

## **Right to Know Advisory Committee**

November 13, 2015

Meeting Summary

Convened 1:07 p.m., Room 208, Cross State Office Building, Augusta

### Present:

Sen. David Burns  
Rep. Kim Monaghan  
Suzanne Goucher  
Fred Hastings  
Richard LaHaye  
Mary Ann Lynch  
Judy Meyer  
Harry Pringle  
Linda Pistner  
Luke Rossignol  
William Shorey

### Absent:

Chris Parr  
Helen Rankin  
Kelly Morgan

### Staff:

Natalie Haynes, Craig Nale, Henry Fouts

### **Introductions**

Advisory Committee members introduced themselves.

### **Public Records Exceptions Subcommittee update and recommendations**

Rep. Monaghan reviewed the progress of the Public Records Exceptions Subcommittee from its meeting that morning. During the review process in the Subcommittee meeting, the Department of Education proposed an amendment to a current public records exception under review, 20-A MRSA §13004(2-A)(B). Staff explained the information presented to the Subcommittee that morning regarding the amendment: that the objective of the exception was to allow sharing of Maine teacher discipline information with other states, through a national organization, that may be looking into a potential teacher candidate's background. Debra Plowman from the Department of Education spoke to the amendment further, stating that this confidentiality exception was undermined because it explicitly maintains a broad category of information as confidential, which includes the information that the Department wants to be able to share with other states under the exception.

While a majority of the Subcommittee had voted to recommend the Department's proposed amendment to the full Committee, Mr. Burns noted his vote in opposition to this. He stated his concern with allowing other states to see teacher discipline information that is not available to parents. Mr. Burns reiterated that he would like to see a mechanism for the public to have access to disciplinary information or investigations, at least after the fact. Mr. Pringle raised his reluctance to vote his support for Advisory Committee movement on this issue. He cited his concern with the breadth of currently confidential information the amendment would allow Maine to share with other states. Additionally, Mr. Pringle noted that the Maine public has, and will continue to have under the amendment, no access to any of this disciplinary information. He

counseled for further thought on the issue. Mr. Burns concurred, requesting further information from the Department before the Committee voted. Mr. Pringle moved to table the item, and the group voted to table the item and to seek further information from the Department on the question of how exactly the confidential information in 20-A MRSA §§6101 and 6103 fit within the broadened exception in 20-A MRSA §13004(2-A) sought by the Department.

Rep. Monaghan moved to accept the remaining “No Modification” recommendations from the Subcommittee with respect to the public records exceptions currently in statute that the Subcommittee reviewed that morning and at the Subcommittee’s previous meeting. The motion was seconded by Ms. Goucher, and the group unanimously voted in support.

### **Remote participation by members of public bodies**

Staff reviewed the results of the remote participation questionnaires received from members. Results were only received from 7 members, with answers showing a good deal of variability and containing various contingencies. Although the questionnaire allowed some concerns to be compared among members, the group agreed that it did not help reach a consensus. Staff then reviewed a chart comparing various elements (e.g. applicability, voting requirements, etc.) of past and present remote participation bills, as well as a draft bill containing various language options reflecting this variability. (Materials from this meeting are available on the Right to Know Advisory Committee’s website.) Sen. Burns noted that a broad recommendation for legislation would be more likely to get consensus. The group agreed to work through forming recommended legislation, agreeing to first address the issue of which public bodies the law permitting remote participation would apply to. Some members voiced support for the law applying to all public bodies, leaving to each body to determine through its policy whether or not to allow remote participation. Other members were opposed to elected officials being permitted to vote remotely. Some agreed with this limitation for reasons of implementing a more incremental change, and ensuring the law would not apply to the Legislature. After much discussion, a large majority of the group voted for the legislation to be written to apply to non-elected bodies subject to the Freedom of Access Act, with exclusions for public bodies currently permitted by statute to have remote participation by members. The Advisory Committee continued to work through consensus on the elements of what would be the group’s recommended legislation. The Advisory Committee voted to not include reference to the type of electronic means of communication that may be used, instead allowing that decision to be made by the body adopting the remote participation policy; to not allow remote participation at executive sessions out of privacy concerns; to maintain notice requirements; to ensure that members both present at the meeting location and participating remotely can hear all of the participants in the meeting and speak to other members of the body during the meeting; to ensure that documents discussed at the meeting be available to members not physically present; to prohibit members participating remotely from voting in quasi-judicial proceedings; and to allow a body to achieve a quorum by including members participating remotely in emergency circumstances. Staff reviewed the results of the discussion and the Committee voted unanimously in support of the resulting draft recommended legislation.

### **Records Management Stakeholder Group**

Staff updated the group on the latest meeting of the Records Management Stakeholder Group, which Advisory Committee staff members were formally invited to in order to keep the Committee apprised of that group’s progress developing reforms to the State records retention and archives process.

### **IT representative member**

The Advisory Committee asked staff to contact the Governor's Office to get an update on the appointment process for the newly added member to the Advisory Committee, a person with "broad experience in and understanding of issues and costs in multiple areas of information technology."

### **Transparency in the Legislature's budget negotiations**

Senator Burns and Representative Monaghan started a discussion about the budget negotiations and process during the past legislative session, which was an issue raised at the first Right to Know Advisory Committee meeting. Representative Monaghan stated that more information and resources were needed to properly address the issue, and explained that there may be a bill on the issue coming up in the next legislative session. Sen. Burns noted that there is an existing mechanism for determining whether FOAA was violated: through the court system. The issue was tabled without objection.

### **Draft annual report - outline**

Staff reviewed the proposed outline and appendices for the upcoming annual report. A full draft is to be presented at the following meeting. The Advisory Committee agreed to the proposed layout and makeup of the report.

### **Schedules**

The full Committee will meet in the morning of Dec. 1<sup>st</sup>, to be immediately followed by a Subcommittee meeting.

The meeting was adjourned at 3:29 p.m.