

LD 113 An Act To Strengthen the Coequal Branches of Maine Government by Ensuring the Legislature Has Access to Necessary Information**To:** Members, Joint Standing Committee on State and Local Government**From:** Lynne Caswell, Esq., Legislative Analyst**Date:** February 10, 2021**SUMMARY**

This bill amends the chapter of the Maine Revised Statutes concerning interbranch communication and coordination to prohibit the Governor from limiting access to department commissioners and other executive branch personnel when the Legislature is seeking information necessary for the Legislature to do the work of the people of Maine.

TESTIMONY*

Sponsor (Rep. Tuell) - P.L. 2019 c. did not solve the problem

Proponents (League of Women Voters Maine) – representative government depends on transparency and reasonable access to the executive branch.

Opponents (Office of the Governor, written only) – violates separation of powers provision of Maine Constitution

NFNA (none)**INFORMATION****PRIOR SESSION** (129th, P.L. 2019, c. 136) – See Attachment A

In the 129th Legislature, LD 257 (Miramant) was considered by the SLG Committee. LD 257 was identical to this bill. It proposed a new §21203 to Title 5, chapter 555, Interbranch Communication and Coordination. The Governor's Office proposed an amendment to LD 257 which did not add a new section but amended the findings portion of this chapter. The bill was voted out of committee OPT-AM (8) / OTP(5) and was enacted. Attachment A highlights the new language enacted in 2019.

POTENTIAL ISSUE - Separation of Powers

Me Const. Art III, §1 & §2, Distribution of Powers, states:

Section 1. Powers distributed. The powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial.

Section 2. To be kept separate. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

STATUTORY REQUIREMENT TO PROVIDE INFORMATION

Several sections of statute require executive branch agencies to provide written materials and reports to the Legislative branch, including:

- 3 MRSA §165, sub-§4 requires “[e]ach state department shall furnish to a [joint standing] committee such documents, material or information as may be requested by a committee”
- 3 MRSA §551 requires the DAFS Commission and the State Treasurer to “advise the Legislature and the Governor in a timely manner and in written form as to the effect on the State's bonded debt of any bond issue or issues proposed.”
- 3 MRSA ch. 35, State Government Evaluation Act requires state and independent agencies to submit a program evaluation report to the committee of jurisdiction every 8 years

Section 996 of the Government Evaluation Act requires the Commissioner of DAFS, and others to provide “assistance”. Specifically, this section state:

“The Department of the Attorney General, the State Auditor, the State Controller, the Commissioner of Administrative and Financial Services, the Director of the Office of Fiscal and Program Review and the Director of the Office of Policy and Legal Analysis shall assist the committee and office with program evaluations under this chapter if the committee and the director determine that such assistance is necessary.”

FISCAL IMPACT - Preliminary (OFPR)

None provided as of this date.

CHAPTER 555**INTERBRANCH COMMUNICATION AND COORDINATION****§21201. Findings**

The Legislature finds that difficulties in interactions among the executive branch, the Legislature and the judicial branch often arise from the lack of understanding of the functions, structures, needs and perspectives of the 3 separate but coequal branches of government. Increased communication and coordination in daily activities as well as in long-range planning are possible to improve the effectiveness and efficiency of all 3 branches without the imposition of the views or directions of one or 2 branches upon another. The Legislature finds that active participation by the executive branch in the lawmaking process is essential to producing informed and effective legislation. The Legislature finds that the Constitution of Maine, Articles IV and V provide for shared participation in the lawmaking process and that shared responsibility has long been recognized and respected. The Legislature finds that a blanket policy by the executive branch that severely limits executive branch engagement and participation in the legislative process is contrary to these fundamental understandings and intentions underlying the Constitution of Maine and that the Governor should provide reasonably accessible information and expertise when the Legislature reasonably so requests.

§21202. Interbranch forum

1. Annual interbranch forum. Beginning in February 1995 and at least every year thereafter, the Chief Justice of the Supreme Judicial Court, the Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly convene an interbranch forum.

2. Purpose of forum. The purpose of the interbranch forum is to provide for discussions among the top policymakers from each branch of government to address the need for cooperation and coordination at all levels. Topics to be discussed may include, but are not limited to:

- A. An integrated system of communication;
- B. A technology plan;
- C. Long-range planning; and
- D. The allocation and use of resources.

3. More frequent forums. Representatives of the 3 branches may convene a forum as often as they determine it is appropriate.

4. Expenses. Each branch absorbs the expenses for convening and holding interbranch forums within the general operating budgets for each department