, the department may consider factors that include, but are not  
34           limited to, professional qualifications, general business terms, innovative engineering  
35           or cost-reduction terms, finance plans and the need for state funds to deliver the  
36           project and discharge the agreement. The department shall undertake negotiations  
37           with the private entity submitting the 1st-ranked proposal. If the department is not  
38           satisfied with the results of the negotiations, the department may, at its sole  
39           discretion, terminate negotiations with that entity and the department may negotiate  
40           with the other entities in order of the ranking of their proposals. If only one proposal  
41           is received, the department shall negotiate in good faith and, if the department is not  
42           satisfied with the results of the negotiations, the department may, at its sole  
43           discretion, terminate negotiations.

(12)

1 C. The department may require that the private entity assume responsibility for all  
2 costs incurred by the State or local governments before execution of the agreement,  
3 including costs of retaining independent experts to review, analyze and advise the  
4 department with respect to the proposal.

5 **6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or  
6 fares for the use of the transportation facility. The following provisions apply to such an  
7 agreement.

8 A. The agreement must be consistent with the traffic and revenue study required  
9 under subsection 4, paragraph F.

10 B. The agreement must ensure that the transportation facility and any related toll  
11 facility are properly operated and maintained in accordance with department  
12 standards or standards generally accepted in the transportation industry.

13 C. The agreement must include provisions governing changes in tolls or fares.

14 D. The department may require provisions in the agreement that ensure that a  
15 negotiated portion of revenues from a toll-generating or a fare-generating  
16 transportation facility is returned to the department over the life of the agreement.

17 **7. Exercise of powers.** If the department exercises its power of eminent domain for  
18 the development and construction of a transportation facility pursuant to this subchapter,  
19 the department must retain ownership rights and interests taken. The State may provide  
20 maintenance, law enforcement and other services with respect to a transportation facility  
21 owned by a private entity when the agreement provides for reasonable reimbursement for  
22 such services.

23 **8. Term of agreement.** An agreement may not exceed a term of 50 years unless the  
24 Legislature, upon the recommendation of the Commissioner of Transportation, approves  
25 a longer term.

26 **9. Legislative approval.** If the department determines that a public-private  
27 partnership proposal and draft agreement meets the standards of this subchapter, the  
28 department shall submit to the Legislature a bill that authorizes the agreement. The bill  
29 must include a statement that the proposal meets the standards in subsection 4, a  
30 summary of the substance of the draft agreement and a description of the nature and  
31 amount of state investment, if any, including effects on programmed capital work.

32 **10. Confidentiality of proposals and negotiations.** All records, notes, summaries,  
33 working papers, plans, interoffice and intraoffice memoranda or other materials prepared,  
34 used or submitted in connection with any proposal considered under this subchapter are  
35 confidential and not subject to public review until the department determines that the  
36 proposal meets the standards of this subchapter or until the proposal is finally rejected by  
37 the department.

38 **11. Report of proposals.** By February 1st, annually, the department shall provide to  
39 the joint standing committee of the Legislature having jurisdiction over transportation  
40 matters a report summarizing all proposals that the department has determined meet the  
41 standards of this subchapter or that have been finally rejected during the previous  
42 calendar year.

(B)

1 12. Rules. The department may adopt rules to implement this subchapter. Rules  
2 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
3 chapter 375, subchapter 2-A.

4 **PART B**

5 **Sec. B-1.** 23 MRSA §753-A, as amended by PL 2007, c. 306, §3, is repealed.

6 **Sec. B-2.** 23 MRSA §4244 is enacted to read:

7 **§4244. Design-build contracting**

8 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
9 following terms have the following meanings.

10 A. "Best value" means the highest overall value to the State, considering quality and  
11 cost.

12 B. "Design-build contracting" means a method of project delivery whereby a single  
13 firm is contractually responsible for performing design, construction and related  
14 services.

15 C. "Major participant" means a firm that would have a major role in the design or  
16 construction of a project as specified by the department in its procurement  
17 documents.

18 D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel,  
19 building or other improvement being constructed or rehabilitated, including all  
20 professional services, labor, equipment, materials, tools, supplies, warranties and  
21 incidentals needed for a complete and functioning product.

22 E. "Proposal" means an offer by the proposer to design and construct the project in  
23 accordance with all request-for-proposals provisions.

24 F. "Proposer" means an individual, firm, corporation, limited liability company,  
25 partnership, joint venture, sole proprietorship or other entity that submits a proposal.

26 G. "Public notice" means notice given electronically through the department's  
27 publicly accessible website or through advertisements in newspapers. If notice is to  
28 be given exclusively in newspapers, the notice must appear in 2 or more public  
29 newspapers circulated wholly or in part in the State and in one public newspaper  
30 circulated wholly or in part in the county where the proposed project is located if any  
31 such newspaper is circulated in that county.

32 H. "Quality" means those features that the department determines are most important  
33 to the project. Quality criteria include design, constructability, long-term  
34 maintenance costs, aesthetics, local impacts, traveler and other user costs, service life,  
35 time to construct and other factors that the department considers to be in the best  
36 interest of the State.

37 **2. Authorization.** Notwithstanding section 4243 or any other provision of law, the  
38 department may use design-build contracting to deliver projects. The department may  
39 evaluate and select proposals on either a best-value or low-bid basis. If the scope of work



1 requires substantial engineering judgment, the quality of which may vary significantly, as  
2 determined by the department, then the basis of award must be the best value.

3 The department retains the authority to terminate the contracting process at any time, to  
4 reject any proposal, to waive technicalities or to solicit new proposals if the department  
5 determines that doing so is in the best interest of the State.

6 **3. Prequalification.** A proposer must be prequalified to be eligible to submit a  
7 proposal. A proposer must be prequalified by a project-specific request-for-qualifications  
8 process described in this subsection, or a proposer may be a team formed of contractors  
9 and designers that are each prequalified separately for design-build contracting in  
10 accordance with ongoing prequalification procedures established by the department. The  
11 department shall specify the method of prequalification in its discretion, except that if the  
12 basis of award is the best value, then prequalification must be through a project-specific  
13 request-for-qualifications process.

14 The department shall give public notice of a project-specific request-for-qualifications  
15 process. The department shall issue a request-for-qualifications package to all firms  
16 requesting one in accordance with the notice. Interested firms shall supply, for  
17 themselves and all major participants, all information required by the department. The  
18 department may investigate and verify all information received. All financial  
19 information, trade secrets or other information customarily regarded as confidential  
20 business information submitted to the department is confidential. The department shall  
21 evaluate and rate all firms submitting a conforming statement of qualifications and select  
22 the most qualified firms to receive a request for proposals. The department may select  
23 any number of firms, except that, if the department fails to prequalify at least 2 firms, the  
24 department shall repeat the request-for-qualifications process or select a different project  
25 delivery method.

26 **4. Request for proposals.** If prequalification is through project-specific  
27 prequalification, the department shall issue a request for proposals to those firms  
28 prequalified. If prequalification is through ongoing prequalification procedures  
29 established by the department, the department shall give public notice of the request for  
30 proposals. The request for proposals must set forth the scope of work, design parameters,  
31 construction requirements, time constraints and all other requirements that have a  
32 substantial impact on the cost or quality of the project and the project development  
33 process, as determined by the department. The request for proposals must include the  
34 criteria for acceptable proposals and must include a request-for-information process that  
35 allows for clarification of such criteria. For projects to be awarded on a best-value basis,  
36 the scoring process and quality criteria must also be contained in the request for  
37 proposals. The request for proposals may also provide for a process for the department to  
38 meet with each proposer individually to review conceptual technical elements of each  
39 proposal before full proposal submittal for the purposes of identifying design or other  
40 technical elements that are unacceptable to the department or that obviously would cause  
41 rejection of the proposal as nonresponsive. All such conceptual technical meetings,  
42 including submittals and responses, are confidential until award of the contract, but the  
43 department may issue addenda to all proposers to clarify design or other technical  
44 elements that will or will not be allowed. Upon award of the contract and after resolution  
45 of any procurement disputes, the department shall return documents submitted by  
46 unsuccessful proposers upon request. The request for proposals may also provide for a

1 stipend upon specified terms to unsuccessful proposers that submit proposals conforming  
2 to all material request-for-proposals requirements as determined by the department.

3 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must  
4 be submitted by the proposer to the department in 2 separate components, a sealed  
5 technical proposal and a sealed price proposal. These 2 components must be submitted  
6 simultaneously. The department shall first review technical proposals for responsiveness.  
7 The department shall award the contract to the proposer that submits a responsive  
8 proposal with the lowest price, if the proposal meets all material request-for-proposals  
9 requirements as determined by the department.

10 6. Best-value award. If the basis of the award is best value, then each proposal  
11 must be submitted by the proposer to the department in 2 separate components, a sealed  
12 technical proposal and a sealed price proposal. These 2 components must be submitted  
13 simultaneously.

14 The department shall open first each technical proposal and evaluate and score it based on  
15 the quality criteria contained in the request for proposals. The request for proposals may  
16 provide that the range between the highest and lowest quality score of responsive  
17 technical proposals must be limited to an amount certain. During this evaluation process,  
18 the price proposals must remain sealed and all technical proposals are confidential.

19 After completion of the review for responsiveness, the department shall publicly open  
20 and read each price proposal associated with each responsive technical proposal. The  
21 department shall calculate the overall value rating for each proposal, which is the total  
22 price divided by the quality score. The department shall award the contract to the  
23 proposer with the lowest price per quality score point, if the proposal meets all material  
24 request-for-proposals requirements as determined by the department.

25 7. Procurement disputes. The request for proposals must provide for resolution of  
26 disputes that may arise before award of the contract by including a dispute review board  
27 procedure in accordance with the department's standard specifications. Except in  
28 extraordinary circumstances as determined by the department, including emergency work  
29 or situations in which delay could result in the loss of funding, the request for proposals  
30 must include a provision that requires that the procurement process be suspended pending  
31 final resolution of such disputes. In cases involving such extraordinary circumstances  
32 when suspension of the procurement process does not occur, proposers that are not  
33 selected may seek monetary damages directly related to such nonselection.

## 34 SUMMARY

35 This amendment replaces the bill.

36 The purpose of Part A of this amendment is to stimulate the Maine economy by  
37 allowing the Department of Transportation to receive and solicit proposals and, with  
38 legislative approval, enter into agreements with private entities for the building,  
39 ownership, leasing or financing of certain transportation facilities.

40 Part B makes changes to the design-build procurement statutes for the Department of  
41 Transportation.

FISCAL NOTE REQUIRED  
(See Attached)

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# COMMITTEE AMENDMENT

16



# 124th MAINE LEGISLATURE

LD 1639

LR 2033(02)

An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority  
Transportation Infrastructure Needs

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Transportation

Fiscal Note Required: Yes

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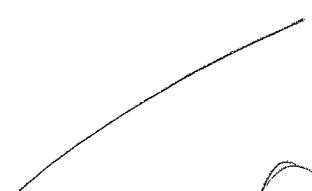
## Fiscal Note

Potential current biennium cost increase - Highway Fund

Potential current biennium cost increase - Federal Expenditures Funds

### Fiscal Detail and Notes

This legislation allows the Department of Transportation, with Legislative approval, to enter into agreements with private entities for the building, ownership, leasing or financing of certain transportation facilities. Until potential proposals from private entities are received, it is not possible to determine whether or not there would be a cost to the State.



SEP 22 2010

Statute: 23 MRSA 4251

Agency: MaineDOT

Contact Person: Toni Kemmerle

Contact Person's E-Mail Address: Toni.kemmerle@maine.gov

**1. Agency's experience in administering or applying this public records exception.**

Legislation containing this exception became effective on July 12, 2010. To date, MaineDOT has had no experience administering or applying this public records exception.

**2. Does your agency support or oppose the exception?**

MaineDOT supports this exception because we believe that a law guaranteeing the confidentiality of the content and details of such proposals will encourage the development and submission of innovative, well conceived proposals by providing a means to protect the necessary investment in time, resources and talent by the submitter(s) from unjust appropriation by others.

**3. Identify any problems that have occurred in application of this exception. Is the exception clear?**

No problems in application have occurred. We believe the exception is articulated clearly.

**4. Does agency recommend changes to this exception?**

No.

**5. Identify stakeholders whose input should be considered in the evaluation of this exception?**

We are unaware of any stakeholders whose input should be considered.

**6. Please provide any further relevant information.**

No further information is available.

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61

**RIGHT TO KNOW ADVISORY COMMITTEE  
ENCRYPTION SUBCOMMITTEE**

**AGENDA**

August 15, 2012

9:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and introductions (Linda Pistner, Chair)
2. Information requested from staff at last meeting:
  - Federal laws/rules pertaining to encryption of emergency transmissions
  - Applicable state law
3. Department of Public Safety – provide a list of subject matter and situations that are or should be confidential when transmitted over the emergency/public safety systems (Lt. Don Pomelow and Major Grotton)
4. General discussion and development of report to full committee
5. Scheduling next meeting and agenda items (if needed)

**Adjourn**



**Response to Encryption Subcommittee request for information about federal or state law that may apply to the encryption of public safety radio transmissions.**

Prepared by Curtis Bentley, OPLA

August 15, 2012

As you recall, the Encryption Subcommittee asked staff to work with the AG to identify any federal or state laws/regulations/policies regarding the encryption (scrambling) of public safety radio transmissions. I have been working with Laura Yustak Smith on this request.

Federal law:

I did not locate any federal laws or rules that are clearly applicable to the encryption of police or first responder radio transmissions.

Laura contacted United States Attorney Mark Winter about the existence of any applicable federal laws or rules and he is unaware of any applicable federal law or regulation. Mr. Winter directed us to Michael Wilhelm, Deputy Chief of the Policy Division in the FCC's Public Safety and Homeland Security Bureau for information about any Federal Communication Commission rules or policies regarding encryption. Mr. Wilhelm stated that "[T]he Commission's rules do not require encryption of public safety communications. That said, encryption is commonly used, notably on tactical police channels."

I contacted Rob Turner, Chief Inspector, Tactical Operations Division, Office of Strategic Technology, U.S. Marshals Service regarding the protocol the U.S. Marshals Service uses to determine what radio transmissions to encrypt/scramble. He e-mailed me the following USMS **policy** statement. "All USMS radio communications must be encrypted with the current edition of USMS key. Unencrypted transmissions are allowed only in cases of exigent circumstances and to ensure interoperability in a critical incident" In response to my follow-up question about how the policy was developed he responded, "I wrote the policy with input from Chief deputies and operational users in the field. Our implementation of encryption wide scale is an officer safety enhancement. We cannot afford to have our enforcement operations, high threat prisoner movements and personal protection operations intercepted by the general public and distributed by the media."

State law:

Criminal History Record Information Act (Title 16, subchapter 8). This Act places restrictions on state criminal justice agencies, courts and the Office of the Attorney General regarding the dissemination of certain criminal justice "records." While radio transmission by criminal justice agencies may contain information that would be subject to the Act, it is unlikely en route radio transmissions would be considered "records" for



purposes of the Act. Once the radio transmission is recorded the provisions of the Act may apply.

Freedom of Access (Title 1, chapter 13). It is unlikely that the public access requirements of FOA would apply to police or first responder radio transmissions en route because such communications do not appear to fall under the definition of “public record” (1 MRSA § 402, sub-§ 3) or a “public proceeding” (1 MRSA § 402, sub-§ 2). Once the radio transmission is recorded the provisions of the Act may apply as well as the confidentiality provisions of Title 25, chapter 352 or other Maine statute.

Emergency Services Communications (Title 25, chapter 352) §2929. Confidentiality of system information (E-9-1-1). This statute makes certain E-9-1-1 call information confidential and defines “confidential information” as information “contained in any database, report, audio recording or other record of the bureau or a public safety answering point....” It is not clear that en route radio transmissions would be considered a database, report or recording for purposes of this statute.

Based on my review of the statutes and legislative history, it appears that the Legislature did not fully contemplate the interception of police and first responder radio transmissions by third parties when enacting these provisions of law.

**Maine Revised Statute Title 15, Chapter 102:  
INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS**

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## 15 §709. DEFINITIONS

The following words and phrases as used in this chapter, unless the context otherwise indicates, shall have the following meanings. [1973, c. 561, (NEW) .]

**1. Communication common carrier.** "Communication common carrier" means any telephone or telegraph company.

[ 1973, c. 561, (NEW) .]

**1-A. Administration of criminal justice.** "Administration of criminal justice" has the same meaning as in Title 16, section 611, subsection 1.

[ 1987, c. 680, §1 (NEW) .]

**2. Contents.** "Contents," when used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport or meaning of that communication.

[ 1973, c. 561, (NEW) .]

**3. Intercepting device.** "Intercepting device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

A. Any telephone or telegraph instrument, equipment or facility or any component thereof being used by a communication common carrier in the ordinary course of its business or extension telephones used by a subscriber to telephone service; or [1973, c. 561, (NEW) .]

B. A hearing aid or similar device being used to correct subnormal hearing to not better than normal. [1973, c. 561, (NEW) .]

[ 1973, c. 561, (NEW) .]

**4. Intercept.** "Intercept" means to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than:

A. The sender or receiver of that communication; [1979, c. 701, §11 (AMD) .]

B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or [1973, c. 561, (NEW) .]

C. A person given prior authority by the sender or receiver. [1979, c. 701, §11 (AMD) .]

[ 1979, c. 701, §11 (AMD) .]

**4-A. Investigative officer.** "Investigative officer" means an employee of the Department of Corrections designated by the Commissioner of Corrections as having the authority to conduct investigations of offenses relating to the security or orderly management of a facility administered by the department.

[ 1997, c. 361, §1 (AMD) .]

**4-B. County jail investigative officer.** "County jail investigative officer" means an employee of a county jail designated by the county jail administrator as having the authority to conduct investigations of offenses relating to the security or orderly management of the county jail.

[ 1997, c. 361, §2 (NEW) .]

**5. Oral communications.** "Oral communications" means any oral communications uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

[ 1973, c. 561, (NEW) .]

**6. Person.** "Person" means any individual, partnership, association, joint stock company, trust or corporation, or any other legal entity, whether or not any of the foregoing is an officer, agent or employee of the United States, a state or a political subdivision of a state.

[ 1973, c. 561, (NEW) .]

**7. Wire communication.** "Wire communication" means any communication made in whole or in part through the use of facilities for transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception.

[ 1973, c. 561, (NEW) .]

SECTION HISTORY

1973, c. 561, (NEW). 1979, c. 701, §11 (AMD). 1987, c. 680, §1 (AMD).  
1997, c. 361, §§1,2 (AMD).

## 15 §710. OFFENSES

**1. Interception, oral communications prohibited.** Any person, other than an employee of a common carrier as defined in this chapter, a law enforcement officer or an investigative officer as defined in this chapter, carrying out practices otherwise permitted by this chapter, who intentionally or knowingly intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept, any wire or oral communication is guilty of a Class C crime.

[ 1987, c. 680, §2 (AMD) .]

**2. Editing of tape recordings in judicial proceedings prohibited.** Any person who knowingly or intentionally edits, alters or tampers with any tape, transcription or other sound recording, or knows of such editing, altering or tampering, and presents that recording in any judicial proceeding or proceeding under oath, without fully indicating the nature of the changes made and the original state of the recording, is guilty of a Class C crime.

[ 1979, c. 663, §96 (AMD) .]

**3. Disclosure, or use of wire or oral communications prohibited.** A person is guilty of a Class C crime if he:

A. Intentionally or knowingly discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or [1979, c. 663, §97 (RPR) .]

B. Intentionally or knowingly uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception. [1979, c. 663, §97 (RPR) .]

**4. Duty to report.** Any communications common carrier shall promptly report to the Attorney General any facts coming to its attention in the conduct of its business which may indicate a possible violation of this section and such carrier shall adopt reasonable rules to assure compliance with this subsection, provided

such carrier shall not be liable to any person who may claim an injury arising out of any such report, if made in good faith. Any person violating this subsection shall be subject to a civil penalty not to exceed \$5,000, payable to the State, to be recovered in a civil action.

[ 1979, c. 663, §98 (AMD) .]

**5. Possession of interception devices prohibited.** A person, other than an employee of a common carrier as defined in this chapter, a law enforcement officer or an investigative officer as defined in this chapter, carrying out practices otherwise permitted by this chapter, who has in his possession any device, contrivance, machine or apparatus designed or commonly used for intercepting wire or oral communications defined in this chapter, is guilty of a Class C crime.

[ 1987, c. 680, §3 (AMD) .]

**6. Sale of interception devices prohibited.** A person who sells, exchanges, delivers, barter, gives or furnishes or possesses with an intent to sell any device, contrivance, machine or apparatus designed or commonly used for the interception of wire or oral communications as defined in this chapter is guilty of a Class B crime. This subsection shall not include devices manufactured under written contract for sale to common carriers, law enforcement agencies and the Department of Corrections, provided that the production of any such device shall not have commenced prior to the signing of the contract by both parties.

[ 1987, c. 680, §4 (AMD) .]

#### SECTION HISTORY

1973, c. 561, (NEW). 1979, c. 663, §§95-100 (AMD). 1987, c. 680, §§2-4 (AMD).

## 15 §711. CIVIL REMEDY

Any party to a conversation intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses such communications and shall be entitled to recover from any such persons: [1973, c. 561, (NEW) .]

**1. Damages.** Actual damages, but not less than liquidated damages, computed at the rate of \$100 per day for each day of violation; and

[ 1979, c. 663, §101 (AMD) .]

**2. Attorney's fee.** A reasonable attorney's fee and other litigation disbursements reasonably incurred.

[ 1973, c. 561, (NEW) .]

#### SECTION HISTORY

1973, c. 561, (NEW). 1979, c. 663, §101 (AMD).

## 15 §712. EXCEPTIONS

**1. Switchboard operators, communication common carrier agent.** It is not a violation of this chapter for an operator of a switchboard or an officer, employee or agent of any communication common carrier, as defined in this chapter, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, provided that the communication common carriers

shall not utilize service for observing or random monitoring, except for mechanical or service quality control checks, nor shall any such officer, employee or agent use or disclose to another the contents as defined in this chapter of the communication so intercepted.

[ 1987, c. 680, §5 (NEW) .]

**2. Investigative officers.** It is not a violation of this chapter for an investigative officer, as defined in this chapter, or for an employee of the Department of Corrections acting at the direction of an investigative officer, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the administration of criminal justice, if:

A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and [2009, c. 93, §1 (AMD) .]

B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:

- (1) Providing the resident with a written notification statement;
- (2) Posting written notification next to every telephone at the facility that is subject to monitoring; and
- (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [1997, c. 361, §3 (AMD) .]

C. [1997, c. 361, §3 (RP) .]

This subsection does not authorize any interference with the attorney-client privilege.

[ 2009, c. 93, §1 (AMD) .]

**3. County jail investigative officer.** It is not a violation of this chapter for a county jail investigative officer, as defined in this chapter, or for a county jail employee acting at the direction of a county jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is a necessary incident to the administration of criminal justice if:

A. Either the sender or the receiver of that communication is a person residing in an adult section of the county jail; and [1997, c. 361, §4 (NEW) .]

B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:

- (1) Providing the resident with a written notification statement;
- (2) Posting written notification next to every telephone at the jail that is subject to monitoring; and
- (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call. [1997, c. 361, §4 (NEW) .]

This subsection does not authorize any interference with the attorney-client privilege.

[ 1997, c. 361, §4 (NEW) .]

#### SECTION HISTORY

1973, c. 561, (NEW). 1973, c. 788, §61 (AMD). 1979, c. 701, §12 (AMD).  
1987, c. 680, §5 (RPR). 1995, c. 182, §1 (AMD). 1997, c. 361, §§3,4  
(AMD). 2009, c. 93, §1 (AMD).

## 15 §713. EVIDENCE

The contents of an interception are not admissible in court, except that the contents of an interception of any oral or wire communication that has been legally obtained under the laws of another jurisdiction in which the interception occurred or that has been legally obtained pursuant to section 712, subsection 2 or 3 is admissible in the courts of this State, subject to the Maine Rules of Evidence. [1997, c. 361, §5 (AMD) .]

### SECTION HISTORY

1979, c. 701, §13 (NEW). 1983, c. 379, (AMD). 1995, c. 182, §2 (AMD). 1997, c. 361, §5 (AMD).

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**RIGHT TO KNOW ADVISORY COMMITTEE  
BULK RECORDS SUBCOMMITTEE**

DRAFT AGENDA

August 23, 2012

11:00 a.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Michael Cianchette, Chair
  
2. Review and Discussion of Law Court Decision and Enacted Legislation
  - A. MacImage of Maine, LLC et al. v. Androscoggin County, et al., 2012 ME 44
  - B. Public Law 2011, chapter 508, An Act Concerning Copying Fees for Users of County Registries of Deeds  
*Additional recommendations?*
  
3. Scheduling future meetings
  
4. Other?

**Adjourn**



**MacImage of Maine, LLC, et al. v. Androscoggin County, et al., 2012 ME 44**  
**Decided March 27, 2012**

**Parties:**

MacImage of Maine, LLC  
John Simpson

Androscoggin County  
Aroostook County  
Cumberland County  
Knox County  
Penobscot County  
York County

**Filing Amicus briefs**

Franklin County and Sagadahoc County  
American Civil Liberties Union Foundation of Maine  
Maine Freedom of Information Coalition

MacImage of Maine, LLC and its principal, John Simpson, asked six Maine counties to provide, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indices to the recorded documents. All documents are available for reviewing in the registries and online and are available for individual copying. MacImage seeks a bulk digital delivery of all documents and indices in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a profit. The counties are willing to provide the documents and indices, but the fees that the counties may charge for the requested electronic information are in dispute.

**Conclusions:**

1. The real estate records held by the county registries of deeds, along with the indices, are available to the public pursuant to Title 33 §651.
2. Reasonable fees for responding to the bulk requests for records and indices, including the transfer of electronic data, have been established by the Legislature through recent legislation (PL 2011, c. 378).
3. PL 2011, c. 378 is applicable to the dispute before the Law Court.
4. The responses of all but two of the counties that are parties, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees.

**Judgment:**

Superior Court judgment vacated, remanded for entry of judgment for Androscoggin, Cumberland, Knox and York Counties (fees are reasonable), and remanded for further proceedings for Aroostook and Penobscot Counties (to provide for digital indices).

**FOAA issues:**

- The law Court found that the specific legislation regarding the registries found in Title 33 – not the more general language of FOAA – controls the resolution of the dispute regarding the reasonableness of the fees charged by the counties. The Law Court did not discuss the FOAA further. (pages 13-14)
- The Court mentioned in a footnote that other states have begun adopting legislation addressing efforts by private entities to obtain digital records in bulk and for commercial use. It notes that the RTK AC has begun to consider such issues and references the 2012 Annual report. (footnote page 14)



Decision: 2012 ME 44  
Docket: Cum-11-127  
Argued: December 13, 2011  
Decided: March 27, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MacIMAGE OF MAINE, LLC, et al.

v.

ANDROSCOGGIN COUNTY et al.

SAUFLEY, C.J.

[¶1] In this appeal, we are presented with a question of first impression regarding the bulk copying of county registry documents. Specifically, MacImage of Maine, LLC, and its principal, John P. Simpson, have asked the six Maine counties involved in this appeal to provide to them, in a specified digital format, copies of every document contained in the counties' registries of deeds, including the indexes to the recorded documents. The recorded documents are already available to MacImage and the public for viewing in the registries and online, and they are available for individual copying. MacImage, however, seeks a bulk, digital delivery of all such documents and all indexes in order to create a private database with a proprietary search engine through which it would offer what it describes as improved, consolidated search and retrieval services to the public for a

profit. The counties have agreed to provide electronic copies of the registries' recorded documents, but disputes over the fees that the counties may charge for the requested electronic information precipitated this litigation and the appeals by the counties and the cross-appeals by MacImage and Simpson. We have consolidated all pending appeals.

[¶2] The counties argue that the Superior Court (Cumberland County, *Warren J.*) erred in determining that they may not charge the fees that they proposed in their responses to the MacImage and Simpson requests. We reach the following conclusions: the real estate records held by county registries of deeds, along with the indexes to those records, are available to the public pursuant to 33 M.R.S. § 651 (2011);<sup>1</sup> reasonable fees for responding to bulk requests for records and indexes,<sup>2</sup> including the transfer of electronic data, have been established by the Legislature through recent legislation, *see* P.L. 2011, ch. 378 (effective June 16, 2011); that legislation is applicable to the dispute before us; and the responses of all but two of the six counties before us, agreeing to provide the requested records in bulk and setting the costs for transferring the data, fall within the applicable law's parameters for reasonable fees. Accordingly, we vacate the

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<sup>1</sup> The records were equally available to the public pursuant to the statute as it existed at the time of the MacImage and Simpson requests. *See* 33 M.R.S. § 651 (2009).

<sup>2</sup> Although the fee provisions of title 33 discuss copies and abstracts of "records," without specific reference to indexes, we read those provisions to apply equally to requests for copies of index pages.

judgment of the Superior Court, which entered its judgment before the most recent legislation was passed, and we remand for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings regarding Aroostook and Penobscot Counties.<sup>3</sup>

## I. BACKGROUND

### A. Electronic Records in the Registries of Deeds

[¶3] As state and local governments have become more sophisticated in their electronic recordkeeping, the ease of effectuating electronic transfers has led to requests for the bulk delivery of complete compilations of various types of government records. Bulk requests were rarely received in a purely paper-based system, given the labor and costs required to reproduce large quantities of paper documents.

[¶4] In response to the technological advances that have enabled a more efficient flow of public information, and the resulting increased interest in obtaining that electronic information at low cost for private commercial use, some states have preemptively legislated the conditions for allowing bulk access. For example, in New Mexico, a copy of a database will be provided if the recipient agrees, among other things, “not to use the database for any . . . commercial

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<sup>3</sup> Both the appellants and the appellees have raised procedural challenges, primarily related to the timeliness of particular filings. *See generally* 1 M.R.S. § 409(1) (2011); 5 M.R.S. § 11002(3) (2011). We are unpersuaded, and we do not discuss those challenges further.

purpose unless the purpose and use is approved in writing by the state agency that created the database.” N.M. Stat. Ann. § 14-3-15.1(C)(2) (LexisNexis 2012). In Michigan, the Legislature acted more broadly to confer on registers of deeds the discretion to satisfy information requests “using a medium selected by the register of deeds.” Mich. Comp. Laws Serv. § 565.551(2)(a) (LexisNexis 2011). About fifteen to forty percent of counties in the United States require users of bulk online records to enter into a contract agreeing not to use the records for commercial purposes. U.S. Gov’t Accountability Office, GAO-08-1009R, *Social Security Numbers in Bulk and Online Records* 22 (2008).

[¶5] In Maine, it appears that the Legislature was made aware of the policy considerations related to registry records, *see* 33 M.R.S. § 651, only after MacImage made its requests and alerted county and state government to the potential for disputes over the availability of the electronic documents in bulk and the fees that could be charged for bulk transfers.<sup>4</sup> Accordingly, when MacImage made its requests for digital copies of every document contained in each county’s registry, the statutes addressing fees for copies of registry records were still written in terms that were designed for a paper-based county registry system. That registry system, which calls for the recording and indexing of land-transfer records in each

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<sup>4</sup> In contrast, Maine’s Freedom of Access Act (FOAA) has, since it was enacted in its present form, defined “public records” to include an “electronic data compilation.” P.L. 1975, ch. 758 (effective July 29, 1976) (codified at 1 M.R.S. § 402(3) (2011)).



county, has existed in Maine since 1821. *See* P.L. 1821, ch. 36 (effective Feb. 20, 1821); P.L. 1821, ch. 98 (effective Mar. 19, 1821). Pursuant to long-existing statutes, Maine's counties provide the public service of recording private and public land transactions and making the information publicly available for a reasonable fee. *See* P.L. 1821, ch. 98, § 3; *see also* 33 M.R.S. § 751(14) (2009); 33 M.R.S. § 751(14-B), (14-C) (2011).

[¶6] The purpose of Maine's registries of deeds, as in other states, is to provide a common base of information regarding the ownership and configuration of real estate in Maine. *See* 33 M.R.S. § 651 (2011) (requiring the registers of deeds to record and index instruments conveying real property interests). All of the documents recorded within the counties' registries are, by statute, always available to the public for reasonable fees, and the parties do not dispute the public availability of the registry records in this case. Rather, as the following procedural history demonstrates, the issue before us relates to the reasonableness of the fees charged by the county registries for providing bulk transfers of electronic copies.

#### B. Procedural History

[¶7] The following facts are not in dispute. In September 2009, MacImage sent requests to several Maine counties seeking “[a]ccess to inspect and copy all land records available on the Registry [of Deeds] website” and “[c]opies of all the electronic data files used by the Registry’s document recording system and the

Registry’s website.” At the time, the county commissioners were authorized by statute to determine “a reasonable fee” to charge for making copies and abstracts from the registries’ records. 33 M.R.S. § 751(14) (2009). The statute did not expressly address bulk information requests or the electronic indexes. *See id.* MacImage requested both the electronic document images of the registries’ land records and the grantor-grantee indexes. Simpson also personally requested electronic copies of the counties’ land records and indexes.

[¶8] At the time that the counties responded to MacImage’s and Simpson’s requests, the relevant statute governing the copying of records at the county registries provided in full:

Except as provided in any other provision of law, registers of deeds shall receive the following fees for:

.....

**14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners.

33 M.R.S. § 751 (2009).

[¶9] It appears that the counties had not previously been asked to provide such bulk data from their relatively recently digitalized document systems. Each county ultimately agreed to provide the requested land records in an electronic format, though two of the counties—Aroostook and Penobscot—failed to offer

electronic copies of the index pages for a fee. The fees identified in several of the counties' responses included costs for the specific formatting of the documents in the format requested by MacImage, including payment to the database contractors who administered the counties' digital systems for technological support in handling the requests.<sup>5</sup>

[¶10] All of the counties at issue offered to make electronic copies of the land records available to the public for specified fees:

- Androscoggin County offered to provide the copies at a rate of \$0.12 per image, plus \$3,600 for recorded documents and \$15,000 for indexes to cover costs owed to its database contractor. It also offered access to the digital information through its website for \$350 per year with no charge for downloads.
- Aroostook County offered to provide electronic copies of land records through its website for \$200 per year for a subscription plus a \$0.50-per-page download charge that is reduced to \$0.05 per page for users who download 1,000 pages or more per month in a calendar year. Aroostook County did not offer to transfer copies of its indexes.

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<sup>5</sup> Simpson had himself become familiar with the county registries when he provided contract computer services to Hancock County to create their digitalized system.

- Cumberland County offered to provide a bulk download at a rate of \$0.02 per document for indexes and \$0.025 per image for land records.
- Knox County offered to provide the information in several ways, including by bulk download at a rate of \$0.02 per document for the index and \$0.025 per image for the land records.
- Penobscot County offered to provide electronic copies through its website for a subscription fee of \$35 per month with a \$1-per-page charge for downloads. Penobscot County did not offer to provide electronic copies of its index pages, and it did not offer a bulk download rate.
- York County offered a bulk download rate of \$0.024 per image.

[¶11] Unsatisfied with the counties' requested fees, in November 2009, MacImage filed a complaint in the Superior Court pursuant to the Maine Freedom of Access Act (FOAA), 1 M.R.S. § 409(1) (2011), and M.R. Civ. P. 80B, in which it alleged a constructive denial of access to the public records by the counties.<sup>6</sup> MacImage sought declaratory and injunctive relief. It also sought to recover costs and attorney fees.

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<sup>6</sup> The complaint was filed against several counties in addition to the six at issue here, but the claims against those other counties were dismissed before trial.

[¶12] The parties proceeded to a five-day trial from October 4 through 8, 2010, and the court entered a judgment on February 22, 2011, in which it concluded that each of the counties had denied access, including by charging unreasonable fees for providing the information identified in the requests from MacImage and Simpson.<sup>7</sup> The court concluded that certain legislation enacted after the requests were denied, *see* P.L. 2009, ch. 575 (effective July 12, 2010) (codified at 33 M.R.S. §§ 651, 751(14) (2010)), did not apply retroactively. It rejected the counties' fee schedules for including costs beyond those associated with making an electronic transfer of information onto storage media. The court articulated its own version of specific fees that it found would be reasonable for each county to charge to transfer the information to MacImage electronically. The court also provided some guidance regarding future requests under the then new statute, which provided, effective July 12, 2010, that specific expenses could be considered in determining a reasonable fee:

Except as provided in any other provision of law, registers of deeds shall receive the following fees for:

.....

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<sup>7</sup> Because we vacate that determination, we do not discuss further the Superior Court's conclusion that the counties may not include in their fees any of the costs of gathering the documents, creating the counties' digital systems, and other costs of doing business. The court's determination that fees may be based only on the limited costs of copying the documents has been superseded by legislative action. *See* P.L. 2011, ch. 378 (effective June 16, 2011).

**14. Abstracts and copies.** Making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request.

33 M.R.S. § 751 (2010).

[¶13] Each of the six remaining county defendants timely appealed, and MacImage and Simpson jointly cross-appealed.<sup>8</sup>

[¶14] After the counties commenced their appeals, the Legislature enacted Public Law 2011, chapter 378, which repealed section 751(14), replaced that subsection with new statutory language, and provided a retroactive explanation of what qualified as a reasonable fee between September 1, 2009, and the effective date of the Act:

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<sup>8</sup> MacImage and Simpson did not separately argue their grounds for appealing from the judgment in their brief, and we do not address the cross-appeals further. *See* M.R. App. P. 9(d).

## **An Act Concerning Fees for Users of County Registries of Deeds**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the registry of deeds offices provide a valuable public service in recording and maintaining the land records of the State; and

**Whereas,** current law allows the county commissioners to set fees for copying at only the cost of providing the copies; and

**Whereas,** the cost to the counties to maintain the information and to make it accessible cannot be adequately reimbursed by fees defined by copying cost; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 33 MRSA §751, sub-§14, as amended by PL 2009, c. 575, §2, is repealed.

**Sec. 2.** 33 MRSA §751, sub-§§14-B and 14-C are enacted to read:

**14-B. Abstracts and copies.** Making abstracts and copies of records at the office of the register of deeds as follows:

A. Five dollars per page for paper abstracts and copies of plans;

B. One dollar per page for other paper abstracts and copies; and

C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records.

This subsection is repealed July 31, 2012;

**14-C. Abstracts and copies.** Beginning August 1, 2012, making abstracts and copies from the records, a reasonable fee as determined by the county commissioners for each category of abstracts and copies, such as paper copies, attested copies, copies obtained online and bulk transfers of copies. In setting a reasonable fee for each category of abstracts and copies, the commissioners shall consider factors relating to the cost of producing and making copies available, which may include, but are not limited to: the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs or other transmitting costs; amortized infrastructure costs; any direct equipment operating and maintenance costs; costs associated with media processing time; personnel costs, including actual costs paid to private contractors for copying services; contract and contractor costs for database maintenance and for online provision and bulk transfer of copies in a manner that protects the security and integrity of registry documents; and a reasonable rate for the time a computer server is dedicated to fulfilling the request; and

**Sec. 3. Legislative intent; retroactivity.** The Legislature finds that the following fees charged by an office of a register of deeds for making abstracts and copies from records, whether in paper or digital form, including for bulk copies or transfers of such copies, between September 1, 2009 and the effective date of this Act are reasonable and in accordance with the legislative intent of Public Law 2009, chapter 575, section 2 and are expressly authorized: a fee of up to \$1.50 per page for paper copies and a fee of up to \$1.50 per page for digital copies. Nothing in this section may be interpreted as a legislative finding that a higher fee charged by an office of a register of deeds between September 1, 2009 and the effective date of this Act to persons who were not subscribers to the online services of a register of deeds is unreasonable. Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.



P.L. 2011, ch. 378 (effective June 16, 2011). With this new legislation to consider, we now address the parties' arguments on appeal.

## II. DISCUSSION

### A. Applicability of the Freedom of Access Laws

[¶15] MacImage argues that its claims fall under Maine's Freedom of Access Act and that all statutory interpretation must be viewed in light of FOAA's broad definition of public records that are open and available for public inspection. *See* 1 M.R.S. §§ 402(3), 408 (2011). We conclude that the applicability of FOAA is not dispositive here.

[¶16] The Legislature has chosen to establish county registries of deeds, to require that all records be made available to the public, and to allow the counties to charge reasonable fees for the services made available through the registries. *See generally* 33 M.R.S. §§ 651-670, 751-752 (2011). Thus, there is no dispute that the records at issue are always open for public inspection and copying, and the counties agree that they have that responsibility.

[¶17] The dispute that brings the parties before us relates only to the fees that may be charged by the counties for the bulk electronic transfer of the records. The specific legislation regarding the registries found in title 33—not the more general language of FOAA—controls the resolution of the dispute regarding the

reasonableness of the fees charged by the counties. The Legislature has recently clarified that FOAA is not intended to govern fees for copying records from the registries of deeds. *See* P.L. 2009, ch. 575, § 1 (effective July 12, 2010) (codified at 33 M.R.S. § 651 (2011) (stating that, notwithstanding FOAA, “this chapter governs fees for copying records maintained under this chapter”)); *see also* 1 M.R.S. § 408(1) (2011) (stating that the FOAA provisions regarding the right to inspect and copy public records apply “[e]xcept as otherwise provided by statute”).

[¶18] Moreover, the purpose of FOAA is not offended by the independent statute governing the fees that may be charged by the registries of deeds. *See* 1 M.R.S. § 401 (2011) (stating the purpose of FOAA to promote the openness of government activities and the records of those activities).<sup>9</sup> Because we conclude that the more specific statutes governing registry functions govern the determination of the reasonableness of the fees imposed, we do not discuss FOAA further.

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<sup>9</sup> Other states have amended their freedom-of-access laws more generally to address private entities' efforts to obtain digital records in bulk and for commercial use. *See, e.g.*, Ky. Rev. Stat. Ann. § 61.874 (LexisNexis 2011) (permitting electronic copying for noncommercial use upon payment for the actual cost of reproduction and permitting public agencies to charge a contracted fee to provide records to be used for a commercial purpose). Maine's Legislature has not yet adopted such standards for general application to FOAA requests, but the Right to Know Advisory Committee has begun to consider such issues and has made some recommendations. *See* Right to Know Advisory Committee, Sixth Annual Report to the 125th Legislature 9-11, 16-17 (Jan. 2012).

## B. Applicability of Changes to Title 33 During Litigation

[¶19] When this litigation began, the statute governing fees for copies of recorded deeds provided only that the county commissioners were entitled to establish “a reasonable fee” to be charged for copies. 33 M.R.S. § 751(14) (2009). While the suit was pending, but before trial, the Legislature amended the statute to set forth factors that the county commissioners could consider when determining reasonable fees for paper copies, attested copies, online copies, or copies delivered through bulk transfers. *See* P.L. 2009, ch. 575, § 2 (effective July 12, 2010) (codified at 33 M.R.S. § 751(14) (2010)). The 2010 legislation did not indicate that it was to be applied retroactively. *See id.* The parties proceeded to trial, and the court concluded that the statute in existence at the time that the original requests were made was applicable: 33 M.R.S. § 751(14) (2009).

[¶20] After the Superior Court entered its judgment and the counties appealed from the court’s decision, however, the Legislature enacted new legislation. P.L. 2011, ch. 378 (effective June 16, 2011) (codified in part at 33 M.R.S. § 751(14-B), (14-C) (2011)). A portion of that legislation was explicitly enacted to apply “retroactively to September 1, 2009,” which encompasses the time within which the MacImage and Simpson requests were submitted. P.L. 2011, ch. 378, § 3. In that section, the Legislature approved the imposition of fees of up to \$1.50 per page for digital copies. P.L. 2011, ch. 378, § 3.

[¶21] We review de novo whether a statutory amendment will be applied retroactively or prospectively. See *In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶ 17, 976 A.2d 955. Regarding the particular legislation at issue here, the counties argue that the most recent legislation—particularly P.L. 2011, ch. 378, § 3—retroactively governs the fees chargeable to MacImage and Simpson to satisfy their requests. To determine whether the new statute applies, we will examine (1) whether the Legislature expressed the intent to make the statute retroactive in its application and (2) whether that retroactive application violates any provisions of the Maine Constitution.

1. Retroactivity

[¶22] The Legislature has adopted a rule of construction that “[a]ctions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby.” 1 M.R.S. § 302 (2011). The general rule of statutory construction set forth in section 302 may be overcome, however, by “[l]egislation expressly citing section 302, or explicitly stating an intent to apply a provision to pending proceedings.” *Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 16, 787 A.2d 144; see *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 20, 856 A.2d 1183, *cert. denied*, 544 U.S. 906 (2005); see also *Sinclair v. Sinclair*, 654 A.2d 438, 439-40 (Me. 1995) (holding that legislative intent—not a classification of legislation as procedural or substantive—determines the

applicability of new legislation to a *pending* claim); *Riley v. Bath Iron Works Corp.*, 639 A.2d 626, 628-29 (Me. 1994) (distinguishing between the application of section 302 to pending claims and the application of the procedural-substantive distinction in determining “the temporal application of legislation to preexisting, inchoate interests”).

[¶23] Thus, the Legislature may appropriately amend a statute and have it take effect immediately, and it may, within the bounds of the Maine Constitution,<sup>10</sup> “make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of a misinterpretation of its work product.” *State v. L.V.I. Group*, 1997 ME 25, ¶ 13, 690 A.2d 960 (quotation marks omitted). A pending proceeding may be affected if the Legislature has expressed an intention that the statute apply retroactively notwithstanding the general rule of construction set forth in section 302. *Bernier*, 2002 ME 2, ¶ 16, 787 A.2d 144.

[¶24] Here, the Legislature determined that, for digital copies of registry records, fees of up to \$1.50 per page were reasonable when charged between September 1, 2009, and the effective date of the legislation, June 16, 2011. P.L.

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<sup>10</sup> Giving statutes retroactive effect may be unconstitutional in a variety of circumstances, including when the legislation would substantially impair a contractual relationship in violation of the Contract Clause, Me. Const. art. I, § 11; see *Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 16, 967 A.2d 690, or would constitute an ex post facto law in violation of the Ex Post Facto Clause, Me. Const. art. I, § 11; see, e.g., *State v. Letalien*, 2009 ME 130, 985 A.2d 4.

2011, ch. 378, § 3.<sup>11</sup> The Legislature explicitly stated, “Notwithstanding the Maine Revised Statutes, Title 1, section 302, this section applies retroactively to September 1, 2009.” *Id.*

[¶25] In the 2011 enactment, the Legislature unequivocally expressed an intent for the statute to apply retroactively, *see Morrill v. Me. Tpk. Auth.*, 2009 ME 116, ¶ 5, 983 A.2d 1065, and the period of retroactivity includes the pending litigation regarding the September 2009 requests submitted by MacImage and Simpson. Thus, unless there is some constitutional impediment to its enforcement, the new legislation requires us to consider this matter based on the standard set forth in P.L. 2011, ch. 378, § 3.

## 2. Constitutional Challenges

[¶26] If there is a reasonable interpretation of a statute that will satisfy constitutional requirements, we will avoid construing the statute in a way that renders it unconstitutional. *Bagley v. Raymond Sch. Dep’t*, 1999 ME 60, ¶ 14, 728 A.2d 127. With this rule of construction in mind, we now consider whether the legislation violates (a) the constitutional separation of powers, (b) the Due Process Clause, (c) the Equal Protection Clause, (d) the Takings Clause, or (e) the Special Legislation Clause.

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<sup>11</sup> The Superior Court concluded that the counties were limited in setting reasonable fees to the actual costs of preparing the data for transfer and the “copying” or transfer costs. The Legislature rejected this limited approach to fee-setting in both of its enactments that followed the initial request of MacImage. *See* P.L. 2011, ch. 378 (effective June 16, 2011); P.L. 2009, ch. 575 (effective July 12, 2010).

a. Separation of Powers

[¶27] The constitutional separation of powers is not always undermined when the Legislature passes legislation that “affects cases that are pending in the judicial system.” *Bernier*, 2002 ME 2, ¶ 17 n.7, 787 A.2d 144; *see* Me. Const. art. III, § 2. Although MacImage and Simpson contend that P.L. 2011, ch. 378, § 3 usurps the judicial function by retroactively interpreting the meaning of a repealed statute, 33 M.R.S. § 751(14) (2009), and attempting to overturn a decision in a private dispute, this argument underestimates the *public interests* at stake.

[¶28] To determine whether conduct violates the constitutional separation of powers in Maine, we ask a narrow question: “[H]as the power in issue been explicitly granted to one branch of state government, and to no other branch?” *State v. Hunter*, 447 A.2d 797, 800 (Me. 1982). The Maine Constitution vests in the Legislature the “full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.” Me. Const. art. IV, pt. 3, § 1. In exercising this power and authority, the Legislature may properly consider issues regarding the funding of county government services.

[¶29] Although MacImage and Simpson argue that the Legislature’s actions constitute an attempt to overturn a decision in a private dispute, the Public Law at issue served more broadly to balance the public and private interests involved in

fee-setting for counties' electronic copying of registry land records and indexes—a technological reality that was not addressed in preexisting legislation. P.L. 2011, ch. 378, Emergency Preamble. The Legislature acted to balance competing interests by legislating the reasonableness of fees that could be charged during the time period when the county registries were acting without legislative guidance, enacting prospective legislation to set specific fees for a limited period of time, and finally requiring the county commissioners to establish fees by taking into account statutory criteria by August 1, 2012. P.L. 2011, ch. 378. The Legislature “establish[ed] . . . reasonable laws and regulations for the defense and benefit of the people of this State,” Me. Const. art. IV, pt. 3, § 1, by establishing certain limits on fees in the short term to allow counties time to develop their fee schedules autonomously in compliance with 33 M.R.S. § 751(14-C) (2011) and by requiring the implementation of those fee schedules on August 1, 2012. The Legislature did not, by enacting this policy-based legislation, usurp the adjudicatory power of the courts. *See* Me. Const. art. III, § 2; Me. Const. art. IV, pt. 3, § 1; Me. Const. art. VI, § 1.

b. Due Process

[¶30] “When the State exercises its police power to regulate for the general welfare and a fundamental right is not at issue, statutes are subjected to rational basis review.” *State v. Haskell*, 2008 ME 82, ¶ 5, 955 A.2d 737. We defer to the



Legislature in its balancing of competing interests to regulate social and economic issues. *Id.* The party challenging a statute's constitutionality therefore bears the burden of proving a constitutional deficiency and "must establish the complete absence of any state of facts that would support the need for [the statute's] enactment." *Id.* (quotation marks omitted).

[¶31] When conducting this "rational basis" review, we review whether (1) "the police powers [were] exercised to provide for the public welfare; (2) the legislative means employed [were] appropriate to achieve the ends sought; and (3) the manner of exercising the power [was] not . . . unduly arbitrary or capricious." *Id.* ¶ 6 (quotation marks omitted). "The Legislature need not provide the facts upon which its rationale rests, so long as *some* theoretical explanation exists." *Id.*

[¶32] The requests made by MacImage and Simpson alerted the Legislature to the novel issue before the counties, and the resulting public law sought to bring legislatively established standards to an area of generally applicable law that lacked definition at the time of MacImage's and Simpson's requests. The Legislature was required to balance the public's interest in access to the records with the governmental costs of making those records available. It has done so in an area of evolving technology and varied fiscal considerations, and it has acknowledged the need for attention to the emerging issues through the sunset

provision that will require the issues to be revisited by the counties' commissioners. We conclude that the Legislature had a rational basis for acting to resolve an issue of important public interest. *See id.* The means employed to address the issue may have resulted in reduced anticipated revenues for MacImage and Simpson, but the Legislature could have balanced their private interests with the counties' and the public's interests to design its legislative solution, and this type of exercise of its legislative power is neither arbitrary nor capricious. *See id.* There was no due process violation.

c. Equal Protection

[¶33] To succeed in an equal protection challenge where, as here, the challenging party is not a member of a suspect class, a party challenging a statute must show (1) “that similarly situated persons are not treated equally under the law,” and (2) that the statute is not “rationally related to a legitimate state interest.” *Town of Frye Island v. State*, 2008 ME 27, ¶ 14, 940 A.2d 1065. “When a statute is reviewed under the rational basis standard, it bears a strong presumption of validity.” *Bagley*, 1999 ME 60, ¶ 28, 728 A.2d 127. It will be deemed unconstitutional on equal protection grounds only if the discriminatory legislative classification is “arbitrary, unreasonable or irrational.” *McBreairty v. Comm’r of Admin. & Fin. Servs.*, 663 A.2d 50, 53 (Me. 1995) (quotation marks omitted).

[¶34] Regarding the first of the factors for our consideration, MacImage and Simpson have failed to establish that their situation differs from others similarly situated. *See Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065. The maximum rates that may be charged to MacImage are no greater than the maximum rates that may be charged to others seeking either individual copies or bulk data during the same time period.

[¶35] Moreover, in considering the second part of the equal protection analysis, the staggered timing of the statute is “rationally related to a legitimate state interest” in balancing the interests of the registers of deeds, the interests of the requestors, and the interests of the public. *See id.* There is a rational relationship between the provisions of P.L. 2011, ch. 378, § 3 and the legislative purpose to provide guidance on how high a fee would have to be to be unreasonable within the meaning of title 33 during the time before the Legislature acted to clarify its intended meaning. Pursuant to section 3, all digital copy rates of \$1.50 or less per page set between September 1, 2009, and the legislation’s June 16, 2011, effective date are deemed reasonable. This portion of the legislation demonstrates an effort to provide some limited guidance regarding decisions made by counties when the statute provided only a vague reasonableness standard, and other portions of the Act give the counties direction for setting fees in the future. Because the legislation does not treat similarly situated parties differently and bears a rational

relationship to a legitimate state interest, it does not violate the Equal Protection Clause. *Town of Frye Island*, 2008 ME 27, ¶ 14, 940 A.2d 1065.

d. Takings Clause

[¶36] The government may not take private property for public use without providing just compensation. U.S. Const. amend. V; Me. Const. art. I, § 21. “Although both tangible and intangible property may be the subject of an impermissible taking, there is no property right to potential or future profits.” *Me. Beer & Wine Wholesalers Ass’n v. State*, 619 A.2d 94, 97 (Me. 1993). Thus, although MacImage and Simpson requested digital copies of the registry records, their planned commercial enterprise does not create an existing property interest in obtaining those records without paying a reasonable fee. Accordingly, no governmental taking has been effectuated through the enactment of P.L. 2011, ch. 378.

e. Special Legislation Clause

[¶37] “The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.” Me. Const. art. IV, pt. 3, § 13. The enacted legislation does not offend this Special Legislation Clause because the enacted law is not a private resolve singling out an individual for unique treatment; rather, the Legislature was attempting to address a newly developing issue that broadly affects the counties in

the state and all entities who have requested—and will request—bulk digital information from the counties. *Cf. Brann v. State*, 424 A.2d 699, 704 (Me. 1981) (stating that the Special Legislation Clause prohibits special legislation that exempts one individual from generally applicable legal requirements, with general legislation preferred “as far as practicable”). We discern no constitutional infirmity.

### C. Application of the Legislation

[¶38] Having concluded that the most recent legislation applies to this matter, we now consider our role in interpreting and applying that legislation as an appellate court. The United States Supreme Court addressed this narrow issue in the early nineteenth century:

It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if, subsequent to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation is denied.

*United States v. Schooner Peggy*, 5 U.S. 103, 110 (1801). In such circumstances, “[i]t is the obligation of the last court in the hierarchy that rules on the case to give effect to [the] latest enactment, even when that has the effect of overturning the judgment of an inferior court, since each court, at every level, must decide according to existing laws.” *Miller v. French*, 530 U.S. 327, 344 (2000) (quotation marks omitted).

[¶39] In *Schooner Peggy*, the Supreme Court vacated a judgment condemning a vessel and then independently interpreted a newly applicable treaty with France to require that the vessel be restored to France. 5 U.S. at 108-10. By contrast, we recently remanded a matter for the trial court to conduct further proceedings based on legislation that took effect after the entry of the trial court's judgment because the newly enacted statute authorized an entire process that had not been afforded to the appellant under the earlier statute. *Morrill*, 2009 ME 116, ¶¶ 2-3, 6-8, 983 A.2d 1065. Accordingly, when legislation enacted after the entry of a trial court's judgment has been found to be applicable to the dispute, we will resolve any purely legal issues based on our interpretation and application of the law to the facts found by the trial court, *see Schooner Peggy*, 5 U.S. at 110, but if any further factual findings or adjudicatory proceedings are required, we will remand the matter to the trial court, *see Miller*, 530 U.S. at 344.

[¶40] We therefore begin by considering the undisputed factual findings of the Superior Court to determine whether, as a matter of law, each of the counties imposed a reasonable fee of "up to \$1.50 per page for digital copies" in response to MacImage's and Simpson's requests. P.L. 2011, ch. 378, § 3. If any of the counties have failed to meet this requirement, we will remand the matter for appropriate action.

[¶41] Applying the test set forth by the Legislature, four of the counties—Androscoggin, Cumberland, Knox, and York—offered a bulk download of digital images for less than \$1.50 per page, taking into account the per-page cost of flat fees imposed to cover county costs for technical assistance. Thus, with respect to these four counties, we vacate the judgment of the Superior Court and remand for entry of judgment in favor of these counties.

[¶42] The other two counties that have appealed—Aroostook and Penobscot—offered access to digital land records on their websites for a cost of less than \$1.50 per page<sup>12</sup> but did not offer to provide digital copies of their indexes in response to the MacImage and Simpson requests. Because further proceedings are necessary, we remand those matters to the Superior Court.

#### D. Prospective Relief

[¶43] Aroostook, Cumberland, Knox, and York Counties contend that the Superior Court's ruling on anticipated future requests responded to a controversy that was not pending and justiciable. "A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another who has an interest in contesting the claim." *Flaherty v. Muther*, 2011 ME 32, ¶ 87, 17 A.3d 640 (quotation marks omitted); *see also Berry*

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<sup>12</sup> Although it would take more time for MacImage or Simpson to download all of the files using the websites, which would therefore increase the costs associated with their intended commercial enterprise, the counties have nonetheless satisfied the public purpose of title 33 to provide access to information and allow copies at a reasonable fee. *See* P.L. 2011, ch. 378, Emergency Preamble.

*v. Daigle*, 322 A.2d 320, 325-26 (Me. 1974) (same in context of a declaratory judgment action). Any requests for rulings on fees that the counties may charge in the future were not properly before the trial court and, in light of the new legislation discussed above, any pronouncements on such requests must be vacated.

The entry is:

Judgment vacated. Remanded to the Superior Court for entry of judgment in favor of Androscoggin, Cumberland, Knox, and York Counties and for further proceedings with respect to Aroostook and Penobscot Counties.

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MAR 16 '12 508

STATE OF MAINE

BY GOVERNOR PUBLIC LAW

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

S.P. 526 - L.D. 1616

**An Act Concerning Copying Fees for Users of County Registries of Deeds**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** county registries of deeds provide a valuable public service in recording and maintaining the land records of the State; and

**Whereas,** under current law, the fees specified for making abstracts and copies of records at registries of deeds will be repealed July 31, 2012; and

**Whereas,** in order to keep the fees in effect, this legislation must be enacted as an emergency measure; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 33 MRSA §751, sub-§14-B, as enacted by PL 2011, c. 378, §2, is amended to read:

**14-B. Abstracts and copies.** Making abstracts and copies of records at the office of the register of deeds as follows:

- A. Five dollars per page for paper abstracts and copies of plans;
- B. One dollar per page for other paper abstracts and copies; and
- C. Fifty cents per page for digital abstracts and copies, except that the fee is 5¢ per page for copies of 1,000 or more digital abstracts and copies of consecutive records; and

~~This subsection is repealed July 31, 2012;~~

B

Sec. 2. 33 MRSA §751, sub-§14-C, as enacted by PL 2011, c. 378, §2, is repealed.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.



## **InforME Bulk Data Services Summary**

**August 2012**

InforME, created in statute in 1998 as the state's e-government provider, provides bulk data services on behalf of several state agencies. A portion of revenue from the sale of bulk data by InforME is remitted to the data custodian agency, and a portion of revenue is retained by InforME for its services.

Bulk data services contribute funding to help support the InforME network, facilitating online public access to government information and services including many online services available to the public at no cost, such as:

- Maine.gov Official State of Maine Website
- Maine.gov DataShare
- Citizen Alert System
- Unclaimed Property Search and Claim
- Sex Offender Registry
- Voter Information Lookup
- Absentee Ballot Request
- Any Deer Hunting Permit Lottery Application
- Corporations Search
- HireME online state job application
- Maine State Archives Search
- Notary and Dedimus Justice Search
- Maine.gov Public Meeting Calendar
- Maine.gov State News System

InforME provides bulk data as a value-added service, providing not only the data itself but also:

- Order tracking (recurring orders)
- Customized data-sets and delivery formats
- Customer service and technical support
- Customer invoicing, billing accounts, and payment processing
- Automatic updates

Definitions:

- Individual Request/Record: "One to one" requests, where one query returns one record, such as "find the record of John S. Doe who lives at 123 on ABC street in XYZ, Maine."



- **Bulk Data:** “One to many” requests, where one query returns many records, such as “Find all Toyota Camry new car registrations in September 2011.” Bulk data may also consist of an entire data-set, such as all vehicle title records, and recurring updates to that data-set (records that have changed from prior month/quarter/year). Bulk requests typically are fulfilled by delivery of a data file containing multiple rows of “records” rather than individual documents or records.
- **Batch Data:** A one-to-one request that is not furnished instantly, but rather is accumulated with other requests and run in a “batch,” typically in an off-peak timeframe, such as overnight. For example, a user/customer may submit a file containing a series of individual queries, such as a list of vehicle plate numbers. These queries are run in a batch and results are returned to the user in a bulk data file.

### **InforME Bulk Data Services**

#### **IF&W Bulk Data:**

Data available to purchase includes moose permittee data, hunting and fishing license data, boat/ATV/snowmobile registration data, and guides/trappers licensee data. These requests tend to be one-time and specific requests from folks who wish to market their business to outdoorsmen (camp owners, guides, outfitters, etc.), as well as from political candidates during election years.

Fees: \$.03 - \$.05 per record

Fee set by: rulemaking

Annual requests: approx 25-30

Annual records sold: approx 27,000

#### **BMV Bulk Data:**

Data available to purchase includes vehicle title, registration, and driver license data. In order to obtain personal information in these records (name, address, date of birth, license number), the requestor must be eligible under the Driver Privacy Protection Act and sign an affidavit regarding their eligibility. All requests must be approved by the BMV. InforME handles the application process and tracks BMV/DPPA approval status. Customers for this data vary but are primarily national data brokers who have standing orders. These records are often re-sold by those companies to other commercial entities - for example, to insurance companies for underwriting purposes. Other customers include credit agencies, private investigators, vehicle fleet owners, and large local employers.



Fees: Individual record fees are set in statute (\$5-7 per record) and bulk data is sold at a significant discount. Entire registration, title, or license database - \$.02 per record; sub-sets - \$.06 per record

Fee set by: rulemaking

Annual requests: approx 210

Annual records sold: approx 6,589,000

**CEC Bulk Corporations and UCC Data:**

Data available to purchase includes corporate records, active/inactive corporations records, trademark records, trademark images, corporate/UCC images, UCC records. Standard record updates are available weekly or monthly. There are a handful of customers, primarily large national data brokers who have standing orders for updates.

Fees:

Individual record fees are set in statute and bulk data is sold at a significant discount.

**Bulk UCC and Corporate Data Full Data Monthly Data-sets**

Corporate or UCC Records	\$600
Active/Inactive Corporate or UCC Records	\$1200
Corporate or UCC Images	\$1500
Service/Trade Mark Records	\$300
Service/Trade Mark Images	\$300

**Bulk UCC and Corporate Data Weekly Updates Data-sets**

Corporate Data	\$300
Corporate Images	\$500
Service/Trade Mark Data	\$150
Service/Trade Mark Images	\$150
UCC Data	\$300
UCC Images	\$500

Bulk Special Request Corporate & UCC Records \$0.10 per record

Fee set by: rulemaking

Annual Requests: approx 260

Annual Records sold: n/a

**State Police Crash Reports:**

Data available to purchase consists of state crash reports, including crash date, location, names, injury information, vehicle information, license status. There are just a few



customers for this data, primarily large national entities that use this information for consumer protection and data broker services.

Fees: Individual record fees are \$10 per record and bulk data is sold at a significant discount: \$0.50 per record

Fee set by: statute specifies that agency may set fees for crash records; fees set in rulemaking

Annual Requests: approx 16

Annual Records sold: approx 73,000

**Board of Medicine – Bulk Physician Licensee Data:**

Online service allows users to specify data parameters to create a downloadable file.

These are typically one-time and specific requests.

Fees: \$50 flat fee plus \$.05 per record

Fee set by: rulemaking

Annual requests: approx 45

Annual records sold: approx 271,000



**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA

August 23, 2012

9:00 a.m.

Room 438, State House, Augusta

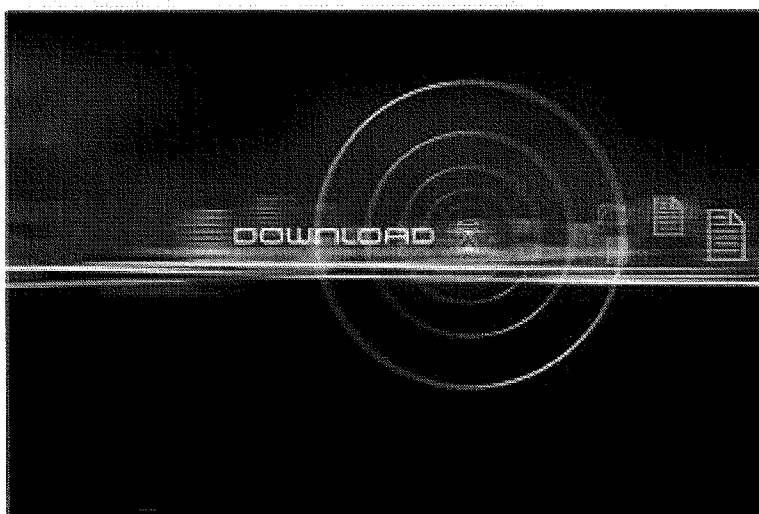
**Convene**

1. Welcome and Introductions  
Judy Meyer, Chair
2. Projects
  - A. Email retention, storage, retrieval – public bodies and individual public officials  
State Archivist David Cheever
  - B. Status of e-mail addresses collected by schools and towns  
Existing statutes  
Draft?
  - C. Use of technology in public proceedings (participation from remote locations) –
  - D. Templates for drafting specific confidentiality statutes
3. Scheduling future meetings
4. Other?

**Adjourn**



# STATE OF MAINE E-MAIL AND DIGITAL RECORDS RETENTION GUIDE



A Maine State Archives Publication  
July 2012

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## Frequently Asked Questions:

### When is something "born digital" actually a record, as far as State of Maine law and policy is concerned?

If recorded information is created or received as part of your official duties, it is almost certain to be an official State of Maine record. The format used is irrelevant.

### How long do e-mails have to be kept?

*Record retention schedules* must be approved by the State Archivist and the Archives Advisory Board, per the Archives and Records Management Law in Title 5. E-mails that qualify as official state records should be classified (matched up to the appropriate retention schedule) according to their content so they can be deleted when it is time, or (for about 5 percent of messages) retained permanently. There are ways to make classifying your messages easier than this may sound. **There is no "retention period for e-mail" as a blanket requirement or policy, and retention schedules do not have to specify that they apply to e-mail messages. An e-mail may or may not be a public record.**

### What is a record copy, and who is responsible for keeping it?

E-mail, stored digital files from Word and Excel, and social media postings are examples of electronic records that could be considered official records under law and policy. E-mail transactions automatically generate at least two copies, one for the sender and one for the recipient. There are often many more copies, because it is so easy to "cc" others and to forward messages. Generally the person who originates the message holds the so-called *record copy*, which is the one that must be kept for the full retention period. Those who receive other copies may (and should) delete them as soon as they have served their purpose. However, if the recipient is required to do something after receiving the message, that may mean an additional record copy has been created. Example #1: Your boss assigns work to you by sending you an e-mail. You will be held responsible for completing the assignment, so reading this e-mail and then following its instructions is part of your job. You must therefore treat it as an official record. Example #2: The Governor's Office sends out an e-mail reminding all employees to use public transportation whenever possible. This message has only one record copy, held by the person whose job it was to send it. Everyone else can and should delete the message after reading it.

When the State of Maine is able to install a full-scale "Records Management Application" (*RMA*), that system will retain only one copy of any digital record for the longest retention period that applies. All other "copies" will actually be stubs leading to the record copy.

### How can I organize my e-mails to make retaining and retrieving them easier?

Ask your *records officer* (every department or independent agency should have at least one) to explain the records retention schedules that apply to your position. It is best to set up folders in your Outlook mailbox that organize e-mail messages according to your retention schedules, with subfolders set up by year and month. This will make it easy to delete messages that have fulfilled their retention periods, without having to look at individual messages again.

## What about mailbox storage limits?

Outlook has an "auto-archiving" function that can be set up to move your older messages to a .pst file, automatically. Once that happens, the messages are available to you as easily as ever; but they're stored on a server drive, not in your mailbox. So they no longer count against your quota. Outlook will keep your filing system when it "auto-archives" your older mail, and you will be able to search for messages that have been "archived" using the same Outlook tool you use within your mailbox.

## What about FOAA (the Freedom of Access Act)?

Whether or not it is an official record, anything that is stored on a State of Maine computer is a *public record* legally speaking unless a privacy statute protects all or part of it from disclosure. Your permission is not necessary when officials responsible for FOAA responses go through your e-mails and then release them to anyone who asks. The attorney or other official who reviews your messages before releasing them will only withhold what is confidential by statute. So if a FOAA search turns up personal messages, SPAM that you and the system both failed to delete, or outdated official e-mails that you could and should have deleted per retention schedules, all of those things will be released. **"Public record" status according to the Freedom of Access Act has nothing to do with the definition of an official record for retention purposes.**

## Is it acceptable to delete messages after I've saved them somewhere else or printed them for paper filing?

From a records retention standpoint only, yes. However, when a FOAA search or legal discovery proceeding includes review of a state employee's e-mails, missing messages can create two problems. First, it is apparent to the person performing the review that certain messages are no longer there. This can be confusing to the reviewer, and it may be viewed by the requestor as an attempt by the State of Maine to conceal records instead of releasing them. Second, every e-mail message has metadata attached. This "data about data" is invisible to the e-mail user, but it is often exactly what most interests a FOAA or legal discovery requestor. So destroying it by deleting the original message, even after saving the text to another format (paper included), can be treated by the courts as a deliberate act of bad faith.

## What about e-mail "chains" (threads, strings, etc.)?

Saving the final message only would be fine for retention purposes alone, if no text or header information was deleted during the exchange. However, deleting the individual messages in "threads" creates the same problems as saving them in other formats. A FOAA requestor may not get the information actually sought, and a court may rule that the State of Maine's response to a discovery proceeding is deliberately inadequate because original messages cannot be produced with all their metadata attached.

## Why not just keep it all (and isn't OIT doing that already)?

There are several reasons why keeping all e-mails that pass through the server gateway, indefinitely, is not the miraculous solution some people believe it to be (nor is this a regulatory requirement inflicted by the Federal government on all businesses and governmental units – that belief qualifies as an urban legend). First, storage is by no means free, or even cheap enough to justify treating it as if it were free. Second, the more messages stored, the longer and more complicated a task search and retrieval becomes. No tools now available can eliminate this seldom considered truth. Third, records kept beyond their retention date are a liability for the organization retaining them. What is there must be searched for and produced, if requested; and the costs of doing this otherwise needless work can be enormous. In fact, they already are becoming ruinous for some agencies.

## What about voice mail?

State of Maine voice mail messages do not need to be treated as official state records now, but this could change as business processes adapt and employees find more extensive and effective ways to use the technology. There was a time, not that long ago, when State of Maine e-mail messages seldom had substantive content; so it is likely that voice mail, which is generally transitory in nature today, will find substantive uses in the future. That is when we will need to classify, store, and retain it according to its content, just as we are now doing with e-mails and other born digital records.

## What about instant messaging?

The private sector is already treating this as a record-creating technology, at least in some industries. Government employees tend to use it as if it cannot possibly create documentation, when that may well be happening without the knowledge of those "chatting" in the line of duty. So far there is no mandate to capture all instant messaging exchanges and make them available under FOIA, subject them to records retention requirements, etc. But that is likely to change within the next few years, so any systems the state purchases for managing, classifying and retaining e-mail should be capable of doing the same with instant messaging.

## What about social media?

According to the National Archives and Records Administration, Federal agencies which use social media are already creating records that must be identified as such and retained according to approved retention schedules: <http://www.archives.gov/records-mgmt/bulletins/2011/2011-02.html>.

So far Maine's state agencies appear to be using social media in much the same way they use the World Wide Web, to publish their information and make it available to the public. As long as this is the case, each agency should be guided by Title 1, §501-A. Publications of state agencies: <http://www.mainelegislature.org/legis/statutes/1/title1sec501-A.html> in submitting copies to the State Librarian.

## A word about digital information in general

A conversation, face to face or in a phone call, results in no recording unless someone deliberately arranges for that. Instant messaging exchanges, voice mail messages, and sending/receiving e-mail messages create recorded information automatically, though, as an essential part of the process. Some VoIP systems create an e-mail for each call they process. So far this is not true with the State of Maine's VoIP system. However, at least one of Maine's municipalities has purchased and is implementing a software system that tracks all VoIP phone calls and allows municipal employees to store comments concerning those calls. This does create records to which that municipality must apply its retention schedule.

## Contact information

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## Definitions

Accession. To transfer physical and legal custody of documentary materials to an archival institution.

Archives. When used as a noun and capitalized, for this publication's purposes it means the Maine State Archives. When used as a verb, to denote the disposition of a record, it means "save for permanent retention by the Maine State Archives."

Archiving. The off line storage of digital records, including e-mail messages, before disposition action is taken.

Archives Advisory Board. The body, along with the State Archivist, that must approve the destruction of records. This is done by the approval of records disposition schedules indicating that all records in a record series may be destroyed after current business needs have been met.

Assistant Records Officers. Individuals, appointed and supervised by a records officer, who are responsible for records management within subdivisions of Maine state departments or agencies, such as bureaus or divisions.

Attachment. A record, object, or document associated with another document or record and filed in the e-mail archive or transmitted as part of the other document or record.

Born Digital. A record that is created in a digital format, and printed (if at all) only to create convenience copies.

Convenience Copies. Additional copies, created for informational purposes only, that may be destroyed when they are no longer useful. Convenience copies should never be kept longer than the record copy, as this can create confusion and resulting legal issues.

Delete. The process of permanently removing, erasing, or obliterating recorded information from a medium, especially a reusable magnetic disk or tape.

Destruction. In records management, the primary type of disposal action. Methods of destroying records include selling or salvaging the record medium and burning, pulping, shredding, macerating, or discarding it with other waste.

Disposition. Those actions taken regarding state records after they are no longer required to conduct current agency business . These actions include:

Transfer of records to agency storage facilities or the Maine State Record Center.

Transfer of records from one Maine state agency to another.

Transfer of permanent records to the Maine State Archives.

Disposal of temporary records no longer needed to conduct agency business, usually by destruction.

Document. Information set down in any physical form or characteristic. A document may or may not meet the definition of a record.

E-mail. E-mail means electronic mail.

Electronic Mail Message. A document created or received via an electronic mail system, including brief notes, formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message. Attachments are considered to be part of the message.

Electronic Record. Information recorded in a form that requires a computer or other machine to process it and that satisfies the legal definition of a record according to 5 M.R.S.A. §92-A.

File. An arrangement of records.

When used as a noun, this term is used to denote papers, photographs, photocopies, maps, machine-readable information, or other recorded information, regardless of physical form or characteristic. Files are accumulated or maintained on shelves, in filing equipment, boxes, or machine-readable media, and they occupy office or storage space.

When used as a verb, this term is used to define the act of assigning and storing records in accordance with the file plan .

Freedom of Access Act. The Freedom of Access Act is the State of Maine statute defining the rights of the public to have access to, and copies of, non-confidential public records held by the State of Maine, its counties, municipalities, and other public entities. See 1 M.R.S.A., Chapter 13.

Legal Discovery (or Discovery). Legal discovery is a formal investigation, governed by court rules, that is conducted before trial. Discovery allows one party to question other parties, and sometimes witnesses. It also allows one party to force the others to produce requested documents or other physical evidence.

Metadata. Data describing stored data: that is, data describing the structure, data elements, interrelationships, and other characteristics of electronic records.

Move. Function that allows the user to relocate records and metadata.

Non-Record. A document that does not meet the definition of a record and thus is not subject to a retention period. Non-records include documents that are personal, not related to State of Maine official business, or of minimal value for documenting government transactions.

Permanent Record. Records appraised by the Maine State Archives as having sufficient historical or other value to warrant continued preservation by Maine state government beyond the time they are normally needed for a particular agency's administrative, legal, or fiscal purposes.

Public Record: Per 1 M.R.S.A., Chapter 13, any recorded information in a state or local government's custody that is not restricted by statute.

Record. Information, regardless of medium, detailing business transactions. Records include all books, papers, maps, photographs, machine-readable materials, and other documentary materials, regardless of physical form or characteristics. Records are made or received by an agency of Maine state government under law or in connection with the transaction of public business. "Archival" records are preserved by the Maine State Archives as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of government or because of the value of data in the record.

Record Copy. The copy of a record that must be retained for the term indicated by its related records disposition schedule.

Record Series. A particular set of records, defined by the Maine State Archives, having a legally required retention period and disposition determination of destroy or Archives (permanent retention).

Record Series Identifier. An alphanumeric or numeric identifier, assigned by the Maine State Archives, indicating a unique record series.

Records Disposition Schedule (also: Records Retention Schedule, Records Schedule). A listing of record series with associated retention periods and final disposition (destroy or Archives).

Records Management. The planning, controlling, directing, organizing, training, promoting, and other managerial activities involving the life cycle of information, including creation, maintenance (use, storage, retrieval), and disposal, regardless of media. Records management procedures are used to achieve adequate and proper documentation of state policies and transactions and effective and economical management of agency and organizational operations.

Records Officers. Records officers are appointed by the agency head (commissioner or equivalent) to act on that person's behalf in complying with the requirements of the Archives and Records Management Law.

Scheduled Records. Records whose final disposition has been approved by the Maine State Archives and, for records whose disposition is "destroy," by the Archives Advisory Board.

Social Media. World Wide Web applications such as Twitter, FaceBook, YouTube, and others designed for social networking purposes, which government agencies may use a means of communicating with citizens.

Storage. Space for non-active records. Can be digital, optical, or cubic feet.

Subject. The principal topic addressed in a record.

Transfer. The act or process of moving records from one location to another, especially from the office space in which the record is used to the Maine State Records Center, from one state agency to another, or from office or storage space to the Maine State Archives for permanent preservation. Physical transfer does not relieve the owning organization of legal and management responsibilities for non-permanent records. Accessioning permanent records to the Maine State Archives, however, transfers both legal ownership and responsibility for the records to the Maine State Archives.

Unscheduled Records. Records that do not have a Maine State Archives-approved final disposition and thus may not be destroyed.

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# RECORDS MANAGEMENT MANUAL



**MAINE STATE ARCHIVES**  
*Division of Records Management Services*

JULY 2012



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# INTRODUCTION

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## THE LAW

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**The Records Management Program for the State of Maine is authorized by:  
MRSA Title V, Chapter 6, Section 95, Subsection 7:**

**7. Records Management Program.** To establish and administer in the executive branch of State Government an active, continuing program for the economical and efficient management of state records. Upon request, the State Archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of State Government and shall, as required by them, provide program services similar to those available to the executive branch. The State Archivist shall, with due regard for the functions of the agencies concerned:

- A.** Provide standards, procedures and techniques for effective management of records in the conduct of current business.
- B.** Recommend improvements in current records management practices, including the use of space, equipment and supplies employed in creating, maintaining, storing and servicing records;
- C.** Establish schedules, in consultation with the heads of state departments, under which each department shall retain state records of continuing value, and dispose, as provided by this chapter, of state records no longer possessing sufficient administrative, legal or fiscal value to warrant their future keeping for current business;
- D.** Obtain such reports from agencies as are required for the administration of the program;

The head of each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency in compliance with the standards, procedures and regulations issued by the State Archivist.

**Transfer of state records.** To provide for the transfer to the archives of state records, disposed of under subsection 7, paragraph C, which have archival value;

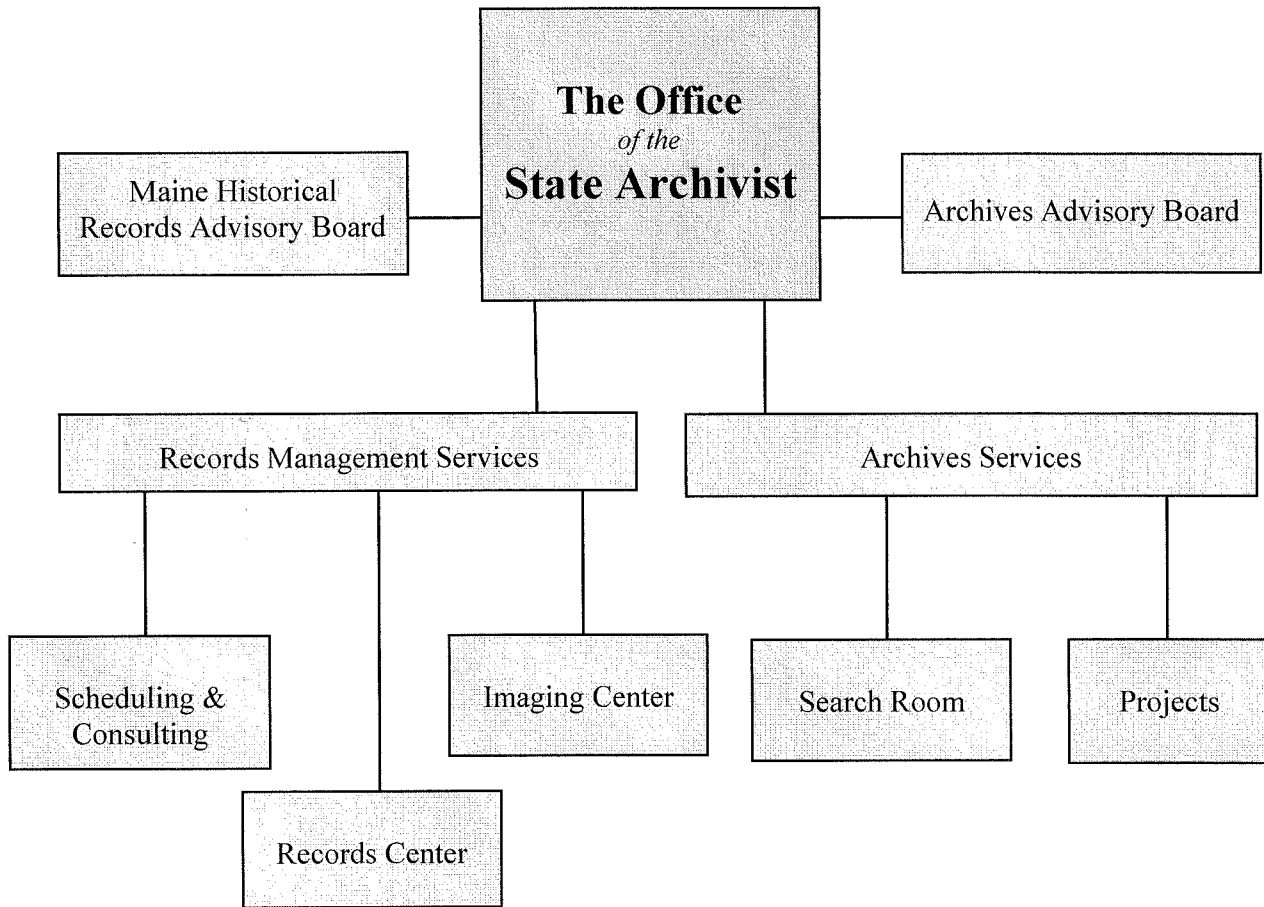
**Destruction of Records.** To authorize and receive confirmation of the destruction of the records of any state department, which, in the opinion of the head of the department are no longer of value to the department, and which, in the opinion of the State Archivist and the Archives Advisory Board, have no archival value to the state;

To carry out the Legislature's intent as described in this statute, the State Archivist has established our program. **We are here to provide these services to you, our fellow state and local government employees.**



# MAINE STATE ARCHIVES ORGANIZATION CHART

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## **RECORDS MANAGEMENT SERVICES DIVISION**

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The goal of records management is to get the right record to the right person, at the right time, at the lowest possible cost. The purpose of the program is to control the creation, utilization, filing, maintenance, storage and final disposition of state records. Our duties include:

Improving information retrieval;

- ♦ Providing standards, procedures and techniques for effective management of all records, regardless of media;
- ♦ Establishing retention schedules;
- ♦ Providing training for records officers, assistant records officers, and other state and local government employees;
- ♦ Transferring infrequently referenced hard copy records to the State Records Center;
- ♦ Assisting each customer agency with the management of its records.

## **STATE AGENCY RESPONSIBILITY**

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- ♦ The head of each state agency or local government agency shall establish and maintain an active, continuing program for the economical and efficient management of any records in compliance with the standards, procedures and regulations issued by the State Archivist. – from Title 5, §95
- ♦ The head of each agency will appoint a records officer.
- ♦ The records officer will be responsible for the economical and efficient management of all records for that agency, including digital records, in compliance with the policies of the State Archivist.
- ♦ The person chosen as records officer should have a thorough knowledge of the organization and its functions, as well as sufficient authority to carry out the duties and sufficient time to do so.
- ♦ The records officer will appoint at least one assistant (sometimes called associate) records officer for each unit within the agency.

## **THE MAINE STATE ARCHIVES IMAGING CENTER**

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Document imaging systems can improve work flow and efficiency, as well as reduce the need to store paper records in expensive office space. Due to both the installation of such systems at state agencies and the growing number of documents that are "born digital" in the first place, it no longer makes sense for us to operate an in-house unit for microfilming nonpermanent records. We can provide a list of vendors that are able to do this work to the standards required for state records, for any agency that may have a continuing need.

The Imaging Center was originally established to reproduce documents and photographs from Maine State Archives holdings. Microfilming of archival records continues, as does photographic copying when requested. More often, though, we now scan permanently valuable records for easy access and reproduce them using archival-quality printing supplies. Framing services are also available. For reproduction of large format documents, and for creating images of museum artifacts, the Imaging Center uses a digital "scan back" and wide format fine art printer.

Many interesting images are available for sale to other government agencies and to the public. Our eStore at [http://www10.informe.org/webshop\\_ifw/?storeID=5](http://www10.informe.org/webshop_ifw/?storeID=5) offers these items on line. Of course we are also glad to accept orders by telephone and from visitors to our Search Room.

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# BASIC INFORMATION

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## DEFINITION OF A RECORD

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"Record" means all documentary material, regardless of media or characteristics, made or received and maintained by an agency in accordance with law or rule or in the transaction of its official business. "Record" does not include extra copies of printed or processed material of which official or record copies have been retained, stocks of publications and processed documents intended for distribution or use or records relating to personal matters that may have been kept in an office for convenience. – from Title 5, §92

All recorded information, regardless of physical form or characteristics: paper, microfilm, word processing files, spreadsheets, databases, audio recordings, video recordings, e-mails, paper documents scanned to create image files, plus any other formats that may come into use as technology advances;

Made or received in connection with the transaction of official government business; and

Maintained as evidence of the agency's functions, policies, decision, procedures, operations and other activities; or because of informational value.

## DIGITAL RECORDS

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*"Electronic record" means a record whose content is not readable unless retrieved by means of an electronic device such as a computer or an audio or video player.* – from Title 16, §456-A

A digital record is an electronic record that can be retrieved and read only by using a combination of computer hardware and software. It may begin with paper or microfilm source documents subsequently converted to digital images, but most documents in the 21<sup>st</sup> Century office are "born" digital – created as computer files in the first place. Digital records can be stored on personal computers, networked servers, and offline media such as CDs, DVDs, flash drives and magnetic tape. A digital file's content, not its format or storage location, determines its status – record or nonrecord – and its retention period. Whether it is an e-mail message, a word processing document, spreadsheet, database, presentation, image file, Geographic Information System layer, or anything else digital, it is a state record if created or received in the course of state business.

## RECORD SERIES

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A group of identical or related records (or, in more modern terms, a group of records created by the same business process that document the same type of transaction).

Examples: case files of an institution; invoices; transitory correspondence.

Documents in the same record series are normally filed as a unit, whether in a drawer of paper records, a computer subdirectory, or an e-mail folder.

Some characteristics of a record series are:

- ♦ Produced by the same activity;
- ♦ Documents a certain kind of transaction;
- ♦ Relates to a particular subject;
- ♦ Arranged under a single filing system;
- ♦ Retained for the same period of time.

**Records inventories and schedules deal with records in series rather than as separate folders or documents. DO NOT combine series when inventorying or developing schedules as it can cause problems later on.**

## ARCHIVAL DIGITAL RECORDS

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- ◆Contact Records Management with specific questions on what to do.
- ◆Do not delete files from a departing employee's PC or from that employee's files on the agency's server(s).
- ◆Do not delete the contents of a departing employee's e-mail box and .pst (archive) files.
- ◆Do not burn files onto a CD or DVD and deliver them to the Archives.

## E-MAIL RETENTION

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E-mail is subject to the same retention requirements as paper correspondence, based on message content.

If you delete unneeded e-mail you can more easily find what you are looking for, especially if you use Outlook's folder capabilities to file messages in a logical manner.

Organizing and managing e-mail (and other files) will save space, provide more efficient access, and make it easier to maintain confidentiality when that is required.

Organizing and managing e-mail will reduce going through outdated records in response to legal discovery proceedings and FOIA (Freedom of Access Act) requests. It will also give you authority to delete files due for destruction, which means that you cannot be held liable for failing to produce those files if – unlikely thought it may be – someone requests them later on.

When an employee leaves a position, computer files (including e-mail) may not be deleted for that reason only!

Not all e-mail systems create automatic backups of your files. Those that do this are not substitutes for your own file management, since backups are overwritten periodically and do not distinguish among subjects, acknowledge retention periods, or otherwise organize the messages in any way except according to transaction date and sender/recipient(s). A backup is not a recordkeeping system.

## PURPOSE OF RECORDS RETENTION SCHEDULING

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*The first step in gaining control of your agency's records is to find out what records exist!*

Your agency needs to know how long to keep its records, and what to do with them afterward. Should they be destroyed, or should they be preserved permanently at the Maine State Archives? Records retention scheduling organizes your agency's records into series (more about that later), and sets a retention period for each series. It also establishes the correct disposition – destroy or transfer to Archives – for each series.

- ◆Records retention schedules drive an agency's records management program;
- ◆Schedules provide the guidance necessary to prevent unneeded records from cluttering agency offices;
- ◆Schedules provide the guidance necessary to preserve mid to long-term records until they have served their purpose.

**Title 5 §95 requires that all state government records be covered by retention schedules. This includes records that never leave the creating agency's custody.**

Retention schedules for digital records work about the same way as for paper, microfilm, and other "traditional format" records. The state is working toward implementing a records management/content management system that will make it much easier for individual employees to classify their "born digital" records, including e-mails and related file attachments. Meanwhile, we will work with you in applying your agency's retention schedules to your digital records. The most important principle to remember is this: **Content, not format, determines retention.**

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# CREATING NEW SCHEDULES

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## APPLICATION FOR RECORDS RETENTION SCHEDULE

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The first step in creating a new schedule is completing an Application for Records Retention Schedule (MSA/RM 22). This form can be downloaded from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>. You cannot fill it out on line – you must save the form to your computer and then complete it.

The application provides general information about the records you want to schedule, such as the creating agency, series title, and proposed retention period. It serves as a cover or “batch” sheet for the Records Series Inventory form (or forms) to follow.

## RETENTION PERIODS

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**Total Retention Period = Time retained in agency + Time retained in Records Center**

Determining the appropriate retention period for records requires taking a look at their value to the creating agency, and then another look at their possible **enduring** (long term, possibly permanent) value to researchers.

Some questions to ask:

**Administrative use:** *What is the value of these records in carrying out your department's functions? How long are they needed for **immediate** retrieval?*

**Legal requirements:** *Is a certain retention period necessary to comply with a statute or the rules of other agencies, or for protection of someone's legal rights and interests? Are Federal retention periods involved?*

**Fiscal requirements:** *How much time must you allow for fiscal requirements such as audit or budget?*

**Historical or research purposes:** *Do these records document important events, or the history and development of your department?*

## ARCHIVES OR DESTROY?

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**500 years from now, will someone want to use these records?**

**YES** - This series may belong in the Archives **NO** - The records should be destroyed when your agency no longer needs them

About 5% of Maine state government records have enduring value sufficient to justify transferring them to the Maine State Archives.

From time to time, a document or file within a record series scheduled for destruction may appear to be permanently valuable. On the rare occasion you think you have such a document or file, please call us at 287-5798. We will arrange for an archivist to appraise your “find.”

## THE RECORDS SERIES INVENTORY

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Complete a separate Record Series Inventory (MSA/RM 59) for each series listed on the Application for Records Retention Schedule.

The Record Series Inventory form can be downloaded from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>. This form supplies detailed information about each series to be scheduled (description, cubic feet of hard copy records that exist and require storage, justification for proposed retention period, proposed disposition of Archives or destroy). The Record Series Inventory form must be accompanied by “live” samples, which means no blank forms. It is acceptable with sensitive records for the agency to black out (redact) confidential information, or to submit a form completed with fictional data; but there must be samples, to show what is in the series.

## AMENDING AN EXISTING SCHEDULE

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After a retention schedule has been approved by the Archives Advisory Board, your agency may need to change it. You might need to do this because of a change in statute, in a Federal regulation, in your agency’s policies, in your business needs, or simply because experience with the records tells you that they are being accessed more or less frequently than you expected when writing the current schedule.

Download the Application for Records Retention Schedule form. Mark the application “amendment” and fill in the following information: series number; series title; new retention periods; schedule number. Be sure to check “change in retention” as the reason for the amendment.

We do not require an amendment for a change of media. Unless the series has a disposition of Archives, the media your agency chooses to maintain and use the record copy – the copy to which you apply the full retention period – is strictly a business decision.

When changing a record series description, you need to submit 2 documents:

- ▷ An Application for Record Retention Schedule (marked “amendment”), and
- ▷ A record series inventory updated to reflect the change of description.

**Also, please include samples of any added documents.** You may need to file such an amendment if the documents the series includes have changed, which usually happens when the program itself has changed. You do not need to change the description for minor alterations in the documents the series includes.

## GENERAL SCHEDULES

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General Record Schedules provide disposition standards for records common to several or all state agencies. Each includes:

- ◆ Record series numbers.
- ◆ Record series descriptions.
- ◆ Which agency holds the **record copy**, and the record copy's required retention period and disposition.
- ◆ The retention period for agency copies of the same record.

### **Brief definitions:**

The **record copy** is a single copy of a record retained by its assigned custodian as the official record of a government transaction.

The **agency copy** is kept by the agency that initiates the transaction. Agency copies are not convenience copies which may be destroyed when no longer useful, because they may not be exact duplicates of the record copies that the creating agency has sent for processing. The General Schedules require agency copies to be retained for specific time periods.

### **Examples:**

The Bureau of Human Resources maintains the record copies of employee personnel records. Each agency maintains its own copies of these records, too, and must do so according to the requirements of General Schedule 10.

The Division of Purchases maintains record copies of contracts with vendors. Each agency that sends contracts to Purchases for processing and approval also maintains its own copies of these contracts, which must be kept for the retention period required by General Schedule 1.

*Before* submitting a new Application for Records Retention Schedule, please check to see if a General Schedule exists for the records. The General Records Schedules may be viewed or downloaded online at:

<http://www.maine.gov/sos/arc/records/state/gensched2.html>

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# THE STATE RECORDS CENTER

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## ***General information***

You can request retrieval of your records from the Records Center on any work day between 8 a.m. and 4 p.m. The Records Center provides its customer agencies with centralized, economical storage for their inactive (sometimes called semi-current) and pre-archival government records.

## **When should records go to the Records Center instead of remaining at your agency?**

### **⇒ In-office records retention (active or current records)**

All records used frequently (more than once a month per file drawer) should be kept at your office.

### **⇒ Records Center retention (inactive, semi-current or pre-archival)**

Records used less than once a month, but still needed for legal, administrative or referencing reasons, should be sent to the Records Center. (Pre-archival records are scheduled for a disposition of Archives, but are temporarily stored in “Records Center status” — that is, still under your agency’s control — because you may need to use them from time to time.)

*All records in the Records Center, and all pre-archival records in Records Center status, belong to the agencies that created them.*

## **ACCESS TO THE STATE RECORDS CENTER**

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Only those persons who have been issued an *Authorization for Records Center Use Card* (MSA/RM 32) may order records retrieved.

Records Officers should use the Application for Authorization for Records Center Use Cards, available for download at <http://www.maine.gov/sos/arc/records/state/strecforms.htm> to order cards. Only Records Officers and Assistant Records Officers may make this request.

We do not issue photo IDs. Please have both your access card number (it is printed on your card) and your driver’s license, security badge, or other photo ID ready if you want to pick up files in person. We will need to make sure we are giving the files only to someone authorized to have them.

Access cards are not transferable. Do not assume that you can use a colleague’s card, and do not lend your card to anyone else.

Records Officers are responsible for notifying us of all changes in access authorizations. When a cardholder leaves the agency, the Records Officer must tell us so we can cancel the card. We also need to know if a cardholder whose duties have changed should no longer be allowed to order records, or should have different access restrictions.

We do an ongoing review to delete the names of employees who are no longer authorized for Records Center access.



## RECORDS RESEARCH AND RETRIEVAL

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### *Retrieving your records from the State Records Center*

You may request records by e-mail, fax, telephone, or mail. *If we receive correct and complete referencing information*, we will put the requested records in our outgoing mail within 24 hours – excluding days when state offices are closed – or notify you that they are ready for pickup, if you prefer.

Please use *Request for Reference Service Form* (MSA/RM 70) to order records in writing. You can find this form on line at <http://www.maine.gov/sos/arc/records/state/strecforms.htm>.

**We prefer e-mail requests whenever possible!** ([RecordsCenter.Archives@maine.gov](mailto:RecordsCenter.Archives@maine.gov))

E-mail requests prevent transcribing errors. They also save time that we must otherwise spend writing down what we think we hear in a telephone message. e boxes out of your office!

## TRANSFERRING RECORDS TO THE STATE RECORDS CENTER

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### *Getting Records Out of Your Office*

*The Archives Advisory Board and the State Archivist must approve your retention schedule before we can accept records for transfer to the Records Center.*

#### **Materials required**

Records Center Boxes (we cannot accept records packed in other containers). You can order these from the Central Warehouse: A001, 10 per bundle.

Transmittal of Records Form (MSA 33). You can download this form from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>.

Packing list (also available from <http://www.maine.gov/sos/arc/records/state/strecforms.htm>).

#### **Packing Boxes**

Please use labeled folders in sequential order, which may be alphabetical or numerical.

**DO NOT OVER LOAD OR STUFF RECORDS INTO THE BOXES!!!** Each box should be about 4/5 full.

Do NOT mix different record series in the same box. We need to track the retention period for each box on our database, and we cannot do this efficiently if the box contains more than one series.

Do NOT pack hanging (“pendaflex”) folders in the box. This wastes space as well as supplies, and it also makes the boxes heavier for your staff and ours to handle.

*Clearly and accurately labeled folders, along with correct and complete itemized lists inside the boxes, will help us retrieve your records quickly.*

#### **Marking Boxes**

- Using a black marker, write the following on each box (on the long side):
- Box number
- Arrangement (this is simply the first and last file in the box)

*Record Center staff will add the agency number, retention date, and assigned location number.*

**We STRONGLY recommend that you place an itemized list in each box and keep a copy for your own records. This helps us retrieve what you request, and it leave no doubt as to whether or not a record was in the box when it came to us.**

# REQUIREMENTS FOR PACKING BOXES

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1. Please use **new** Records Center boxes. Recycling and reusing can be wonderful for some things, but not for cardboard containers that must be marked clearly and must stand up to years of handling.
2. Arrange files first by the year's closing date, then alphabetically or numerically within that year. Only one fiscal or calendar year per box, please. The Records Center Supervisor must receive a corresponding transmittal in advance, with enough time to review it and contact you if there are questions before delivery or pick up. Please do not add boxes to a transmittal without the Records Center Supervisor's approval.
3. Do not overstuff boxes. Each should be no more than 4/5 full.
4. Please place an itemized packing list in the box.
5. Do not mix different record series in the same box.
6. Number your boxes consecutively, with no duplicate box numbers. If you use the same box numbers on different transmittals, it will be harder for our staff to shelve the boxes; and it will also make retrieval more difficult.
7. On the outside of the box, list the first and last file inside it.
8. Unacceptable boxes include those containing hanging folders or three ring binders; reused, old, improperly marked boxes; overstuffed boxes; boxes with broken handles. Records Center staff will be referencing this material; and the easier it is for us to handle your boxes, the better they will protect your records. This also helps keep our staff members safe.

**"Archives" (as some customers also call the Records Center) will accept only boxes that meet the criteria just listed. We may refuse pickup or delivery if these requirements are not met.** This helps us to provide the best possible service to our customer agencies. If you have questions, please call 287-5792 (Records Center Supervisor).

**INCLUDE INFORMATION**  
**ON BOTH ENDS OF THE BOX!**

<b>AGENCY USE</b> 	<b>AGENCY USE</b> 
<b>Maine State Archives</b>	
Box Contents	Box Number
	Transmittal Number <b>ARCHIVES USE ONLY</b>
<b>ARCHIVES USE ONLY</b>	Disposition Date <b>ARCHIVES USE ONLY</b>
Location Number	

## TABLE OF EQUIVALENTS

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Standard Record Center Box = 1 Cubic Foot

Type	Size	Volume	Cubic Feet
Standard File Cabinet	Letter 8 1/2" x 11"	1 full drawer	1.50
	Legal 8 1/2" x 14"	1 full drawer	2.00
Lateral File Cabinet (39" drawers)	Letter 8 1/2" x 11"	1 full drawer	2.50
	Legal 8 1/2" x 14"	1 full drawer	3.00
Shelf Files (15" x 36")	Letter 8 1/2" x 11"	1 full shelf	3.00
	Legal 8 1/2" x 14"	1 full shelf	3.40
Index Cards	3" x 5"	12,000 cards	1.00
	4" x 6"	6,000 cards	1.00
	5" x 8"	4,800 cards	1.00
Microfilm	16mm x 100'	90 reels	1.00
	35mm x 100'	44 reels	1.00

## COMPLETING THE TRANSFER

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### *From your office to the State Records Center or Archives*

The Records Center Supervisor will process your transmittal, and will contact you to arrange pick up or delivery. (*We pick up boxes only in the Augusta and Gardiner area*)

After the Records Center has received your boxes, we will complete the Transmittal of Records Form with box locations and return it through the Records Officer to the contact person listed.

The contact person should then attach the itemized list of box contents to the Transmittal of Records Form. This will create a complete record of what is in the boxes and where they are located in the Records Center!

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# GUIDELINES FOR SAFE TRANSPORT OF STATE RECORDS

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## **Use a covered vehicle!**

It's amazing, and frightening, what can happen to records in the bed of an open pickup truck. The boxes can come open – the vehicle can drive through an unexpected rain shower – someone can decide to open a box and rummage through it, if the driver has to stop and leave the vehicle unattended. A tarp and tie-downs are better than nothing, but transporting State records in an open vehicle is always an invitation to trouble.

## **Handle boxes carefully, and make sure anyone else who will be handling them knows you expect this, too.**

Why would anyone stand on a box filled with State records, in order to reach something else on the truck? Without thinking that the box might collapse, and that wouldn't do much for the records inside it? This has happened before, and we don't want it (or anything similar) to happen again. Take a moment to make sure the people who will be performing the transfer know that the boxes contain official State documents, and must be handled with reasonable care.

## **Make sure you know what will happen if a hired carrier can't pick up the boxes from you, and deliver them to us, all in the same day.**

Your contract with the moving company should specify how they will secure your records if they have to hold them overnight. Ideally, this shouldn't happen at all; but experience tells us that it can. And sometimes will.

## **Make sure your contract with a hired carrier specifies that the vehicle's cargo compartment must be kept locked at all times, except during loading and unloading (and will not be left unattended, even briefly, during the loading and unloading processes).**

## **Specify that the boxes will be stacked no more than three high.**

This will avoid collapsed boxes and crushed, damaged records.

## **Palletized boxes should be shrink wrapped to keep them from shifting during transport.**

Another way to avoid crushing, bursting open of boxes, and the resulting damage. Loads do shift, even when carefully packed. If you're using a commercial shipper, the company should be able to protect your records by doing this.

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# THE LEGAL DESTRUCTION OF RECORDS

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## ***When Records Management destroys records***

We destroy records stored in the Records Center only after:

1. The Records Center Supervisor sends a *Records Center Disposition Notice* (MSA/RM 72) to the agency of record;
2. The Records Officer approves the disposition;
3. The Records Officer returns the form to the Records Center Supervisor;
4. Maine State Archives reserves the right to destroy records that have passed (by 10 months) their expired retention date. The need for Archives involvement occurs when the generating agency refuses to sign off on the destruction of the records. (Warehouse space is always at a premium)

*This is the Records Officer's opportunity to double check and make sure the records are not needed for an uncompleted audit, anticipated litigation, or other need that the retention schedule did not anticipate.*

## ***When your agency destroys records***

Agencies may destroy records according to approved retention schedules.

Records should be destroyed in a confidential manner (preferably by shredding). The State of Maine's contractor for waste paper provides shredding as part of its routine service. That was not true with past recycling contractors, though; and it may not always be true in the future. If in doubt, you must check. It is your agency's responsibility to make sure its records are destroyed without breach of confidentiality.

The key to confidential destruction is keeping your records secure until they are picked up or processed by the contractor. Do NOT store them to wait for pickup in an area accessible to the public, such as a loading dock, hallway, or conference room.

Even if the files are not confidential in the legal sense, no agency wants to be the subject of a news story about records that were supposed to be picked up for destruction — but instead wound up intact and outside of the State of Maine's possession. We have all read accounts of documents found in dumpsters, scattered along roadsides, or even picked from landfills by concerned citizens.

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# PURCHASING RECORDS MANAGEMENT EQUIPMENT

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## HOW TO PURCHASE RECORDS MANAGEMENT EQUIPMENT

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*To order filing, microfilming or imaging equipment*, you must fill out a *Records Management Expenditure Request* (MSA/RM 94). You find the form online at:  
<http://www.maine.gov/sos/arc/records/state/strecforms.htm>

- Your expenditure request must be approved by the Director of Records Management Services.
- Send the form directly to the Director at 84 SHS and hold your requisition or contract release until you receive his approval.
- The Director will approve your request and return a copy to you. The original will be sent directly to the Division of Purchases to be matched up with your order, which you can then send in. If the request cannot be approved as submitted, you will be contacted by Records staff who will explain the problem. This can nearly always be resolved, because no one wants to stop you from getting what you need. Records Management must make sure that records you plan to store or convert to another format have retention schedules, and that any conversion work is being done by an approved vendor.

*Supply all information requested on the form, including the schedule and series numbers.*

*If no retention schedule has been approved for the affected records, you must submit an Application for Records Retention Schedule, Record Series Inventory Form and record samples with the request.*

*We will gladly defer the scheduling process for up to six months, though, if the records relate to a new program, new position, or new agency function. If this is the case, please tell us so on the form.*

The MSA/RM 94 is also required for purchase of such records storage equipment as shelving, filing cabinets, and form racks, and to contract for records conversion services such as microfilming or microfiching.

*When in doubt, please call us before you select the equipment or vendor and prepare the paperwork!*

### ***Why all this red tape?***

Poor equipment selection can sentence an agency to years of inefficient reference activity and uneconomical storage. We want to make sure that you are purchasing the equipment and/or services best suited to your needs.

ALSO, we want to make sure that you have scheduled all the records that you plan to store!

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# VITAL RECORDS YOU CAN'T AFFORD TO LOSE

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## What are "vital records"?

Vital records are all records needed to recreate an agency's legal and/or financial position and to preserve the rights of that agency, its employees, and the general public. In other words, vital records are those which are absolutely essential for the continued operation of your agency.

## Why are they vital?

If your agency had a fire, how long would it take to reconstruct the information you would need to continue doing business and how much would it cost? How much employee time would be required, and what would that time cost? Can you even assign a dollar value to the aggravation and to the negative impact on your customers?

## Ways to protect your hard copy vital records:

- Scan these records and store a backup copy off site – preferably in another city.
- Have them microfilmed by an approved vendor.
- Store vital records which are not currently active at the State Records Center.
- Store active vital records in a fireproof vault.
- Use fireproof cabinets for active vital records (Note: Simply using a fireproof safe or cabinet designed for important papers is not enough. Paper will begin to char around 400°F. Magnetic tapes become unreadable at much lower temperatures than paper ignites, so you want to purchase a safe or cabinet that prevents internal temperature from rising above 125°F for at least 1 hour during exposure to fire at 1500°F.

## To protect your vital digital records:

- Make sure they are stored on a file server, not on PC hard drives, so that they will be backed up regularly.
- Keep the software used to access your vital digital records as up to date as possible. After any major software update, such as going to a new version of the product, make sure your older vital records continue to open without problems.

Be very careful of software products not specifically approved for agency use. When in doubt, always contact your agency's IT support or HelpDesk.

## IF DISASTER STRIKES

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### *Fire, flood, explosion or any other non-computer virus disaster:*

Call the Maine State Archives Safety Officer: 287-5795

### *If you discover a computer virus*

1. STOP using your machine IMMEDIATELY! Do not try to fix the problem yourself.
2. Call the Office of Information Services Help Desk at 624-7700, or your own agency's Help Desk if you have one that is separate from OIT.
3. Leave the screen as it is, so the person who responds can see exactly what you saw.

*Off-site storage of backups is a strong defense against two serious threats, physical theft and natural disaster. Information services staff makes sure all State of Maine servers are backed up daily, so – once again – store your files on a server! Not on your PC's hard drive, which is the default storage location for most programs (Microsoft Office included)!*

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# GLOSSARY

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**Active Records:** Records that are referred to more than once a month per file drawer. They are normally maintained within the agency of record.

**Administrative Value:** That usefulness of a record which is determined by the minimum length of time required to have the record or record series available in the agency office for the conduct of day-to-day operations; generally, administrative value is inherent through program or project completion or the completion of a business transaction.

**Agency of Record:** The office responsible for maintenance and disposal of the records it creates and receives in performing its official functions.

**Archives:** The facility designated as the repository for the preservation of permanent records of the State of Maine. The State Archives is responsible for selecting, preserving and making available archival records.

**Attachments:** All files that can be joined to an e-mail message, and transmitted with it from sender to recipient. Types may include, but are not limited to: Word processing documents; spreadsheets; databases and "snapshots" from databases; images.

**Confidential Records:** Those records which are not generally available for examination by the public as stipulated by state or federal legislation or regulations.

**Cubic Foot:** A standard measure of volume for records, 12 inches high, 12 inches thick. The volume of records that will fill a standard records storage box.

**Digital Records:** Records created using computer hardware and software, that can only be retrieved and read by using a hardware/software combination.

**Disposition:** The various actions taken with records, normally after they become inactive. These actions include reproduction on microfilm, transfer to the State Records Center for temporary storage, transfer to the State Archives for permanent preservation, and destruction.

**Electronic Records:** Records that cannot be read without the use of electronic equipment. Electronic records include both digital (computer) records, and analog records such as nondigital audio and video recordings.

**Evidential Value:** The usefulness of records which document the history of an agency's organization and function. It may also describe data necessary for legal purposes.

**File Arrangement:** The manner in which a record series is organized in a file, e.g. alphabetically, numerically, chronologically.

**Fiscal Value:** That value of a record which is determined by state and/or federal audit requirements or by the informational value relating to financial transactions and obligations of the agency.

**Forms Management:** The function that establishes standards for the creation, design, analysis, and revision of all forms within an organization and assures that they are designed, produced, and distributed economically and efficiently

**Frequency of Referral:** The number of times a record series is referenced during normal business activities. Daily? Weekly? Once a month? Once a year, or rarely if at all?

**General Retention Schedules:** Disposition schedules which apply to all offices within a particular branch of state government. They are prepared for records which are common to most agencies.



**Historical Value:** The long-term value of a record to scholars or to posterity, as determined by the Archives Advisory Board and the State Archivist.

**Inactive Records:** Records which are no longer referred to in the conduct of current business. They are normally transferred to the Archives if permanently valuable, or destroyed if no longer of value to the State of Maine.

**Informational Value:** The value of a record that provides unique and permanent information for purposes of research; relates to archival record analysis.

**Lawful Custodian of Records:** The head of a state department, office commission, board, or other unit of state government, or his/her authorized deputy, or the custodian to whom the records were transferred pursuant to law.

**Legal Size:** A standard paper size, 8 1/2 X 14, or a container capable of holding legal size papers or records.

**Legal Value:** That value of a record which is determined by statutory provisions of Maine State Statutes, Federal Code of Regulations, and any other applicable provisions or the value inherent in records that provide legal proof of a business transaction.

**Letter Size:** A standard paper size, 8 1/2 X 11 inches, or a container capable of holding letter size papers or records.

**Metadata:** Data about data. Specifically, for the purposes of State of Maine electronic records management, data concerning an electronic record's creation (creator and date of creation), transmission, editing, viewing, and any other details captured by the particular system being used to create, transmit, and store that record.

**Microfilm:** A high resolution film containing an image greatly reduced in size from the original; the recording of microphotographs on film.

**Micrographics:** A term applied to the uses of microimage recording, retrieval, and reproduction technologies in an information system.

**Monitoring:** Checking the electronic files maintained by state agencies to verify compliance with state records management standards.

**Non-Record:** A convenience copy such as a reading file, unofficial copies kept for reference, stocks of publications, blank forms, and non-government related publications. Also, personal records such as e-mail messages unrelated to State of Maine business.

**Permanent Record:** Records considered to be so valuable or unique in documenting the history of an agency that they are designated for preservation in the Maine State Archives.

**Pre-Archival Records:** Records scheduled for preservation in the Maine State Archives, but currently stored in Records Center status.

**Public Records:** The original and all copies of any paper, correspondence, form, book, photograph, photostat, film, microfilm, sound recording, map drawing or other document, regardless of physical form or characteristics, which have been made or received in transacting public business by the state, a political subdivision, or an agency of the state. *(For the complete legal definition, see Title 1, §402.)*

**Purging:** Removal of individual papers, folders, or groups of folders from a larger group of records, usually to permit disposal of parts of the group and retention of the selected portions. Eliminating material before it is stored.

**Records:** All books, papers, photographs, maps, or other documentary materials, regardless of physical form or characteristics, made or received in connection with the transaction of public business, which are maintained because they serve as evidence of the functions, policies, decisions, procedures, operations and other activities of state organizations or because of informational value contained therein.

**Records Inventory:** An identification and description of all of the records possessed by an organization.

**Records Management:** That function of administrative management and business operations concerned with the creation, protection, retention, retrieval, and preservation of records and recorded information required for the continuance of operations.

**Records Officer:** An employee appointed by the director or administrator of a state agency to represent the agency in records management matters and to function as a liaison between the agency and the Division of Records Management Services of the Maine State Archives.

**Records Retention Schedule:** A timetable that identifies the length of time that a record must be retained in active and Records Center status before final disposition, either through destruction or transfer to Archives.

**Records Retrieval:** The process of locating and delivering records for agency use.

**Records Series:** A group of identical or related records that are normally used and filed as a unit.

**Security Microfilming:** The process of filming documents while continuing to retain the original documents. The film serves as a back up to the original. This procedure is usually applied to records judged to be vital to an agency's operation.

**Semicurrent Records:** Records that, on average per cubic foot, are referred to only once or twice a month. These records should be sent to the State Records Center.

**Shredding:** The destruction of documents and microfilm by mechanical shredding, pulping, or beating to render them illegible and beyond reconstruction.

**State Records Center:** The facility designed for the organized storage of inactive (semicurrent) records retained for administrative or legal purposes.

**State Records Management Standards:** Requirements included in the Archives and Records Management Law (Title 5, Chapter 6, §95); in rules adopted by the Maine State Archives under the Administrative Procedures Act; and in retention schedules approved by the State Archivist.

**Transfer:** The movement of records from one location or custodian to another, usually moving records from the active files to inactive files or from agency office space to a records center or an archival establishment.

**Unscheduled Records:** Records or record series for which no decision on disposition has been made and which must be preserved until legal authority on disposition has been approved.

**Vital Records:** Records which are absolutely essential to continue and/or reconstruct the operations of a state agency or office subsequent to an emergency arising from enemy action or a natural or man-made disaster such as flood, fire, tornado, riot, explosion, etc.; those records which are necessary to recreate the agency's legal and financial position and to preserve the rights of the agency, its employees, and the general public.

**Working Papers:** Documents such as rough notes, calculations, or drafts assembled or created and used in the preparation or analysis of other documents.

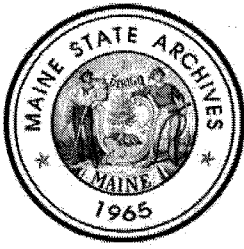
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## CONTACT INFORMATION

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Director of Records Management Services, Tammy Marks .....	287-5799
Scheduling & Consulting, Felicia Kennedy .....	287-5798
Records Center***, 101 Water St Hallowell.....	287-3627
Records Research & Retrieval	
Records Center Supervisor, Rob Caron .....	287-5792
Office Associate II, Bill Towne .....	287-3627
Transfers/pickups	
Records Center Supervisor, Rob Caron .....	287-5792
Office Associate II, Bill Towne .....	287-3627

\*\*\*If the Records Center phone is not answered, please call 287-5792.



**Maine State Archives**  
 84 SHS, Augusta, ME 04333-0084  
 Tel. (207)287-5792 Fax (207)287-6035

## Application for Records Retention Schedule

Department	Bureau/Division	Date
Agency Records Officer	Mailing Address	Telephone Number

**Certificate of Agency Representative:**

I hereby certify that I am authorized to act for this agency in matters relating to the disposal of its record series as described in this Records Retention Schedule. These records will not be needed for current business after the retention period(s) specified.

Date	Signature of Agency Records Officer
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New Schedule     Amendment to Existing Schedule

If amendment, please indicate reason:

Change in retention (please give justification)

Other (describe)

Series No. <i>(if Amended)</i>	Series Title	Media Type*	Retain in Agency**	Retain in Center**	Total Retention Period	Destroy or Archives	Action Taken <i>(Leave Blank)</i>

\*See Inventory Form for media examples. \*\*Give amount of time in agency and in Records Center (i.e. no. of years, contingent upon event, less than one year, permanent, etc.)

### Maine State Archives Use Only

**Notification to Agency:**

This Records Retention Schedule is approved except as noted in the "Action Taken" column.

Agency No.	Schedule No.
Date	Signature of State Archivist

MSA/RM 22/R rev. 062012

Maine State Archives <b>RECORD SERIES INVENTORY</b>	For Maine State Archives Use Only		
	Agency No.	Schedule No.	Series No./Media

Department	Bureau/Division	Date
Person to Contact	Telephone No.	Location of Records
Contact person's mailing address		

Series title

**Why does the agency keep these records—what program or programs do they support? How are the records used, and by whom? What might be found in a typical file? (Please include samples with inventory form; you may black out identifiable personal information if this raises confidentiality concerns. Also, please spell out all acronyms.)**

**Frequency of Use**  
 Daily  Weekly  Monthly  Annually For how long \_\_\_\_\_

At what point does each file become "closed" as far as your business needs are concerned? Possible examples: When client is discharged; when fiscal year ends; when case has been inactive for six consecutive months.

<b>Arrangement</b> <input type="checkbox"/> Alphabetically <input type="checkbox"/> Chronologically <input type="checkbox"/> Geographically <input type="checkbox"/> Case number <input type="checkbox"/> Other _____	<b>These records are retained by</b> <input type="checkbox"/> Calendar Year (1/1 – 12/31) <input type="checkbox"/> State Fiscal Year (7/1 – 6/30) <input type="checkbox"/> Federal Fiscal Year (10/1 – 9/30)	<b>Media Type</b> <input type="checkbox"/> Paper <input type="checkbox"/> Microfilm <input type="checkbox"/> Microfiche <input type="checkbox"/> Audio Tape <input type="checkbox"/> Digital Audio <input type="checkbox"/> Magnetic Tape <input type="checkbox"/> Photograph <input type="checkbox"/> DVD/Video <input type="checkbox"/> Electronic <input type="checkbox"/> Computer Disk <input type="checkbox"/> Other _____
--	---	---

Date of Oldest File	Volume in Cubic Feet if Applicable	Annual Rate of Accumulation if Applicable	Filing and Storage Equipment (How are records stored)

Can the same information be found in other records? (If yes, please explain. We are asking this because it's important to know where the State would go to reconstruct the records, in case of disaster.)

Are records confidential?  no  yes If yes, which statutes or regulations apply?

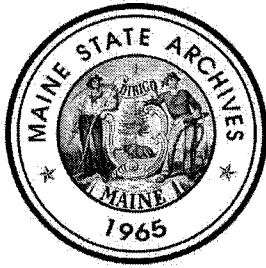
Retention determined by  Statute  Agency Policy  Other (Please give statutory citation or identity of person who determines policy)

How long do you need to store these records (total for paper files should not exceed 20 years):

In Your Agency	In the Records Center	Archives or Destroy (your recommendation)

Signature of Agency Records Officer or Assistant Records Officer	Date





**MAINE STATE ARCHIVES**

Records Center

84 State House Station, Augusta, ME 04333-0084

Tel. (207)287-5792 Fax (207)287-6035

[RecordsCenter.Archives@Maine.gov](mailto:RecordsCenter.Archives@Maine.gov)

**REQUEST FOR REFERENCE SERVICE**

Executive or Judicial Agency		Date of Request		
<b>Files Requested (file name and/or file number):</b>		<b>Box No.</b>	<b>Location No.</b>	
Name of Requestor	Access Card No.	Telephone	FAX	E-Mail
<input type="checkbox"/> Mail file requested to the address listed here:				
<input type="checkbox"/> Hold for pickup and call this number when file becomes available:				
File requested by: <input type="checkbox"/> Fax <input type="checkbox"/> Visit <input type="checkbox"/> Mail <input type="checkbox"/> E-mail <input type="checkbox"/> Telephone				
Type of Record: <input type="checkbox"/> Paper <input type="checkbox"/> Magnetic Tape <input type="checkbox"/> Microfilm <input type="checkbox"/> Microfiche <input type="checkbox"/> Other (please specify)				

MSA/RM RRS/Rev. 062012

For Maine State Archives Use Only

Agency No.	Transmittal No.
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**TRANSMITTAL OF RECORDS**

Department		Bureau		Division				
Person to contact		Telephone		Location (building, floor, room)				
Mailing address				Retention (to be inserted by RM staff)				
Restrictions on access		Authority		These records are retained by (please check one): Calendar Year      State Fiscal Year      Federal Fiscal Year <input type="checkbox"/> (1/1 – 12/31) <input type="checkbox"/> (7/1 – 6/30) <input type="checkbox"/> (10/1 – 9/30)				
Schedule No.	Series No.	Media	Series Title (See Records Disposition Schedule – use same title)			Are all records included closed and inactive?		
<b>Location</b> <i>(leave blank for RM use)</i>	<b>Agency Box Identifier</b>	<b>First Item</b>		<b>Last Item</b>		<b>First Date</b>	<b>Last Date</b>	<b>Final Dispo.</b> <i>(leave blank for RM use)</i>
Signature of Records Officer <i>(if e-mailed from a State address, typed name will be sufficient):</i>			Date	Received by <i>(Maine State Archives):</i>			Date	







**Maine State Archives**  
 84 State House Station, Augusta, ME 04333-0084  
 Tel. (207)287-5790 Fax (207)287-6035

## RECORDS MANAGEMENT EXPENDITURE REQUEST

Department	Bureau/Division	Agency No. <i>(per State Budget Office)</i>	Date
Person to Contact	Tel. No.	Mailing Address	
Equipment or services requested <i>(indicate quantity and type of equipment, supplies, or services; please be specific)</i>			
Title(s) of Record Series to be stored, filmed, or imaged <i>(use same wording as on applicable retention schedule, please):</i>		Schedule No.	Series No.
<p><b>If no schedule has been approved for the above records, an APPLICATION FOR RECORDS RETENTION SCHEDULE (RM22), RECORD SERIES INVENTORY (RM59), and samples of the records must accompany this form.</b></p> Justification:			
Signature of Records Officer or Agency Head <i>(may be typed if submitted from a State e-mail address)</i>			Date
<b>FOR MAINE STATE ARCHIVES USE</b>			
This request has been reviewed by the Maine State Archives for need and feasibility. The proposed procurement is: <input type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended <b>**Approval of request does not constitute authority to destroy State records**</b>			
Director, Records Management Services			Date

## Maine Revised Statutes

- §1976 PDF
- §1976 WORD/RTF
- STATUTE SEARCH
- CH. 163 CONTENTS
- TITLE 5 CONTENTS
- LIST OF TITLES
- DISCLAIMER
- MAINE LAW
- REVISOR'S OFFICE
- MAINE LEGISLATURE

§1975

Title 5:

§1981

### ADMINISTRATIVE PROCEDURES AND SERVICES

#### Part 4: FINANCE

#### Chapter 163: OFFICE OF INFORMATION TECHNOLOGY

#### Subchapter 1: CHIEF INFORMATION OFFICER

#### §1976. Use of State Government computer system

**1. Confidentiality.** Computer programs, technical data, logic diagrams and source code related to data processing or telecommunications are confidential and are not public records, as defined in Title 1, section 402, subsection 3, to the extent of the identified trade secrets. To qualify for confidentiality under this subsection, computer programs, technical data, logic diagrams and source code must:

A. Contain trade secrets, as defined in Title 10, section 1542, subsection 4, held in private ownership; and [2001, c. 388, §14 (NEW).]

B. Have been provided to a state agency by an authorized independent vendor or contractor under an agreement by which:

(1) All trade secrets that can be protected are identified without disclosing the trade secret;

(2) The vendor or contractor retains all intellectual property rights in those trade secrets; and

(3) The state agency agrees to hold and use the programs, data, diagrams or source code without disclosing any identified trade secrets. [2001, c. 388, §14 (NEW).]

[ 2001, c. 388, §14 (NEW) .]

**2. Public records.** Except as provided in subsection 1, any document created or stored on a State Government computer must be made available in accordance with Title 1, chapter 13 .

[ 2007, c. 597, §4 (AMD) .]

#### 3. Violation.

[ 2003, c. 176, §2 (RP) .]

#### 4. Penalty.

[ 2003, c. 176, §2 (RP) .]

#### SECTION HISTORY

2001, c. 388, §14 (NEW). 2003, c. 176, §2 (AMD). 2007, c. 597, §4 (AMD).



**Legislative Subcommittee**

Proposed Draft Prepared by Harry Pringle:  
Confidentiality of parental contact information  
in possession of school administrative districts

**Sec. 1.** 20-A MRSA §6001, sub-§4 is enacted to read:

**20-A §6001. DISSEMINATION OF INFORMATION**

**1. Federal and state law.** The provisions of this section, the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the United States Education of All Handicapped Children Act, Public Law 94-142 govern the dissemination of information about students, as well as written notices of intent to provide equivalent instruction through home instruction and all education records of students receiving equivalent instruction through home instruction.

**2. Internet restrictions.** A public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students' parents. For the purpose of this section, "personal information" means information that identifies a student, including, but not limited to, the student's full name, photograph, personal biography, e-mail address, home address, date of birth, social security number and parents' names.

**3. Dissemination of education records to criminal justice agencies.** A school may disseminate education records as defined in 20 United States Code, Section 1232 g(a)(4) regarding a juvenile if:

- A. The juvenile has not been adjudicated as having committed a juvenile crime;
- B. The education records are disseminated to:
  - (1) Criminal justice agencies; or
  - (2) Agencies that by court order or agreement of the juvenile are responsible for the health or welfare of the juvenile and that have provided the school with a statement describing the purpose of the dissemination; and
- C. The education records are relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation.

Education records received under this subsection are confidential and may not be further disseminated, except to the court or as otherwise provided by law. The persons to whom the education records are disseminated shall certify in writing to the school that the records will not be disclosed to any other party, except the court or as otherwise provided by law, without the written consent of the juvenile or the juvenile's parent or guardian.

**4. Parental privacy.** The names, home addresses, electronic mail addresses, and other personal information of students' parents are confidential when in the possession of school administrative units. "Personal information" means a parent's:

- A. Social security number;

**Legislative Subcommittee**

Proposed Draft Prepared by Harry Pringle:  
Confidentiality of parental contact information  
in possession of school administrative districts

B. Date and place of birth;

C. Telephone number, including a parent's cellular telephone, home facsimile and pager numbers;

D. Credit or financial information; and

E. Username, login information, personal identification number (PIN), password or other unique personal identifiers that enable a parent to access or communicate in a school unit's electronic systems, to obtain access to student education records regardless of where such records are maintained, to obtain notifications from school officials about student attendance, grades, assignments or school-related activities, or to otherwise collaborate in his or her child's education.

For the purposes of this subsection, the term "parent" has the same meaning as in section 5202, subsection 1.

E-mail and Electronic Mail Protections in Maine Law

Title	Section	Sub-§	General subject matter	Language
1	402	3, ¶O	Freedom of Access Act, exclusions from definition of "public record"	<p>(Not a "public record":</p> <p>O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:</p> <p>(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and</p> <p>(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;</p>
4	1806	1, 2	Maine Commission on Indigent Legal Services - confidential records	<p><b>1. Definitions.</b> As used in this section, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship.</p> <p>B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number.</p> <p><b>2. Confidential information.</b> The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.</p> <p>A. Individual client information that is submitted by a commission-rostered</p>

B-2

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.</p> <p>B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential.</p> <p>C. Personal contact information of a commission-rostered attorney is confidential.</p> <p>D. Personal contact information of a member of the commission or a commission staff member is confidential.</p>
5	17057	3	Maine Public Employees Retirement System	<p><b>3. Home contact information.</b> Except as provided in this subsection, records of home contact information of members and benefit recipients of any of the programs of the retirement system and of staff members that are in the possession of the retirement system are confidential, not open to public inspection and not public records as defined in Title 1, section 402, subsection 3.</p> <p>A. For purposes of this subsection, "home contact information" means a home address, home telephone number, home facsimile transmission number or home <b>e-mail</b> address.</p> <p>C. This subsection does not apply to the home address of a member or a benefit recipient of any of the programs of the retirement system used only for membership recruitment purposes by a nonprofit or public organization established to provide programs, services and representation to Maine public sector retirees unless the retirement system member or benefit recipient has signed a form made available by the retirement system indicating that the individual does not authorize disclosure of that individual's home address. The retirement system may not provide information under this subsection to an organization if the retirement system has determined that the organization</p>



For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				obtained information for the purpose of membership recruitment but used the information for a purpose other than membership recruitment.
5	90-B	7	Address Confidentiality Program	7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.
12	10110		Department of Inland Fisheries and Wildlife	<p><b>§ 10110. Hunting and fishing license; confidential</b></p> <p><b>1. Indication of confidentiality.</b> The commissioner shall allow an applicant for a hunting or fishing license to indicate that the applicant's e-mail address is confidential.</p> <p><b>2. Confidential information.</b> If a person indicates that the person's e-mail address submitted as part of the application process for a hunting or fishing license is confidential as provided in subsection 1, that information is confidential.</p> <p><b>3. Exception.</b> E-mails designated as confidential under this section are not confidential to department personnel or law enforcement officers or for purposes of court proceedings.</p>
12	8005	1	Department of Conservation, Bureau of Forestry	<p><b>1. Contact information.</b> Social security numbers, addresses, telephone numbers and electronic mail addresses of landowners owning less than 1,000 acres of forest land statewide and collected by the bureau for the purposes of contacting landowners under section 8611, or received by the bureau in notifications filed under section 8883-B, or in reports received under Title 36, section 581-G are confidential and may be disclosed only in accordance with this section.</p>
12	8005	3		<p><b>3. Disclosure.</b> Except as provided in subsection 4, the director may disclose confidential information in accordance with this subsection. Confidential information disclosed pursuant to this subsection remains the property of the bureau. Recipients of the confidential information may not disclose this information or use this information except as authorized by the director.</p>

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>A. The director may disclose information designated as confidential under this section to a governmental entity that, in the opinion of the director, requires this information.</p> <p>B. The director shall provide names, addresses and <b>electronic mail</b> addresses upon request to a nonprofit corporation that provides educational services to forest landowners regarding sound forest management as long as the information disclosed is used to provide information about forest management.</p>
12	8611	1	Cooperative forestry management	<p><b>I. Forest management information.</b> The bureau shall provide a forest management information clearinghouse service with a statewide toll-free number. The information and referral service must include, but is not limited to:</p> <ul style="list-style-type: none"> <li>A. Reporting, notification and management requirements pursuant to this chapter;</li> <li>B. Timber and forest management options;</li> <li>C. Soil conservation practices;</li> <li>D. Insect and disease management practices;</li> <li>E. Recreation management options; and</li> <li>F. Wildlife management options.</li> </ul> <p>Addresses, telephone numbers and <b>electronic mail</b> addresses collected by the bureau for the purpose of contacting forest landowners owning less than 1,000 acres statewide to provide them with forest management information are confidential and may be disclosed only in accordance with section 8005. The bureau shall provide copies of forest management information sent to landowners to the joint standing committee of the Legislature having jurisdiction over agriculture, conservation and forestry matters.</p>

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
12	8883-B	8	Forest landowner and wood processor reporting requirements	<p><b>8. Confidentiality.</b> The addresses, telephone numbers and electronic mail addresses of forest landowners owning less than 1,000 acres statewide contained in notifications filed under this section are confidential and may be disclosed only in accordance with section 8005.</p>
20-A	6001	2	Student records	<p><b>2. Internet restrictions.</b> A public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students' parents. For the purpose of this section, "personal information" means information that identifies a student, including, but not limited to, the student's full name, photograph, personal biography, e-mail address, home address, date of birth, social security number and parents' names.</p>
21-A	1125	2-B	Maine Clean Election Act	<p><b>2-B. Seed money required for gubernatorial candidates; documentation.</b>                      For seed money contributions that a candidate for Governor collects to satisfy the requirement in subsection 5, paragraph C-1, the candidate shall obtain the contributor's name, residence address, mailing address, telephone number if provided by the contributor and other information required for reporting under section 1017, subsection 5. For these contributions, the candidate shall submit to the commission during the qualifying period:</p> <p>A. A contribution acknowledgment form as determined by the commission, to be completed by each person that contributes seed money, that includes the name, residence address, mailing address, optional telephone number and signature of the person making the seed money contribution acknowledging that the contribution was made with the person's personal funds and will not be reimbursed by any source;</p> <p>B. A list of the seed money contributions in a format determined by the commission that includes the name and mailing address of the contributor;</p> <p>C. For seed money contributions received by check or money order,</p>

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>photocopies of the check or money order; and</p> <p>D. For seed money contributions received by debit or credit card, a bank or merchant account statement that contains the cardholder's name and that otherwise meets the requirements specified by the commission in order to verify compliance with subsection 5, paragraph C-1.</p> <p>The commission may permit the submission of an online or electronic acknowledgment form as required by paragraph A for seed money contributions made via the Internet. The telephone numbers, e-mail addresses and bank account and credit card information of contributors that candidates have submitted to the commission pursuant to this subsection are confidential, except that the commission may disclose this information in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.</p>
21-A	1125	3	Maine Clean Election Act	<p><b>3. Qualifying contributions.</b> Participating candidates must obtain qualifying contributions during the qualifying period as follows:</p> <p>A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;</p> <p>B. For a candidate for the State Senate, at least 175 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or</p> <p>C. For a candidate for the State House of Representatives, at least 60 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.</p> <p>A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees</p>

**For Legislative Subcommittee Review August 23, 2012**

Title	Section	Sub-§	General subject matter	Language
				<p>paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the <b>Internet</b>. Records containing information provided by individuals who have made qualifying contributions over the <b>Internet</b> are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.</p> <p>It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.</p>
32	2109			<p>§ 2109. Confidentiality of personal information of applicant or licensee</p> <p>For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law.</p>
32	90-B		Emergency Medical Services licensing	<p>§ 90-B. Address of applicant</p> <p>Beginning on January 1, 2012, an applicant for a license or renewal of a</p>

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>license under this chapter shall provide the board with:</p> <p><b>1. Public record address.</b> A contact address, telephone number and <b>e-mail</b> address that the applicant is willing to have treated as a public record, such as a business address, business telephone number and business <b>e-mail</b> address; and</p> <p><b>2. Personal address.</b> The applicant's personal residence address, personal telephone number and personal <b>e-mail</b> address.</p> <p>If the applicant is willing to have the applicant's personal residence address and telephone number and personal <b>e-mail</b> address treated as public records, the applicant shall indicate that in the application and is not required to submit a different address under subsection 1.</p>
32	91-B	1, ¶A	Emergency Medical Services licensing	<p>A. A personal residence address, personal telephone number or personal <b>e-mail</b> address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal <b>e-mail</b> address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.</p>
35-A	10106	1	Efficiency Maine Trust	<p><b>1. Confidential records.</b> The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:</p> <p>A. A record obtained or developed by the trust that:</p> <p>(1) A person, including the trust, to whom the record belongs or pertains has requested be designated confidential;</p>

For Legislative Subcommittee Review August 23, 2012

Title	Section	Sub-§	General subject matter	Language
				<p>(2) The board has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the trust's records, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment, other than loss or denial of financial assistance from the trust, to any person to whom the record belongs or pertains;</p> <p>(3) Contains information about the energy usage profile of an identifiable customer of a transmission and distribution utility in the State or an identifiable customer of a distributor of heating fuel or other energy source; and</p> <p>(4) Contains the social security number, address, telephone number or <b>e-mail</b> address of a customer that has participated or may participate in a program of the trust; and</p> <p>B. A financial statement or tax return.</p>
36	581-G	3	Tree Growth Tax Law	<p><b>3. Confidentiality.</b> Addresses, telephone numbers and <b>electronic mail</b> addresses of forest landowners owning less than 1,000 acres statewide contained in reports filed under this section are confidential when in possession of the Department of Conservation, Bureau of Forestry and may be disclosed only in accordance with Title 12, section 8005.</p>

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**Right to Know Advisory Committee**

**Selected state statutes limiting release of e-mail addresses**

Prepared July 8, 2010

State	Provision
Idaho	No agency may distribute or sell for use as a mailing list or a telephone number list any list of persons without first securing the permission of those on the list. §9-348(1)(a) No list of persons prepared by the agency may be used as a mailing list or a telephone number list except by the agency or another agency without first securing the permission of those on the list. §9-438(1)(b)
Virginia	The following records are not public records but may be disclosed by in the discretion of the custodian (except where such disclosure is prohibited by law): 10. Personal information, as defined in §2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record. §2.2-3705.1.10
Pennsylvania	Exemptions The following personal information: (A) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number. . . . §708(a)(6)(i)(A)
New York	An Agency may deny access to records or portions thereof that, if disclosed, would constitute an unwarranted invasion of personal privacy. An unwarranted invasion of personal privacy includes, but is not limited to: . . . iii. Sale or release of lists of names or addresses if such lists would be used for commercial or fund-raising purposes. NY Pub.Off.Law §87(2)(b)(iii)
Indiana	State agencies by administrative rule and

## Right to Know Advisory Committee

State	Provision
	<p>other governmental units by ordinance may restrict the commercial use of information obtained through disk or tape of electronically-stored information. §5-14-3-3(e)</p> <p>A public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. §5-14-3-3(f)</p>
Kansas	<p>The agency may require a person requesting the records or information therein to provide written certification that: . . .(2) the requester does not intend to, and will not:</p> <p>(A) Use any list of names or addresses contained in or derived from the records or information for the purpose of selling or offering for sale any property or service to any person listed or to any person who resides at any address listed; or (B) sell, give or otherwise make available to any person any list of names or addresses contained in or derived from the records or information for the purpose of allowing that person to sell or offer for sale any property or service to any person listed or to any person who resides at any address listed.</p>
Texas	<p>An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter. Tx Govt Code §552.137</p> <p>Exceptions, including disclosure if the member of the public affirmatively consents to its release.</p>

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Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Using technology to conduct public proceedings

**PART A**

**Sec. A-1. 1 MRSA § 403-A** is enacted to read:

**§403-A. Public proceedings through other means of communication**

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

**1. Requirements.** A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section.

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E. Each member of the body participating in the public proceeding is able to simultaneously hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.

F. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G. All votes taken during the public proceeding are taken by roll call vote.

H. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I. The public proceeding is not a public hearing.

**2. Voting.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

**3. Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

**4. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

Seek input of agencies before making legislative changes to statutory procedures below.

## PART B

### Finance Authority of Maine

**Sec. B-1.** 10 MRSA §971 is amended to read:

#### **§971. Actions of the members**

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with Title 1, section 403-A and the following.

- 1. Placement of call.** A conference call to the members must be placed by ordinary commercial means at an appointed time.
- 2. Record of call.** The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.
- 3. Notice of emergency meeting.** Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and that is available for members of the public to hear the business conducted at the telephone meeting.

### Ethics Commission (any changes?)

**Sec. B-2.** 21-A MRSA §1002 is amended to read:

#### **§1002. Meetings of commission**

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an

election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

#### Emergency Medical Services Board

**Sec. B-3.** 32 MRSA §88, sub-§1, ¶D is amended to read:

#### **§88. Emergency Medical Services' Board**

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

**1. Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies in compliance with Title 1, chapter 13, subchapter 1, to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board

Sec. B-4. 39-A MRSA §151, sub-§5 is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. The board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology in compliance with Title 1, chapter 13, subchapter 1. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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**Business & Education  
at Work for Maine**

5 Community Drive, PO Box 949, Augusta, ME 04332-0949 TEL: 1-800-228-3734 / 1-207-623-3263  
E-mail: info@famemaine.com URL: www.famemaine.com FAX: 1-207-623-0095 TTY: 1-207-626-2717

August 20, 2012

Judy Meyer, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Dear Chair Meyer:

Thank you for the opportunity to review and comment on the proposed draft legislation concerning use of technology to conduct public proceedings. The Finance Authority of Maine (FAME) appreciates the opportunity to respond to the proposed changes to our existing statute, which is set forth at 10 M.R.S.A. § 971.

As we have noted in previous correspondence to the Committee, FAME's statutory language on this matter has been in place for some time now, and use of technology to conduct FAME-related public proceedings has been used rarely, but well. We have some concerns regarding the proposed changes and wish to offer some suggestions for improvement.

First, as a general matter, we prefer to retain our existing statutory language, unaltered. If one examines the proposed changes to FAME's statute, our emergency meetings would now have to meet all the requirements of proposed 1 M.R.S.A. § 403-A, *as well as* FAME's additional existing statutory requirements. We value our current ability to conduct emergency proceedings electronically in limited circumstances. The draft language appears to allow full telephonic meetings only in very limited circumstances (i.e. when the Department of Health and Human Services or the Governor so declare). This is too narrow for FAME's customers' needs. As you can imagine, FAME "emergencies" are different from health risks or weather disasters; they typically are economic in nature, such as when a company requires immediate financial assistance to continue operating and immediate board action is necessary to save jobs. Other examples include having to make a credit decision on less than three days' notice based on the exigencies of a situation, and may include having to conduct a meeting that was regularly scheduled, but is now impossible for members to attend because of poor weather, so that the businesses awaiting financing may receive a timely decision.

C-2

Second, if changes to the FAME Act must proceed, we have specific concerns and suggestions for improvement of the proposed language:

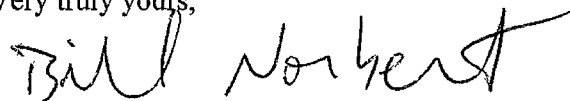
- In proposed **1 M.R.S.A. § 403-A(1)(C)**, a quorum of the body would now be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. Although perhaps ideal, this new requirement is problematic for FAME in cases of emergency when telephonic participation of members is necessary and quorums are *only* achievable by counting telephonic participants. We have found this option useful when dealing with business assistance emergencies in the past, and have only used this method approximately three times in the past seven years. While the draft legislation creates exceptions for certain emergencies, as discussed below, we urge the committee to consider removing this requirement for a broader range of “emergencies,” at least as to FAME.
- **Subsection (1)(D)** would require that, for use of remote board member participation, that “[t]he physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member’s physical attendance is not reasonably practical must be stated in the record of the public proceeding.” How do we determine what is “reasonably practical”? If we get it wrong, would the board action subsequently be invalidated? If we are conducting a public hearing on a proposed rule or appeal during a board meeting, should the member participating remotely hang up, not participate, and phone back later?
- **Subsection (1)(E)** requires that remote participants be able to “simultaneously” hear each other and speak. We are not certain what this means from a technology standpoint. Speaker phones frequently require speaking and listening sequentially rather than simultaneously, but allow, in our view, adequate means of communication back and forth, and should be allowed.
- **Subsections (1)(H) and (2)(A)** create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although FAME always attempts to furnish all materials in advance to board members, sometimes last-minute borrower request materials are provided at the actual meeting. Often, such materials are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.

- **Subsection (1)(I)** would forbid remote member participation in the case of a public hearing. FAME requests that an exception be made for the common case of *pro forma* public hearings in the rulemaking process. The Administrative Procedures Act requires that one-third of board members be present. FAME prefers to have greater member participation and not inconvenience our members with additional meetings, so we typically conduct our rulemaking hearings on monthly, regular board meeting days. To do otherwise would require a minimum of five (of our fifteen) board members (who are busy and live in all parts of the state) to gather physically more frequently for just this purpose. This is impractical and logistically challenging. Besides, written comments for public hearings are already allowed under the law.
- **Subsection (3)(A)** seemingly limits emergency meetings to cases largely inapplicable to FAME (a Governor-declared emergency or health emergency). Again, what about FAME-related emergencies like potential business closings? The exceptions here should be broadened to allow for our current statute and other statutory cites, or these requirements should be deleted. We ask either to be left out of this legislative change or instead have an additional definition of “emergency” added for our needs.

In sum, FAME prefers to keep its current statute on the books, unamended. We are happy and able, however, to comply with the bulk of the proposed changes to Title 1, if necessary, but urge you to consider the needs and practicalities of our members and our mission. In rare but important cases, FAME members need to meet at a moment’s notice to save a business or respond to a financial emergency. Requiring our volunteer board members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. We are glad to assist in any way possible.

Very truly yours,



William S. Norbert  
Governmental Affairs and  
Communications Manager

Cc: Colleen McCarthy Reid, OPLA  
Curtis Bentley, OPLA





August 20, 2012

Judy Meyer, Chair  
Legislative Subcommittee  
Right to Know Advisory Committee  
c/o Peggy Reinsch  
Office of Policy and Legal Analysis  
13 State House Station  
Augusta, ME 04333

Dear Chair Meyer:

Thank you for the opportunity to review and comment on the proposed draft legislation concerning use of technology to conduct public proceedings. The Small Enterprise Growth Board (SEGB) appreciates the opportunity to respond to the proposed language.

The SEGB's proceedings are governed by Statute (10 M.R.S.A. §§381 – 392) and by Rule. The Board is comprised of volunteers, all uncompensated. Although nothing in our Statute references remote participation by Board Members, our Rule does. *See Section 6(D) of attached Ch. 701: Small Enterprise Growth Program.* The process, although rarely used, works well. In essence, the existing process allows Board Members to participate in meetings telephonically. They are not entitled to vote or help determine a quorum, however, *except* in cases when the Board Chair determines the allowance of votes by those members, and the counting of their "presence" for a quorum, to be *necessary to avoid undue hardship* to an applicant for an investment. The SEGB has used this provision judiciously and rarely, and to very good effect. It has been used in cases where a company was facing some sort of financing crisis, and SEGB action was required between meetings to approve a certain set of terms for investment; for example, so that the staff could execute and not hinder the company. In 2009, SEGB held two regular board meetings via telephone, and three "emergency" meetings telephonically to address pressing issues. Since January 1, 2010, however, SEGB has held only one meeting telephonically, and that was a regular, non-emergency meeting.

We would like to share some of our concerns and suggestions for improvement of the proposed language:

SMALL ENTERPRISE GROWTH FUND

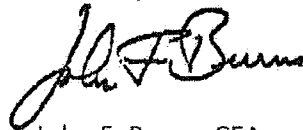
- In proposed **1 M.R.S.A. § 403-A(1)(C)**, a quorum of the SEGB would be required to be assembled physically at the meeting location, and a remote participant would not count toward a quorum. As noted above, our current Rule requires this *except* in cases when the Board Chair determines the allowance of votes by those members, and the counting of their “presence” for a quorum, to be *necessary to avoid undue hardship* to an applicant for an investment. Although perhaps ideal, this new requirement would be problematic for SEGB in cases of emergency when telephonic participation of members is necessary and quorums are *only* achievable by counting telephonic participants. We have found this option useful in several instances, as provided in the above example, and have only used this method approximately five times in the past three years. While the draft legislation creates exceptions for certain emergencies, as discussed below, we urge the committee to consider removing this requirement for a broader range of “emergencies.”
- **Subsection (D)** would require that, for use of remote board member participation, that “[t]he physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member’s physical attendance is not reasonably practical must be stated in the record of the public proceeding.” We would appreciate further guidance as to what constitutes “reasonably practical”? Would the board action subsequently be invalidated if we get it wrong?
- **Subsection 1(E)** requires that remote participants be able to “simultaneously” hear each other and speak. We are not certain what this means from a technology standpoint. Traditional speaker phones frequently require speaking and listening sequentially rather than simultaneously, but allow, in our view, adequate means of communication back and forth, and should be allowed.
- **Subsections (1)(H) and (2)(A)** create requirements that members not physically present: (1) receive in advance all documents to be discussed at the public meeting; and (2) disallows remote member voting if materials that may influence their decision are presented at the public proceeding but not to the remote member. Although SEGB strives to furnish all materials in advance to board members, sometimes last-minute materials are provided at the actual meeting. Often, such materials are not, absent the ability to immediately fax or e-mail it to the absent member, easily able to be transmitted to members in advance. A business seeking board approval may bring an object, large document or display to the meeting that could not practicably be provided instantaneously to a member participating electronically. At a minimum, an exception should be made in cases where substantial information has been presented and it is not practicable to furnish all late-arriving materials.

- **Subsection (3)(A)** limits emergency meetings to cases largely inapplicable to SEGB (a Governor-declared emergency or health emergency). The exceptions here should be broadened to allow for our current practice or these requirements should be deleted. We ask either to be left out of this legislative change or instead have an additional definition of “emergency” added for our needs.

In sum, the SEGB respectfully requests that the Committee consider the above concerns as you move forward on potential legislation for the 126<sup>th</sup> Legislature. In rare but important instances, SEGB members need to meet at a moment’s notice to approve a certain transaction, or approve a waiver so that the subject company is freed to do other things, for example. Requiring our members who live throughout the state to physically assemble to conduct important business with little notice could result in businesses not receiving financing assistance in a timely manner with potentially devastating results for the business.

Please let me know if you or the Committee have any questions or require further information. FAME’s legislative liaison, Bill Norbert, will be monitoring the issue and appearing at most Committee meetings on our behalf. We are glad to assist in any way possible.

Sincerely,

A handwritten signature in black ink that reads "John F. Burns". The signature is written in a cursive, flowing style.

John F. Burns, CFA  
Fund Manager

cc: Colleen McCarthy Reid, OPLA  
Curtis Bentley, OPLA

Summary: This Rule establishes the procedures and standards applicable to the Small Enterprise Growth Program, a program that provides for the administration of one or more funds that invest in eligible small Maine-based businesses demonstrating potential for high growth and significant public benefit.

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**1. Definitions**

A. **Reference to Act Definitions.** Certain terms used in this rule, which are defined in 10 M.R.S.A. §381 and following (the "Act"), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.

B. **Defined Terms**

1. "Administrative contract" means a contract between the Board and a service provider to administer specified aspects of the program.
2. "Applicant" means an individual or entity which has submitted a complete application to the Board.
3. "Authority" means the Finance Authority of Maine, or as the context requires, the Chief Executive Officer and employees of the Authority.
4. "Board" means the Small Enterprise Growth Board.
5. *[Repealed effective July 25, 2002]*
6. *[Repealed effective July 25, 2002]*
7. "Fund manager" means an individual or entity that has entered into an agreement with the Board to administer the program and the Program Funds, including but not limited to, the review and analysis of applications, meeting with applicants, providing analysis of the status of the Program Funds, publicizing the Program Funds, executing documents and taking other actions on behalf of the Board.
8. "Initial investment" means a disbursement from the SEGF of up to \$500,000, which may be made in a single payment or in a series of payments to the qualifying small business pursuant to one or more disbursement agreements.
9. "Investment agreement" means an agreement between the recipient and the Board setting out the terms on which the Board will invest in the recipient and on which the recipient will repay the Program Funds or otherwise provide a return to the Board on its investment.



10. "Program" means the Small Enterprise Growth Program, which shall encompass administration of the Small Enterprise Growth Fund and any and all Side Funds.
11. "Program Funds" means the Small Enterprise Growth Fund and any and all Side Funds.
12. "Public benefit" means that the disbursement will advance and assist the people of the State of Maine.
13. "Qualifying small business" means
  - (A) For the purpose of an initial investment by the Board, a business which employs the full time equivalent of 50 or fewer individuals at the time of application or has gross sales not exceeding \$5,000,000 within the most recent 12 months for which financial statements meeting the Board's requirements are available; or
  - (B) For the purpose of a subsequent investment by the Board, a business that has previously received an investment from the Board and that, in the judgment of the Board, evidences continued potential for high growth.
14. "Recipient" means a qualified small business in which the Board makes an investment from the Funds and includes a prospective recipient where the context requires, and also includes any related entity having 50% or greater common ownership or beneficial interest with the recipient or any individual or entity having a 50% or greater ownership or beneficial interest in the recipient.
15. "SEGF" means the Small Enterprise Growth Fund.
16. "Side Fund(s)" means a fund or funds, created and administered by the Board, from sources other than monies appropriated to the SEGF (and earnings thereon) which co-invests alongside the SEGF, or makes independent investments in select qualifying small businesses.
17. "Side Fund Investments" means investments in qualifying businesses by the Board from one or more Side Funds.
18. "Subsequent investment" means, an investment by the SEGF which, together with any initial investment, is in an amount which does not exceed ten percent (10%) of the capitalization of the SEGF from all appropriations received for application to the SEGF, plus any funds received from repayment, interest, royalties, equities or other interests in business enterprises, products or services to the extent the repayment, interest, royalties or equities or other interests are in excess of the amount initially invested in the recipient, as determined on the date of approval of the subsequent investment, which may be made in a single disbursement or a series of disbursements to the qualifying small business.

**2. Administration**

- A. The Board has the power to approve investments to qualifying small businesses from the Program Funds. The Board may not delegate the final authority to approve investments, but once having authorized a potential investment from the Program Funds within designated parameters approved by it, the Board may delegate to a subcommittee of the Board the authority to negotiate and agree to terms of the investment within those designated parameters.
- B. The Board may delegate to one or more subcommittees the authority to review applications. The subcommittee may be given the authority to deny applications for investments. The Board may determine in advance that such a denial will be final agency action, not subject to appeal to the full Board.
- C. The Board may create such other subcommittees as it may deem necessary for the administration of the Board's business.
- D. The Board may enter into administrative contracts with one or more individuals or entities to perform the administrative functions necessary to the efficient conduct of the program and the administration of the Program Funds. Without limitation, services contracted for may include development of rules, procedures, documentation, financial reporting, publicity, analysis and recommendations with respect to applications received. The contracts may provide compensation for services rendered and reasonable expenses.

**3. SEGF Administration**

- A. The Authority shall maintain and invest the cash balances of the SEGF at the direction of the Board and shall report regularly to the Board regarding the balance of the SEGF.
- B. Appropriations, interest on investments, interest on investments to recipients, principal repayments, grants, endowments and gifts will be added to the SEGF. The SEGF will be used to make investments to recipients and to pay costs and expenses associated with maintaining, servicing and administering the SEGF and the program.

**3A. Side Fund Administration**

- A. The Board may enter into agreements or contracts with third parties to create and fund Side Funds. Ownership interests in Side Funds may be allocated or issued by the Board in accordance with such agreements, and monies in the Side Funds, whether principal, interest, investment income, investment repayment, or profit, may be distributed by the Board to third parties in accordance with such agreements. Such agreements may also provide that the Board be entitled to receive and retain profits or other returns on investments by the Side Fund. Any amounts definitively earned by the Board in a Side Fund shall be transferred to the SEGF at such time as the Board may direct, but in no event later than the closing of such Side Fund.

- B. Monies for the creation or funding of Side Funds may come from any lawful source, including public entities and private individuals or entities, and may be structured as revolving or non-revolving funds, and all or a portion of such monies may be returned to the contributor or investor in accordance with the terms of the agreements governing the creation of such Side Funds.
- C. Interest on investments of Side Fund monies, interest on investments by Side Funds into Recipients, principal repayments, grants, endowments and gifts will be added to such Side Fund as directed by the Board. Such Side Funds may be used to make investments to Recipients and to pay costs and expenses associated with maintaining, servicing and administering the Side Funds and the program.
- D. The Board may charge and accept management fees, or carried interest for management, from the Side Funds, or from third parties, for management and administration of monies in the Side Funds, provided that in no event shall any such management fees be charged to or paid from monies appropriated by the state to the SEGF.
- E. The Authority shall maintain and invest any and all Side Funds for which it is given direction to do so by the Board and shall report regularly to the Board regarding the balance of such Side Funds.

#### 4. Eligibility

To be eligible to receive an investment from the Funds an applicant must meet each of the criteria in A-C below:

- A. Must be engaged in or involve at least one of the following:
  - 1. Marine Sciences
  - 2. Biotechnology
  - 3. Manufacturing
  - 4. Export of goods or services to locations outside the State or activities that result in significant amounts of capital being imported into the State
  - 5. Software development
  - 6. Provision or development of environmental services or technologies
  - 7. Provision or development of financial or insurance products or services
  - 8. Production of value-added goods from natural resources
  - 9. Other enterprises that the Board determines will further the purposes and intent of the program, including, but not limited to, retail sales, tourism and agricultural production.

- B. The qualifying small business must demonstrate that it has the potential for high growth and that it will provide public benefit.
- C. The qualifying small business must provide evidence of its need for financial assistance from the fund to realize its projected growth and achievement of public benefit.

**5. Application Procedure and Contents**

- A. Prior to being considered for an investment from the Program Funds, a company seeking investment must supply, at a minimum, the following information:
  - 1. A description of the applicant, which identifies the business of the applicant, including the legal form of the business entity.
  - 2. A statement of how the investment will be used.
  - 3. The background and experience of all individuals essential to the applicant. (Resumes may be attached to fulfill this requirement.)
  - 4. A description of the goal and/or opportunity, which inspired the applicant.
  - 5. A description of the current status of the applicant, including an assessment of the stage it is at in its effort to achieve its goal or opportunity.
  - 6. A description of all previous investments received by the applicant.
  - 7. An assessment of the current value of the applicant.
  - 8. An estimate of the amount of capital needed to achieve the goal or opportunity of the applicant.
  - 9. A description of the competition of the applicant.
  - 10. A statement of how the applicant will obtain the required matching funds.
  - 11. A description of the potential of the applicant for high growth and public benefit.
  - 12. The profit and loss statement, balance sheet and statement of cash flows for the most recent two years or such shorter time as the applicant has conducted the business.
  - 13. The applicant's projected financial statements for the next three years, including a profit and loss statement, balance sheet, statement of cash flows and any other projections the Board requests.

14. A disclosure of any actions, suits, proceedings or investigations pending against or, to the knowledge of the applicant or the individuals managing the applicant, threatened against or affecting the applicant or the individuals managing the applicant.

B. The applicant shall provide such additional information related to the business or the individuals managing the business as the Board may reasonably request.

## **6. Board Action**

A. Five (5) Board members shall constitute a quorum of the Board. If five (5) Board members are present at the beginning of any meeting, then a quorum exists for the transaction of the business. If any Board member(s) leaves a meeting at which a quorum was originally present, so that less than five (5) Board members remain, a quorum shall be deemed to continue to exist. Notwithstanding the foregoing, a majority of those present and voting is necessary for approval of an application or other action, and the affirmative vote of at least four (4) Board members is required to approve an investment.

B. No Board member may participate in a vote on an application where that member has a direct or indirect pecuniary interest in the outcome of the vote. Every interest of a Board member in any matter before the Board must be disclosed to the Board.

C. In cases where the Board approves an investment, the Board or an authorized subcommittee may issue a term sheet outlining the terms and conditions of the investment. In cases where the application for an investment from the Program Funds are denied, the Board shall issue (or cause to be issued) a letter of denial, which includes an explanation for the denial.

D. The Board shall have a physical location for each meeting at which members of the public may attend. Board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference shall not be entitled to vote nor be deemed present for the purposes of determining a quorum, except in cases when the Chair of the Board determines the allowance of votes by those members participating by teleconference, and the counting of such members towards a quorum is necessary to avoid undue hardship to an applicant for an investment.

## **7. Delegation of Application Review to Subcommittee**

A. Affirmative action by the Board is necessary to delegate to a subcommittee authority to review applications or authority to negotiate and agree to terms of an approved investment within designated parameters set by the Board.

B. Each subcommittee shall be composed of 1 or more members, except that a subcommittee with delegated authority to negotiate or approve a portfolio company investment shall have at least 3 members.

- C. Each decision of a subcommittee must be approved by a majority of all members of the subcommittee.
- D. Subcommittees may meet and take action by means of teleconference.

**8. Terms and Conditions of Investments**

- A. Initial investments, subsequent investments, and Side Fund Investments shall be made in an amount which is reasonable as shown by materials submitted by the qualified small business.
- B. Investments from the Program Funds may be in a form determined by the Board in recognition of the degree of risk of the proposal. The investment agreement may require royalties or additional payments based on sales, net cash flow or other financial measures, or rights to equity in the enterprise in the form of debentures, warrants, stock ownership or similar rights.
- C. With respect to investments from the SEGF, the qualifying small business must provide the Board satisfactory evidence that it has obtained other cash funds in an amount at least equal to the investment. The matching cash may be in the form of debt or equity, but must be at risk in the qualifying small business for a term at least equal to the Board's investment, must be invested no later than the date of the Board's investment and may be invested prior to the Board's investment as approved by the Board. If the Board approves an investment made prior to the Board's investment as the matching investment, it must remain at risk in the recipient for at least as long as the Board's investment. Side Fund investments may, in the discretion of the Board, count as matching investments to investments from the SEGF.
- D. The Board may make incremental investments to the recipient based on specific events or conditions established at the time of approval.
- E. The recipient will be required to report to the Board at least quarterly on each of the following performance measures:
  - 1. Financial performance;
  - 2. Job creation;
  - 3. Technological progress;
  - 4. Market progress; and
  - 5. Any other measures the Board requires.
- F. The recipient may not use the investment to make distributions to or for the benefit of an owner of the recipient or a related entity.

- G. No member, employee or agent of the Board may disclose to any person the contents of any business or marketing plan for any application, any financial statements or reports pertaining to any recipient, or any other records which may be confidential pursuant to 1 M.R.S.A. §401 and following and 10 M.R.S.A. §391 or any successor or similar provisions.

**9. Fees and Other Charges**

- A. *[Repealed Effective October 1, 1999]*

The Board may require the recipient to be responsible for costs and expenses of closing, administering and collecting on the investment.

**10. Advisory Rulings**

The Board is authorized to issue nonbonding advisory rulings as to the applicability of the program or the Board's rules to the applicant. Requests for advisory rulings must be in writing and must specifically identify the section or provision of the statute or rule on which the ruling is sought. The Board may decline to issue any ruling if the request is not sufficiently specific, is not accompanied by adequate information, does not adequately identify the applicant or the purpose for which the ruling is sought, or if the Board determines that issuance of a ruling would not assist the applicant or would be contrary to the purposes of the program. All rulings shall be in writing. Rulings shall not be binding upon the Board. The Board may charge an applicant for a ruling the Board's actual, out-of-pocket costs and expenses, if any, in preparing any ruling.

**11. Hearing Procedures**

In any case, where applicable law or rule requires the Board to conduct a hearing, the hearing shall be conducted substantially as follows:

- A. The proponent shall make a statement in support of its position, addressing the findings required to be made by the Board in considering the application. The Board may ask questions of the applicant. The Board may allow others to ask questions of the proponent through the chair.
- B. Opponents shall be given an opportunity to state the basis of their opposition to the matter before the Board.
- C. The proponent shall be given an opportunity to respond to the opposition presented.
- D. The Board may require additional information, and may continue the hearing to a later date or specify a period within which it will accept further evidence, but shall not be obligated to do so.

The Board may, in its discretion, retain a court reporter or otherwise make a record of the hearing, and the proponent shall be responsible for any costs and expenses of making the record.





BASIS STATEMENT

Amendment 6

The rule amendment adds provisions to allow the Board to establish and maintain so-called "Side Funds" from sources other than State appropriations, which would be a more flexible investment vehicle than the Small Enterprise Growth Fund. The ability to establish and manage these side funds was added by PL 2010, Chapter 475.

A public hearing was not held and no other comments were received.

Economic Impact Analysis Statement/Fiscal Impact Note

- A. There should be no costs associated with this Rule amendment.
- B. The Rule amendment will enable the Board to obtain the most timely financial information available regarding an applicant.
- C. The Rule amendment should not affect competition and the employment market.
- D. The above statements were made based on the experience of the members of the Board in administering this program.

The proposed Rule amendment will not impose any costs on municipalities or counties.

---

STATUTORY AUTHORITY: 10 M.R.S.A. §385

EFFECTIVE DATE:  
June 14, 1997

AMENDED:  
November 2, 1998 (Amendment 1) - Section VI  
October 1, 1999 (Amendment 2) - changes to Sections 1.B.5., 1.B.6, 1.B.10, 3.B, 4.C., 5.A. 1-14, including the addition of a new Section 5.A.13, and the renaming of the prior 5.A.13 to 5.A.14, 5.B., 8.A., 8.B., 8.C., 8.D., 8.E., 8.F., 8.G.,9.A. and 9.B.

NON-SUBSTANTIVE CHANGE:  
January 17, 2002 - moved from umbrella-unit number 94-457 to 95-592

AMENDED:

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July 25, 2002 (Amendment 3) - the addition of Sections 1.B.7A., 1B.7B., 1.B.7C., 1.B.11., 1.B.12., changes to Sections 1.B.8., 1.B.10., 2.A., 2.B., 2.C., 3.B., 4., 5.A., 5.A.2., 5.A.12., 5.A.13, 6.A., 6.C., 8., 8.A., 8.B., 8.D., 8.E., 8.F., 9., and the deletion of Sections 1.B.5, 1.B.6.

December 10, 2003 (Amendment 4), filing 2003-463 - Section 1.B.10.(A).

NON-SUBSTANTIVE CORRECTION:

February 18, 2004 - capitalization of "Board" on page 2

November 15, 2008 (Amendment 5)

AMENDED:

September 7, 2010 (Amendment 6). Added Section 3A and other conforming changes.



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF PUBLIC SAFETY  
MAINE EMERGENCY MEDICAL SERVICES  
152 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333



JOHN E. MORRIS  
COMMISSIONER

JAY BRADSHAW  
DIRECTOR

August 21, 2012

Maine State Legislature  
Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
13 State House Station  
Augusta, ME 04333

Re: Participating in meetings using technology

I am writing on behalf of the Emergency Medical Services' Board to express our concern regarding proposed changes that will affect the EMS Board's use of video/audio conferencing technology.

The EMS Board consists of 17 members who represent various aspects of emergency medical services, and come from all regions of the state. Members of the Board are compensated \$20/day, plus mileage to attend bi-monthly meetings, which are held in Augusta. The length of the meeting varies depending on the business at hand and can range from less than an hour to all day.

For over a decade, Maine EMS has utilized both audio and video conferencing to enable members to participate in Board meetings. This has enabled members whose work schedule or weather conditions made travel difficult, and for the meetings where there was a brief agenda. It has been particularly helpful for the members from distant rural areas who otherwise would not be able to attend.

Many of the proposed changes to 1 MRS § 403-A are consistent with how EMS currently utilizes technology. However, several could have a significant impact, to wit:

§ 403-A. (1)(C) will require that a quorum be assembled physically at the location identified in the public notice. EMS has always had a physical location where the public is able to attend, and there are often several members of the Board in attendance at that location. However, there have also been times when the agenda is brief and a majority of members participate in the meeting via technology. As such, a requirement that a minimum of 9 members be present at the physical location will have a negative effect on the ability of the Board to conduct business in a cost effective and timely manner.

§ 403-A. (1)(D) adds a restriction that the physical absence be "reasonably practical." It is unclear what this means and as such, we have concerns about how it may be interpreted.

PHONE: (207) 626-3860

TTY: (207) 287-3659

FAX: (207) 287-6251

§ 403-A (1)(I) restricts the ability to conduct public hearings via technology. The EMS Board is responsible for adopting rules in accordance with the ADA and has the additional statutory requirement to conduct a hearing in each region as determined necessary (32 MRS § 88 (2)(B)).

Since the late 1990s, EMS has utilized technology as a means to expand the ability of public participation during the rule-making process. Without the ability to utilize technology for public hearings, members of the public in rural areas will either be required to travel considerable distance to participate in person or be limited to providing written comments.

In § 403-A (2)(B) it is not clear to us what is meant by “quasi-judicial proceeding”. The Board of EMS does not utilize technology for member participation in Investigations Committee meetings, nor for Adjudicatory Fair Hearings. However, the routine business conducted by the Board may include rules clarifications, an appeal of a staff decision, or a waiver request. To the extent that these could be considered “quasi-judicial”, the proposed restriction will significantly delay the Board’s ability to act upon a license matters in a timely manner

Lastly, § 403-A (3) provides an exemption to the physical quorum exception only in emergency situations as defined in this section. As previously stated, the physical quorum requirement provides a significant obstacle to the Board’s ability to conduct its business.

We appreciate the opportunity to provide input regarding the proposed changes and encourage the Committee to not make changes that will provide additional obstacles to the Board as it conducts business, and to public participation in the rule making process.

I am planning to attend Thursday’s meeting and will be happy to provide additional information that will help the Committee.

Sincerely,



Jay Bradshaw  
Director



PAUL R. LePAGE  
GOVERNOR

STATE OF MAINE  
WORKERS' COMPENSATION BOARD  
GENERAL COUNSEL'S OFFICE  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

JOHN C. ROHDE, GENERAL COUNSEL  
JAN M. ADAMS, ASSISTANT GENERAL COUNSEL

PAUL H. SIGHINOLFI, ESQ.  
EXECUTIVE DIRECTOR /CHAIR

August 21, 2012

Maine State Legislature  
Office of Policy and Legal Analysis  
Right to Know Advisory Committee  
13 State House Station  
Augusta, Maine 04330

**RE: Draft Legislation for 39-A M.R.S.A. § 151(5)**

To the Members of the Right to Know Advisory Committee:

On behalf of the Workers' Compensation Board (the "Board"), I would like to thank the Committee for the opportunity to comment on the draft legislation regarding use of technology to conduct public proceedings. For the reasons stated in this letter, the Board respectfully suggests that its statutory authority to conduct meetings "by telephone or other remote-access technology" remain unchanged. 39-A M.R.S.A. § 151(5).

The Board consists of three management members, three labor members and a chair who is also the Board's executive director. The six management and labor members are chosen from lists provided by the Maine Chamber of Commerce and the Maine AFL-CIO respectively. They are not full-time Board employees. Each member serves on the Board while simultaneously working full-time in another occupation. It is sometimes difficult for these members to juggle the demands of their full-time occupations with the obligations that come with service on the Board. This is especially true given that Maine is a large state and members are sometimes required to travel long distances to attend meetings.

Because of these difficulties, the Legislature, in 2004, added a provision to the Workers' Compensation Act permitting Board members to participate in meetings "by telephone or other remote-access technology." 39-A M.R.S.A. § 151(5). This provision has worked well since its inception. Board members have been able to participate in meetings even when the demands of their full-time occupations make their physical presence impossible. It also is a means of assuring potential Board members who live far from the Board's central office in Augusta that, should they be appointed to the

TEL: 207-287-7086  
or toll-free in Maine  
1-888-801-9087

TTY: 877-832-5525

FAX: 207-287-7198

C-5

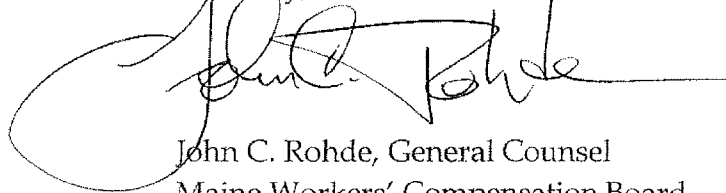
Board, they will be able to fulfill their duties as a member of the Board even if their physical presence is not always possible.

The draft legislation will make remote participation more difficult. Of particular concern is § 403-A (1)(D) which only permits participation by remote-access technology when physical attendance is "not reasonably practical." It is not clear what "not reasonably practical" means. It is clear, though, that this language would likely lead the Board back to where it was prior to 2004 when it was difficult to recruit and retain Board members.

For these reasons, the Board respectfully requests that the draft legislation, if it goes forward, leave 39-A M.R.S.A. § 151(5) unaltered.

Thank you again for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Rohde", written over a large, stylized circular flourish.

John C. Rohde, General Counsel  
Maine Workers' Compensation Board

JCR/ldl



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

August 20, 2012

Judy Meyer, Chair  
Right to Know Advisory Committee  
13 State House Station  
Augusta, ME 04332

Dear Ms. Meyer,

Thank you for the opportunity to comment on behalf of the Ethics Commission staff concerning draft legislation governing the use of technology in meetings of public boards and commissions. It is an important topic, and we are grateful for your attention to it, as well as all of the other areas within your committee's jurisdiction that involve balancing efficient government operations and the public's interest in transparency.

The Commission staff recommends adopting the proposed legislation as drafted, which would make no changes to the Commission's meeting statute (21-A M.R.S.A. § 1002(2)).

#### **About the Commission**

The Commission receives financial reports from candidates, political parties, political action committees and other organizations raising and spending money to influence elections. We also administer the Maine Clean Election Act. We receive complaints from the public concerning acceptance of illegal contributions, inaccurate or late financial reporting, or misuse of public campaign funds.

The Commissioners are private citizens who are selected jointly by the legislative leaders and the Governor. Typically, the Commission has consisted of two Democratic members, two Republican members, and someone who is not enrolled in a political party. It is helpful if all five members can participate in every meeting, to promote the appearance of a politically balanced decision.

Generally, the Commission meets monthly. On meeting days, some of our members have regularly driven 7 or 8 hours round trip to Augusta, including Alan Harding (of Presque Isle) and Vinton Cassidy (of Calais).

C-10

### **Special Requirement to Meet within Two Days of a Complaint**

The Legislature has decided that – during the last 28 days before an election – the Commission is required to meet within two business days of receiving a complaint or question. (21-A M.R.S.A. §§ 1002(1) & (2)) Thus, during this 28-day period, the Commission's meeting dates are largely outside of the control of the Commission. The Commissioners may need to set aside personal or professional plans on short notice to participate in a meeting. This meeting requirement may be unique within Maine Law, due to its unpredictability for board members.

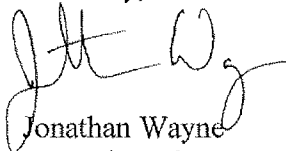
Accordingly, the Legislature authorized the Commission to meet by telephone during this 28-day period, provided that the Commission gives notice to all affected parties and the Commission's office remains open to the press and other members of the public to participate. (21-A M.R.S.A. § 1002(2))

### **Recommendation by Commission Staff**

The Commission staff therefore recommends making no changes to 21-A M.R.S.A. § 1002(2), including the notwithstanding phrase in the second sentence. This will provide the Commission the flexibility to set its own reasonable procedures for Commission meetings held during this limited time period. The Commission has a positive track record of adopting procedures in recent years that have promoted the transparency of our meeting process. In the last nine years, I cannot remember receiving any complaint or criticism that one of our meetings was closed to the public or did not comply with the open meetings law.

Thank you for your consideration of this letter.

Sincerely,



Jonathan Wayne  
Executive Director



RTK AC General Agency Confidential Individual and Business Records Template.

Sec. X. XX MRSA §XXX-X, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

Sec. X. XX MRSA §XXX-X is enacted to read:

**§ XXX-X. Freedom of access; confidentiality of records**

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] is confidential for purposes of Title 1, section 402, subsection 3, paragraph A if the applicant or recipient is an individual.

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains.

C. A financial statement or tax return.

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project.

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

D-1

## RTK AC General Agency Confidential Individual and Business Records Template

not to be considered confidential unless it meets the requirements of the other paragraphs of the subsection.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information.

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, **except that the [board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria** in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

## RTK AC General Agency Confidential Individual and Business Records Template

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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**RIGHT TO KNOW ADVISORY COMMITTEE  
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA

September 13, 2012

1:00 p.m.

Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Judy Meyer, Chair
2. Projects
  - A. Email retention, storage, retrieval
  - B. Status of e-mail addresses collected by schools and towns  
Review draft
  - C. Use of technology in public proceedings (participation from remote locations)  
Review revised draft
  - D. Templates for drafting specific confidentiality statutes
3. Scheduling future meetings
4. Other?

**Adjourn**



# Department Series Report

4: Conservation

## Description Description

56#:

Schedule #:	Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
537	2#:Citizen's Forestry Council Meeting Minutes Materials including agenda business items and minutes for official meetings of the CFAC	Paper	10/24/198	3 Years	No Retention	0 Archives	Current	
1250	13#:Commissioners Correspondence (Conservation) Commissioners correspondence (Department of Conservation)	Paper	2/23/1993	2 Years	0 Years	0 Archives	Current	
537	1#:Forests For the Future Internal Working Papers Internal working papers of the program, results of meetings, transferring information, etc.	Paper	10/24/198	50 Years	No Retention	0 Destroy	Current	
537	4#:Forests For The Future Program Reference Materials Consists of studies, reports, articles, and so forth about the forest resources of Maine.	Paper	10/24/198	50 Years	No Retention	0 Destroy	Current	
537	3#:General Correspondence General Correspondence between program staff and the CFAC members. Plus other correspondence with the public.	Paper	10/24/198	3 Years	3 Years	3 Destroy	Current	
1298	14#:Historic photos and videos of the Department of Conservation activities Photos of state parks, Spruce Budworm, Public Lands, general fauna and flora. Videos of Snowmobile Training, Bigelow Mountain, etc. Keep in Agency until no longer needed.	MP/SP	4/15/1999	Variable - See Description	0 Years	0 Archives	Current	
574	5#:Legislative Committee Documents Documents in the nature of reports and studies from Joint Standing Committees to which the Deputy Commissioner is assigned.	Paper	1/9/1987	3 Years	No Retention	0 Archives	Current	
1143	12A:Planning Files (Forestry)							

A-1

# Department Series Report

## 4: Conservation

### Description

These are working files of reports mandated by the Legislature regarding forest practices. File include dicennial surveys; forest health reports; import export data; extracts for NOTAR (Notification, Tracking and Reporting System.) Keep in agency life of project plus 10 years.

### Schedule #:

1143 12B:Planning Files (Forestry) Final Report  
 These are working files of reports mandated by the Legislature regarding forest practices. File include dicennial surveys; forest health reports; import export data; extracts for NOTAR (Notification, Tracking and Reporting System.) Keep in agency life of project plus 10 years.

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Paper	3/15/1995	Years 10	Years 10	Destroy	Current	Fiscal Year Type
Paper	3/15/1995	Years 0	No Retention 0	Archives	Current	Fiscal Year Type

# Department Series Report

4: Conservation

Description Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Dispositio	Status	Fiscal Year Type Fiscal Year Type
58#:Forestry  Schedule #: 645 8#:Air Detection Contracts Contracts for service, riders, amendments, flight maps, and related	Paper	12/16/198	3 Years	No Retention 0	Destroy	Current	
Schedule #: 1506 23#:Civilian Conservation Corps Documents, newsclippings, training manuals.	Paper	2/13/1989	0	0	Archives	Current	
Schedule #: 662 11#:Forestry Appeals Board Records Records of the appeals brought before the Forestry Appeals Board during the Board's existence. To include : Inter-departmental Memoranda; Application for review and related correspondence.	Paper	2/22/1988	0 Years	No Retention 0	Archives	Current	





# Department Series Report

7: Executive

## Description Description

102#:Governor, Office of the

**Schedule #:** 1107 5#:Boards and Commissions File  
Working files of the myriad of Boards and Commissions throughout Maine State Government. Files contain: resumes, applications, appointments, length of term, etc. Keep in agency until no longer referenced.

**Schedule #:** 1107 2#:Constituent & Low Level Correspondence  
Correspondence to and from the Governor's Office from constituents including: birth announcements; retirement letters; birthdays and birthday parties; letters of regret for not attending a function; etc.

**Schedule #:** 1281 117#:Executive Orders  
Executive orders issued by the Office of the Governor, with all referenced attachments.

**Schedule #:** 1107 6#:Federal Agency Files  
These files deal with issues relating to the State of Maine and the various departments of the Federal Government. Examples: Portsmouth Naval Shipyard; various dredging projects.

**Schedule #:** 1115 8#:Governor's E-Mail Correspondence  
Electronic mail sent to and from the Governor's Office. Retain in office through end of term, then transfer to Archives.

**Schedule #:** 1108 7#:Governor's Schedule  
The Governor's scheduled appointments including: appointment books, daily, weekly, and monthly calendars and back-up materials. Keep in agency until term complete.

**Schedule #:** 1107 4#:Governor's Speeches

Tuesday, September 04, 2012

**Media**

Paper

Paper

Paper

Paper

Paper

Paper

**Approval Date**

8/23/1994 Contingent Upon Event - See Description

8/23/1994 Years 1

8/5/1998 Years 2

8/23/1994 Years 1

2/5/2003 Contingent Upon Event - See Description

8/23/1994 Contingent Upon Event - See Description

**Rec Center Retention**

No Retention 0

Years 3

Years 0

No Retention 0

Years 0

No Retention 0

**Disposition**

Destroy

Destroy

Archives

Archives

Archives

Archives

**Status**

Current

Current

Current

Current

Current

Current

**Fiscal Year Type**

**Fiscal Year Type**

A-2

# Department Series Report

7: Executive

**Description**  
**Description**  
**Media**  
**Approva I Date**  
**In Agency Retention**  
**Rec Center Retention**  
**Dispositio**  
**Status**  
**Fiscal Year Type**  
**Fiscal Year Type**

Speeches made by the Governor to various groups, organizations, the Legislature, etc. These speeches are on both cards and paper. Keep in agency

Paper  
 8/23/1994 Contingent Upon Event - See Description  
 No Retention: 0  
 Archives  
 Current

**Schedule #:** 1107 1#:Issues Files

These files are State issues which come from the various departments and from the Governor's Office. These files are kept by the various department liaisons within the Governor's Office. Issues such as: gay rights; Kathy Haggerty; marijuana; Edwards Dam; Workers Compensation. Keep in agency until issue resolved plus 1 year.

Paper  
 8/23/1994 Years 1  
 No Retention 0  
 Archives  
 Current

**Schedule #:** 1107 3#:Judicial Files

These files include judicial hopefuls, appointed judges, and retired judges. Files contain: applications, resumes and related correspondence. Keep in agency until no longer referenced.

Paper  
 8/23/1994 Contingent Upon Event - See Description  
 No Retention 0  
 Destroy  
 Current

**Schedule #:** 0 1632:Maine Law Enforcement Planning & Assistance Agency

This Agency was created by a federal grant to study Juvenile delinquency in

Paper  
 9/1/2000 Years 0  
 No Retention 0  
 Archives  
 Current

**Schedule #:** 1123 10#:Maine State Agency and Department Files

Miscellaneous memos concerning various issues, generally unrelated. These are copies of letters from the Governor to individuals on miscellaneous topics related to the Departments. Files contain: memos requesting contingency training account funds, briefing memos from commissioners to the Governor on issues or phone calls to make. These files were established as general files when there was no need for specific issue files.

Paper  
 11/15/199 Years 2  
 Years 12  
 Archives  
 Current

**Schedule #:** 1690 20#:Maine State Employees Combined Charitable Appeal Campaign (MSECCA)

# Department Series Report

7: Executive

## Description

These records support the Maine State Employees Combined Charitable Appeal Campaign (MSECCA) program, a coordinated campaign to encourage financial support from state employees for various charitable agencies. The records are used for accountability of how employee's contributions are distributed to the various charitable organizations. All records pertaining to Federal and Agency submission applications and Committee decisions, correspondence, campaign audit reports, administrator contracts, Planning & Admission Committee

Schedule #:	Description	Media	Approva I Date	In Agency Retention	Rec Center Retention	Dispositio	Status	Fiscal Year Type
1129	12#:Pardon Board Documentation Documents associated with Pardon requests---memoranda describing cases and reasons for pardon request; correspondence scheduling hearings and notifying interested parties of hearing outcomes; other related correspondence. Keep in agency until term ends.	Paper	10/23/200	0	10 Years	Destroy	Current	Fiscal Year Type
1131	13#:Pocket Vetoes Enactors from the Legislature which became "pocket vetoes" when they weren't signed or vetoed at the end of the sessions. A "pocket veto" is a bill passed by the Legislature, but not signed by the Governor by the end of the Legislative session, thereby do not become law. This is effect vetoes the Bill.	Paper	12/29/199	0	No Retention	Archives	Current	Fiscal Year Type
1138	15#:Press Clippings Newspaper articles about the Governor of Maine from various newspapers throughout Maine.	Paper	12/29/199	0	No Retention	Archives	Current	Fiscal Year Type
1136	14#:Special Projects Newspaper articles about the Governor of Maine from various newspapers throughout Maine. Keep in Agency one year then microfilm. Destroy clippings after film is verified.	Roll Microfilm	1/6/1995	0	No Retention	Archives	Current	Fiscal Year Type
1129	11#:Press Releases Public statements released to the media by the Governor's Press Secretary. Keep in agency until term expires.	NC	1/6/1995	1	No Retention	Destroy	Current	Fiscal Year Type
1129	11#:Press Releases Public statements released to the media by the Governor's Press Secretary. Keep in agency until term expires.	Paper	12/29/199	0	No Retention	Archives	Current	Fiscal Year Type

# Department Series Report

7: Executive

## Description Description

Miscellaneous projects of the Governor's - Loaned Executive Program, Distinguished Lecture Series, and other projects that don't fall within normal office operations of the office.

**Schedule #:** 1115 9#: Weekly Reports of Commissioners  
Each week written reports are submitted to the Governor's Office by the various commissioners about their departments. Reports contain major issues of the day regarding their departments. Retain in agency until governor's term ends.

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Paper	1/5/1994	Years 4	No Retention 0	Archives	Current	
Paper	11/15/199	Contingent Upon Event - See Description 0	Years 4	Archives	Current	

# Department Series Report

29: Secretary of State

## Description Description

### 255#: Maine State Archives

**Schedule #:** 709 43#: Maine State Archives Mailing Lists  
Lists of names and addresses of individuals and organizations which receive MSA newsletter and other information.

Lists of names and addresses of individuals and organizations which receive MSA newsletter and other information.

**Schedule #:** 709 42#: Maine State Archives Newsletters  
Newsletters describing activities of the Maine State Archives and disseminating information to such audiences as historical groups and records officers.

Newsletters describing activities of the Maine State Archives and disseminating information to such audiences as historical groups and records officers.

**Schedule #:** 709 41#: MSA Computer Documentation  
Computer manuals (published and agency - created) for hardware and software owned by MSA; program diskettes. Retention begins when software

Computer manuals (published and agency - created) for hardware and software owned by MSA; program diskettes. Retention begins when software

**Schedule #:** 709 40#: MSA Publications  
The State Archives is authorized by Title V, Chapter 6 to publish and sell to the public archival material, reports, etc. On copy of each revision (excluding "revisions" which are confined to minor corrections of the text) is to be retained by the agency.

The State Archives is authorized by Title V, Chapter 6 to publish and sell to the public archival material, reports, etc. On copy of each revision (excluding "revisions" which are confined to minor corrections of the text) is to be retained by the agency.

**Schedule #:** 352 28#: Administrative Files, Office of State Archivist

Tuesday, September 04, 2012

Media	Approva l Date	In Agency Retention	Rec Center Retention	Dispositio	Status	Fiscal Year Type
Digital File	2/13/1989	Destroy When Updated	0	0	Destroy	Current
Computer Printout	2/13/1989	Destroy When Updated	0	0	Destroy	Current
Digital File	2/13/1989	Years	1	0	Destroy	Current
Paper	2/13/1989	Years	2	0	Archives	Current
Paper	2/13/1989	Years	5	0	Destroy	Current
Digital File	2/13/1989	Years	5	0	Destroy	Current
Paper	2/13/1989	Years	0	0	Archives	Current
Digital File	2/13/1989	Destroy When Updated	0	0	Destroy	Current

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# Department Series Report

29: Secretary of State

Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Confidential correspondence and reference materials in operating files maintained in the State Archivist's private office.	Paper	6/21/1985 Years	10	No Retention 0	Archives	Current	Fiscal Year Type
<b>Schedule #:</b> 976 44#: Copier Repair Logs							
A services log is kept on how many times and when a copier repairman comes or is called. Also the work orders associated with the call are kept with the	Paper	2/24/1992 Years	1	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 386 30#: Correspondence - Directors, Maine State Archives							
Requests for tours, special programs, training sessions, technical assistance, speeches; requests for explanations of agency policies, programs, services; nonroutine reference requests involving Civil War, other military records. Replies to requests for information regarding division policies and procedures; requests for reference materials, tours, training etc.; memoranda (inter-office and intra-agency) concerning staff meetings, processing of forms.	Paper	2/13/1989 Years	2	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 312 11#: Correspondence - Requests for Employment							
Inquiries concerning employment with Maine State Archives.	Paper	6/19/1981 Years	2	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 312 8#: Daily Mileage Report - State Owned Vehicles							
Duplicate copy book of all use of state vehicle including mileage, points visited, driver.	Paper	6/19/1981 Years	2	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 566 32#: Employee Vacation - Sick Leave Daily Breakdown MSA 99							
This document is kept for each working day. It allows the State Archivist to see who is absent and for what reason on a daily basis.	Paper	10/24/198 Years	2	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 337 25#: General Correspondence							
Relating to audit reports, council orders, Executive Dept. memos, information bulletins and other inter-agency correspondence of the business office.	Paper	2/15/1985 Years	3	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 312 6#: Incoming Telephone Calls							

# Department Series Report

29: Secretary of State

## Description Description

A reference copy of all incoming telephone messages.

Fiscal Year Type  
Fiscal Year Type

Status  
Current

Dispositio  
Destroy

Rec Center  
Retention

In Agency  
Retention

Approva  
IDate

Media

Paper  
2/13/1989 Retention of 0  
Less than 1  
Year - See  
Description

No Retention 0

0

0

Paper

**Schedule #:** 1655 101:Maine Historical Records Adv. Board Recommendations to National Publications and Records Com.

These records provide examples of proposals to the National Publications and Records Commission, which are used in helping other organizations prepare similar proposals. Final grant proposals formally submitted for Board review as part of a grant submission by a Maine historical records repository to the National Publications and Records Commission. Summary of Board recommendations, NHPRC correspondence related to particular proposals, such as the notice of funding and final reports

Current

Destroy

0

8

Years

Paper

**Schedule #:** 1655 100:Maine Historical Records Advisory Board Overall Projects Management

These records summarize projects undertaken by the Maine Historical Records Advisory Board, a Board charged with supporting the preservation of, and access to, Maine's historical records. They are used by the Board to manage the projects and to help plan future projects such as the Board Staffing Grants, Statewide Records Surveys, and Reprints. These records document the activities of the Maine Historical Records Advisory Board, as well as the preservation techniques and standards of importance considered appropriate for preserving those materials. Board project proposals and authorization, if any, from funding agency. Policy documents describing project operation (purpose, application requirements, expected outcomes) Correspondence and memos documenting any unusual events Selected examples of typical products. Reports required by the Board or other funding sources, including any project summaries, statistical analyses, outside evaluations.

Current

Archives

0

5

Years

Paper

**Schedule #:** 1655 102:Maine Historical Records Advisory Board Regrant Intermediate Planning Documents



# Department Series Report

29: Secretary of State

## Description Description

These records provide background information on historical records collections in Maine. They are used by staff to provide background information in setting priorities and in planning projects for the Board. The consultant reports, final reports, and rejected/withdrawn applications are also used to provide guidance to individual records repositories.

Consultant reports for historical records repositories.

Final reports from grantees

Rejected/withdrawn applications

RegrantAll Table (located in Grants database at Common\MHRAB\grants.mdb), showing applicants, project titles, grant awards, details of tracking grants

### Schedule #: 1655 103:Maine Historical Records Advisory Board Regrant Program Routine

These records are used in managing the applications for specific deadlines of the Regrant Program, a grant program for non-profit historical records repositories and local and county government. They include the detailed information pertinent only to the projects as they are taking place. They are used by the Regrant Program administrator to administrate the details of the Regrant Program.

Completed Applications

Correspondence related to funded grant projects

Printed summary of written Board review comments and numerical ratings prior to Board review meeting; original Board review forms not included in summary

### Schedule #: 331 14#:Maine State Archives Employees Weekly Time & Production Reports

Forms, designed specifically for each operational unit, that have been revised and redesigned several times since the early 1970's. All show detailed breakdown of time spent by each employee performing the component tasks and activities of the division or unit to which he is assigned.

Forms, designed specifically for each operational unit, that have been revised and redesigned several times since the early 1970's. All show detailed breakdown of time spent by each employee performing the component tasks and activities of the division or unit to which he is assigned.

### Schedule #: 1762 106#:Maine State Library Digitized Maps

Digitized map collection from the holdings of the Maine State Library. These are invaluable Maine related historical maps which include information on the history and geography of Maine of archival interest to historians and citizens of

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Paper	Years	10	0	Destroy	Current	
Paper	9/18/2006	Years	3	Destroy	Current	
Digital File	2/13/1989	Years	5	No Retention	0	Current
Paper	2/24/1984	Years	1	No Retention	0	Current
Digital File	5/21/2010		0	Archives	0	Current

# Department Series Report

29: Secretary of State

Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
<b>Schedule #:</b> 312 Daily register showing staff users of photocopier machine, number of copies, agency unit, number of wasted copies.	Paper	12/30/198	1 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 337 A reference copy of all incoming phone messages.	Paper	2/15/1985	2 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 312 Time key signed out and returned and signature of user. Note: May be destroyed after 6 months.	Paper	6/19/1981	1 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 305 Monthly Narrative Reports and Weekly Time & Production Reports (monthly statistics reported are kept permanently in Monthly Statistics Register.)	Paper	2/20/1981	1 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 613 Request for use of leave credits by employee; attached to and filed with MSA 14.	Paper	4/24/1987	2 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 351 A record of all visitors who enter the restricted area beyond the security door located in the third floor corridor.	Paper	6/21/1985	2 Years	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 709 Documents received by the State Archivist from MSA employees, such as: division directors' reports; carbon or xerox copies of letters/memos sent by division directors; informal memos from other employees. State Archivist will glean each year before RC transfer, and will destroy/duplicate/transitory material	Paper	2/13/1989	4 Years	6 Years	Archives	Current	
<b>Schedule #:</b> 709 37#: State Archivist's Correspondence - Archival							

# Department Series Report

29: Secretary of State

Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Correspondence documenting such activities as: major plant alterations; development of background to policy decisions; discussions of legal issues specific to the agency; staff and organization structure decision-making; crisis	Paper	2/13/1989	Years 4	Years 6	Archives	Current	
Correspondence documenting such activities as: major plant alterations; development of background to policy decisions; discussions of legal issues specific to the agency; staff and organization structure decision-making; crisis	Digital File	2/13/1989	Destroy When Updated	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 709 36#:State Archivist's Correspondence - Short Term Evidential Incoming and outgoing correspondence of State Archivist on all; matters of less than permanent significance. Intra-office memoranda duplicating information documented in agency's permanent records; correspondence with other governmental agencies concerning equipment repairs, attendance at informational meetings, and other "housekeeping" issues; correspondence with individuals and private organizations.	Digital File	2/13/1989	Destroy When Updated	No Retention 0	Destroy	Current	
Incoming and outgoing correspondence of State Archivist on all; matters of less than permanent significance. Intra-office memoranda duplicating information documented in agency's permanent records; correspondence with other governmental agencies concerning equipment repairs, attendance at informational meetings, and other "housekeeping" issues; correspondence with individuals and private organizations.	Paper	2/13/1989	Years 6	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 709 35#:State Archivist's Correspondence Transitory Outgoing correspondence of State Archivist on matters of no legal significance, such as: invitations to dignitaries to attend special events; letters of thanks; letters of transmittal in response to requests for reference materials.(Destroy after 60 days.)	Hard Disk	2/13/1989	Variable - See Description	No Retention 0	Destroy	Current	
<b>Schedule #:</b> 709 39#:State Archivist's Program Files Records of the State Archivist's activities as chair/ex officio member of boards and committees; records of archival/records management/historical programs/major projects conducted or attended by State Archivist. Includes minutes of meetings; agendas; notes for talks or speeches; outlines of training programs; testimony/comments received at hearings. State Archivist will glean each calendar year before records transfer.	Paper	2/13/1989	Years 4	Years 6	Archives	Current	

**Schedule #:** 337 22#:Time Record Book

Tuesday, September 04, 2012

# Department Series Report

29: Secretary of State

## Description

A record of each employee's weekly time, overtime, and accumulated vacation and sick leave. Write over/destroy after employee leaves agency.

**Schedule #:** 312 9#: Vehicle Log

Employee's use of State vehicles with sign out and in time and signature of user.

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Digital File	2/13/1989	Contingent Upon Event - See Description	No Retention 0	Destroy	Current	
Paper	6/19/1981	Years 1	No Retention 0	Destroy	Current	



# Department Series Report

30: Legislature

Description	Media	Approval Date	In Agency Retention	Rec Center Retention	Dispositio	Status	Fiscal Year Type
<p><b>260#: Legislature</b></p> <p><b>Schedule #:</b> 1374 24: Bound copies of the House Advance Journal and Calendar</p> <p>Bound copies of the Senate Advance Journal and Calendars are kept by the Clerk's Office as a historical reference on how items were taken up in the Senate Chamber, to use as samples. The Bound Copy of the Senate Advance Journal and Calendar contain a copy to the daily calendar used in the Senate Chamber during session.</p>	Paper	1/9/2001 Years	4 Years	0 Years	Archives	Current	Fiscal Year Type
<p><b>Schedule #:</b> 1374 25: Bound Copies of the Senate Advance Journal and Calendar</p> <p>Senate Advance Journal and Calendars are kept in the Clerk's Office as a historical reference on how items were taken up in the Senate Chamber. The bound copy of the Senate Advance Journal and Calendar contains a copy of the daily calendar used in the chamber during session.</p>	Paper	1/9/2001 Years	4 Years	0 Years	Archives	Current	Fiscal Year Type
<p><b>Schedule #:</b> 1631 26#: Committee Clerk Handbooks</p> <p>These are the handbooks that the Committee clerks follow, containing the clerk's assignments for each standing committee. These books are guidelines that the clerks follow. The handbooks change from Legislative session to Legislative session.</p>	Paper	6/16/2005 Years	2 Years	5 Years	Archives	Current	Fiscal Year Type
<p><b>Schedule #:</b> 1631 27#: Committee Rules of Procedure</p> <p>These are written rules that the Joint Standing Committees agree on at the beginning of each session. The rules are used to determine how business is conducted on a daily basis. These rules are not retained anywhere else. Legislators and staff may need to look back at previous years to determine how business was conducted. A typical file for one year will have a two page "agreement" from each standing committee.</p>	Paper	6/16/2005 Years	2 Years	10 Years	Archives	Current	Fiscal Year Type
<p><b>Schedule #:</b> 911 8#: County Budgets</p> <p>County budgets submitted to Legislature each year.</p>	Paper	2/7/1991 Years	3 Years	No Retention	Archives	Current	Fiscal Year Type
<p><b>Schedule #:</b> 1631 28#: Final Letters of Committees</p>							

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# Department Series Report

36: Legislature

## Description Description

Each Legislative Committee prepares a "final" letter at the end of each session. The information in this letter is vital to knowing what the outcome of the committee's bills were for the session. For example, it breaks down how many bills were killed, how many passed, how many were amended. These records are often used by staff and legislators in trying to determine how many bills a committee may have in the future and statistically how things change from year to year. A typical file would have between 15 and 16 letters from a

**Schedule #:** 1011 10#:Legislative Committee Master Files  
Files relating to each legislative proposal are created and maintained by clerks of each legislative committee. Each file includes a copy of the legislative document(bill), notice of public hearing, public hearing sign- in sheet, staff memoranda, fiscal note (if bill affects revenues), written testimony distributed at the public hearing, and proposed amendments, the vote of the committee and the signed report of the committee.

**Schedule #:** 1221 11#:Legislative Computer Backup Tapes  
Backup tapes for legislative computer system. Tapes include the work of all legislative offices and the bill status system. Includes Wang Virtual Systems Back Up Tapes 9 Track Reel to Reel, Wang Virtual Systems Backup Tapes 8mm Cassette and Wang Virtual Systems 288 megabyte Removable Disc Packs

**Schedule #:** 1011 9#:Legislative Day Files  
This series consists of files, one for each day the Legislature meets. Each file includes a copy of the printed advance calendar and supplemental calendars with hand written notes of floor actions. This information is posted in the online legislative bill status system. This same information can also be found in the House and Senate Journals (3 copies prepared) and in the Legislative Record (published).

**Schedule #:** 1389 14:Legislative Studies  
Legislative Studies deal with specific issues. These files would include any type of testimony given at public hearings. The files would also include any documentation of the work that the Committee did in the meetings.

**Schedule #:** 711 3#:Photographic Prints: Speakers of the House

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Paper	6/16/2005 Years	2	5 Years	Archives	Current	

Paper	2/23/1993 Years	1	No Retention	Archives	Current	
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Magnetic Tape	4/23/1997 Years	1	2 Years	Destroy	Current	
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Paper	2/23/1993 Years	1	No Retention	Destroy	Current	
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Paper	2/21/2001 Years	1	10 Years	Archives	Current	
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# Department Series Report

30: Legislature

## Description Description

Photographic prints of speakers of the house.

**Schedule #:** 666 2#:Special Committee Report Files  
Documents used by Committee in preparing its reports for each Legislative session. Included are file copies of majority report and minority report; proposed legislation; statements of citizens and interested groups/organizations; surveys, calculations, statistical information; related correspondence. To be filmed 3 years after session, after which paper may be destroyed.

Documents used by Committee in preparing its reports for each Legislative session. Included are file copies of majority report and minority report; proposed legislation; statements of citizens and interested groups/organizations; surveys, calculations, statistical information; related correspondence. To be filmed 3 years after session, after which paper may be destroyed.

**Schedule #:** 666 1#:Standing Committee Report Files  
Documents used by Committee in preparing its reports for each Legislative session. Included are file copies of majority report and minority report; proposed legislation; statements of citizens and interested groups/organizations; surveys, calculations, statistical information; related correspondence. To be filmed 3 years after session, after which paper may be destroyed.

Documents used by Committee in preparing its reports for each Legislative session. Included are file copies of majority report and minority report; proposed legislation; statements of citizens and interested groups/organizations; surveys, calculations, statistical information; related correspondence. To be filmed 3 years after session, after which paper may be destroyed.

Media	Approval Date	In Agency Retention	Rec Center Retention	Disposition	Status	Fiscal Year Type
Still Photograph	2/13/1989	0 Years	No Retention 0	Archives	Current	Fiscal Year Type
Paper	6/22/1988	3 Years	No Retention 0	Destroy	Current	Fiscal Year Type
Roll Microfilm	6/22/1988	50 Years	No Retention 0	Destroy	Current	Fiscal Year Type
Paper	6/22/1988	3 Years	No Retention 0	Destroy	Current	Fiscal Year Type
Roll Microfilm	6/22/1988	50 Years	No Retention 0	Destroy	Current	Fiscal Year Type







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**General Schedules, for Records Common to Most or All Agencies**

- Schedule 1, Vendor Series
- Schedule 2, Accounting Series
- Schedule 3, Payrolls and Authorizations
- Schedule 4, Income Series
- Schedule 5, Budget Series
- Schedule 6, Financial Order Series
- Schedule 7, Attorney General Opinions Series
- Schedule 8, Inventory Series
- Schedule 9, Records Management Series
- Schedule 10, Personnel Series
- Schedule 11, MFASIS Reports
- Schedule 12, Minutes of Meetings
- Schedule 13, State Agency Correspondence
- Schedule 14, Rules Adopted by State Agencies
- Schedule 15, Quality Management Records
- Schedule 16, State Employee Charitable Programs

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These retention schedules apply to records regardless of their physical format. Therefore, records created or maintained in electronic format would also fall under these guidelines and must adhere to the minimum retention requirements of these General Schedules (**that is any reference to "correspondence" could pertain to either paper, email or other electronic documents.**)

Legend: Disposal: A=Archives, D=Destroy, X=Other (See Description).

SAR=State Audit Requirement

FAR=Federal Audit Requirement

**General Schedule 1: Vendor Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	REQUISITIONS, RFP, BIDS, & PURCHASE ORDERS	Forms approved by Bureau of Purchases to requisition services, commodities or equipment.	Bureau of Purchases	10/23/2008	D	7	3	Y	Y
2	Petty Cash	The records being retained will include the requests for a petty cash check, possibly the request for reimbursement, bank statements, checkbook registers; cancel/voided checks, deposit slips and documentation; and miscellaneous correspondence regarding the petty cash account.	Creating Agency	10/23/2008	D	7	0	Y	N
3	DELIVERY SLIPS	Contents duplicated on third copy of purchase order.	Creating Agency	12/7/1990	D	3	Not Applicable	Y	Y
4	VENDOR'S INVOICE	Invoice sent to agency by vendor for payment.	Accounts & Control	12/7/1990	D	7	3	Y	Y
5	ACCOUNTS PAYABLE	Accounts payable sent to agency by Accounts and Control to authenticate payment.	Accounts & Control	12/7/1990	D	7	3	Y	Y
6	EXPENSE ACCOUNTS ET AL	Expense accounts, utility bills, Cell Phone billing, Blue Cross Blue Shield bills and inter-departmental bills.	Accounts & Control	12/7/1990	D	7	3	Y	Y
7	CORRESPONDENCE			12/7/1990	D	3		Y	Y

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		Incoming or outgoing correspondence or memo relating to the vendor series.	Creating agency				Not Applicable		
8	<b>CONTRACTS</b>	Contracts with vendors for services.	Bureau of Purchases	12/7/1990	D	7	3	Y	Y
9	<b>CHECK CANCELLATIONS</b>	Forms used to request cancellation of a State check, and forms used to request replacement check (including forgery application).	Accounts & Control	3/11/1991	D	7	3	Y	Y
10	<b>GRANT AWARDS - MFASIS INPUT DOCUMENTS</b>	Grant awards (unless covered by agency-specific retention schedules), grant input documents, Federal Aid Charges Form.	Creating Agency	3/11/1991	D	3	Not Applicable	Y	Y
11	<b>INTERNAL SELLER'S BILL</b>	Intragovernmental bills (one State agency billing another for goods or services) and related forms.	Accounts & Control	3/11/1991	D	7	3	Y	Y
12	<b>DEBTOR INVOICE</b>	Accounts receivable invoices (bills sent by the State to individuals, businesses, etc. for goods or services) and related forms, including the invoice transaction input form.	Accounts & Control	3/11/1991	D	7	3	Y	Y
13	<b>PAYMENT VOUCHER FORM</b>	Keep with related series, or retain agency copy 3 years if kept separately.	Accounts & Control	3/11/1991	D	7	3	Y	Y
14	<b>ACCOUNTING DISTRIBUTION SHEET</b>	Keep with agency copy with related record series. If kept separately, retain 3 years and destroy.	Accounts & Control	3/11/1991	D	7	3	Y	Y
15	<b>ACCOUNTS PAYABLE TRANSMITTAL FORM</b>	Accounts payable transmittal form to accompany payment voucher submitted to Bureau of Accounts & Control.	Accounts & Control	3/11/1991	D	7	3	Y	Y
16	<b>CREDIT CARD RECEIPTS</b>	Receipts documenting use of State-issued employee credit cards.	individual agencies	10/31/2002	D	7	n/a	Y	Y

**General Schedule 2: Accounting Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>ENCUMBRANCE LEDGER</b>	Ledger maintained by agency to show expenditures and dedicated revenues to insure that allotment will not be overdrawn. Summarized on controller's analysis of income and expenditure. June and December record copies are archival; others destroyed after retentions as shown.	Accounts & Control	9/20/1989	X	7	3	Y	Y
1	<b>REQUISITIONS/RFP/BIDS/PURCHASE ORDERS/OPEN MARKETS/CONTRACT RELEASES</b>	Forms approved by Bureau of Purchases to requisition services, commodities or equipment.	Bureau of Purchases	3/11/1991	D	7	3	Y	Y
2	<b>ADVISE OF ALLOTMENT</b>	Form sent to agency by Bureau of Budget indicating money allotted for expenditures. Information	Accounts & Control	9/20/1989	X	7	3	Y	Y

		repeated on controller's encumbrance and expenditure ledger, which is actually the record copy. June and December only are archival.								
3	REQUEST FOR ADJUSTMENT OF ALLOTMENT	Request by agency for adjustment of allotment during a fiscal year. Information repeated on controller's encumbrance and expenditure ledger, which is actually the record copy. June and December only are archival.	Accounts & Control	9/20/1989	X	7	3	Y	Y	
4	ANALYSIS OF INCOME AND EXPENDITURE	Used by agency to verify the encumbrance ledger. June and December only are archival.	Accounts & Control	9/20/1989	X	7	3	Y	Y	
5	SUMMARY OF APPROPRIATION EXPENDITURES AND INCOME	Monthly summary of expenditures and income kept by warrant and journal number to balance encumbrance ledger.	Accounts & Control	9/20/1989	D	7	3	Y	Y	
6	INCOME & EXPENDITURE SUMMARY BY CHARACTER & OBJECT	Quarterly report by character and object.	Accounts & Control	9/20/1989	D	7	3	Y	Y	
7	OUTSTANDING PURCHASE ORDER LIST	List of outstanding purchase orders at month end. Verifies purchase orders brought forward at end of quarter or fiscal year.	Accounts & Control	9/20/1989	D	5	3	Y	Y	
8	JOURNALS	Journals used to indicate transfers of funds, error correction and journal entries used in lieu of accounts payable.	Accounts & Control	9/20/1989	D	7	3	Y	Y	
9	CORRESPONDENCE	Incoming or outgoing correspondence relating to accounting series.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	Y	
10	PROJECT TRACKING DOCUMENTS	Project input documents, miscellaneous project charges forms, and related documents.	Creating Agency	3/11/1991	D	3	Not Applicable	N	Y	
10	ACCOUNTING SERIES	Audit reports for a given fiscal year or period.	Dept. of Audit	4/12/2000	A	3	3			

**General Schedule 3: Payrolls & Authorizations**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
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1	<b>PAYROLL REGISTER - EXCEPTION COPY</b>	(Last page only.) Contains gross wage and deductions for given pay date and authorized signatures of agency.	Accounts & Control	9/20/1989	D	8	3	Y	Y
2	<b>PAYROLL REGISTER - PAID COPY</b>	Actual paid copy of payroll registers, contains all paycheck information for each State employee.	Accounts & Control	9/20/1989	D	60	3	Y	Y
3	<b>HUMAN RESOURCE PROFILE</b>	(Formerly Personnel Management Data Form-- "Turnaround Form.") Personnel authorizations effecting changes in employee's pay. Retention periods counted from date file becomes inactive.	Bureau of Human Resources	12/18/2001	D	60	3	Y	Y
4	<b>PAYROLL DEDUCTION AUTHORIZATIONS</b>	Listing of all voluntary payroll deductions from employee checks (i.e., health insurance, union dues, credit union, etc.) Agency copy's retention period counted from termination of employee.	Agency of Employment	9/11/2003	D	3	1	Y	N
5	<b>HEALTH AND DENTAL INSURANCE EXCEPTIONS</b>	Lists all payroll deductions to the monthly health and dental insurance billings.	Accounts & Control	9/11/2003	D	3	3	Y	Y
6	<b>TIME SLIPS</b>	Original weekly time slips signed by employee indicating amount of time worked, vacation, sick leave and overtime. Retain last audited year through current State audit.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	Y
8	<b>STATE VEHICLES FOR COMMUTING FORMS</b>	Information collected each year documenting the value of using an employee-assigned state vehicle for commuting from home to work site. The Controller's office maintains this as part of the supporting records to Form W-2.	Accounts & Control	9/24/2003	D	3	3	Y	Y

**General Schedule 4: Income Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>CASH RECEIPT STATEMENT/INCOME STATEMENT</b>	Form used to deposit money with State Treasury.	Accounts & Control	3/11/1991	D	7	3	Y	Y
2	<b>BANK DEPOSIT SLIP</b>	Used by agency for direct deposit with bank.	Treasury	9/20/1989	D	2	3	Y	Y
3	<b>AGENCY RECEIPTS</b>	Receipts issued by agency for money collected; 2 copies retained by agency: 1) Detached copy with collected money given to individual who prepares income statement, destroy after 2 years and State Audit; 2) Copy in receipt book, retain last audited year through current audit then destroy.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	Y
4	<b>CASH JOURNALS</b>	Daily listing of cash received showing date, name of individual or corporation sending money and amount.	Creating Agency	6/21/1985	D	7	Not Applicable	N	N
5	<b>ACCOUNTS RECEIVABLE</b>	Bill heads sent out by State agencies for services performed or goods sold.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	Y
6	<b>UNISSUED LICENSES</b>	Pre-numbered licenses which have not been issued and become obsolete after the current year.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	N
7	<b>CORRESPONDENCE</b>	Incoming and outgoing correspondence or memo relating to income series.	Creating Agency	9/20/1989	D	3	Not Applicable	Y	Y

**General Schedule 5: Budget Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
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1	<b>BIENNIAL BUDGET REQUEST</b>	Copy retained by agency to prepare work program and as a reference in preparing new budget.	Bureau of the Budget	2/19/1986	D	10	4	N	N
2	<b>WORK PROGRAM</b>	Program made out from budget figures approved by the Legislature.	Bureau of the Budget	2/19/1986	D	10	4	N	N
3	<b>CORRESPONDENCE</b>	Incoming or outgoing correspondence or memo relating to budget series.	Creating Agency	2/19/1986	D	4	Not Applicable	N	N
4	<b>FINANCIAL ORDERS UNDER \$45,000 (APPROVED BY STATE BUDGET OFFICER)</b>	Financial orders below \$45,000 can be approved by the State Budget Officer, and do not go to the Secretary of State for permanent retention.	Bureau of the Budget	10/31/2002	D	4	4	N	N

**General Schedule 6: Financial Order Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>FINANCIAL ORDER (EXPENSE/TRANSFER BUDGET)</b>	Orders approved by the Governor relating to intradepartmental transfers, requests for expenditures not authorized by other means, etc. Orders pertaining to short term obligations (including so-called "Budget Orders," for the purpose of bringing funds out of allotment reserve) may be destroyed after 2 years and audit. Orders pertaining to long term obligations (contracts, leases, etc.) destroy after final action and audit. Supporting documents shall have the same retention periods as the orders/obligations to which they relate.	Secretary of State - CEC	3/11/1991	A	Transfer to Archives	2	Y	N

**General Schedule 7: Attorney General Opinions**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>ATTORNEY GENERAL OPINION</b>	Opinions relating to interpretation of the law. Record copy is retained by Attorney General for current business; other copies may be destroyed when opinion is no longer applicable.	Attorney General	8/15/1975	D	Contingent Upon Event - See Description	Destroy when opinion is no longer applicable.	N	N

**General Schedule 8: Inventory Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>CAPITAL EQUIPMENT INVENTORY CARDS</b>	Card containing pertinent information concerning State owned equipment. Destroy inactive or obsolete cards after audit and reconciliation.	Creating Agency	6/21/1985	D	1	Not Applicable	Y	Y
2	<b>QUARTERLY EQUIPMENT REPORT</b>	Report of all equipment purchased, sold, traded in, surplus and discarded during a quarter. Record copy retained by BPI for current business; agency copy destroyed after 5 years if inventory cards are reconciled.	Bureau of Public Improvements	6/21/1985	D	Contingent Upon Event - See Description	5	N	N
3	<b>CAPITAL EQUIPMENT RECONCILIATION</b>	Yearly report made up from the four quarterly equipment reports. Must balance with total on equipment card. Record copy retained by BPI for current business; agency copy destroyed after 5 years if inventory cards are reconciled.	Bureau of Public Improvements	6/21/1985	D	Contingent Upon Event - See Description	5	N	N
4	<b>EQUIPMENT ADJUSTMENT SLIP</b>	Form used to adjust transfers in and out of an	Creating Agency	6/21/1985	D	5	Not Applicable	N	N

		agency. Destroy with quarterly reports.							
5	<b>SURPLUS PROPERTY DISTRIBUTION LIST</b>	Form used to transfer equipment to surplus from agency. Destroy agency copies with quarterly reports; record copy held by Bureau of Purchases for current business.	Bureau of Purchases	6/21/1985	D	Contingent Upon Event - See Description	5	N	N
6	<b>CORRESPONDENCE</b>	Incoming or outgoing correspondence relating to inventory series. Destroy with quarterly reports.	Creating Agency	6/21/1985	D	5	Not Applicable	N	N

**General Schedule 9: Records Management Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>APP. FOR AUTHORIZATION FOR RECORDS CENTER USE CARD</b>	Application for issuance of Records Center Access Cards.	Records Management Services	1/25/1989	D	5	2	N	N
2	<b>AUTHORIZATION FOR RECORDS CENTER USE (ACCESS CARD)</b>	Destroy upon expiration of card or separation of employee.	Creating Agency	1/25/1989	D	Contingent Upon Event - See Description	Not Applicable	N	N
3	<b>DESIGNATION OF DEPARTMENTAL RECORDS OFFICERS</b>	Form designating Records Officers and Assistant Records Officers for various State agencies.	Records Management Services	1/25/1989	D	2	2	N	N
4	<b>RECORDS CENTER DISPOSITION NOTIFICATION</b>	Record of State records removed from State Records Center and destroyed, according to authorized retention schedule and with written consent of agency records officer.	Records Management Services	1/25/1989	A	10	2	N	N
5	<b>DISPOSAL LIST, MSA 2</b>	One-time permission for destruction of State records. Transferred to Archives Services Division 2 years from date approved.	Records Management Services	1/25/1989	A	2	2	N	N
6	<b>REQUEST FOR RECORDS RETENTION SCHEDULE, MSA/RM 22</b>	Includes MSA 59 (Record Series Inventory) and record samples. Transferred to Archives Services Division when schedule is terminated; agency copies destroyed 2 years from termination.	Records Management Services	1/25/1989	A	Contingent Upon Event - See Description	2	N	N
7	<b>RECORDS MANAGEMENT EXPENDITURE REQUEST, MSA/RM 94</b>	Used by State agencies to confirm that records have been scheduled before purchase of filing equipment, microfilming equipment, etc.	Records Management Services	1/25/1989	D	5	2	N	N
9	<b>TRANSMITTAL OF RECORDS, MSA 33, AND CONTINUATION</b>	Record of boxes accepted for Records Center storage and their contents. Retention periods counted from disposal of last box on each sheet.	Records Management Services	1/25/1989	D	10	2	N	N
10	<b>REQUEST FOR REFERENCE SERVICE, MSA 70</b>	Request for reference service from State Records Center. Agency copy may be destroyed as soon as records are returned to Records Center.	Records Management Services	1/25/1989	D	6	Contingent Upon Event - See Description	N	N
11	<b>AGENCY RECORDS DESTRUCTION NOTICE, MSA 192</b>	Listing of records destroyed by State agencies with authorization of departmental and/or general schedules.	Records Management Services	1/25/1989	A	5	2	N	N

**General Schedule 10: Personnel Series**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
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1	<b>EMPLOYEE PERSONNEL RECORDS</b>	Applications, salary history, performance appraisals, job histories, leave authorizations, exam results, termination documents, related documents and correspondence. Agency personnel folder is to be sent to new employing agency whenever a State employee is transferred/promoted/restored to service. When employee separates from State service, last employing agency will retain complete personnel folder 4 years. The folder can then be destroyed, but only after the agency has contacted the Bureau of Human Resources to confirm that the employee has not been re-employed at another agency. Note: If collective bargaining contract requires that disciplinary documents be destroyed earlier than described above, the contract shall be followed.	Bureau of Human Resources	12/18/2001	D	60	4	N	N
2	<b>INCIDENT FILE RECORDS</b>	Records of employee commendation/counseling; corrective action memos; related correspondence between employer and employee. Destroy after yearly performance appraisal has been prepared and grievance deadline has expired, unless grieved. If grieved, destroy 3 years after resolution of grievance.	Creating Agency	3/8/1990	D	1	Not Applicable	N	N
3	<b>REQUISITION FOR EMPLOYEE</b>	Requisition for employee forms; registers (job referral lists); structured interview materials; related correspondence. Agency copy may be destroyed after 1 year unless grieved. If grieved, destroy 3 years after resolution of grievance.	Bureau of Human Resources	3/8/1990	D	3	1	N	N
4	<b>CLASS SPECIFICATIONS (NOT APPEALED)</b>	Class definition; representative tasks; knowledges and abilities; qualifications; exam plan. Replace active classes whenever changes are made. Retain abolished classes 5 years (BHR only).	Bureau of Human Resources	3/8/1990	D	5	Destroy When Updated	N	N
5	<b>CLASS SPECIFICATIONS (APPEALED)</b>	Class definition; representative tasks; knowledges and abilities; qualifications; exam plan. Agencies are not responsible for maintaining appeal materials.	Bureau of Human Resources	3/8/1990	D	40	Destroy When Updated	N	N
6	<b>ADMINISTRATIVE REPORT OF WORK CONTENT (FJA-1)</b>	Individual job description/task statements for each position in State service. A new FJA-1 is prepared whenever duties are changed. BHR will maintain grieved FJA for 3 years following resolution of grievance; all other FJA's (agency copies and BHR record copy) may be replaced whenever changes are made in job.	Bureau of Human Resources	3/8/1990	D	3	Destroy When Updated	N	N
7	<b>POSITION DETAIL RECORD</b>	Computer-generated history of each position in State service. Shows current and previous incumbents, salary scale, and classification. Paper copy of PDR may be destroyed whenever an update is printed. Bureau of Human Resources shall delete position from disk file 5 years after position is abolished.	Bureau of the Budget	11/6/2002	D	3	Destroy When Updated	N	N
8	<b>HUMAN RESOURCE PROFILE</b>	See General Schedule 3 (Payrolls and Authorizations Series). This form is frequently treated by State agencies as part of the employee's payroll record, because it is the document used to authorize change/increase in rate of pay.	Bureau of Human Resources	12/18/2001	D	60	3	Y	Y
9	<b>WORKERS COMPENSATION FILES FOR STATE EMPLOYEES</b>	Employer's First Report of Occupational Injury, Employee's Report of Injury, Supervisor's Report of Injury, Wage Statements, Medical Release Forms, Employer's Supplemental Report, Memorandum of Payment or Notice of Controversy Form, Informal Conference Report, Medical Reports and related correspondence. Although the Bureau of Human Resources is the agency of record, most documents	Bureau of Human Resources	3/8/1990	D	13	n/a	N	N



		are actually held by the agency employing the individual worker. The full retention period should be applied to these documents.							
10	<b>DIRECT HIRE APPLICATIONS</b>	Certain positions may be filled directly by the department or agency which has the vacancy. The Federal Fair Employment Practices Act requires that these applications and accompanying documents (transcripts, letters of reference, etc.) be retained two years, after which they may be destroyed.	Creating Agency	1/15/1996	D	2	Not Applicable	N	N
11	<b>Employee Medical Records</b>	All medical records created at the request of the employing department. OSHA requires that these medical records be maintained for 30 years after the employee leaves state service.	Creating Agency	10/23/2008	D	30	N/A	N	N
12	<b>Employee training records</b>	All certifications, certificate and related documentation. For employee required/state training. Destroy 4 yrs. after employee separates from state service.	creating agency	10/23/2008	D	4	N/A	N	N
13	<b>Job Interview Packs</b>	All structured interview materials and related correspondence.	Creating agency	10/23/2008	D	4	N/A	N	N

**General Schedule 11: MFASIS REPORTS**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>COMPUTER PRINTOUTS GENERATED BY MFASIS SYSTEM</b>	Informational printouts provided to state agencies by MFASIS system. Destroy when superseded by more current information--in no case should an MFASIS report be retained longer than the record series to which the report relates (see General Schedules 1 - 10)	Creating Agency	3/11/1991	D	Destroy When Updated	Not Applicable		

**General Schedule 12: MINUTES OF MEETINGS**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>MINUTES OF MEETINGS - BOARDS AND COMMISSIONS</b>	Minutes of official meetings of boards and commissions, as transcribed from secretary's notes or abstracted from recording of meeting and incorporated into the board or commission's files. Note: Earlier transfer of minutes to the Archives, or a Records Center retention period, may be arranged by contacting Records Management.	Creating Agency	2/23/1993	A	10	Not Applicable	Y	Y
2	<b>MEETING NOTES - BOARDS AND COMMISSIONS</b>	Shorthand notes and other notes made by the secretary or secretary pro tem in the course of the meeting, used at a later time to prepare official minutes for the board or commission's approval and adoption. Destroy as soon as the board or commission acts on the minutes as presented by the secretary.	Creating Agency	2/23/1993	D	Contingent Upon Event - See Description	Not Applicable	N	N
3	<b>RECORDINGS OF MEETINGS - BOARDS AND COMMISSIONS</b>	Audio or video recordings of official meetings of boards or commissions. If a verbatim transcript is prepared, it may be retained for 5 years and the audio or video tape may be reused/destroyed. Note: Boards/commissions are not required to tape their meetings; but if they do so, the recordings are official state records and may not be destroyed except as permitted by this schedule.	Creating Agency	2/23/1993	D	5	Not Applicable	Y	Y

**General Schedule 13: STATE AGENCY CORRESPONDENCE**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>COMMISSIONER'S CORRESPONDENCE</b>	Official correspondence of departmental commissioner or other state agency head, not filed as part of another approved record series. Note: Each department has the option of retaining its commissioner's correspondence on	Creating Agency	2/23/1993	A	2	Not Applicable		

		site for longer than 2 years, and may store such correspondence at the State Records Center for a predetermined period if the agency wishes to retain official custody. Records Center storage requires prior arrangement with the Division of Records Management Services.							
2	<b>TRANSITORY CORRESPONDENCE</b>	Correspondence received/created by a state agency that is purely informational in nature, such as: letters of transmittal; letters of thanks; invitations and responses to invitations; notices of such employee activities as Christmas parties, softball games, etc.; replies to routine questions from other state agencies and/or the public.	Creating Agency	2/23/1993	D	60 days	Not Applicable		
3	<b>ALL OTHER STATE AGENCY CORRESPONDENCE</b>	File with related record series, or (if there is no related series) establish appropriate departmental retention schedule.	Creating Agency	2/23/1993	D		Not Applicable		
4	<b>Freedom of Access Act Requests</b>	A written request for copies of Public Records. That are in the custody of State Government or its Agencies.	Creating Agency	12/18/2009	D	1 Year	Not Applicable	N	N

**General Schedule 14: Rules Adopted by State Agencies**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>APA (ADMINISTRATIVE PROCEDURES ACT) RULES</b>	All rules adopted under the APA are filed with the Secretary of State (Bureau of Corporations, Elections and Commissions). This filing constitutes the record copy, which is maintained at CEC for 20 years after it expires, is repealed, or is superseded.	Secretary of State	4/14/1994	A	20	Destroy When Updated	N	N

**General Schedule 15: Quality Management Records**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>AGENDAS AND MINUTES OF QUALITY COUNCIL MEETINGS</b>	A record copy of agendas and minutes of all Department, Bureau, and Division Quality Council meetings shall be maintained by the department's Quality Management Coordinator. Minutes more than 3 years old may be transferred to Archives at the Coordinator's discretion. All other copies shall be considered "convenience copies," and may be destroyed when no longer needed.	Department Coordinator	4/12/2000	A	3	0	N	N
2	<b>MINUTES AND FINAL REPORTS OF PROCESS ACTION, PROCESS PLANNING, AND WORK TEAMS</b>	Minutes and final reports of all Process Planning Teams, Work Teams, and officially chartered Process Action Teams shall be maintained by the department's Total Quality Management Coordinator. Minutes more than 3 years old may be transferred to Archives at the Coordinator's discretion. All other copies shall be considered "convenience copies," and may be destroyed when no longer needed.	Department Coordinator	4/12/2000	D	3	0	N	N

**General Schedule 16: State Employee Charitable Programs**

No. of Item	Title	Description	Agency of Record	Date Adopted	Disposal	Retention of Record Copy	Retention of Copies	SAR	FAR
1	<b>Maine State Employees Combined Charitable Appeal Campaign (MSECCA)</b>	These records support the Maine State Employees Combined Charitable Appeal Campaign (MSECCA) program, a coordinated campaign to encourage financial support from state employees for various charitable agencies. The records are used for accountability of how employee contributions are distributed to the various charitable organizations. All	Governor's Office	10/23/2008	D	10	3	Y	N

records pertaining to Federal and Agency submission applications and Committee decisions, correspondence, campaign audit reports, administrator contracts, Planning & Admission Committee meetings.

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**Legislative Subcommittee**

Draft: Suggested Revisions to Frequently Asked Questions on [www.maine.gov/foaa](http://www.maine.gov/foaa);  
Links to Records Retention Guides Prepared by State Archives

**What records must a public officer or agency keep, and how long do they have to keep them?**

The Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule or in the transaction of its official business. 5 MRSA § 92-A (5) How long records must be kept depends on the type of record and the value of the record's content. The Maine State Archives works with state agencies and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention. 5 MRSA § 95 (7). The Maine State Archives provides guidance on the management and retention of state agency and local government records, including schedules for how long records are retained, on its website at <http://www.maine.gov/sos/arc/records/state/index.html>

**Are an agency's or official's e-mails public records?**

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Email messages are subject to the same retention schedules as other public records based on the content of the message. There are no retention schedules specific to email messages. Guidance on the retention of email and digital records can be found at <http://www.maine.gov/sos/arc/records/state/emailguide0712.pdf>

A-6



**Legislative Subcommittee**

Draft revised after August 23rd meeting (divided report):  
Confidentiality of parental contact information  
in possession of school administrative districts  
*revised 9/11/12*

**Sec. 1.**           **20-A MRSA §6001, sub-§4** is enacted to read:

**20-A §6001. DISSEMINATION OF INFORMATION**

**1. Federal and state law.** The provisions of this section, the United States Family Educational Rights and Privacy Act of 1974, Public Law 93-380, as amended by Public Law 93-568, and the United States Education of All Handicapped Children Act, Public Law 94-142 govern the dissemination of information about students, as well as written notices of intent to provide equivalent instruction through home instruction and all education records of students receiving equivalent instruction through home instruction.

**2. Internet restrictions.** A public school may not publish on the Internet or provide for publication on the Internet any personal information about its students without first obtaining the written approval of those students' parents. For the purpose of this section, "personal information" means information that identifies a student, including, but not limited to, the student's full name, photograph, personal biography, e-mail address, home address, date of birth, social security number and parents' names.

**3. Dissemination of education records to criminal justice agencies.** A school may disseminate education records as defined in 20 United States Code, Section 1232 g(a)(4) regarding a juvenile if:

- A. The juvenile has not been adjudicated as having committed a juvenile crime;
- B. The education records are disseminated to:
  - (1) Criminal justice agencies; or
  - (2) Agencies that by court order or agreement of the juvenile are responsible for the health or welfare of the juvenile and that have provided the school with a statement describing the purpose of the dissemination; and
- C. The education records are relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation.

Education records received under this subsection are confidential and may not be further disseminated, except to the court or as otherwise provided by law. The persons to whom the education records are disseminated shall certify in writing to the school that the records will not be disclosed to any other party, except the court or as otherwise provided by law, without the written consent of the juvenile or the juvenile's parent or guardian.

**4. Parental privacy.** The names, home addresses, electronic mail addresses, and other personal information of students' parents are confidential when in the possession of school administrative units. "Personal information" means a parent's:

**Legislative Subcommittee**

Draft revised after August 23rd meeting (divided report):  
Confidentiality of parental contact information  
in possession of school administrative districts  
*revised 9/11/12*

A. Social security number;

B. Date and place of birth;

C. Telephone ~~Unlisted~~ telephone number, including a parent's cellular telephone number, home facsimile number and pager numbers number;

D. Credit or financial information; and

E. Username, login information, personal identification number (PIN), password or other unique personal identifiers that enable a parent to access or communicate in a school unit's electronic systems, to obtain access to student education records regardless of where such records are maintained, to obtain notifications from school officials about student attendance, grades, assignments or school-related activities, or to otherwise collaborate in the education of the parent's child.

For the purposes of this subsection, the term "parent" has the same meaning as in section 5202, subsection 1.

**SUMMARY**

This draft amends the Education laws to specify that certain information about parents of students is confidential. This draft provides that the names, home addresses and email addresses of students' parents are confidential, as well as other personal information. "Personal information" is defined as a parent's: social security number; date and place of birth; unlisted telephone numbers, cell phone numbers, fax and pager numbers; credit or financial information; and unique personal identifiers that enable a parent to access or communicate in a school unit's electronic systems to access student records, including attendance, grades, assignments and school-related activities, or to otherwise collaborate in the student's education. Title 22, section 5202 defines "parent" to mean the parent or legal guardian with custody.

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(9/11/2012 11:51:00 AM)

Right to Know Advisory Committee  
Legislative Subcommittee  
DRAFT: Using technology to conduct public proceedings (Tabled 8/23/12)

PART A

Sec. A-1. 1 MRSA § 403-A is enacted to read:

**§403-A. Public proceedings through other means of communication**

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other means of communication.

1. **Requirements.** A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other means of communication only if the following requirements are met.

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other means of communication in accordance with this section. *The policy may establish circumstances under which a member may participate when not physically present. (Is this necessary?)*

B. Notice of the public proceeding has been given in accordance with section 406.

C. A quorum of the body is assembled physically at the location identified in the notice required by section 406.

D. The physical attendance by each member who is participating from another location is not reasonably practical. The reason that each member's physical attendance is not reasonably practical must be stated in the record of the public proceeding.

E D. Each member of the body participating in the public proceeding is able to *simultaneously* hear each other and speak to each other during the public proceeding. Members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations.



F E. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication identifies the persons present in the location from which the member is participating.

G F. All votes taken during the public proceeding are taken by roll call vote.

H G. Each member who is not physically present and who is participating through telephonic, video, electronic or other means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available.

I H. The public proceeding is not a public hearing. (Do you want to keep this?)

**2. Voting.** A member of a body who is not physically present and who is participating in the public proceeding through telephonic, video, electronic or other means of communication may not vote:

A. On any issue for which materials providing additional information that may influence the member's decision are presented at the public proceeding but have not been provided to the member by the time of the vote; or

B. On any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

**3. Exception to quorum requirement.** A body may convene a public proceeding by telephonic, video, electronic or other means of communication without a quorum assembled physically at one location if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

**4. Annual meeting.** If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other means of communication from a different location.

## PART B

Small Enterprise Growth Fund Board Proposed amendment to exempt from §403-A

**Sec. B-1. 10 MRSA §384, sub-§5** is enacted to read:

**5. Meetings.** The board shall have a physical location for each meeting. Notwithstanding Title 1, section 403-A, board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference are not entitled to vote and are not considered present for the purposes of determining a quorum, except in cases in which the chair of the board determines that the counting of members participating by teleconference and the allowance of votes by those members is necessary to avoid undue hardship to an applicant for an investment.

Finance Authority of Maine No change

**Sec. B-2. 10 MRSA §971** is amended to read:

### **§971. Actions of the members**

Seven members of the authority constitute a quorum of the members. The affirmative vote of the greater of 5 members, present and voting, or a majority of those members present and voting is necessary for any action taken by the members. No vacancy in the membership of the authority may impair the right of the quorum to exercise all powers and perform all duties of the members.

Notwithstanding any other provision of law, in a situation determined by the chief executive officer to be an emergency requiring action of the members on not more than 3 days' oral notice, an emergency meeting of the members may be conducted by telephone in accordance with the following.

**1. Placement of call.** A conference call to the members must be placed by ordinary commercial means at an appointed time.

**2. Record of call.** The authority shall arrange for recordation of the conference call when appropriate and prepare minutes of the emergency meeting.

**3. Notice of emergency meeting.** Public notice of the emergency meeting must be given in accordance with Title 1, section 406 and that public notice must include the time of the meeting and the location of a telephone with a speakerphone attachment that enables all persons participating in the telephone meeting to be heard and understood and

that is available for members of the public to hear the business conducted at the telephone meeting.

Ethics Commission No change

**Sec. B-3. 21-A MRSA §1002** is amended to read:

**§1002. Meetings of commission**

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public.

*Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:*

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

**3. Other meetings.** The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

**Sec. B-4. 32 MRSA §88, sub-§1, ¶D** is amended to read:

**§88. Emergency Medical Services' Board**

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program.

**1. Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, 2 representatives of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board.

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate.

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379.

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable

vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. *The Notwithstanding Title 1, section 403-A, the board may use video conferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1.* Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Workers' Compensation Board Proposed amendment to exempt from §403-A

**Sec. B-5. 39-A MRSA §151, sub-§5** is amended to read:

**5. Voting requirements; meetings.** The board may take action only by majority vote of its membership. *The Notwithstanding Title 1, section 403-A, the* board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

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(Suggestions from FAME)

*Revised 9/11/12*

**Sec. X. XX MRSA §XXX-X**, as amended by PL XXXX, c. XXX, §XX and affected by §XX, is repealed.

**Sec. X. XX MRSA §XXX-X** -is enacted to read:

**§ XXX-X. Freedom of access; confidentiality of records**

The records of the [board, agency, authority, etc.] are public records, except as specifically provided in this section.

**1. Confidential records.** The following records are designated as confidential for purposes of Title 1, section 402, subsection 3, paragraph A:

A. Records containing any information acquired by the [board, agency, authority, etc.] or a member, officer, employee or agent of the [board, agency, authority, etc.] from an applicant for or recipient of financial assistance provided pursuant to a program administered or established by the [board, agency, authority, etc.] if the applicant or recipient is an individual;

B. A record obtained or developed by the [board, agency, authority, etc.] that:

(1) A person, including the [board, agency, authority, etc.], to whom the record belongs or pertains has requested be designated confidential; and

(2) The [board, agency, authority, etc.] has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business, invasion of privacy, or other significant detriment to any person to whom the record belongs or pertains;

C. A financial statement or tax return;

D. A record that contains an assessment by a person who is not employed by the [board, agency, authority, etc.] of the credit worthiness or financial condition of any person or project;

E. A record obtained or developed by the [board, agency, authority, etc.] prior to receipt of a written application or proposal if the application or proposal is for financial assistance to be provided by or with the assistance of the [board, agency, authority, etc.], or in connection with a transfer of property to or from the [board, agency, authority, etc.]. After receipt by the [board, agency, authority, etc.] of the application or proposal, a record pertaining to the application or proposal is

## RTK AC General Agency Confidential Individual and Business Records Template

(Suggestions from FAME)

Revised 9/11/12

not confidential unless it meets the requirements of the other paragraphs of the subsection; and

E. Non-public, personally identifiable information of an individual, including a consumer.

The [board, agency, authority, etc.] shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

**2. Exceptions.** Notwithstanding subsection 1, the following are public records and are not confidential:

A. Any otherwise confidential information the confidentiality of which the [board, agency, authority, etc.] determines to have been satisfactorily and effectively waived;

B. Any otherwise confidential information that has already lawfully been made available to the public; and

C. Impersonal, statistical or general information, including:

(1) Names of recipients of or applicants for financial assistance, including principals, where applicable;

(2) Amounts, types and general terms of financial assistance provided to those recipients or requested by those applicants;

(3) Descriptions of projects and businesses benefiting or to benefit from the financial assistance;

(4) Names of transferors or transferees, including principals, of property to or from the authority, the general terms of transfer and the purposes for which transferred property will be used;

(5) Number of jobs and the amount of tax revenues projected or resulting in connection with a project;

(6) Upon the authority's satisfaction of its loan insurance liability, the amount of any loan insurance payments with respect to a loan insurance contract; and

(7) Names of financial institutions participating in providing financial assistance and the general terms of that financial assistance.;

**3. Disclosure prohibited; further exceptions.** A person may not knowingly divulge or disclose records designated confidential by this section, **except that the**

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(Suggestions from FAME)

*Revised 9/11/12*

[board, agency, authority, etc.], in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;

B. Information requested by a financing institution or credit reporting service;

C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;

D. If necessary to ensure collection of any obligation in which the [board, agency, authority, etc.] has or may have an interest;

E. In any litigation or proceeding in which the [board, agency, authority, etc.] has appeared, introduction for the record of any information obtained from records designated confidential by this section;

F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority; and

G. If necessary in connection with acquiring, maintaining, or disposing of property.

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**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
September 13, 2012  
9:00 a.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Shenna Bellows, Chair
2. Existing Exceptions Remaining from 125<sup>th</sup> Legislature  
Review drafts
  - Title 22, section 8754, reporting of sentinel events (divided)
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act
3. Review of Existing Exceptions –Titles 26 through 39-A
  - A. Statutes tabled from August 8th meeting  
14, 37, 45
  - B. Additional statutes ready for review
4. Public-private partnership, DOT projects, exception review (23 MRSA §4251)  
Review draft (Minority report)
5. Scheduling future subcommittee meetings
6. Other?

**Adjourn**



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

Revised 9/4/2012 1:47 PM

Shaded = Tabled 8/8/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	26	3	Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM</li> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM?</li> <li>• DOL: no more than one or 2/year; NO CHANGE</li> </ul>		
2	26	43	Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Federal law prohibits release that would identify</li> <li>• NO CHANGE</li> </ul>		
3	26	665	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• Request very rare</li> <li>• NO CHANGE</li> </ul>		
4	26	685	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	<ul style="list-style-type: none"> <li>• ?</li> </ul>	<ul style="list-style-type: none"> <li>• DAFS, BHR</li> <li>• consistent with current personnel laws</li> <li>• info may be subject to federal law</li> <li>• NO POSITION</li> </ul>		
5	26	934	Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
6	26	939	Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• 2 requests, final decision public</li> <li>• NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
7	26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• Requests not uncommon</li> <li>• Subject to court order</li> <li>• Federal law prohibits release</li> <li>• NO CHANGE</li> </ul>	
8	27	121	Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	<ul style="list-style-type: none"> <li>• Maine State Library</li> <li>• Law and Legislative Reference Library</li> <li>• <i>UMS library</i></li> <li>• <i>MCCS library</i></li> <li>• <i>MMA library</i></li> <li>• <i>Public libraries?</i></li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
9	27	377	Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research	<ul style="list-style-type: none"> <li>• Maine Historic Preservation Commission</li> <li>• Maine State Museum</li> </ul>	<ul style="list-style-type: none"> <li>• No FOA requests</li> <li>• Access/release of info permitted for legitimate research purposes</li> <li>• NO CHANGE</li> </ul>		
10	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> <li>• DAFS: BABLO</li> </ul>	<ul style="list-style-type: none"> <li>• Not being collected now</li> <li>• Unresolved by Legislature in 12.5th</li> <li>• Support change but recommend NO CHANGE for now</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS	
11	29-A	152	3	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 12-20 times per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: Repeal	
12	29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 12 times per year</li> <li>• NO CHANGE</li> </ul>	8/8: No change (4-1; SBellows)	
13	29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 6-10 times per year</li> <li>• NO CHANGE</li> </ul>	8/8: No change	
14	29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	• SOS	<ul style="list-style-type: none"> <li>• No request</li> <li>• NO CHANGE</li> </ul>	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input	
15	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> <li>• Estimate: 1-2 every couple of years</li> <li>• NO CHANGE</li> </ul>	8/8: Amend—strike 2 <sup>nd</sup> ¶ because same language in #12	
16	29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	• SOS	<ul style="list-style-type: none"> <li>• Estimate: daily</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: No change	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
 Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
17	29-A	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	<ul style="list-style-type: none"> <li>SOS</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: handful per year</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>	8/8: No change (4-1; SBellows—remove law enforcement exception)	
18	30-A	1	Title 30-A, section 503, subsection 1, relating to county personnel records	<ul style="list-style-type: none"> <li>Counties – Joe Brown and Tim Leet?</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
19	30-A	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	<ul style="list-style-type: none"> <li>Counties – Joe Brown and Tim Leet?</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
20	30-A	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
21	30-A	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
22	30-A	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
23	30-A	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	<ul style="list-style-type: none"> <li>Municipalities</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
24	32	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board	<ul style="list-style-type: none"> <li>Emergency Medical Services Board</li> </ul>	<ul style="list-style-type: none"> <li>Estimate: Fewer than 4 requests per year</li> <li>Records available to public through State Police Bureau of Identification</li> <li>NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	• Emergency Medical Services Board	• Estimate: Fewer than 12 requests per year • NO CHANGE	
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• Estimate: Fewer than 12 requests per year • NO CHANGE	
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• Estimate: Fewer than 6 requests per year • NO CHANGE	
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	• Emergency Medical Services Board	• Estimate: Fewer than 4 requests per year • NO CHANGE	
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• No requests in many years • NO CHANGE	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
30	32	2105-A	3 Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Patient information also protected by federal law (HIPAA)</li> <li>Redacted information can make contents of a complaint difficult to read for board members</li> <li>NO CHANGE</li> </ul>		
31	32	2109	Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Health information protected by federal law also</li> <li>NO BOARD DISCUSSION OR POSITION; may be superfluous to protect address and telephone number given Internet and search engines</li> </ul>		
32	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
33	32	2600-A	Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
34	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	<ul style="list-style-type: none"> <li>Medical Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
35	32	3300-A	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	<ul style="list-style-type: none"> <li>Medical Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
36	32	6115	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters	<ul style="list-style-type: none"> <li>DPFR: Consumer Credit Regulation</li> </ul>	<ul style="list-style-type: none"> <li>No requests; similar provision in other state licensing laws</li> <li>NO CHANGE</li> </ul>		
37	32	9418	Title 32, section 9418, relating to applications for private security guard license	<ul style="list-style-type: none"> <li>DPS</li> </ul>	<ul style="list-style-type: none"> <li>No experiences to discuss</li> <li>NO CHANGE</li> </ul>	<ul style="list-style-type: none"> <li>8/8: Tabled—ask DPS for application</li> </ul>	
38	32	11305	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>No application of exemption</li> <li>NO CHANGE</li> </ul>		
39	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> <li>Real Estate Commission</li> </ul>	<ul style="list-style-type: none"> <li>No experience; applies to records of hearings held by professional trade associations</li> <li>NO POSITION: Why part of Real Estate Brokerage Act?</li> </ul>		

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
 Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
40	32	16607	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested</li> <li>NO CHANGE</li> </ul>		
41	33	1971	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	<ul style="list-style-type: none"> <li>Treasurer</li> </ul>	<ul style="list-style-type: none"> <li>Requests infrequent</li> <li>NO CHANGE</li> </ul>		
42	34-A	1212	Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Approximately 10 times per year (during litigation)</li> <li>NO CHANGE</li> </ul>	8/8: No change	
43	34-A	1216	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requests are frequent; can be released to some requesters</li> <li>NO CHANGE</li> </ul>	8/8: No change	
44	34-A	1216	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested occasionally</li> <li>NO CHANGE</li> </ul>	8/8: No change	
45	34-A	5210	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested 2-3 times per year</li> <li>AMEND: clarify that applies regardless of entity advising Governor</li> </ul>	8/8: Tabled—ask Governor's Office for input	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
46	34-A	9877	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
47	34-A	9903	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>• No experience – records are of the governing body, not Maine</li> <li>• NO CHANGE</li> </ul>		
48	34-B	1207	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client	• DHHS	<ul style="list-style-type: none"> <li>• DHHS does not collect data on requests</li> <li>• NO CHANGE</li> </ul>		
49	34-B	1223	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board	• DHHS	<ul style="list-style-type: none"> <li>• Relatively new board</li> <li>• One request</li> <li>• NO CHANGE</li> </ul>		
50	34-B	1931	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	• DHHS	<ul style="list-style-type: none"> <li>• Few cases</li> <li>• Legal opinion that does not comply with HIPAA</li> <li>• NO CHANGE</li> <li>• Overlapping responsibilities – may not be needed</li> </ul>		

**Public Records Exemptions Subcommittee**  
**Existing Public Records Exemptions, Titles 26 – 39-A**  
 Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
51	34-B	5	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch?</li> <li>DPS: State Police</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests NO CHANGE</li> <li>DPS: State Police:</li> </ul>		
52	34-B	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests NO CHANGE</li> </ul>		
53	34-B	6	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism	<ul style="list-style-type: none"> <li>DHHS/Maine Disability Rights Commission</li> <li>Replaced 8/12 by §5005-A, sub-§5 (PL 2011, c. 657)</li> </ul>	<ul style="list-style-type: none"> <li>DHHS: no data on requests</li> <li>NO CHANGE</li> <li>DHHS will be contracting with DRC</li> </ul>		
54	34-B	3	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
55	34-B	6	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
56	34-B	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>No data on requests</li> <li>NO CHANGE</li> </ul>		
57	34-B	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
58	35-A	114	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC	<ul style="list-style-type: none"> <li>PUC</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division	• PUC	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	• PUC	<ul style="list-style-type: none"> <li>• Rarely get requests</li> <li>• NO CHANGE</li> </ul>	
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	• PUC	<ul style="list-style-type: none"> <li>• Occasional requests</li> <li>• NO CHANGE</li> </ul>	
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	• PUC	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	• PUC	<ul style="list-style-type: none"> <li>• Does not come through PUC</li> <li>• Could be worded more clearly</li> </ul>	
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> <li>• PUC</li> <li>• ConnectME Authority</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
64.5	36	191		Title 36, section 191, relating to tax returns	<ul style="list-style-type: none"> <li>• Maine Revenue Services</li> </ul>	<ul style="list-style-type: none"> <li>• Protects individual and corporate tax return info</li> <li>• Corollary provision in federal Internal Revenue Code</li> <li>• NO CHANGE</li> </ul>	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS	
65	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	DOC: <ul style="list-style-type: none"> <li>New, closely parallels §579</li> <li>Never received a request under §579</li> <li>NO CHANGES</li> </ul> MRS: <ul style="list-style-type: none"> <li>No position</li> </ul>	(added by PL 2011, c. 619)	
66	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li><i>Municipal assessors</i></li> <li>Maine Revenue Services</li> </ul>			
67	36	581-G	3	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	<ul style="list-style-type: none"> <li>Dept. of Conservation</li> <li>Maine Revenue Services</li> </ul>	DOC: <ul style="list-style-type: none"> <li>Receives 1 – 2 requests per year, but by government agency or nonprofit educational org; denied one several years ago</li> <li>NO CHANGES</li> </ul> MRS: <ul style="list-style-type: none"> <li>NO POSITION</li> </ul>		
68	36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	<ul style="list-style-type: none"> <li><i>Municipal officers</i></li> <li>Maine Revenue Services</li> </ul>	MRS: <ul style="list-style-type: none"> <li>NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
69	36	1106-A	3, Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>• <i>Municipal assessors</i></li> <li>• Dept. of Conservation</li> <li>• Maine Revenue Services</li> </ul>	<p>DOC:</p> <ul style="list-style-type: none"> <li>• New, closely parallels §579</li> <li>• Never received a request under §579</li> <li>• No provision to review plans under this section</li> <li>• <b>NO POSITION</b></li> </ul> <p>MRS:</p> <ul style="list-style-type: none"> <li>• <b>NO POSITION</b></li> </ul>	(added by PL 2011, c. 618, §7)	
70	36	4315	1-A, Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	<ul style="list-style-type: none"> <li>• Wild Blueberry Commission</li> <li>• Maine Revenue Services</li> </ul>	<p>WBC:</p> <ul style="list-style-type: none"> <li>• No requests</li> <li>• <b>NO CHANGE</b></li> </ul> <p>MRS:</p> <ul style="list-style-type: none"> <li>• <b>NO CHANGE</b></li> </ul>		
71	36	4316	4, Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture	<ul style="list-style-type: none"> <li>• Wild Blueberry Commission</li> <li>• Dept. of Agriculture</li> <li>• Maine Revenue Services</li> </ul>	<p>WBC:</p> <ul style="list-style-type: none"> <li>• Administration does not apply to WBC</li> </ul> <p>MRS:</p> <ul style="list-style-type: none"> <li>• <b>NO CHANGE</b></li> </ul> <p>Dept. of Ag.:</p> <ul style="list-style-type: none"> <li>• <b>NO CHANGE</b></li> </ul>		
72	36	6760	Title 36, section 6760, relating to employment tax increment financing	<ul style="list-style-type: none"> <li>• DAFS –</li> <li>• Commissioner</li> <li>• State Tax Assessor</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b></li> </ul>		
73	37-B	506	Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	<ul style="list-style-type: none"> <li>• DVEM: Bureau of Veterans' Affairs</li> </ul>	<ul style="list-style-type: none"> <li>• <b>NO CHANGE</b></li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
74	37-B	708	3 Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
75	37-B	797	7 Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	<ul style="list-style-type: none"> <li>DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>1 – 2 request per year for general info</li> <li>NO CHANGE</li> </ul>		
76	38	100-A	1 Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	<ul style="list-style-type: none"> <li>DOT: Marine Pilotage Commission</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
77	38	345-A	4 Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	<ul style="list-style-type: none"> <li>DEP</li> <li>BEP</li> </ul>	<ul style="list-style-type: none"> <li>DEP: subpoenas issued for trade secret info</li> <li>NO POSITION; Clarify by including cross-reference to definition of trade secret ?</li> </ul>		



**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
78	38	414	6	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> <li>• DEP</li> <li>• BEP</li> </ul>	<ul style="list-style-type: none"> <li>• DEP: 1-2 requests per year</li> <li>• NO CHANGE</li> <li>• BEP: No need to access info in proceedings</li> <li>• NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>	
79	38	470-D		Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Information reported in aggregate</li> <li>• NO CHANGE</li> </ul>	
80	38	585-B	6	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests by facilities to keep information confidential</li> <li>• REPEAL</li> </ul>	
81	38	585-C	2	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	<ul style="list-style-type: none"> <li>• DEP</li> </ul>	<ul style="list-style-type: none"> <li>• No requests by facilities to keep information confidential for at least 10 years</li> <li>• REPEAL</li> </ul>	

**Public Records Exemptions Subcommittee**

**Existing Public Records Exemptions, Titles 26 – 39-A**

Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
82	38	1310-B	2 Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>		
83	38	1610	6-A Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>		
84	38	1661-A	4 Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>2 requests made for confidential info</li> <li>DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>NO CHANGE</li> </ul>		

**Public Records Exceptions Subcommittee**

**Existing Public Records Exceptions, Titles 26 – 39-A**

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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>• Only 1 request</li> <li>• Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>• CONTINUE; NO CHANGE</li> </ul>	
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• Average of 6 times per year</li> <li>• NO CHANGE</li> </ul>	
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	• BOI	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>	
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI	<ul style="list-style-type: none"> <li>• Requests are rare</li> <li>• NO CHANGE</li> </ul>	

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
91	39-A	409	Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>AMEND; clarify that already included within § 403, sub-§ 15 exception</li> </ul>		

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**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

Sec. 1. 22 MRSA §8754 is amended to read:

**§8754. Division duties**

The division has the following duties under this chapter.

**1. Initial review; other action.** Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

**2. Procedures.** The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

~~**3. Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.~~

~~A. Privileged and confidential information under this subsection is not:~~

~~(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;~~

~~(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or~~

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

~~(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.~~

~~B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.~~

~~C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.~~

~~D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.~~

~~E. For the purposes of this subsection, "privileged and confidential information" does not include:~~

~~(1) Any final administrative action;~~

~~(2) Information independently received pursuant to a 3rd party complaint investigation conducted pursuant to department rules; or~~

~~(3) Information designated as confidential under rules and laws of this State.~~

~~This subsection does not affect the obligations of the department relating to federal law.~~

**3-A. Notifications and reports subject to Title 1, chapter 13.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are subject to public access under Title 1, chapter 13, except for:

A. Information designated as confidential under federal law; and

B. Data developed from the reports that identifies or permits identification of a patient of a health care facility.

*{Are there other types or categories of information reported to the department that should be designated as confidential??}*

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

**4. Report.** The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

**Summary**

This draft amendment repeals the provision making confidential notifications, reports and other information filed with the department related to sentinel events. The amendment makes the information subject to public access pursuant to Title 1, chapter 13, except for information designated as confidential under federal law and information that identifies or permits identification of a patient of a health care facility.

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

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**To: Right To Know Advisory Committee - Exemption Review Sub-Committee**

**From: Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association,  
Medical Mutual Insurance Company of Maine**

**Date: September 14, 2012**

**Re: Sentinel Event Confidentiality (Title 22 MRSA §8754)**

Thank you for accepting these comments from MHA, MMA, MOA and Medical Mutual on your review of the confidentiality of sentinel event records in the possession of the Department of Health and Human Services (DHHS).

When the Exemption Review Sub-Committee sought input on this exemption (in 2010), MHA and others opposed changes to the exemption. We are unaware of any comment, provided either in writing or at a meeting of the Sub-Committee, which supported making any changes to the statute.

We believe the fact that your process produced no call for changes is evidence that the program is working as intended. Following are several other reasons not to change the confidentiality for sentinel event records.

**1. Removing confidentiality is bad policy.** The legislatively declared purpose of the Sentinel Event program (22 MRSA §8751-8756) is to improve performance: *"There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety."* Transparency and keeping the public informed are valid public purposes. However, they are not the purpose of the sentinel event statute and program.

The purpose of a sentinel event program is to improve quality. It works by making sure health care providers fully understand "what happened" and, with the help of DHHS, make changes to policies and practices where necessary to prevent similar events from happening again. Both the process of doing a root cause analyses and the results of that analyses drive health care quality improvement. In order for sentinel event systems to succeed, confidentiality is essential. The internal sentinel event systems must have full staff acceptance that the process is not about ascribing blame or shame associated with the event. Public reporting of these internal reviews will have a significant chilling effect on discovering all of the events as well as the facts that are necessary to understand the events.

**2. Confidentiality was critical to the enactment of the sentinel event law .** When the statute was enacted 10 years ago, it went through a lengthy legislative process. It was heard in April 2001, strongly opposed as drafted by many organizations,( including the above signers), and held-over until the next session where it was substantially amended and finally enacted in April 2002. ***The original bill did not have a confidentiality provision and that was a prime focus of our opposition.*** The bill was all but dead as originally proposed. It was only after confidentiality

was added that it got broader support and enactment. Removal of confidentiality is patently unfair because it undoes an important legislative compromise without which the program probably never would have existed.

3. **There is publicly available information about hospital quality.** Members of the RTKAC may not be aware of the burgeoning availability of hospital quality data. The leading collector and disseminator of the quality of care provided in hospitals in the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). CMS maintains a publicly available website called “Hospital Compare” where data about dozens of quality metrics are available, by hospital name. While no system is perfect, this data set provides a much more comprehensive picture about the care provided at hospital facilities. In addition, private organizations both use the CMS data to create score cards and they supplement the CMS data with additional information they gather. Groups ranging from the Maine Health Management Coalition to Consumer Reports collect and disseminate data about health care quality. The amount and accessibility of the data is growing each year.

Attached is a matrix developed by MHA that shows most of the publicly available hospital-specific data that may be used to evaluate the quality and safety of care. The first column lists each quality metric, with the National Quality Forum reference number in most cases which provides the national definition of each metric. The top horizontal row defines whether the metric is collected at the state or federal level. CMS collects or calculates hospital-specific measures in 9 different programs. “MQF/MHDO” is the Maine Quality Forum/Maine Health Data Organization, which mandates the collection of certain hospital quality and safety data under Chapter 270. “MHMC” is the Maine Health Management Coalition which posts additional hospital-specific data on their publicly available web site. This is the data used in the state employees’ hospital tiering program.

Not only is the raw data available publicly, but increasingly, groups are taking the data and putting them into more user-friendly scorecards and ranking systems such as you see at Consumer Reports.

4. **Hospitals are not public/government entities.** The foundation of the argument about the “public’s right to know” seems misplaced in reference to hospitals. The purpose of the FOA Act is to provide transparency into what **government** is doing. There is obviously public curiosity and interest in many private organizations but the FOA Act does not apply to private organizations. As best we understand the arguments in favor of repealing the confidentiality those arguments are rooted in the desire for the public to know what is going on in hospitals, not in the desire to know what is going on at DHHS. The annual DHHS sentinel event report no doubt satisfies the public interest in understanding what DHHS is doing. Expanding the FOA Act, in effect, provide the public access to the internal documents of private organizations is simply inappropriate.

5. **Sentinel Events may be a misleading metric.** More reports at a particular facility do not necessarily mean more problems or poorer quality; this may be misleading indicia. A higher level of reporting may simply be a reflection of a more robust reporting culture at a particular hospital – which would be good for patient safety.

6. **Other States include confidentiality protections.** The federal DHHS Office of the Inspector General issued a report in 2008 on state reporting systems for hospital adverse events which found that **25 of 26 states with sentinel event programs provide confidentiality.**<sup>1</sup> (This is not inconsistent with the staff memo that found fewer state confidentiality provisions. Staff indicated that they found a confidentiality provisions included in the sentinel event statute in 15 states. They noted that confidentiality could have still been provided somewhere else in each states' statutes.)

7. **Several accountability measures are available.** There are plenty of accountability measures available to patients and their families who experience sentinel events, with a varying degree of transparency. These measures include: filing complaints directly with providers; filing complaints with professional licensing boards; filing complaints with DHHS facilities licensing; private tort litigation; and, patients going to the press/social media.

8. **The process to release sentinel event information will be difficult and expensive.** The state may not override the patient confidentiality provisions in federal laws such as HIPAA. Accordingly, before DHHS would be able to release sentinel event records, someone would have to redact the sentinel event records to prevent any personally identifying information or other such privacy related information from being disclosed.

## **Conclusion**

The challenge you face in reviewing every single exemption ever enacted is daunting. The fact that you have a process to conduct the review is great and essential to doing a good job. The process revealed no objections to confidentiality and there are several persuasive reasons to keep the provision intact. The subcommittee needs to trust the process and not dramatically disrupt an important program grounded in improving health care quality.

MHA staff regrets not being able to attend this meeting in person. We take this issue quite seriously and are more than happy to meet with you to discuss this further.

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<sup>1</sup> U.S. Department of Health and Human Services, Office of the Inspector General, *Adverse Events in Hospitals: State Reporting Systems* (2008), p. 13.



**Program**

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HITECH meaningful use clinical quality measures*	CMS: ACO	CMS: Readmission Program	CMS: Inpatient Psychiatric FY 2014	Maine: MQF/ MUDO Ch. 270 <sup>3</sup>	Maine: MIMC
Utilization of inpatient care (total inpatient, medicine, surgery and maternity) (Rand)														
Leapfrog Survey														
Medication Spotlight Survey														
<b>Acute Myocardial Infarction (AMI)</b>														
Appropriateness of Care Measure (ACM) Composite														
AMI-1: Aspirin at arrival	X	Suspend 12/31/11											X	
AMI-2: Aspirin prescribed at discharge (NQF #142)	X	X	X						X				X	
AMI-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	Suspend 12/31/11											X	
AMI-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11											X	
AMI-5: Beta blocker prescribed at discharge	X	Suspend 12/31/11											X	
AMI-7a: Fibrinolytic (thrombolytic) agent received within 30 minutes of arrival (NQF #164)	X	X	X						X				X	
AMI-8a: Timing of receipt of primary PCI (NQF #163)	X	X	X						X				X	
AMI-10: Statin prescribed at discharge (NQF #639)	X	X	X						X				X	
<b>Heart Failure (HF)</b>														
Appropriateness of Care Measure (ACM) Composite														
HF-1: Discharge instructions	X	X	X										X	
HF-2: Evaluation of left ventricular systolic function	X	X	X										X	
HF-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	X	X										X	
HF-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11											X	
<b>Stroke Measure Set</b>														
STK-1: VTE prophylaxis (NQF #434)			X	X										
STK-2: Antithrombotic therapy for ischemic stroke at discharge (NQF #435)			X	X										
STK-3: Anticoagulation therapy for afib/flutter (NQF #436)			X	X										
STK-4: Thrombolytic therapy for acute ischemic stroke (NQF #437)			X	X										
STK-5: Antithrombotic therapy by the end of hospital day 2 (NQF #438)			X	X										
STK-6: Discharged on statin (NQF #439)			X	X										
STK-8: Stroke education (NQF #440)			X	X										
STK-10: Assessed for rehabilitation services (NQF #441)			X	X										
<b>VTE Measure Set</b>														
VTE-1: VTE prophylaxis (NQF #371)			X	X										
VTE-2: ICU VTE prophylaxis (NQF #372)			X	X										
VTE-3: VTE patients with anticoagulation overlap therapy (NQF #373)			X	X										
VTE-4: Patients receiving un-fractionated Heparin with doses/labs monitored by protocol (NQF #374)			X	X										
VTE-5: VTE discharge instructions (NQF #375)			X	X										
VTE-6: Incidence of potentially preventable VTE (NQF #376)			X	X										
<b>Pneumonia (PN)</b>														



**Program**

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Appropriateness of Care Measure (ACM) Composite																X
PN-2: Pneumococcal vaccination status	X	Retire 12/31/11													X	
PN-3b: Blood culture performed before first antibiotic received in hospital	X	X	X	X		X	X									
PN-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11													X	
PN-5c: Timing of receipt of initial antibiotic following hospital arrival	X	Retire 12/31/11													X	
PN-6: Appropriate initial antibiotic selection (NQF #147)	X	X	X	X		X	X			X					X	
PN-7: Influenza vaccination status	X	Retire 12/31/11													X	
<b>Surgical Care, including the Surgical Care Improvement Project (SCIP)</b>																
Appropriateness of Care Measure (ACM) Composite																X
SCIP INF-1: Prophylactic antibiotic received within 1 hour prior to surgical incision (NQF #527)	X	X	X	X		X	X			X					X	
SCIP INF-2: Prophylactic antibiotic selection for surgical patients (NQF #528)	X	X	X	X		X	X			X					X	
SCIP INF-3: Prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac surgery)	X	X	X	X		X	X			X					X	
SCIP INF-4: Cardiac surgery patients with controlled 6AM postoperative serum glucose	X	X	X	X		X	X			X					X	
SCIP INF-6: Surgery patients with appropriate hair removal	X	Suspend 12/31/11													X	
SCIP INF-9: Postoperative urinary catheter removal on post operative day 1 or 2 with day of surgery being day zero (NQF #453)	X	X	X	X		X	X			X						
SCIP INF-10: Surgery patients with perioperative temperature management	X	X	X	X		X	X								X	
SCIP Cardiovascular-2: Surgery patients on a beta blocker prior to arrival who received a beta blocker during the perioperative period	X	X	X	X		X	X									
SCIP VTE-1: Surgery patients with venous thromboembolism (VTE) prophylaxis ordered	X	X	X	X		X	X								X	
SCIP VTE-2: Surgery patients who received appropriate VTE prophylaxis within 24 hours pre/post surgery	X	X	X	X		X	X								X	
Safe Surgery Checklist use for inpatient surgery																
Risk-standardized complication rate after elective primary total hip or total knee arthroplasty (NQF # 1550)																
<b>Mortality Measures (Medicare Patients)</b>																
AMI 30-day mortality rate	X	X	X	X		X	X			X					X	
Heart failure 30-day mortality rate	X	X	X	X		X	X			X					X	
Pneumonia 30-day mortality rate	X	X	X	X		X	X			X					X	
<b>Patients' Experience of Care</b>																
HCAHPS (Beginning FY 2015, CMS adds: were you admitted to the hospital through the ED & how would you rate your overall mental/emotional health)	X	X	X	X		X <sup>2</sup>	X <sup>2</sup>								X <sup>2</sup>	
CTM-3: Care transition measure (NQF #228)																
Transition record with specified elements received by discharged inpatients (NQF #647; AMA-PCPI)																
<b>Readmission Measure (Medicare Patients)</b>																
AMI 30-Day Risk Standardized Readmission	X	X	X	X		X	X					X				
Heart failure 30-Day Risk Standardized Readmission	X	X	X	X		X	X					X				

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Pneumonia 30-Day Risk Standardized Readmission	X	X	X	X							X			X		X
Risk-standardized all-cause 30 day readmission (NQF #0329)			X	X										X		
30 day readmission for total hip and knee arthroplasty (NQF #1551)			X	X										X		
<b>AHRO Indicators and Composite Measures</b>																
PQ1 1: ACSC admissions (diabetes, short term) (NQF #272)														X		
PQ1 2: ACSC admissions (perforated appendix) (NQF #273)																
PQ1 3: ACSC admissions (diabetes long term complications) (NQF #274)														X		
PQ1 5: ACSC admissions (COPD) (NQF #275)														X		
PQ1 7: ACSC admissions (hypertension) (NQF #276)																
PQ1 8: ACSC admissions (heart failure) (NQF #277)														X		
PQ1 10: ACSC admissions (dehydration) (NQF #280)														X		
PQ1 11: ACSC admissions (bacterial pneumonia) (NQF #279)																
PQ1 12: ACSC admissions (urinary infections) (NQF #281)																
PQ1 13: ACSC admissions (angina without procedure) (NQF #282)																
PQ1 14: ACSC admissions (diabetes, uncontrolled) (NQF #638)																
PQ1 15: ACSC admissions (adult asthma) (NQF #283)														X		
PQ1 16: ACSC admissions (lower extremity amputation diabetes) (NQF #285)																
PSI 4: Death among surgical inpatients with serious, treatable complications	X	X	X	X												
PSI 6: Iatrogenic pneumothorax, adult	X	X	X	X												
PSI 11: Post operative respiratory failure	X	X	X	X												
PSI 12: Post operative PE or DVT	X	X	X	X												
PSI 14: Post operative wound dehiscence	X	X	X	X												
PSI 15: Accidental puncture or laceration	X	X	X	X												
PSI 90: Complication/patient safety for selected indicators (composite)	X	X	X	X												
IQI 11: Abdominal aortic aneurysm mortality rate	X	X	X	X												
IQI 19: Hip fracture mortality rate	X	X	X	X												
IQI 91: Mortality for selected medical conditions (composite)	X	X	X	X												
<b>Structural Measures</b>																
Participation in a systematic database for cardiac surgery	X	X	X	X												
Participation in a systematic clinical database registry for stroke care	X	X	X	X												
Participation in a systematic clinical database registry for nursing sensitive care	X	X	X	X												
Participation in a systematic clinical database registry for general surgery	X	X	X	X												
<b>Health care-Associated Infections Measures</b>																
Central line associated bloodstream infection (critical care units)	X	X	X	X												
SSI (NHSN) (NQF #299) (OP-24) (Cardiac, hip/ knee arthroplasty, colon, hysterectomy & vascular) (IPPS FY 2014: colon & abdominal hvst only)	X	X	X	X												
Central line insertion practices percentage (NQF #298)																
Percent compliance with the mechanical ventilation bundle of care																
Catheter-associated urinary tract infection (CAUTI) (critical care units)	X	X	X	X												
MRSA bacteremia (NHSN)	X	X	X	X												
Nosocomial MRSA infection rate (CMS is NHSN MRSA bacteremia measure)																



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Clostridium difficile (C. Diff) SIR (NHSN)		X	X	X										X	
Health care personnel influenza vaccination (NHSN)		X	X	X											
<b>Nursing Sensitive Care Measures</b>															
Percentage of inpatients with hospital-acquired pressure ulcer2 Stage 1														X	
Number of inpatient falls per inpatient days														X	
Number of inpatient falls with injury per inpatient days														X	
Percentage of inpatients who have a vest or limb restraint														X	X
Percentage of RN care hours to total nursing care hours														X	
Percentage of LVN/LPN care hours to total nursing care hours														X	
Percentage of UAP care hours to total nursing care hours														X	
Percentage of contract hours (RN, LPN/LVN, UAP) per patient day														X	
Number of RN care hours per patient day														X	
Number of total nursing care hours (RN, LPN/LVN, UAP) per patient day														X	
Number of voluntary uncontrolled separations for RNs and APNs														X	
Number of voluntary uncontrolled separations for LPN/LVN and nurse aides														X	
AHQ Hospital Survey on Patient Safety Culture for nursing staff annually														X	
<b>Hospital Acquired Condition Measures</b>															
Foreign object retained after surgery	X	X							X						
Air embolism	X	X							X						
Blood incompatibility	X	X							X						
Pressure ulcer Stages III & IV	X	X							X						
Falls and trauma (includes: fracture, dislocation, intracranial injury, crushing injury, burn, electric shock)	X	X							X						
Vascular catheter-associated infection	X	X							X						
Catheter-associated urinary tract infection (CAUTI)	X	X							X						
Manifestations of poor glycemic control	X	X							X						
Surgical site infection after certain cardiac, orthopedic and bariatric surgeries									X						
DVT/PE after hip or total knee replacement									X						
Surgical site infection after cardiac implantable electronic device (FY 2013)									X						
Iatrogenic pneumothorax with venous catheterization (FY 2013)									X						
<b>Emergency Department Throughput</b>															
ED-1: Median time from emergency department arrival to departure from the emergency room for patients admitted to the hospital (NOF #495)		X	X	X						X					
ED-2: Median time from admit decision to time of departure from the ED for ED patients admitted to the inpatient status (NOF #497)		X	X	X						X					
ED-3: Median time from ED arrival to ED departure for discharged ED patients (NOF #496)										X					
<b>Global Immunization Measures</b>															
Global flu immunization		X	X	X											
Global pneumonia immunization		X	X	X											
<b>Cost Efficiency</b>															
Medicare spending per beneficiary		X	X	X										X	
HealthPartners Total Cost of Care and Total Resource Use Measure Set															X

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<b>Perinatal Care</b>																
PC-01: Elective delivery before 39 weeks gestation (NQF #469)		X	X							X				X		X
Appropriate use of antenatal steroids (NQF #476)														X		
Prenatal and postpartum care rate (NQF # 1391; NCQA)														X		
Cesarean section delivery (Joint Commission)										X						
Exclusive breast milk feeding (Joint Commission; NQF #480)										X						
Healthy term newborn (NQF #716)										X						
EHD1-1a: hearing screening prior to hospital discharge (NQF #1354)																
<b>Hospital-based Inpatient Psychiatric Services (Joint Commission/CMS)</b>																
HBIPS-1: Admission screening completed for violence risk, substance use, psychological trauma history and patient strengths													X			
HBIPS-2: Hours of physical restraint use (NQF #640)													X			
HBIPS-3: Hours of seclusion use (NQF #641)													X			
HBIPS-4: Patients discharged on multiple antipsychotic medications (NQF #552)													X			
HBIPS-5: Patients discharged on multiple antipsychotic medications with appropriate justification (NQF #560)													X			
HBIPS-6: Post-discharge continuing care plan created (NQF #557)													X			
HBIPS 7: Post-discharge continuing care plan transmitted to the next level of care provider upon discharge (NQF #558)													X			
<b>Children's Asthma Care (Joint Commission/CMS)</b>																
CAC-1: Use of Relievers for Inpatient Asthma																
CAC-2: Use of Systemic Corticosteroids for Inpatient Asthma																
CAC-3: Home Management Plan of Care Given to Patient/Caregiver (NQF #559)									X							
<b>Tobacco Use (Joint Commission)</b>																
TOB-1: Tobacco use screening																
TOB-2: Tobacco use treatment offered during hospital stay																
TOB-2a: Tobacco use treatment																
TOB-3: Tobacco use treatment offered at discharge																
TOB-3a: Tobacco use treatment at discharge																
TOB-4: Tobacco use: assessing status after discharge																
<b>Substance Abuse (Joint Commission)</b>																
SUB-1: Alcohol use screening																
SUB-2: Alcohol use brief intervention offered/provided																
SUB-2a: Alcohol use brief intervention																
SUB-3: Alcohol and other drug abuse disorder treatment provided or offered at discharge																
SUB-3a: Alcohol and other drug use disorder treatment at discharge																
SUB-4: Alcohol and drug use: assessing status after discharge																
<b>2011 Hospital National Patient Safety Goals (Joint Commission)</b>																
NPSG.01.01.01: Use at least two ways to identify patients																
NPSG.01.03.01: Make sure that the correct patient gets the correct blood when they get a blood transfusion																
NPSG.02.03.01: Get important test results to the right staff person on time																
NPSG.03.04.01: Before a procedure, label all medicines/solutions/containers																



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NPSG.03.05.01: Take extra care with patients on anticoagulant therapy														
NPSG.07.01.01: Use the hand hygiene guidelines from the CDC or the WHO, and set/use goals for improving hand cleaning														
NPSG.07.03.01: Use evidence-based guidelines to prevent hospital-acquired MDRO infections														
NPSG.07.04.01: Use evidence-based guidelines to prevent CLABSI														
NPSG.07.05.01: Use evidence-based guidelines for preventing surgical site infections														
NPSG.08.01.01: Accurately and completely reconcile medications across the continuum of care (standard is not in effect at this time)														
NPSG.08.02.01: Give a list of the patient's medicines to their next caregiver/regular doctor before discharge (standard is not in effect at this time)														
NPSG.08.03.01: Provide a list and explanation of the patient's medicines to the patient/family before discharge (standard is not in effect now)														
NPSG.08.04.01: For patients who get medicine in small amounts or for a short time, perform modified medication reconciliation (standard is not in effect now)														
NPSG.15.01.01: Identify patients at risk for suicide														
UP.01.01.01: Conduct a pre-procedure verification process														
UP.01.02.01: Mark the correct surgical site on the patient's body														
UP.01.03.01: Perform a time-out before the procedure														
(2012) NPSG.07.07.01: Implement evidence-based practices to prevent indwelling catheter-associated urinary tract infections (CAUTI)														
<b>Hospital Outpatient Measures (Joint Commission/CMS)</b>														
OP-1: Median time to fibrinolysis														X
OP-2: Fibrinolytic therapy received within 30 minutes of ED arrival														X
OP-3: Median time to transfer to another facility for acute coronary intervention														X
OP-4: Aspirin at arrival														X
OP-5: Median time to ECG														X
OP-6: Prophylactic antibiotic initiated within one hour prior to surgical incision														X
OP-7: Prophylactic antibiotic selection for surgical patients														X
OP-8: MRI lumbar spine for low back pain														X
OP-9: Mammography follow-up rates														X
OP-10: Abdomen CT use of contrast material														X
OP-11: Thorax CT use of contrast material														X
OP-12: Ability for providers with HIT to receive lab data electronically directly into their qualified/certified EHR system as discrete searchable data (CY 2012)														X
OP-13: Cardiac imaging for preoperative risk assessment for non-cardiac low-risk surgery (CY 2012)														X
OP-14: Simultaneous use of brain CT and sinus CT (CY 2012)														X
OP-15: Use of brain CT in the ED for atraumatic headache														Public reporting deferred
OP-16: ED--Tropin results for AMI or chest pain patients received within 60 minutes of arrival (CY 2013)														Removed August 2012
OP-17: Tracking clinical results between visits (CY 2013)														X
OP-18: Median time from ED arrival to ED departure for discharged patients (CY 2013)														X



**Program**

Quality Measure	CMS: IPPS for CY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2014-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/TECH meaningful use clinical quality measures*	CMS: ACO	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/ MUDO Ch. 270	Maine: MHMC
OP-19: Transition record with specified elements received by discharged patients (CY 2013)					Suspended March 2012											
OP-20: Door to diagnostic evaluation by qualified medical professional (CY 2013)					X											
OP-21: ED--median time to pain management for long bone fracture (CY 2013)					X											
OP-22: ED--patient left before being seen (CY 2013)					X											
OP-23: ED--head CT scan results for acute ischemic stroke (or hemorrhagic stroke who received head CT scan) within 45 minutes of arrival (CY 2013)					X											
OP-24: ED--Cardiac rehabilitation referral from an outpatient setting (CY 2014)					Deferred											
OP-25: Safe Surgery Checklist use (CY 2014)					X											
OP-26: Outpatient surgery volume (cardiovascular, eye, GI, GU, musculoskeletal skin, nervous system, respiratory) (CY 2014)					X											
<b>Outpatient Measures</b>																
CAHPS: Timely care (NQF #5)											X					
CAHPS: Doctor communication (NQF #5)											X					
CAHPS: Access to specialists (NQF #5)											X					
CAHPS: Rating of doctor (NQF #5)											X					
CAHPS: Health promotion and education (NQF #5)											X					
CAHPS: Shared decision making (NQF #5)											X					
CAHPS 30 question core survey of adult health plan members (NQF #6)											X					
NCQA 20 question supplement to CAHPS survey (NQF #7)											X					
Utilization of ambulatory care--outpatient visits and ED (NCQA)											X					
Medication reconciliation after inpatient discharge (NQF #97)											X					
Annual monitoring for patients on persistent medications (NQF #21)											X					
Proportion of days covered: 5 rates by therapeutic categories (NQF #541)											X					
Percent of PCPs qualifying for an EHR incentive payment program											X					
Influenza immunization annually for adult patients (NQF #41; PQRS #110)											X					
Influenza immunization annually for adult patients (NQF #59; NCQA)											X					
Pneumococcal vaccine (NQF #43)											X					
Mammography screening (NQF #31; PQRS #112)											X					
Cervical cancer screening (NQF #2; NCQA)											X					
Colorectal screening (NQF #34; PQRS #113)											X					
Adult weight screening and follow-up (NQF #421; PQRS #128)											X					
Adult BMI assessment (HEDIS, NCQA)											X					
Blood pressure measurement within 2 years for adults 18+ (CMS)											X					
Chlamydia screening in women age 21-24 (HEDIS, NCQA)											X					
Tobacco use assessment/intervention (NQF #28)											X					
Medical assistance with tobacco cessation (NQF #27; NCQA)											X					
Depression screening and follow-up (NQF #418; PQRS #134)											X					
Antidepressant medication management (NQF #105)											X					
Bipolar I Disorder 2: Annual assessment of BMI, glycemic control and lipids (Rand)											X					
Bipolar I Disorder C: Proportion of patients treated with mood stabilizer medications (Rand)											X					



**Program**

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HITECH meaningful use clinical quality measures <sup>4</sup>	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/MHDO Ch. 179	Maine: MHMC
Schizophrenia 2: Annual assessment of BMI, glycemic control and lipids (Rand)															
Adherence to anti-psychotics for individuals with schizophrenia (CMS)													X		
Schizophrenia C: Proportion of selected patients with antipsychotic polypharmacy utilization (Rand)															
Follow-up after hospitalization for mental illness (NQF #576)													X		
Mental health service utilization (NCQA)															
Alcohol misuse screening/intervention (VHA)															
Initiation and engagement of alcohol and other drug dependence treatment (NQF #4; NCQA)													X		
Diabetes: A1c control <8 (NQF #729) all or nothing scoring											X				
Diabetes: A1c poor control >9 (NQF #59)											X				
Diabetes: A1c testing (NQF #57)													X		
Diabetes: LDL <100 (NQF #729) all or nothing scoring											X				
Diabetes: Tobacco non-use (NQF #729) all or nothing scoring											X				
Diabetes: Lipid profile (NQF #63; NCQA)													X		
Diabetes: Aspirin use (NQF #729) all or nothing scoring											X				
Diabetes: Blood pressure control (NQF #729) (OP-27) all or nothing scoring											X				
Heart failure: Beta blockers therapy for LVSD (NQF #83; PQRS #8)											X				
CAD: Drug therapy to lower LDL (NQF #74; PQRS #197) all or nothing scoring											X				
CAD: ACE or ARB therapy for diabetic patients (NQF #66; PQRS #118) all or nothing scoring											X				
IVD: Complete lipid profile and LDL under 100 (NQF #75; NCQA)											X				
IVD: Use of aspirin or another antithrombotic (NQF #68)											X				
Persistent beta blocker therapy for AMI patients (NQF #71; NCQA)											X				
Blood pressure control (NQF #18; NCQA)											X				
Asthma: Use of appropriate medications (NQF #36)													X		
HIV/AIDS: Annual medical visit (NQF #403)															
Falls: Screening for fall risk (NQF #101)															
Timely transmission of transition record from facility to next provider (NQF #648; AMA-PCPI)															
Low back pain: Use of imaging studies (NQF #52; NCQA)															
X <sup>1</sup> : Proposed to be added (cells filled with yellow highlight also mark proposals)															
X <sup>2</sup> : 8 HCAHPS domains (quiet/cleanliness combined; recommendation)															
X <sup>3</sup> : MQF/MHDO is accepting the applicable CMS metrics for AMI, HF, PN and SCIP and will amend its rule to align with CMS															
X <sup>4</sup> : After FY 2015 payment calculation, data period will be flu season; 10/1-3/51															



**Program**

**Quality Measure**

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/ECI meaningful use clinical quality measures*	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicare	Maine: MQF/MHDO	Maine: MHMC
* Stage 1 CMS "meaningful use" 14 requirements: CPOE, implement drug interaction/allergy checks, maintain problem list, maintain allergy list, record certain demographic info, chart certain vital signs, record smoking history, report 15 quality measures, implement one clinical decision support rule, provide patients with an e-copy of certain health information & discharge instructions on request, exchange key clinical information among providers, & adequately protect electronic health information. Stage 1 also requires meeting 5 of these 10 objectives: implement drug formulary checks, record advance directives, incorporate lab results into EHR, generate patient lists by conditions, use EHR technology to identify patient-specific education resources, medication reconciliation, provide summary care record for each transition of care, submit electronic data to immunization registries, submit reportable electronic data to state public health agency, & submit syndromic surveillance data to public health agencies. (Stage 1 focus is on data capture; Stage 2 focus on information exchange; Stage 3 focus on achieving improved outcomes.) Stage 2 final rule published August 2012; must meet 16 core objectives plus 3 from the 6 menu objectives and report on 16/29 clinical quality measures from at least 3 of the 6 National Quality Strategy policy domains. (The 29 measures finalized for FY 2014 are noted above.)															
Hospitals accredited by the Joint Commission are required to collect data for a minimum of four core measure sets or a combination of applicable core measure sets and non-core measures. The core measure sets are the metrics listed above for: Acute Myocardial Infarction (AMI), Children's Asthma Care (CAC), Heart Failure (HF), Surgical Care Improvement Project (SCIP), Pneumonia (PN), Hospital Outpatient Measures (HOP), Perinatal Care (PR), Venous Thromboembolism (VTE), Hospital-Based Inpatient Psychiatric Services (HBIPS), Stroke (STK), Tobacco Use (TOB) and Substance Abuse (SAB). Accredited hospitals are also surveyed for their compliance with the National Patient Safety Goals, which are updated annually. (Web-standing, psych must participate in HBIPS)															
<b>GLOSSARY:</b>															
ACO: Accountable Care Organization															
ACSC: ambulatory care sensitive conditions															
AHRQ: Agency for Healthcare Research and Quality (U.S. Department of Health and Human Services)															
CAD: coronary artery disease															
CDC: Centers for Disease Control and Prevention															
CLABSII: central line-associated blood stream infection															
CMS: Centers for Medicare & Medicaid Services															
COPD: chronic obstructive pulmonary disease															
HAC: hospital-acquired condition															
IVD: ischemic vascular disease															
MA: Medicare Advantage															
MDRO: multidrug-resistant organisms															
MHMC: Maine Health Management Coalition															
MQF/MHDO: Maine Quality Forum/Maine Health Data Organization (MHDO web site allows users to calculate AHRQ quality measures)															
NCQA: National Committee for Quality Assurance															
NQF: National Quality Forum															
PQRS: CMS Physician Quality Reporting System															
UAP: unlicensed assistive personnel															
VBP: Value-Based Purchasing															
WHO: World Health Organization															
<b>August 6, 2012</b>															

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**Maine Revised Statute Title 22, Chapter 1684:  
SENTINEL EVENTS REPORTING**

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## 22 §8751. SENTINEL EVENT REPORTING

There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

### SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

## 22 §8752. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

**1. Division.** "Division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

[ 2009, c. 358, §1 (AMD) .]

**2. Health care facility.** "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, an end-stage renal disease facility and an intermediate care facility for persons with ~~mental retardation~~ or developmental disabilities.

*intellectual disabilities* *Other*  
[ 2009, c. 358, §1 (AMD) .]

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**2-A. Immediate jeopardy.** "Immediate jeopardy" means a situation in which the provider's noncompliance with one or more conditions of participation in the federal Medicare program has caused, or is likely to cause, serious injury, harm or impairment to or death of a patient.

[ 2009, c. 358, §1 (NEW) .]

**3. Major permanent loss of function.** "Major permanent loss of function" means sensory, motor, physiological or intellectual impairment that was not present at the time of admission and requires continued treatment or imposes persistent major restrictions in activities of daily living.

[ 2009, c. 358, §1 (AMD) .]

**3-A. Near miss.** "Near miss" means an event or situation that did not produce patient injury, but only because of chance, which may include, but is not limited to, robustness of the patient or a fortuitous, timely intervention.

[ 2009, c. 358, §1 (NEW) .]

**3-B. Root cause analysis.** "Root cause analysis" means a structured process for identifying the causal or contributing factors underlying adverse events. The root cause analysis follows a predefined protocol for identifying these specific factors in causal categories.

[ 2009, c. 358, §1 (NEW) .]

**4. Sentinel event.**

[ 2009, c. 358, §1 (RP) .]

**4-A. Sentinel event.** "Sentinel event" means:

A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; [2009, c. 358, §1 (NEW).]

B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient. If within 2 weeks of discharge from the facility, evidence is discovered that the major loss of function was not permanent, the health care facility is not required to submit a report pursuant to section 8753, subsection 2; [2009, c. 358, §1 (NEW).]

C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; and [2009, c. 358, §1 (NEW).]

D. Other serious and preventable events as identified by a nationally recognized quality forum and determined in rules adopted by the department pursuant to section 8756. [2009, c. 358, §1 (NEW).]

[ 2009, c. 358, §1 (NEW) .]

## SECTION HISTORY

RR 2001, c. 2, §A37 (COR). RR 2001, c. 2, §A38 (AFF). 2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2007, c. 324, §17 (REV). 2009, c. 358, §1 (AMD).

**22 §8753. MANDATORY REPORTING OF SENTINEL EVENTS**

A health care facility shall notify the division whenever a sentinel event has occurred, as provided in this chapter. [2009, c. 358, §2 (AMD).]

**1. Notification.** A health care facility shall notify the division of a sentinel event by the next business day after the event occurred or the next business day after the facility discovers that the event occurred. The notification must include the date and time of notification, the name of the health care facility and the type of sentinel event pursuant to section 8752, subsection 4-A.

[ 2009, c. 358, §2 (AMD) .]

**2. Reporting.** The health care facility shall file a written report no later than 45 days following the notification of the occurrence of a sentinel event pursuant to subsection 1. The written report must be signed by the chief executive officer of the facility and must contain the following information:

A. Facility name and address; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

B. Name, title and phone number of the contact person for the facility; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

C. The date and time of the sentinel event; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

D. The type of sentinel event and a brief description of the sentinel event; and [2009, c. 358, §2 (AMD) .]

E. [2009, c. 358, §2 (RP) .]

F. [2009, c. 358, §2 (RP) .]

G. [2009, c. 358, §2 (RP) .]

H. A thorough and credible root cause analysis. A root cause analysis is thorough and credible only in accordance with the following.

(1) A thorough root cause analysis must include: a determination of the human and other factors most directly associated with the sentinel event and the processes and systems related to its occurrence; an analysis of the underlying systems and processes to determine where redesign might reduce risk; an inquiry into all areas appropriate to the specific type of event; an identification of risk points and their potential contributions to the event; a determination of potential improvement in processes or systems that would tend to decrease the likelihood of such an event in the future or a determination, after analysis, that no such improvement opportunities exist; an action plan that identifies changes that can be implemented to reduce risks or formulates a rationale for not undertaking such changes; and, where improvement actions are planned, an identification of who is responsible for implementation, when the action will be implemented and how the effectiveness of the action will be evaluated.

(2) A credible root cause analysis must include participation by the leadership of the health care facility and by the individuals most closely involved in the processes and systems under review, is internally consistent without contradictions or unanswered questions, provides an explanation for all findings, including those identified as "not applicable" or "no problem," and includes the consideration of any relevant literature.

(3) The root cause analysis submitted to the division may exclude protected professional competence review information pursuant to the Maine Health Security Act. [2009, c. 358, §2 (NEW) .]

[ 2009, c. 358, §2 (AMD) .]

**3. Cooperation.** A health care facility that has filed a notification or a report of the occurrence of a sentinel event under this section shall cooperate with the division as necessary for the division to fulfill its duties under section 8754.

[ 2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

**4. Immunity.** A person who in good faith reports a near miss, a suspected sentinel event or a sentinel event or provides a root cause analysis pursuant to this chapter is immune from any civil or criminal liability for the act of reporting or participating in the review by the division. "Good faith" does not include instances when a false report is made and the person reporting knows the report is false. This subsection may not be construed to bar civil or criminal action regarding perjury or regarding the sentinel event that led to the report.

[ 2009, c. 358, §2 (AMD) .]

**5. Near miss notification.** A health care facility may notify the division of the occurrence of a near miss. Should a facility report a near miss, the notification must include the date and time of notification, the name of the health care facility and the type of event or situation pursuant to section 8752, subsection 4-A that is related to the near miss.

[ 2009, c. 358, §2 (NEW) .]

#### SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §2 (AMD) .

## 22 §8753-A. STANDARDIZED PROCEDURE

A health care facility shall have a written standardized procedure for the identification of sentinel events. The division shall develop the standardized reporting and notification procedures by adoption of routine technical rules under Title 5, chapter 375, subchapter 2-A. [2009, c. 358, §3 (NEW) .]

### SECTION HISTORY

2009, c. 358, §3 (NEW) .

## 22 §8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

**1. Initial review; other action.** Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW) .]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW) .]

[ 2009, c. 358, §4 (AMD) .]

**2. Procedures.** The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[ 2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

**3. Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[ 2009, c. 358, §5 (AMD) .]

**4. Report.** The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[ 2009, c. 358, §6 (AMD) .]

#### SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD).

## 22 §8755. COMPLIANCE

**1. Oversight.** The division shall place primary emphasis on ensuring effective corrective action by the facility.

[ 2009, c. 358, §7 (NEW) .]

**2. Penalties.** When the division determines that a health care facility failed to report a sentinel event pursuant to this chapter, the health care facility is subject to a penalty imposed in conformance with Title 5, chapter 375, subchapter 4 and payable to the State of not more than \$10,000 per violation. If the facility in good faith notified the division of a suspected sentinel event and the division later determines it is a sentinel event, the facility is not subject to a penalty for that event. Funds collected pursuant to this section must be deposited in a dedicated special revenue account to be used to support sentinel event reporting and education.

[ 2009, c. 358, §7 (NEW) .]

**3. Administrative hearing and appeal.** To contest the imposition of a penalty under this section, a health care facility must submit to the division a written request for an administrative hearing within 10 days of notice of imposition of a penalty pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[ 2009, c. 358, §7 (NEW) .]

**4. Injunction.** Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

[ 2009, c. 358, §7 (NEW) .]

**5. Enforcement.** The Office of the Attorney General may file a complaint with the District Court seeking injunctive relief for violations of this chapter.

[ 2009, c. 358, §7 (NEW) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §7 (RPR).

## 22 §8756. RULEMAKING

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

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**Public Records Exceptions Subcommittee**  
Proposed Draft  
(no specific protection for trade secrets, remove 50-mile radius)

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**  
Proposed Draft  
(no specific protection for trade secrets, remove 50-mile radius)

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director may provide information on~~ must include the identity of the chemical substance, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

~~In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.~~

**22 §1696-E. Cooperation with state agencies**



**Public Records Exceptions Subcommittee**

Proposed Draft

(no specific protection for trade secrets, remove 50-mile radius)

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. ~~Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.~~

**22 §1696-F. Provision of information; ~~trade secrets~~**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. All information about a toxic or hazardous substance is a public record.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public. These amendments require the director to release the information that is public upon request to any requester, and repeal the requirement that the requester reside within 50 miles of the specific location.

G:\STUDIES 2012\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Community right to know act draft for Sept 13.doc (8/31/2012 11:30:00 AM)





**STATE OF MAINE**  
**DEPARTMENT OF PUBLIC SAFETY GAMING & WEAPONS SECTION**  
 164 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0164  
 (207) 624-7210

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**Application for Contract Security Company License**

**Application Fee - New: \$121.00 (\$100.00 plus \$21.00 for Background Check) Upon Issuance of License \$300.00**

**Application Fee - Renewal: \$221.00 (\$200.00 plus \$21.00 for Background Check)**

**(Make Checks Payable to Treasurer, State of Maine)**

Full Name (Last, First, Middle)(Please Print)			Date of Birth	Place of Birth
Complete Physical Address			SSN	Telephone #
City or Town	State	Zip Code	High School Graduate or High School Equivalency Yes <input type="checkbox"/> No <input type="checkbox"/>	
Complete Mailing Address			Citizen or Resident Alien of the United States Yes <input type="checkbox"/> No <input type="checkbox"/>	
City or Town	State	Zip Code	<b>FOR OFFICE USE ONLY</b>	
Eyes	Height	Weight	Case Number _____	
			Check Number _____	
			Check Amount _____	
Resident Alien Number	Federal ID Number		New	Renewal

List Addresses for the Last 5 Years (If More Space is Needed use a Plain Sheet of Paper)

Address	Dates

Name of Company			Name of DBA		
Company's Physical Address			DBA Physical Address		
City or Town	State	Zip Code	City or Town	State	Zip Code
Company's Mailing Address			DBA Mailing Address		
City or Town	State	Zip Code	City or Town	State	Zip Code
Company's Telephone Number			DBA Telephone Number		

List of Previous Issuances of a Contract Security Company License by any Issuing Authority


List of Previous Refusals to Issue or Renew; Suspension or Revocations of any Contract Security Company License by any Issuing Authority


Check Appropriate Box After Each Question

1. Are you less than 18 years of age? Yes  No
  2. Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime which is punishable by one year or more imprisonment or for any other crime alleged to have been committed by you with the use of a dangerous weapon, as defined in 17-A MRSA § 2(9), or of a firearm against another person? Yes  No
  3. Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be punishable by one year or more imprisonment or for any juvenile offense alleged to have been committed by you with the use of a dangerous weapon, as defined in 17-A MRSA § 2(9), or of a firearm against another person? Yes  No
  4. Have you been convicted of a crime described in question 2 or adjudicated as having committed a juvenile offense as described in question 3? Yes  No
  5. Are you a fugitive from justice? Yes  No
  6. Are you a drug abuser [defined in 32 MSRA § 9403(3-E)] or drug addict [defined in 32 MSRA § 9403(3-C)] or drug dependent person [defined in 32 MSRA § 9403(3-D)]? Yes  No
- NOTE: Definition of drug dependent person does not include a person who is able to function effectively as the result of taking prescription or other drugs, such as a diabetic who is able to function effectively as the result of taking insulin.
7. Do you have a mental disorder which causes you to be potentially dangerous to yourself or others? Yes  No
  8. Have you been adjudicated to be an incapacitated person [defined in 18-A MRSA § 5-101(1)] pursuant to Title 18-A, Article V, Parts 3 and 4, and not had that designation removed by an order under Title 18-A, Section 5-307, Subsection (b)? Yes  No
  9. Have you been dishonorably discharged from the military forces within the past 5 years? Yes  No
  10. Are you an illegal alien? Yes  No
  11. Is there a formal charging instrument now pending against you in this jurisdiction for any crime enumerated in section 9412? Yes  No
  12. Is there a formal charging instrument now pending against you in this jurisdiction for a juvenile offense which involves conduct which if committed by an adult, would be a crime enumerated in section 9412? Yes  No
  13. Have you within the past 5 years been convicted of a crime described in question 11 or adjudicated of having committed a juvenile offense described in question 12? Yes  No
  14. Within the past 5 years have you been the subject of an investigation by any law enforcement agency regarding the alleged abuse by you of family or household members? Yes  No
  15. Within the past 5 years have you been convicted of 3 or more crimes punishable by less than one year imprisonment? Yes  No
  16. Within the past 5 years have you been adjudicated to have committed 3 or more juvenile offenses involving conduct which if committed by an adult, would be punishable by less than one year imprisonment? Yes  No
  17. Within the past 5 years have you been adjudicated of 3 or more civil violation? Yes  No
  18. Within the past 5 years has your license as a contract security company been suspended pursuant to section 9411-A? Yes  No
  19. Within the past 5 years have you engaged in reckless or negligent conduct, as defined in 32 MSRA § 9403(8-A), which has been the subject of an investigation by a government entity? Yes  No

Initials: \_\_\_\_\_

**BY AFFIXING YOUR SIGNATURE BELOW AS THE APPLICANT YOU:**

A. Certify that the statements you have made in this application, including Addendum A, and any documents you have made a part of this application, are true and correct.

B. Certify that you understand that an affirmative answer to question 1, question 13, or any of the questions numbered 4 through 10 is cause for refusal.

C. Certify that you understand that any false statements made in either this application, including Addendum A, or any documents you have made part of this application may result in criminal prosecution as provided in section 9412, subsection 1, paragraph D.

D. Certify that you understand that at the request of the commissioner or his designee you are required and certify that you are willing to take whatever action is required of you by law to allow the commissioner or his designee to obtain from: hospitals and mental institutions either within or outside the State, limited to records of involuntary commitments; law enforcement agencies; and the military, information relevant to the following:

1. The ascertainment of whether the information supplied in the application or any documents made a part of the application is true and correct;
2. The ascertainment of whether each of the additional requirements of section 9405 has been met and
3. Section 9411-A.

E. Certify that you understand that since a photograph is an integral part of the application process, you will submit a photograph of yourself taken within six months of the date of this application.

F. Certify that you understand that if it becomes necessary to resolve any questions as to your identity, you will submit to having your fingerprints taken by the commissioner or his designee.

G. Certify that you have received a copy of the pamphlet entitled "Laws Relating to Private Security Guards" dated May 2009, issued by the Bureau of Maine State Police.

**Under penalties of perjury, I certify that the statements in this written application and any documents made a part thereof are, to the best of my knowledge and belief, true, correct and complete.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**Authority, pursuant to 32 M.R.S. §§ 9405(1-A)(G)(1) and 9405(4), to release information to the Commissioner or his/her designee for the purpose of evaluating information supplied on the application for a Contract Security Company License.**

To all law enforcement agencies and courts, either within or outside the State of Maine:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, a copy thereof, within six months of the date appearing below, any information in your possession or control concerning me pertaining to the following:

1. conviction data;
2. any criminal matter in which a formal charging instrument is now pending;
3. adjudication data within the past 5 years relating to any civil violation;
4. fugitive from justice status;
5. incidents of abuse of family or household members within the past 5 years;
6. unlawful use of, or addiction to, marijuana or any other drug;
7. reckless or negligent conduct within the past 5 years.

To all military forces, both State and Federal:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below, any information in your possession or control concerning me pertaining to a dishonorable discharge from the military forces.

To the Justice Department, Immigration and Naturalization Service:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below, any information in your possession or control concerning me pertaining to being an illegal alien.

To all hospitals and mental institutions wither within or outside the State of Maine:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below any information, if contained within your records, pertaining to being adjudged to be mentally defective or committed to a mental institution within the past 5 years.

(Check appropriate box below)

I wish to review this material prior to its release:

I do not wish to review this material prior to its release:

To all above addressed governmental entities:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below any information to your possession or control concerning me pertaining to the following:

1. my full name;
2. my full current address and addresses for the prior 5 years;
3. the date and place of my birth any my physical description;
4. my signature

Should there be any questions as to the validity of this release, you may contact me at the address and/or telephone number listed below.

Full Name (Last, First, Middle)(Please Print)	Date of birth	
Complete Physical Address	Telephone #	
City or Town	State	Zip Code
Complete Mailing Address		
City or Town	State	Zip Code
Signature of Applicant	Date	
Signature of Witness	Date	

*All information obtained pursuant to this release is confidential by virtue of 32 M.R.S. § 9418 and may not be made available for public inspection or copying by the Commissioner or his/her designee unless the confidentiality is waived by this applicant by written notice to the Commissioner.*





**Reinsch, Margaret**

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**From:** Cianchette, Michael <Michael.Cianchette@maine.gov>  
**Sent:** Friday, August 31, 2012 2:47 PM  
**To:** Reinsch, Margaret  
**Cc:** McCarthyReid, Colleen; Bentley, Curtis; Plummer, Judy; Billings, Dan  
**Subject:** RE: RTK AC - confidentiality for the Parole Board

Peggy,

Thanks for this. There are a few different pieces to your question, so I'll try to address them:

1. Why should the report containing recommendations be confidential?

The primary reason is the uniqueness of the Executive Clemency power. With the Constitutional Amendments doing away with the Executive Council, the clemency power is plenary and discretionary. A Governor could grant reprieves for every person convicted of theft on a Friday if he or she so chose. Instead, governors back to at least Gov. McKernan have had a board to perform the role formerly played by the Executive Council. To ensure that the Governor and the Board are fully informed as to the circumstances, history, and sentiment of a particular petition or petitioner, Corrections conducts a thorough background investigation. Portions of the background investigation report include statutorily-defined confidential information (e.g. non-conviction data (16 MRSA §613)), public policy-driven confidential information (e.g. victim's statements and community interviews), and public records (e.g. charging instruments).

In order for a Governor to be fully informed before he or she exercises this extraordinary power, it is essential that he or she has all this information available. Further, while narrowing the exception to include portions of the report could likely be done, there are other means available to information seekers to obtain the public records (Archives, Court system, etc.).

2. Should the exception be extended to the Executive Clemency Board?

While I agree with Judy that the exception should apply to the advisory board, I don't think legislative action is necessary. Again, because the Clemency power is plenary, the report is furnished to the Governor by DOC. The Governor, per his prerogative, then refers it to the Board for review. Nevertheless, the documents remain legally in the custody of the Governor and the exception would apply.

3. How is public access protected by the current system?

Again, the Constitution does not envision any role for public participation in the use of the clemency power. However, as noted, governors have constituted advisory boards to assist as the Executive Council once did. These advisory boards have had a two step process: first, they meet in executive session and review petitions, dismissing some outright. The others are granted a hearing. Those hearings are open to the public and advertised in a newspaper of general circulation where the crime occurred. Thus, if any member of the public or media wanted to witness the arguments made for/against a pardon, they are free to do so. Of course, this is not binding, so a future Governor could change this practice.

Hope that clarifies some of the process. Let me know if you have further questions. Happy to speak to the subcommittee if they'd like.

Thanks,

Mike

**Michael J. Cianchette**  
Office of the Governor  
[Direct] (207) 287-3543

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**From:** Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]  
**Sent:** Friday, August 31, 2012 11:54 AM  
**To:** Cianchette, Michael  
**Cc:** McCarthyReid, Colleen; Bentley, Curtis; Plummer, Judy  
**Subject:** RTK AC - confidentiality for the Parole Board

Hi, Mike –

The Public Records Exceptions Subcommittee review Title 34-A, section 5210, subsection 4, paragraph C and has some questions. Can you help?

The central question is really what information is paragraph C covering – it seems very broad. Specifically, why would the report itself – which would contain recommendations – be confidential?

Also, Judy Plummer at the Department of Corrections, who did a great job completing all the questionnaires for that Department, raised another question, which is that there are other entities that provide similar information to the Governor; shouldn't they be covered? Her questionnaire response is attached.

Any guidance you can provide us would be most appreciated.

Thanks!  
Peggy and Colleen and Curtis

<< File: 45.pdf >>

## §5210. Duties

The board shall: [1983, c. 459, §6 (NEW).]

- 1. Time of parole.** Determine the time of parole for each committed offender; [ 1983, c. 459, §6 (NEW) .]
- 2. Parole revocation.** Revoke parole when warranted due to a parole violation; [ 1983, c. 459, §6 (NEW) .]
- 3. Discharge from parole.** Determine the time of discharge of parolees from parole supervision; and [ 1983, c. 459, §6 (NEW) .]
- 4. Advice to Governor.** When requested by the Governor, advise him concerning applications for pardon, reprieve or commutation.
  - A. The board shall hold hearings, cause an investigation to be made and collect records to determine the facts and circumstances of a committed offender's crime, his past criminal record, his social history and his physical and mental condition as may bear on the application. [1983, c. 459, §6 (NEW).]
  - B. The board shall make recommendations regarding action by the Governor on the application. [1983, c. 459, §6 (NEW).]
  - C. All information obtained under this subsection, and any report furnished to the Governor under this subsection, is confidential. [1983, c. 459, §6 (NEW).]

[ 1983, c. 459, §6 (NEW) .]

SECTION HISTORY

1983, c. 459, §6 (NEW).

Margaret J. Reinsch, Esq., Legislative Analyst  
Joint Standing Committee on Judiciary  
Maine State Legislature  
Office of Policy and Legal Analysis  
13 State House Station  
Room 215, Cross State Office Building  
Augusta, Maine 04333  
(207) 287-1670 (office number)  
(207) 287-1673 (direct and voice mail)  
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**Public Records Exceptions Subcommittee**  
Proposed Draft (2-3 Minority Report)  
(Repeal confidentiality for Public Private Partnership records)

**Title 23: HIGHWAYS**  
**Part 5: DEPARTMENT OF TRANSPORTATION**  
**Chapter 410: DEPARTMENT OF TRANSPORTATION**  
**Subchapter 5: PUBLIC-PRIVATE PARTNERSHIPS**

**§4251. Public-private partnerships; transportation projects**

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

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement. [

**2. Applicability.** This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

**3. Authorization.** Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

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**4. Standards for review.** Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department.

B. The private entity must have the financial, technical and operational capacity to discharge the responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting.

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department.

D. The proposal must be cost-effective in the long term.

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration.

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement.

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and

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payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4.

I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures.

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility.

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department.

L. The proposal and transportation facility are in the best interest of the public. [

**5. Proposal and selection processes; solicited and unsolicited.** The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal.

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake

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negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations.

C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal.

**6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F.

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry.

C. The agreement must include provisions governing changes in tolls or fares.

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement.

**7. Exercise of powers.** If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

**8. Term of agreement.** An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.



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**9. Legislative approval.** If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

**10. Confidentiality of proposals and negotiations.** All records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under this subchapter are ~~confidential and not subject to public review until the department determines that the proposal meets the standards of this subchapter or until the proposal is finally rejected by the department~~ public records for the purposes of Title 1, chapter 13, subchapter 1.

**11. Report of proposals.** By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

**12. Rules.** The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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