

RIGHT TO KNOW ADVISORY COMMITTEE

AGENDA

June 22, 2016

10:00 a.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Summary of the Right To Know Advisory Committee duties and powers
3. Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016
 - A. RTKAC recommendations
 - LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings
 - LD 1241, An Act To Increase Government Efficiency
 - B. Proposed public records exceptions reviewed by Judiciary Committee
 - LD 466, An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market
 - LD 1467, An Act Regarding Maine Spirits
 - LD 1498, An Act To Clarify Medicaid Managed Care Ombudsman Services
 - LD 1499, An Act To Increase the Safety of Social Workers
 - LD 1578, An Act To Update Maine's Solid Waste Management Laws
4. Public records exceptions statutory review schedule for public records exceptions enacted from 2005- 2012 pursuant to Public Law 2015, chapter 250 (due by 2017)
5. Potential topics and projects for 2016
 - Judiciary Committee request - review the public records exception enacted in LD 484, which relates to hazardous material transported by railroads. (*See letter.*)
 - Judiciary Committee request - develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State (LD 1499) (*See letter.*)
 - Ken Capron request - funding FOAA cases by indigent people and the possibility of developing a court form for a pro se complainant. (*See email.*)
 - Jack Comart (Maine Equal Justice Partners) suggestions – agency time and cost estimates, fee waiver policies, remedies for requestors. (*See email.*)
6. Discussion of any additional topics and projects for 2016
7. Discussion of Subcommittees
8. Scheduling of future meetings

Adjourn

**Right to Know Advisory Committee
Membership List
June 21, 2016**

Appointments by the Governor

Christopher Parr Representing state government interests
Department of Public Safety
104 State House Station
Augusta, ME 04333

Harry R. Pringle Representing school interests
Drummond, Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, ME 04101-2480

Vacant Representing municipal interests

Eric Stout A member with broad experience in
State of Maine OIT information technology
145 State House Station
Augusta, ME 04333

Appointments by the President of the Senate

Senator David C. Burns Senate member of the Judiciary Committee
159 Dodge Road
Whiting, ME 04691

Richard LaHaye Representing law enforcement interests
Chief, Searsport Police Department
3 Union Street
Searsport, ME 04974

Vacant Representing the press

Luke Rossignol Representing the public
Bemis & Rossingol
1019 State Road
Mapleton, ME 04757

William D. Shorey Representing county or regional interests
Board of Waldo County Commissioners
39-B Spring Street
Belfast, ME 04915

A. J. Higgins Representing broadcasting interests
State House Bureau Chief
Maine Public Broadcasting
18 West Street
Manchester, ME 04351

Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016

RTKAC recommendations

- LD 1586, An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings
 - LD 1241, An Act To Increase Government Efficiency
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127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1586

H.P. 1077

House of Representatives, February 9, 2016

**An Act To Implement Recommendations of the Right To Know
Advisory Committee Concerning Remote Participation in Public
Proceedings**

Reported by Representative HOBBS of Saco for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph
G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

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

2 PART A

3 Sec. A-1. 1 MRSA §403-A is enacted to read:

4 **§403-A. Public proceedings through other means of communication**

5 **1. Requirements.** A body, except a publicly elected body, subject to this subchapter
6 may conduct a public proceeding through telephonic, video, electronic or other similar
7 means of communication only if the following requirements are met:

8 A. The body has adopted a written policy that authorizes a member of the body who
9 is not physically present to participate in a public proceeding. The policy must
10 establish criteria that must be met before a member may participate when not
11 physically present. The policy may not allow a member who is not physically present
12 to participate in an executive session;

13 B. Notice of the public proceeding has been given in accordance with section 406;

14 C. A quorum of the body is assembled physically at the location identified in the
15 notice required by section 406, except that a body may convene a public proceeding
16 by telephonic, video, electronic or other similar means of communication without a
17 quorum if:

18 (1) An emergency has been declared in accordance with Title 22, section 802,
19 subsection 2-A or Title 37-B, section 742;

20 (2) The public proceeding is necessary to take action to address the emergency;
21 and

22 (3) The body otherwise complies with the provisions of this section to the extent
23 practicable based on the circumstances of the emergency;

24 D. Each member of the body who is participating in the public proceeding is able to
25 hear all the other members and speak to all the other members during the public
26 proceeding, and members of the public attending the public proceeding in the
27 location identified in the notice required by section 406 are able to hear all members
28 participating from other locations;

29 E. Each member of the body who is not physically present and who is participating
30 through telephonic, video, electronic or other similar means of communication
31 identifies the persons present at the location from which the member is participating;

32 F. All votes taken during the public proceeding are taken by roll call vote; and

33 G. Each member of the body who is not physically present and who is participating
34 through telephonic, video, electronic or other similar means of communication has
35 received prior to the public proceeding any documents or other materials that will be
36 discussed or presented at the public proceeding, with substantially the same content
37 as those documents actually discussed or presented. Documents or other materials
38 made available at the public proceeding may be transmitted to the member not
39 physically present during the public proceeding if the transmission technology is

1 the board is 4 members, but a smaller number may adjourn until a quorum is present.
2 Emergency meetings may be called by the executive director when it is necessary to take
3 action before a regular meeting can be scheduled. The executive director shall make all
4 reasonable efforts to notify all members as promptly as possible of the time and place of
5 any emergency meeting and the specific purpose or purposes for which the meeting is
6 called. For an emergency meeting, the 4 members constituting a quorum must include at
7 least one board member representing management and at least one board member
8 representing labor.

9 **SUMMARY**

10 Part A of this bill allows members of a body subject to the Freedom of Access Act to
11 participate in meetings of the body through telephonic, video, electronic or other similar
12 means of communication under certain conditions; however, the bill does not allow
13 members of publicly elected bodies to participate in public proceedings unless physically
14 present. The body must have adopted a written policy authorizing remote participation
15 with criteria that must be met before a member may participate remotely, but the policy
16 may not allow a member to participate remotely in an executive session of the body. The
17 bill also requires that notice of the proceeding must be given as if no members were
18 participating remotely, each member of the body must be able to hear and speak to all
19 other members, members of the public must be able to hear all members of the body, each
20 member participating remotely must identify anyone else present at the location from
21 which the member is participating, documents or materials discussed or presented at the
22 proceeding must have been received by or transmitted to members participating remotely
23 and all votes must be taken by roll call vote. A member who is not physically present may
24 not vote in a quasi-judicial proceeding of the body. A quorum of the body must be
25 physically present unless an emergency has been declared and the proceeding is
26 necessary to address the emergency. If the body conducts proceedings with members
27 participating remotely, the body must also hold at least one proceeding annually where no
28 members participate remotely.

29 Under current law, the following state agencies are authorized to use remote-access
30 technology to conduct meetings: the Finance Authority of Maine, the Commission on
31 Governmental Ethics and Election Practices, the Emergency Medical Services' Board and
32 the Workers' Compensation Board. Part B provides a specific exemption from the new
33 requirements for the Emergency Medical Services' Board and the Workers' Compensation
34 Board and does not affect the existing authority of those agencies or the Finance
35 Authority of Maine or the Commission on Governmental Ethics and Election Practices to
36 use remote-access technology to conduct meetings.

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Date: (Filing No. H-)

JUDICIARY

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

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1077, L.D. 1586, Bill, “An Act To Implement Recommendations of the Right To Know Advisory Committee Concerning Remote Participation in Public Proceedings”

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

'Sec. 1. 1 MRSA §403-A is enacted to read:

§403-A. Remote participation in public proceedings

1. Written policy required; posted. A body subject to this subchapter may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication only if the body first adopts a written policy that governs remote participation and that explicitly describes how the policy meets the principles of this subchapter. The body shall make the policy available on its publicly accessible website, if any, and shall post a copy of the policy at the site of the proceeding included in the notice under section 406 in which one or more members participate remotely.

2. Policy contents. The policy adopted under subsection 1 must address under what circumstances a member may participate remotely, whether a quorum is required to physically assemble, whether the body may conduct an executive session when a member is participating remotely, the regular, quasi-judicial or other proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice under section 406 can hear or see and hear the members who are participating remotely.

3. Policy provided to Public Access Ombudsman; review. A body shall submit a copy of the policy adopted under subsection 1 to the Public Access Ombudsman, appointed pursuant to Title 5, section 200-I, subsection 1, who shall make all the policies received available to the public and submit them annually to the advisory committee.'

COMMITTEE AMENDMENT

SUMMARY

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

This amendment replaces the bill, which restricts which public bodies may conduct public proceedings when one or more members are participating remotely through telephonic, video, electronic or other similar means of communication. Instead, this amendment provides that any body subject to the Freedom of Access Act may conduct a public proceeding in which one or more members participate remotely through telephonic, video, electronic or other similar means of communication, but only if the body first adopts a written policy that governs the remote participation and that explicitly describes how the policy meets the principles of the Freedom of Access Act. The policy must address under what circumstances a member may participate remotely, whether the body may conduct an executive session when a member is participating remotely, whether a quorum must physically assemble, the proceedings in which a member participating remotely may vote and how the body will ensure that members of the public in attendance at the site of the proceeding included in the notice can hear or see and hear the members who are participating remotely.

A body that adopts a remote participation policy must make the policy available on the body's publicly accessible website and must post a copy at the location of each meeting during which one or more members participate remotely.

A body that adopts a remote participation policy must send a copy of the policy to the Public Access Ombudsman, who will make all the policies received available to the public and submit them annually to the Right To Know Advisory Committee.

FISCAL NOTE REQUIRED
(See attached)

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

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S.P. 446 - L.D. 1241

An Act To Increase Government Efficiency

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

Sec. 1. 4 MRSA §1602, sub-§3, as amended by PL 1997, c. 523, §2, is further amended to read:

3. Officers; quorum. The authority shall elect from its membership a chair and a vice-chair. In addition, the authority may have a secretary and a treasurer, who may be members or nonmembers of the authority. Three members of the authority constitute a quorum and the vote of 3 members is necessary for any action taken by the authority. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. 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. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

Sec. 2. 22 MRSA §2054, sub-§4, as enacted by PL 1971, c. 303, §1, is amended to read:

4. Powers of authority. The powers of the authority ~~shall be~~ are vested in ~~the its~~ members ~~thereof in office from time to time,~~ and 5 members of the authority ~~shall~~ constitute a quorum at any meeting of the authority. ~~No~~ A vacancy in the membership of the authority ~~shall does not~~ impair the right of ~~such members~~ a quorum to exercise all the rights and perform all the duties of the authority. ~~Any~~ An action taken by the authority under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution ~~shall take~~ takes effect immediately, ~~or an action taken by the authority may be authorized~~ by a resolution circularized or sent to each member of the authority, which ~~shall take~~ resolution takes effect at such time as a majority of the members ~~shall~~ have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it ~~may deem~~ considers proper.

The authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each member can hear all other members, speak to all other members and, to the extent reasonably practicable, see all other members by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all members participating from other locations by videoconferencing or other similar means of communication;

B. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the member is participating;

C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the member's attendance is not reasonably practical. The reason that the member's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. 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. Failure to comply with this paragraph does not invalidate an action taken by the authority at the public proceeding.

Sec. 3. 30-A MRSA §4723, sub-§2, ¶B, as amended by PL 2011, c. 560, §1, is further amended to read:

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities. The powers of the Maine State Housing Authority are vested in the commissioners. The commissioners may delegate such powers and duties to the director of the Maine State Housing Authority as they determine appropriate.

The Governor shall appoint the chair of the commissioners from among the 8 gubernatorial appointments. The chair serves as a nonvoting member, except that the chair may vote only when the chair's vote will affect the result. The commissioners shall elect a vice-chair of the commissioners from among their number.

Following reasonable notice to each commissioner, 5 commissioners of the Maine State Housing Authority constitute a quorum for the purpose of conducting its business, exercising its powers and for all other purposes, notwithstanding the existence of any vacancies. Action may be taken by the commissioners upon a vote of a majority of the commissioners present, unless otherwise specified in law or required by its bylaws.

The Maine State Housing Authority may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

(1) Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

(2) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and

(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

Sec. 4. 30-A MRS §5951, sub-§4, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

4. Officers of board; exercise of powers. The board of commissioners shall elect one of its members as ~~chairman~~, chair and one as ~~vice-chairman~~ vice-chair and shall appoint an executive director who ~~shall~~ also ~~serve~~ serves as both secretary and treasurer. The powers of the bank are vested in the commissioners of the bank in office from time to time. Three commissioners of the bank ~~constitutes~~ constitute a quorum at any meeting of the commissioners. Action may be taken and motions and resolutions adopted by the bank at any meeting by the affirmative vote of at least 3 commissioners of the bank. A vacancy in the office of commissioner of the bank does not impair the right of a quorum of the commissioners to exercise all the powers and perform all the duties of the bank.

The board of commissioners may meet by telephonic, video, electronic or other similar means of communication with less than a quorum assembled physically at the location of a public proceeding identified in the notice required by Title 1, section 406 only if:

A. Each commissioner can hear all other commissioners, speak to all other commissioners and, to the extent reasonably practicable, see all other commissioners

by videoconferencing or other similar means of communication during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear and, to the extent reasonably practicable, see all commissioners participating from other locations by videoconferencing or other similar means of communication;

B. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication identifies all persons present at the location from which the commissioner is participating;

C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only when the commissioner's attendance is not reasonably practical. The reason that the commissioner's attendance is not reasonably practical must be stated in the minutes of the meeting; and

D. Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate an action taken by the bank at the public proceeding.

Summary of Second Regular Session, 127th Legislature's FOAA actions in 2016

Proposed public records exceptions reviewed by Judiciary Committee

- LD 466, An Act To Increase Competition and Ensure a Robust Information and Telecommunications Market
- LD 1467, An Act Regarding Maine Spirits
- LD 1498, An Act To Clarify Medicaid Managed Care Ombudsman Services
- LD 1499, An Act To Increase the Safety of Social Workers
- LD 1578, An Act To Update Maine's Solid Waste Management Laws

STATE OF MAINE

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IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

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H.P. 305 - L.D. 466

**An Act To Increase Competition and Ensure a Robust Information and
Telecommunications Market**

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

Sec. 1. 35-A MRSA §7102, sub-§6-A is enacted to read:

6-A. Price cap incumbent local exchange carrier or price cap ILEC. "Price cap incumbent local exchange carrier" or "price cap ILEC" means an incumbent local exchange carrier that agreed to accept Connect America Fund Phase II support pursuant to the Federal Communications Commission's Report and Order released on December 18, 2014, in In the Matter of Connect America Fund, WC Docket No. 10-90, FCC 14-190, for locations within the State on or before January 1, 2016 and does not receive funding from a state universal service fund under section 7104.

Sec. 2. 35-A MRSA §7104, sub-§2, as amended by PL 2011, c. 623, Pt. B, §13, is further amended to read:

2. General availability. The commission shall seek to ensure that provider of last resort service is available at reasonably comparable rates to consumers throughout all areas of the State ~~at reasonably comparable rates in which the service is available pursuant to section 7221.~~

Sec. 3. 35-A MRSA §7221, sub-§§4 to 7 are enacted to read:

4. Removal of the provider of last resort service obligation in select municipalities. This subsection governs the removal of the obligation of a price cap ILEC to provide provider of last resort service in certain municipalities.

A. Thirty days after the effective date of this subsection a price cap ILEC is not obligated to provide provider of last resort service in the following municipalities:

- (1) Portland;
- (2) Lewiston;

- (3) Bangor;
- (4) South Portland;
- (5) Auburn;
- (6) Biddeford; and
- (7) Sanford.

B. Every 6 months after the effective date of this subsection, the commission shall examine the service quality reports of a price cap ILEC under section 7225-A for the immediately preceding 2 consecutive quarters and, if the service quality requirements of section 7225-A have been met, the commission shall issue a certificate relieving the price cap ILEC of the obligation to provide provider of last resort service in 5 of the municipalities listed in this paragraph. The order in which a price cap ILEC may be relieved of the obligation to provide provider of last resort service in a municipality under this paragraph is as follows:

- (1) Scarborough;
- (2) Gorham;
- (3) Waterville;
- (4) Kennebunk;
- (5) Cape Elizabeth;
- (6) Old Orchard Beach;
- (7) Yarmouth;
- (8) Bath;
- (9) Westbrook;
- (10) Freeport;
- (11) Brewer;
- (12) Kittery;
- (13) Windham;
- (14) Brunswick; and
- (15) Augusta.

C. For one year from the date a price cap ILEC is relieved of the obligation to provide provider of last resort service in a municipality in accordance with this subsection, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date the obligation ceased a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service.

D. Prior to the removal of the obligation to provide provider of last resort service in any municipality pursuant to this subsection, the commission shall hold a public

meeting in the municipality to allow customers of the price cap ILEC to obtain information about the upcoming changes to service.

E. The price cap ILEC shall give advance notice in its monthly billing statement to each customer in a municipality listed in this subsection in which the obligation to provide provider of last resort service will be removed. That notice must include the following information:

(1) An existing customer will still be provided service for one year from the date on which the obligation to provide provider of last resort service is removed at the same rates, terms and conditions as the price cap ILEC provides to provider of last resort service customers to whom the price cap ILEC is obligated to provide provider of last resort service; and

(2) The date, time and location of the public meeting required under paragraph D, which will be hosted by the commission in the municipality.

5. Relief of provider of last resort service obligation. After a price cap ILEC has been relieved of the obligation to provide provider of last resort service in all the municipalities listed in subsection 4, the price cap ILEC may petition the commission under this subsection to be relieved of its provider of last resort service obligation in one or more additional municipalities.

A. The commission shall approve the petition if the commission finds:

(1) With respect to a municipality, that, pursuant to the following standards, there is sufficient competition in that municipality to ensure access to affordable telephone service by households in the municipality:

(a) In addition to the price cap ILEC, there is at least one wireline-facilities-based voice network service provider that offers service to at least 95% of the households in the municipality; and

(b) One or more mobile telecommunications services providers offer, on a combined basis, mobile telecommunications services to at least 97% of the households in the municipality; and

(2) The price cap ILEC prior to filing the petition has met service quality requirements under section 7225-A in the immediately preceding 2 consecutive quarters.

B. The commission shall establish by rule the sources of information and a methodology it will use to reasonably calculate the percentage of households served by wireline-facilities-based voice network service providers and mobile telecommunications services providers for purposes of making a determination under paragraph A. The commission may not require wireline-facilities-based voice network service providers and mobile telecommunications services providers to provide competitive information to the commission but may rely on other available sources for this information, including information available from the Federal Communications Commission. Competitive information about the extent of service provided by wireline-facilities-based voice network service providers and mobile telecommunications services providers used to make this determination is confidential and is not a public record under Title 1, section 402, subsection 3 and



may not be disclosed to any person outside the commission. In developing the methodology under this paragraph, the commission may allow for reasonable adjustments to the information it receives if it is aware that actual availability of competitive services differs from what is reflected in the information. If the application of the commission's methodology results in a finding that the standards in paragraph A, subparagraph (1) have been met, there is a rebuttable presumption of sufficient competition in a municipality to ensure access to affordable telephone service by households in the municipality.

C. Ninety days prior to filing a petition under this subsection, a price cap ILEC shall notify the commission and the Office of the Public Advocate of the price cap ILEC's intent to file a petition. The price cap ILEC shall also give advance notice of its intent to file a petition in its monthly billing statement to each customer in the municipality in which it will be seeking relief from the obligation to provide provider of last resort service.

The commission shall hold a public hearing in each affected municipality to allow customers of the price cap ILEC as well as other residents of the affected municipality to testify. The price cap ILEC shall give advance notice of the hearing to each customer in the municipality in its monthly billing statement and publish this notice in a newspaper of general circulation in that municipality.

D. The commission shall issue an order granting or denying a petition within 180 days of receiving a petition under this subsection, except that the commission, at its discretion, may extend this period for up to an additional 30 days.

E. For one year from the date the commission issues an order granting a price cap ILEC relief from the obligation to provide provider of last resort service in a municipality, the price cap ILEC shall continue to offer to each provider of last resort service customer in that municipality to whom it was providing the service on the date of that order a telephone service with the same rates, terms and conditions as it provides to provider of last resort service customers to whom it is obligated to provide provider of last resort service.

For purposes of this subsection, "voice network service provider" has the same meaning as in section 7104.

6. Abandonment. A price cap ILEC may not discontinue, reduce or impair the service that it provides in a municipality, or part of a municipality, where it has previously served as the provider of provider of last resort service unless the commission approves the discontinuance, reduction or impairment. The commission may approve the discontinuance, reduction or impairment only if it finds that neither the present nor future public convenience and necessity will be adversely affected by such discontinuance, reduction or impairment of service.

In granting its approval under this subsection, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. A price cap ILEC abandoning all or part of its plant, property or system or discontinuing service pursuant to authority granted by the commission under this subsection is deemed to have waived all objections to the terms, conditions or requirements imposed by the

commission in its approval. A discontinuance approved under this subsection is not subject to further approval under section 1104.

7. Rules. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 35-A MRSA §7222-A is enacted to read:

§7222-A. Rates

1. Price cap ILEC rate requirements. The provisions of sections 304 and 307 do not apply to a price cap ILEC with respect to the rates for provider of last resort service. A price cap ILEC shall post on its publicly accessible website the rates, terms and conditions for provider of last resort service. Rates for provider of last resort service provided by the price cap ILEC are governed by the following:

A. On the effective date of this paragraph, the monthly charge for provider of last resort service offered by a price cap ILEC may not exceed \$20 for any residential customer. A price cap ILEC may, beginning one year after the effective date of this paragraph, increase rates for its provider of last resort service by up to 5% annually; and

B. Low-income customers of a price cap ILEC must receive a monthly discount of \$3.50 in addition to any applicable federal subsidy for voice service for low-income customers.

For the purposes of this subsection, "low-income customer" means a customer who qualifies for assistance under the Federal Communications Commission's Lifeline program, as defined in 47 Code of Federal Regulations, Section 54.401.

Sec. 5. 35-A MRSA §7225-A is enacted to read:

§7225-A. Price cap ILEC service quality requirements

1. Service quality metrics reporting. A price cap ILEC shall report to the commission quarterly on service quality using the following metrics, using rolling one-year averages, in areas where provider of last resort service is available:

A. Network trouble rates;

B. The percentage of network troubles not cleared in 48 hours;

C. The percentage of installation appointments not met; and

D. The average delay, in days, for missed installation appointments.

A report submitted under this subsection is confidential and not a public record under Title 1, section 402, subsection 3 and may not be disclosed to any person outside the commission, except as provided in subsection 3.

2. Minimum requirements. A price cap ILEC shall provide service that meets the following minimum requirements, based on rolling one-year averages, in the areas in which it serves as provider of provider of last resort service:





- A. Less than 3 network troubles per 100 customers;
- B. Less than 20% of network troubles not cleared within 48 hours;
- C. Less than 12% of all installation appointments not met; and
- D. Less than a 9-day average delay for missed installation appointments.

3. Failure to meet service quality requirements. If a price cap ILEC fails to meet any service quality requirement in this section for any 2 consecutive quarters, the results for these service quality requirements for these quarters are no longer confidential and become public records. The commission shall investigate a failure to meet a service quality requirement. If the commission concludes after investigation that the failure to meet a service quality requirement is due to factors within the control of the price cap ILEC, the commission shall, by order, direct the price cap ILEC to take such steps as the commission determines necessary to meet the requirement. If the provider fails to comply with the commission's order, the commission shall impose a penalty in accordance with section 1508-A, subsection 1, paragraph A in an amount sufficient to ensure compliance with that order. Nothing in this subsection limits the commission's authority to direct a price cap ILEC to act to improve service under any other provision of this chapter.

Sec. 6. Rules. The Public Utilities Commission shall provisionally adopt major substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, to implement Title 35-A, section 7221, subsections 4 to 6 by January 1, 2017. By January 1, 2017, the commission shall also review its rules adopted pursuant to Title 35-A, section 7225 and make any necessary amendments to account for changes as a result of the enactment of Title 35-A, section 7225-A. Notwithstanding Title 35-A, section 7225, subsection 3, rules adopted pursuant to the commission's review under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. Commission review of effect of relief of provider of last resort service obligation. By January 15, 2018 and again by January 15, 2020, the Public Utilities Commission shall submit to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters a report related to the removal of the provider of last resort service obligation for a price cap ILEC under the Maine Revised Statutes, Title 35-A, section 7221, subsections 4 and 5. A report under this section must list municipalities in which the obligation to provide provider of last resort service has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B or in which the commission has approved in accordance with Title 35-A, section 7221, subsection 5 the removal of a price cap ILEC's obligation to provide provider of last resort service. A report under this section must also include the effect of the removal on former provider of last resort service customers, the price cap ILEC's workforce, the maintenance and status of the copper line network, public safety and the cost, features and availability of telephone service, including service to the hearing impaired, and broadband service. Each report may include recommendations for related legislation. The joint standing committee of the Legislature having jurisdiction over utilities and energy matters may report out a bill relating to provider of last resort service to the Second Regular Session of the 128th Legislature and may also report out a bill relating to provider of last resort service to the Second Regular Session of the 129th Legislature. At least 30 days before submitting a report to the committee, the commission shall post the report on its publicly

accessible website and allow persons to submit to the commission written comments on the report. The commission shall submit to the committee with each report all comments that it received on the respective report. If the commission in either report makes a recommendation to repeal or modify Title 35-A, section 7221, subsection 5, it may not, notwithstanding that subsection, accept a petition submitted in accordance with that subsection until 90 days after the adjournment of the session to which the report is submitted.

Sec. 8. Commission legal review; report. The Public Utilities Commission shall examine all laws and rules of this State relating to provider of last resort service as they apply to a price cap ILEC, as defined in the Maine Revised Statutes, Title 35-A, section 7102, subsection 6-A, and determine whether any changes may be needed to conform those laws and rules to the provisions of this Act. The commission shall submit a report of its findings, together with any necessary draft legislation to implement its recommendations, to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters by December 15, 2016. The committee may report out a bill relating to provider of last resort service to the First Regular Session of the 128th Legislature.

Sec. 9. Commission's annual report. Through 2022, the Public Utilities Commission shall include in its annual report pursuant to the Maine Revised Statutes, Title 35-A, section 120, subsection 7 information on provider of last resort service, including in which municipalities the obligation to provide provider of last resort service has ceased pursuant to Title 35-A, section 7221, subsection 4, paragraph B; the municipalities in which the commission granted approval of a petition in accordance with Title 35-A, section 7221, subsection 5; the municipalities, if any, in which the commission approved the discontinuance, reduction or impairment of service under Title 35-A, section 7221, subsection 6; and any complaints the commission may have received regarding the costs of or a lack of access to reliable basic telephone service in municipalities from which the provider of last resort service obligation has been removed.

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
S.P. 565 - L.D. 1467

An Act Regarding Maine Spirits

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

Whereas, legislative action is immediately necessary to ensure continued and efficient administration of the state liquor contract; 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. 28-A MRSA §84, sub-§4, as amended by PL 2013, c. 368, Pt. V, §61, is further amended to read:

4. Confer with commissioner. Confer regularly as necessary or desirable and not less than once a month with the Commissioner of Administrative and Financial Services on the operation and administration of the bureau and make available for inspection by the Commissioner of Administrative and Financial Services, upon request, all books, records, files and other information and documents of the bureau; ~~and~~

Sec. 2. 28-A MRSA §84, sub-§5, as amended by PL 2013, c. 588, Pt. B, §1, is further amended to read:

5. Certification. Certify monthly to the Treasurer of State and the Commissioner of Administrative and Financial Services a complete statement of revenues and expenses for liquor sales for the preceding month and submit an annual report that includes a complete statement of the revenues and expenses for the bureau to the Governor and the Legislature, together with recommendations for changes in this Title-; ~~and~~

Sec. 3. 28-A MRSA §84, sub-§6 is enacted to read:

6. Implement a spirits sales data reporting system. Collect from reselling agents data on spirits sales made by each reselling agent to establishments licensed to sell spirits for on-premises consumption. The data must include, but is not limited to, the amount and date of sale of each product code sold to on-premises licensees by the reselling agent. For the purposes of this subsection, "product code" has the same meaning as in section 461. For the purposes of collecting on-premises spirits sales data from reselling agents, the director shall enter into a contract with a trade association representing states that control and manage the sale of spirits. The contract must require that neither the bureau nor the trade association may make publicly available any information that would specifically identify the reselling agent, including, but not limited to, the reseller's name, the name of the reseller's agency liquor store, the reseller's agency liquor store's address or the address of any associated storage facility of the reselling agent.

Sec. 4. 28-A MRSA §453-C, sub-§4 is enacted to read:

4. Reporting of spirits sales to on-premises licensees. Beginning October 15, 2016, a licensed reselling agent shall report on a monthly basis all spirits sales made to establishments licensed to sell spirits for on-premises consumption.

A. A report under this subsection must be made to a trade association contracted by the bureau to collect spirits sales data from reselling agents as described in section 84, subsection 6.

B. The bureau shall ensure that reports under this subsection may be made by electronic transmission through a secure website established by the bureau. A reselling agent that is not reasonably able to use the website may submit a report under this subsection on paper or by using other methods approved by the bureau.

C. The bureau may provide a stipend or reimbursement to reselling agents licensed and actively selling spirits to on-premises licensees as of July 1, 2016 to mitigate the costs of compliance with this subsection.

D. The bureau may adopt rules regarding mitigating the costs incurred by reselling agents in complying with this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

Sec. 5. 28-A MRSA §606, sub-§2, as amended by PL 2011, c. 380, Pt. PPPP, §1 and PL 2013, c. 368, Pt. V, §61, is repealed.

Sec. 6. 28-A MRSA §755, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

§755. Records confidential

All Except for on-premises spirits sales data required to be reported by reselling agents in accordance with section 453-C, subsection 4, all business and financial records of licensees are confidential.

Sec. 7. Bureau to adopt rules. No later than October 1, 2016, the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall adopt rules to mitigate the costs incurred by reselling agents in



complying with the reporting requirements of the Maine Revised Statutes, Title 28-A, section 453-C, subsection 4.

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

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1021 - L.D. 1498

An Act To Clarify Medicaid Ombudsman Services

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

Sec. 1. 22 MRSA §3174-X, as enacted by PL 1999, c. 681, §1, is repealed and the following enacted in its place:

§3174-X. Contracted ombudsman services

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

A. "Children's health insurance program" means the state children's health insurance program under Title XXI of the Social Security Act. "Children's health insurance program" includes the Cub Care program, which is established in section 3174-T, the federal Children's Health Insurance Program, or CHIP, and the federal State Children's Health Insurance Program, or S-CHIP.

B. "Eligible member" means a person who is eligible to participate as a member or beneficiary of the MaineCare program or the children's health insurance program.

C. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program.

D. "Outreach and education" includes, but is not limited to, work site and community-based training and workshops for members, eligible members and health care providers, social service providers and health insurance navigators, brokers and agents; outreach at events such as town fairs, expositions and health fairs; development of mailings about coverage options, open enrollment periods and other important updates; information hotline response, including providing information and referrals to members and eligible members who call; and screening for eligibility for coverage programs, including programs other than Medicaid programs such as, but not limited to, prescription assistance programs.

E. "Program" means the ombudsman program established under this section.

2. Program established. The ombudsman program is established as an independent program to provide ombudsman services to the Medicaid population regarding Medicaid services provided by the department and the department's office for family independence and office of MaineCare services. The program shall consider and promote the best interests of the Medicaid and children's health insurance program populations, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of a member or eligible member. The program shall include outreach and education to eligible members and those who serve eligible members, including health care providers, social service providers and health insurance navigators, brokers, agents and other enrollment professionals. The program shall function through the staff of the program, subcontractors and any volunteers recruited and trained to assist in the duties of the program. If members or eligible members described in this subsection are applying for or receiving long-term care home-based and community-based services or institutional services, ombudsman assistance for those services is provided by the long-term care ombudsman program established pursuant to section 5106, subsection 11-C. The program shall coordinate with the long-term care ombudsman program on activities, including but not limited to marketing, outreach and referral services.

3. Contracted services; political activity prohibited. The program shall operate by contract with a nonprofit organization that is best able to provide services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

4. Program services. The first priority in the work of the program and the contract for ombudsman services under subsection 3 must be case-specific advocacy and enrollment services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. The program may:

- A. Provide information to the public about the services of the program through a comprehensive outreach program. The program shall provide information through a toll-free telephone number or numbers;
- B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department;
- C. Provide services to members and eligible members to assist them in protecting their rights;
- D. Inform members and eligible members of the means of obtaining services from the department;
- E. Provide information and referral services;
- F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws;

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with members and eligible members making inquiries or complaints and the department;

H. Apply for and use grants, gifts and funds for the purpose of performing the duties of the program; and

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or as the department considers appropriate.

5. Information for members and eligible members; eligibility. The program, in consultation with appropriate interested parties, shall provide information about eligibility requirements and procedures for enrolling in MaineCare to members and eligible members, including their dependents. The providing of the information under this subsection does not constitute representation of members and eligible members. Members and eligible members may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to members and eligible members.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of members and eligible members.

6. Confidentiality of records. Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made only if the ombudsman determines such disclosure is lawful and in the best interest of the member or eligible member.

7. Liability. Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability arising from that complaint or inquiry. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers of the program are employees of the State for the purposes of the Maine Tort Claims Act.

8. Information. Information about the services of the program must be given to all members and eligible members who receive or are eligible to receive services from the department and from persons and entities contracting with the department for the provision of Medicaid services.

9. Report. The program shall report to the department according to the requirements of the program contract under subsection 3. The program shall also report annually by January 1st to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the activities and services of the program, priorities that may have been set by the program among types of inquiries and complaints, waiting lists for services and the provision of outreach services and recommendations for changes in statute, rules or policy to improve the provision of services.

10. Funding. The department shall contract for ombudsman services under this section as long as nonstate funding is available.



STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1022 - L.D. 1499

An Act To Increase the Safety of Social Workers

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

Sec. 1. 32 MRSA §7032 is enacted to read:

§7032. Addresses confidential

The address and telephone number of an applicant for licensure or a person licensed under this chapter that are in the possession of the board are confidential. Nothing in this section prohibits the board and its staff from using and disclosing the address and telephone number of an applicant or licensee as necessary to perform the duties and functions of the board.

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Date: (Filing No. S-)

ENVIRONMENT AND NATURAL RESOURCES

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 626, L.D. 1578, Bill, “An Act To Update Maine's Solid Waste Management Laws”

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

Sec. 1. 38 MRSA §1611 is enacted to read:

§1611. Stewardship program for batteries

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

A. "Approved product" means:

(1) A covered battery or a covered battery-containing product for which its producer, individually or through a covered battery stewardship organization, has submitted a covered battery stewardship plan approved by the commissioner and the plan has been implemented to collect and recycle covered batteries in accordance with the plan; or

(2) A covered battery-containing product that has been listed in accordance with subsection 9 as the product of a participant in a covered battery stewardship program.

B. "Brand" means a trademark, including both a registered and an unregistered trademark, a logo, a name, a symbol, a word, an identifier or a traceable mark that identifies a covered battery or covered battery-containing product and identifies as the producer of the battery or product the owner or licensee of the brand.

C. "Covered battery" means a new or unused primary battery or a new or unused rechargeable battery.

D. "Covered battery-containing product" means a new or unused product that contains or is packaged with a primary battery or a rechargeable battery. "Covered battery-containing product" does not include:

COMMITTEE AMENDMENT

- 1 (1) A product from which the primary battery or rechargeable battery is not
2 easily removed or is not intended or designed to be removed from the product by
3 a consumer;
- 4 (2) A medical device, as described in the Federal Food, Drug and Cosmetic Act,
5 21 United States Code, Section 321(h) (2009), if, when the device or battery
6 within the device is discarded, it must be treated as biomedical waste or if
7 changing the supplier of the battery contained in the medical device would trigger
8 the need for premarket review of the device with the United States Food and
9 Drug Administration pursuant to the Federal Food, Drug and Cosmetic Act, 21
10 United States Code, Section 360 (2012), unless such device is listed as an exempt
11 device under the Federal Food, Drug and Cosmetic Act, 21 United States Code,
12 Section 360(m) (2012) or other applicable provision of law; or
- 13 (3) A device related to the physical or ancillary operation or use of a motor
14 vehicle that is distributed through a new vehicle dealer franchised by the original
15 manufacturer of the motor vehicle. As used in this subparagraph, "motor
16 vehicle" has the same meaning as in Title 29-A, section 101, subsection 42 and
17 "new vehicle dealer" has the same meaning as in Title 29-A, section 851,
18 subsection 9.
- 19 E. "Covered battery stewardship organization" or "organization" means an
20 organization appointed by more than one producer to design, submit a plan for,
21 implement and administer a covered battery stewardship program in accordance with
22 this section and that has accepted that appointment.
- 23 F. "Covered battery stewardship plan" or "plan" means a plan submitted to the
24 commissioner in accordance with subsection 3 by a producer or a covered battery
25 stewardship organization.
- 26 G. "Covered battery stewardship program" or "program" means a system
27 implemented for the collection, transportation, recycling and disposal of covered
28 batteries in accordance with a covered battery stewardship plan approved under
29 subsection 4.
- 30 H. "Discarded covered battery" means a covered battery that a user discarded,
31 abandoned or sent for recycling.
- 32 I. "Operator" means a producer or covered battery stewardship organization that
33 implements and administers a covered battery stewardship program.
- 34 J. "Participant" means a producer that establishes or participates in a covered battery
35 stewardship program individually or by appointing and having that appointment
36 accepted by a covered battery stewardship organization to operate the program on the
37 producer's behalf.
- 38 K. "Primary battery" means a nonrechargeable battery that weighs 2 kilograms or
39 less, including, but not limited to, nonrechargeable alkaline, carbon-zinc and lithium
40 metal batteries.
- 41 L. "Producer" means, with respect to a covered battery or covered battery-containing
42 product that is sold, offered for sale or distributed for sale in the State, the following:



1 **14. Proprietary information.** Proprietary information submitted to the department
2 in a covered battery stewardship plan, in an amendment to a plan or pursuant to the
3 reporting requirements of this section that is identified by the submitter as proprietary
4 information is confidential and must be handled by the department in the same manner as
5 confidential information is handled under section 1310-B.

6 As used in this subsection, "proprietary information" means information that is a trade
7 secret or production, commercial or financial information the disclosure of which would
8 impair the competitive position of the submitter and would make available information
9 not otherwise publicly available.

10 **15. Administration and enforcement; rules.** The department shall administer and
11 enforce this section and may adopt rules consistent with this section as necessary for the
12 purposes of implementing, administering and enforcing this section. Rules adopted
13 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
14 subchapter 2-A.

15 A. The department shall charge a reasonable fee to be paid by an applicant for
16 review and approval of a covered battery stewardship plan. A fee assessed under this
17 paragraph must be based on the actual costs to the department of reviewing and
18 approving a covered battery stewardship plan and may not exceed \$25,000.

19 B. The department may establish a reasonable annual fee, to be paid by the operator
20 of each covered battery stewardship program, to cover the department's costs for
21 annual report review, oversight, administration and enforcement of the program. A
22 fee assessed under this paragraph must be based on the actual costs to the department
23 of annual report review, oversight, administration and enforcement of the operator's
24 program and may not exceed \$25,000 per year.

25 C. The commissioner may not initiate an enforcement action under this section
26 against a manufacturer, distributor, wholesaler or retailer:

27 (1) Concerning the sale of covered batteries that are not approved products if the
28 sale occurred prior to October 1, 2018;

29 (2) Concerning the sale of covered battery-containing products that are not
30 approved products if the sale occurred prior to October 1, 2019;

31 (3) Concerning the sale of covered batteries manufactured prior to July 1, 2018 if
32 the sale occurred prior to October 1, 2018;

33 (4) Concerning the sale of covered battery-containing products manufactured
34 prior to July 1, 2018 if the sale occurred prior to October 1, 2019; or

35 (5) Concerning the sale of medical devices manufactured prior to July 1, 2019 if
36 the sale occurred prior to October 1, 2020.

37 D. The commissioner may not initiate an enforcement action under this section
38 against a manufacturer, distributor, wholesaler or retailer:

39 (1) For selling or offering for sale a covered battery or covered battery-
40 containing product if that entity, within 90 days of discovering that the battery or

1 product is not in compliance with this section, removes the battery or product
2 from sale; or

3 (2) For purchasing a covered battery or covered battery-containing product after
4 the effective date of this section that is verified to be an approved product at the
5 time of purchase but that is no longer an approved product at the time it is sold by
6 that entity.

7 **16. Limited private right of action.** Except as provided in paragraph F, a producer
8 or organization that has submitted a plan for the establishment of a covered battery
9 stewardship program that has been approved by the commissioner and that has been
10 implemented to collect, transport and recycle discarded covered batteries in the State may
11 maintain a civil action in Superior Court against a producer or organization not
12 participating in its program to recover a portion of its costs and additional sums, as set
13 forth in this subsection.

14 A. Damages recoverable under this subsection include a fair share of the actual costs
15 incurred by a plaintiff producer or organization in collecting covered batteries of a
16 defendant producer or organization discarded in the State for which the defendant
17 was required under this section to submit and implement a covered battery
18 stewardship plan or join an existing covered battery stewardship program, as well as
19 the plaintiff's costs incurred in handling, transporting and recycling or properly
20 disposing of the defendant's batteries. Additional amounts recoverable under this
21 subsection include an award of reasonable attorney's fees and court costs, including
22 expert witness fees.

23 B. In an action by a plaintiff producer or organization against a defendant producer
24 or organization that did not operate or participate in a covered battery stewardship
25 program established under this section during the time period in which discarded
26 covered batteries of the defendant were collected, transported and recycled by the
27 plaintiff, the plaintiff may establish the defendant's fair share of the plaintiff's actual
28 costs by:

29 (1) Providing the court with market share data that the court finds reasonably
30 represent the percentage of sales of covered batteries by the defendant in the
31 State;

32 (2) Providing the court with data generated from discarded covered battery sorts
33 involving a minimum of 500 pounds of discarded covered batteries collected at
34 each of 3 or more collection locations in the State that are found by the court to
35 have been collected in an unbiased manner and to be reasonably representative of
36 the population of the State; or

37 (3) Through any other method that the court finds reliable in establishing the
38 defendant's fair share of the plaintiff's actual costs.

39 C. In an action by a plaintiff producer or organization against a defendant producer
40 or organization that operated or participated in a covered battery stewardship program
41 established under this section during the time period in which discarded covered
42 batteries of the defendant were collected, transported and recycled by the plaintiff,
43 the plaintiff may establish the defendant's fair share of the plaintiff's actual costs by

PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE

Maine Freedom of Access Act - public records exceptions

Enacted 2005 - 2012

(Revised 6/22/2016)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
46	21-A	1125	2-B	Title 21-A, section 1125, subsection 2-B, relating to records of individuals who made Clean Elections gubernatorial seed money contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		Indefinitely postpone because citizen's initiative repealed this exception
3	1	402	3	Title 1, section 402, subsection 3, paragraph N, relating to Social Security Numbers	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		No Modification
4	1	402	3	Title 1, section 402, subsection 3, paragraph O, relating to personal contact information concerning public employees other than elected officials	Department of Administrative and Financial Services - Bureau of Human Resources; Legislative Council, Executive Director; Administrative Office of the Courts		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
7	1	402	3	Title 1, section 402, subsection 3, paragraph R, relating to Social Security numbers in possession of the Secretary of State	Secretary of State		No Modification
9	1	1013	2	Title 1, section 1013, subsection 2, relating to the identity of a requestor of Commission on Governmental Ethics and Election Practices opinions	Commission on Governmental Ethics and Election Practices		No Modification
10	1	1013	4	Title 1, section 1013, subsection 4, relating to Commission on Governmental Ethics and Election Practices records other than complaints	Commission on Governmental Ethics and Election Practices		No Modification
11	1	1013	3-A	Title 1, section 1013, subsection 3-A, relating to complaint alleging a violation of legislative ethics	Commission on Governmental Ethics and Election Practices		No Modification
49	22	2425	8	Title 22, section 2425, subsection 8, relating to medical marijuana registry identification cards	Department of Health and Human Services		No Modification
52	22	4087-A	6	Title 22, section 4087-A, subsection 6, relating to information held by or records or case-specific reports maintained by the Child Welfare Ombudsman	Child Welfare Ombudsman		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
70	36	6271	2	Title 36, section 6271, subsection 2, relating to an application, information submitted in support of an application and files and communications in relation to a municipal property tax deferral program for senior citizens	Maine Municipal Association		No Modification
71	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	Department of Environmental Protection		No Modification
72	38	580-B	11	Title 38, section 580-B, subsection 11, relating to records held by the Department of Environmental Protection or its agents regarding individual auctions administered under the carbon dioxide cap-and-trade program	Department of Environmental Protection		No Modification
44	21-A	1003	3-A	Title 21-A, section 1003, subsection 3-A, relating to investigative working papers of the Commission on Governmental Ethics and Election Practices	Maine Commission on Governmental Ethics and Election Practices		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
45	21-A	1125	3	Title 21-A, section 1125, subsection 3, relating to records of individuals who made Clean Elections qualifying contributions over the Internet	Maine Commission on Governmental Ethics and Election Practices		No Modification
47	21-A	196-A		Title 21-A, section 196-A, relating to information contained electronically in the central voter registration system	Secretary of State		No Modification
55	29-A	1301	6-A	Title 29-A, section 1301, relating to the social security number of an applicant for a driver's license or nondriver identification card	Secretary of State		No Modification
63	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	Maine State Housing Authority (MaineHousing)		No Modification
68	35-A	122	1-B	Title 35-A, section 122, subsection 1-B, paragraph G, relating to information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use in the context of energy infrastructure corridors	Interagency Review Panel (Governor's Energy Office)		No Modification

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
5	1	402	3	Title 1, section 402, subsection 3, paragraph P, relating to geographic information regarding recreational trails on private land	Department of Inland Fisheries and Wildlife; Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
8	1	538	3	Title 1, section 538, subsection 3, relating to InforME subscriber information	Information Resources of Maine (InforME)		No Modification (Adopted)
12	4	1806		Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services	Maine Commission on Indigent Legal Services		No Modification (Adopted)
14	5	17057	3	Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff	Maine Public Employees Retirement System		No Modification (Adopted)
15	5	17057	4	Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity	Maine Public Employees Retirement System		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
16	5	17057	5	Title 5, section 17057, subsection 3, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information	Maine Public Employees Retirement System		No Modification (Adopted)
17	5	90-B	7	Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program	Secretary of State		No Modification (Adopted)
18	7	1052	2-A	Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers	Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
20	8	1006	1	Title 8, section 1006, subsection 1, paragraph A, relating to information or records required by the Gambling Control Board for licensure; trade secrets and proprietary information	Department of Public Safety		No Modification (Adopted)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
21	8	1006	1	Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for licensure: would be unwarranted invasion of privacy of key executive, gaming employee or another person	Department of Public Safety		No Modification (Adopted)
22	8	1006	1	Title 8, section 1006, subsection 1, paragraph C, relating to information or records required by the Gambling Control Board for licensure: key executive or gaming employee compensation	Department of Public Safety		No Modification (Adopted)
23	8	1006	1	Title 8, section 1006, subsection 1, paragraph D, relating to information or records required by the Gambling Control Board for licensure: financial, statistical and surveillance information related to the applicant	Department of Public Safety		No Modification (Adopted)
24	8	1006	1	Title 8, section 1006, subsection 1, paragraph E, relating to information or records required by the Gambling Control Board for licensure: creditworthiness, credit rating or financial condition of person or project	Department of Public Safety		No Modification (Adopted)

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
25	8	1006	1	Title 8, section 1006, subsection 1, paragraph F, relating to information or records required by the Gambling Control Board for licensure; information from other jurisdictions conditioned on remaining confidential	Department of Public Safety		No Modification (Adopted)
26	8	1006	1	Title 8, section 1006, subsection 1, paragraph G, relating to information or records required by the Gambling Control Board for licensure; information designated confidential under federal law	Department of Public Safety		No Modification (Adopted)
27	8	1006	1	Title 8, section 1006, subsection 1, paragraph H, relating to information or records required by the Gambling Control Board for licensure; specific personal information, including Social Security number, of any individual	Department of Public Safety		No Modification (Adopted)
28	8	1006	3	Title 8, section 1006, subsection 3, relating to records and information developed as part of suitability requirement to select operator of central site monitoring system, held by Gambling Control Board and Dept. of Public Safety	Department of Public Safety		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
29	8	1006	4	Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Dept. of Public Safety	Department of Public Safety		No Modification (Adopted)
30	8	1007	2	Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement	Department of Public Safety		No Modification (Adopted)
31	8	1008		Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052	Department of Public Safety		No Modification (Adopted)
32	8	1052		Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Dept. of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive	Department of Public Safety		No Modification (Adopted)

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
33	8	270-A		Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license	Department of Agriculture, Conservation and Forestry		No Modification (Adopted)
48	22	1494		Title 22, section 1494, relating to occupational disease reporting	Department of Health and Human Services		No Modification (Adopted)
34	9-A	6-105-A		Title 9-A, section 6-105-A, last paragraph, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions	Department of Professional and Financial Regulation - Bureau of Consumer Credit Protection		No Modification (Adopted)
19	7	2231	3	Title 7, section 2231, subsection 3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes	Department of Agriculture, Conservation and Forestry		Repealed by PL 2009, ch. 320, section 1
1	1	402	2	Title 1, section 402, subsection 2, paragraph G, relating to committee meetings pertaining to interscholastic sports	Maine Principal's Association - Interscholastic Management Committee	MPA response that it is not a public body	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
2	1	402	3	Title 1, section 402, subsection 3, paragraph C-1, relating to legislative working papers	Legislative Council, Executive Director		
6	1	402	3	Title 1, section 402, subsection 3, paragraph Q, relating to security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events for Department of Corrections or county jail	Department of Corrections		
13	5	1541	10-B	Title 5, section 1541, subsection 10-B, relating to internal audit working papers of the State Controller	Department of Administrative and Financial Services - Office of the State Controller		
35	12	8005	1	Title 12, section 8005, subsection 1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	Department of Agriculture, Conservation and Forestry	Tabled	

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
36	12	8005	2	Title 12, section 8005, subsection 2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs	Department of Agriculture, Conservation and Forestry	Tabled	
37	12	8005	4	Title 12, section 8005, subsection 4, relating to forest management information designated confidential by agency furnishing the information	Department of Agriculture, Conservation and Forestry	Tabled	
38	12	10110		Title 12, section 10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license	Department of Inland Fisheries and Wildlife	Tabled	
39	12	12551-A	10	Title 12, section 12551-A, subsection 10, relating to smelt dealers reports, including name, location, gear and catch	Department of Inland Fisheries and Wildlife	Tabled	
40	14	6321-A	4	Title 14, section 6321-A, subsection 4, relating to the financial information disclosed in the course of mediation under the foreclosure mediation program	Administrative Office of the Courts	Repealed by PL 2015, ch. 202, section 1.	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
50	22	1711-C	20	Title 22, section 1711-C, subsection 20, relating to hospital records concerning health care information pertaining to an individual	HealthInfoNet	Response that HealthInfoNet is not a public body	
51	22	2153-A		Title 22, section 2153-A, relating to information provided to the Department of Health and Human Services by the U.S. Department of Agriculture and the U.S. Food and Drug Administration that is confidential under federal law	Department of Health and Human Services	DHHS response that ACF is custodian	
54	25	4202		Title 25, section 4202, relating to records and information connected in any way with the work of a critical incident stress management team for law enforcement personnel	Department of Public Safety		
58	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
59	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	Department of Public Safety		
60	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to information about a person receiving emergency medical services as part of an application for credentialing by Emergency Medical Services Board	Department of Public Safety		
61	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	Department of Public Safety		
62	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	Department of Public Safety		

Ref #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
41	17-A	1176	1	Title 17-A, section 1176, subsection 1, relating to information that pertains to current address or location of crime victims	Department of Public Safety		
42	17-A	1176	5	Title 17-A, section 1176, subsection 5, relating to request by crime victim for notice of release of defendant	Department of Corrections		
43	20-A	13004	2-A	Title 20-A, section 13004, subsection 2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel	Department of Education	Advisory Committee wrote letter to Education and Cultural Affairs Committee asking for subject matter guidance; SEE RESPONSE LETTER FROM EDU TO RTKAC	
53	24-A	2736	2	Title 24-A, section 2736, subsection 2, relating to insurer rate filings on individual health insurance policies and supporting information, in regards to protected health information and descriptions of the amount and terms or conditions or reimbursement in a contract between an insurer and a 3rd party	Department of Professional and Financial Regulation - Bureau of Insurance	Review not necessary; not a new PR exception	

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
56	29-A	2251	7-A	Title 29-A, section 2251, subsection 7-A, relating to personally identifying accident report data contained in an accident report database	Department of Public Safety		
57	29-A	2117-A	4	Title 29-A, section 2117-A, relating to data collected or retained through the use of an automated license plate recognition system	Department of Public Safety; Department of Transportation		
64	34-A	11221	13	Title 34-A, section 11221, subsection 13, relating to disclosure of certain sex offender registry information	Department of Public Safety		
65	34-A	11221	9-A	Title 34-A, section 11221, subsection 9-A, relating to certain sex offender registry information	Department of Public Safety		
66	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	Mental Health Homicide, Suicide, and Aggravated Assault Review Board (MHSAARB)		
67	34-B	3864	12	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	Department of Public Safety		

Ref. #	M.R.S. TITLE	§	Sub-§	DESCRIPTION	DEPARTMENT/AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS
69	35-A	10106		Title 35-A, section 10106 relating to records of the Efficiency Maine Trust and its board	Efficiency Maine	Subcommittee requested that proposed amendment from Efficiency Maine be in bill format	

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STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS

March 1, 2016

Sen. David C. Burns, Chair
Right to Know Advisory Committee
127th Maine Legislature
Second Regular Session

RE: Review of Public Records Exception Affecting the Department of Education

Dear Sen. Burns:

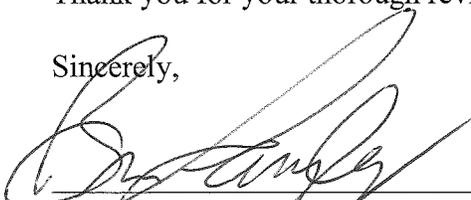
By letter dated January 6, 2016, the Right to Know Advisory Committee requested that the Education and Cultural Affairs Committee review a public records exception affecting the ability of the Department of Education to share certain education certification information with other states. We reviewed the exception at 20-A MRSA §13004(2-A)(A)&(B), and determined that no amendment to statute is necessary at this time.

We agree with the Right to Know Advisory Committee that section 13004 does prohibit the disclosure of information that is designated confidential under Title 20-A, sections 6101 and 6103. However, when the Department of Education provided further information regarding the interstate exchange in which it participates, we concluded that the prohibitions in section 13004 are not currently affecting the Department's ability to participate in that exchange. The exchange – the National Association of State Directors of Teacher Education and Certification – relies on information derived from final determinations in certification actions (i.e. certification denial, revocation or suspension). In Maine, this information is within the definition of a “public record” under Title 20-A, section 6101(2)(C) and section 13004(2-A)(D), and can therefore be shared freely.

The Department has indicated that it may seek an amendment to section 13004 to clarify its language, and we welcome a proposal in the future.

Thank you for your thorough review and for bringing this potential issue to our attention.

Sincerely,


Brian D. Langley, Senate Chair


Victoria P. Kornfield, House Chair

cc: Members, Joint Standing Committee on Education and Cultural Affairs

Potential topics and projects for 2016

- Judiciary Committee request - review the public records exception enacted in LD 484, which relates to hazardous material transported by railroads. *(See letter.)*
- Judiciary Committee request - develop comprehensive recommendations for the treatment of personal contact information for professions and occupations regulated by the State (LD 1499) *(See letter.)*
- Ken Capron request - funding FOAA cases by indigent people and the possibility of developing a court form for a pro se complainant. *(See email.)*
- Jack Comart (Maine Equal Justice Partners) suggestions – agency time and cost estimates, fee waiver policies, remedies for requestors. *(See email.)*

SENATE

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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

February 24, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: Railroad cargo public records exception

Dear Right to Know Advisory Committee Members:

During the First Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 484, An Act Regarding the Confidentiality of Railroad Carrier Cargo, sponsored by Representative Shaw. The bill originally proposed a public records exception for records describing "commodities transported by a railroad" in the possession of law enforcement, fire departments or other first responders or emergency management entities.

The testimony at the public hearing indicated that railroads wanted to provide information to emergency entities and first responders, but were concerned that all the information would become public which could cause business consequences or result in heightened security concerns. Representative Shaw, Pan Am Railways and St. Lawrence and Atlantic Railroad testified in favor of the bill. No other individuals, organizations or entities provided testimony or participated in the public hearing or work sessions.

The Judiciary Committee ended up reporting out the bill with a narrowed public records exception, limited to hazardous material, as defined by the federal Department of Transportation, reported by a railroad company to state or local emergency management entity or law enforcement agency, a fire department or other first responder. The public records exception covers the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes. The Judiciary Committee discussed the confidentiality and public interest issues in the proposed bill and the amendment they finally approved, which they always do when considering public records exceptions. Members of the Committee were concerned that information about hazardous materials could be used in the furtherance of terrorism and

supported the confidentiality provision in the interest of public safety. The bill was enacted by the Legislature, vetoed by the Governor, and the veto was overridden. It is now Public Law 2015, chapter 161, codified as Title 1, section 402, subsection 3, paragraph U.

Recent publications have indicated that the new public records exception has caused problems for citizens trying to know whether crude oil is being transported through the State. The Judiciary Committee did not receive any information about public concerns in this area, and we would like to ensure that the public has an additional opportunity to comment and recommend changes, if necessary. The Judiciary Committee therefore requests that the Right to Know Advisory Committee include in its continuing review of existing public records exceptions Title 1, section 402, subsection 3, paragraph U. The Judiciary Committee will be happy to share all files and correspondence.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 323 - L.D. 484

An Act Regarding the Confidentiality of Railroad Carrier Cargo

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

Sec. 1. 1 MRSA §402, sub-§3, ¶S, as amended by PL 2013, c. 518, §2, is further amended to read:

S. E-mail addresses obtained by a political subdivision of the State for the sole purpose of disseminating noninteractive notifications, updates and cancellations that are issued from the political subdivision or its elected officers to an individual or individuals that request or regularly accept these noninteractive communications; ~~and~~

Sec. 2. 1 MRSA §402, sub-§3, ¶T, as enacted by PL 2013, c. 518, §3, is amended to read:

T. Records describing research for the development of processing techniques for fisheries, aquaculture and seafood processing or the design and operation of a depuration plant in the possession of the Department of Marine Resources; and

Sec. 3. 1 MRSA §402, sub-§3, ¶U is enacted to read:

U. Records provided by a railroad company describing hazardous materials transported by the railroad company in this State, the routes of hazardous materials shipments and the frequency of hazardous materials operations on those routes that are in the possession of a state or local emergency management entity or law enforcement agency, a fire department or other first responder. For the purposes of this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of Federal Regulations, Section 105.5.

SENATE

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CHRISTOPHER K. JOHNSON, DISTRICT 13

MARGARET J. REINSCH, SENIOR LEGISLATIVE ANALYST
HENRY D. FOUTS, LEGISLATIVE ANALYST
SUSAN M. PINETTE, COMMITTEE CLERK



HOUSE

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THEODORE BEAR MITCHELL I, PENOBSCOT NATION

STATE OF MAINE
ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
COMMITTEE ON JUDICIARY

April 15, 2016

Senator David C. Burns, Chair
Representative Kimberly J. Monaghan, Co-Chair
Members
Right to Know Advisory Committee

Re: State regulation of professions and occupations: personal contact information

Dear Right to Know Advisory Committee Members:

During the Second Regular Session of the 127th Legislature, the Judiciary Committee heard, worked and reported out LD 1499, An Act to Increase the Safety of Social Workers, sponsored by Representative Goode. The bill originally proposed to designate as confidential the home address of licensed social workers held by the State Board of Social Worker Licensure. The purpose is to ensure that social workers and their families cannot be tracked down and endangered at home by emotionally distraught clients or others the social workers come into contact with professionally. The Judiciary Committee has sympathy for those concerns.

The Judiciary Committee also recognizes that the State regulates professions and occupations in the interest of public safety and welfare. Professional and Financial Regulation Commissioner Anne Head provided the following testimony.

State regulation of a profession or occupation is a public process. Licensing board meetings are open to the public, adjudicatory hearing proceedings are open to the public, and information submitted by applicants seeking state licenses is in the public domain. A license application and information contained within an application – with one exception – is considered a “public record” under Title 1, section 402. The only item of information required on a license application that is confidential is an applicant’s social security number pursuant to Title 1, section 402(3)(N).

The notice to applicants on every application form includes the sentence, “Names, license numbers and mailing addresses listed on or submitted as part of this application will be available to the public and may be posted on our website.”

A few licensing entities other than those boards that are part of the Department of Professional and Financial Regulation do provide confidentiality for personal contact information of their licensees, including the Emergency Medical Services Board, the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the State Board of Nursing and the Department of Public Safety as it licenses professional investigators.

The Judiciary Committee ended up reporting out the bill as amended, replacing the proposed text with language designating the address and telephone number of an applicant as well as a licensee under the Social Worker chapter as confidential when in the possession of the licensing board. It specifically provides that the board and its staff may use and disclose the address and telephone number as necessary to perform the duties and functions of the board.

The Judiciary Committee would like to see a uniform policy for the treatment of personal contact information for professions and occupations regulated by the State. We are therefore requesting that the Right to Know Advisory Committee take up this topic and try to develop comprehensive recommendations that can be applied to all professions and occupations, balancing the protection of privacy with the public interest in an open and transparent regulatory process, a regulatory process whose underlying purpose is the protection of the health, safety and welfare of the public. In the case of social workers, their privacy interest includes the need to manage their risk in a profession that can present danger because of the nature of their work; this is a concern that may apply in several professions and occupations. Commissioner Head has agreed to work with the Advisory Committee to provide the Department's input in discussions and formulations of appropriate requirements. The Judiciary Committee will be happy to share all files and correspondence on this bill.

Please feel free to contact us or our committee analyst if you have any questions.

Thank you.

Sincerely,


Senator David C. Burns
Senator Chair


Representative Barry J. Hobbins
House Chair

Attachment: Committee Amendment to LD 1499

c: Commissioner Anne Head, DPFR
Lori Gramlich, NASW Maine Chapter

Fouts, Henry

From: WatchDog [<mailto:watchdog@maine.rr.com>]
Sent: Wednesday, February 17, 2016 6:19 PM
To: Reinsch, Margaret
Subject: LD 1586 - proposed committee amendment

Hi Peggy,
Glad to see FOAA is catching up with the 21st Century.

Now – how about the RTK Committee find a way to fund FOAA cases by indigent people. The cheapest retainer I have found is \$7,500 – \$10,000. That’s just the retainer. We have to make the appeals process cheaper, slicker and perhaps easier for Pro Se filers.

Can the Ombudsperson develop a Court ‘form’ that could get a Pro Se complainant through the door?

As I often say, it does no good to have laws on the books that an average person cannot afford to enforce.

Ken Capron

From: Reinsch, Margaret
Sent: Wednesday, February 17, 2016 12:11 PM
To: jud-ip@lists.legislature.maine.gov
Subject: [jud-ip] LD 1586 - proposed committee amendment

Attached please find a proposed committee amendment that Senator Johnson will offer for consideration at the public hearing on LD 1586, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Remote Participation in Public Proceedings.

The public hearing is scheduled for Wednesday, February 24, 2016, at 10:00 a.m. in Room 438 of the State House.

Audio of the public hearing can be streamed live: <http://legislature.maine.gov/calendar/#Committees/JUD>

Please let me know if you have any questions.

Thank you
Peggy

Margaret J. Reinsch, Esq., Legislative Analyst
Joint Standing Committee on Judiciary
Maine State Legislature
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Augusta, Maine 04333
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Fouts, Henry

From: Jack Comart [<mailto:jcomart@mejp.org>]
Sent: Tuesday, April 26, 2016 2:26 PM
To: Reinsch, Margaret
Cc: Kielty, Brenda
Subject: Right to Know Advisory Committee

Dear Peggy,

After some recent unsatisfactory experiences with using the FOAA, I had some suggestions for changes to the current law that I hope the Advisory Committee might have an interest in pursuing. Here are my suggestions:

1. Section 408-A (9) should be amended to require the agency to provide the estimate of time and cost for each separate component of any request for information. (In one of our FOAA requests, we had 6 separate requests for data. The agency imposed a fee on the entire request which we could not pay. We believe that some or most of the data requested could have been provided quickly and at little or no cost.)
2. Section 408-A (11) should be amended to require the agency to publically post and otherwise make available their fee waiver policy. (In one of our cases, we submitted a fee waiver request. We were then asked to provide additional information to support the request. Ultimately, we were told that no fee waiver would be granted because the agency (DHHS) does not grant fee waiver requests.)
3. Section 408-A (11) should be amended to require the agency to grant fee waiver requests based upon reasonable standards. (As noted above, the policy at DHHS is to never grant a fee waiver request. If FOAA is going to be a meaningful tool to ensure that public records are available for inspection and copying, then agencies must provide reasonable access.)
4. Section 408-A(9) should be clarified to state when the estimate of time and cost is provided. Is it provided within the five (5) response time? (In our case, the agency (DHHS) provides a boilerplate response within 5 days that contains no estimate of time and simply states that "if the estimate exceeds \$30" that DHHS will not proceed without payment of the estimated cost if the estimate exceeds \$100. Besides being virtually incomprehensible to the ordinary person, it fails to reasonably inform the person of the estimated time or cost. On the other hand, it does seem burdensome to require the agency to provide the estimation of cost and time within 5 days. However, at some point, perhaps within 14 days of the request, there should be a good faith estimate of the time and cost for each component of the FOAA request. The law should then provide for some process whereby the requester and the agency can agree to some less costly, less burdensome request.
5. Finally, there appears to be no recourse for agency action which may be arbitrary or capricious. For example, if agencies provide bad faith estimates of cost or time to discourage use of FOAA or to provide access only to the politically favored, then people and businesses in Maine should have the right to some administrative and/or court process to challenge these sorts of acts. (For example, in one of our cases with DHHS, they provided a response in 5 days that granted our request, but provided no estimate of costs or time, and which then took months to respond to, even though most of the data was easily retrievable. At some point, agencies should be held accountable.)

Thanks for considering this request.

Jack

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