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

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

**Convene**

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

**Adjourn**



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

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

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

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

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

**Public Records Exceptions Subcommittee**

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

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

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

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

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

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

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

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

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

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90	39-A	403	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI			
91	39-A	409	Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	• BOI			

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**Sentinel Events**  
RTK AC 2011 recap

Public Records Exceptions Subcommittee  
September 29, 2011

54      22 MRSA §8754: *sentinel events*

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

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

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

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

November 17, 2011

54      22 MRSA §8754: *sentinel events*

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



**Sentinel Events**  
RTK AC 2011 recap

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

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

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

December 8, 2012

54     22 *MRSA §8754: sentinel events*

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



**Sentinel Events**  
RTK AC 2011 recap

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

*Right to Know Advisory Committee*

December 8, 2011

Exception 54. The Subcommittee had discussed the complete confidentiality provided by the statute with regard to the reporting of “sentinel events” by hospitals and other providers to the Department of Health and Human Services. Ms. Pistner identified the tension that exists between helping hospitals to improve and giving consumers the information they need to make intelligent choices about which hospital to utilize. The Subcommittee did not recommend statutory changes with the understanding that the subject matter would be taken up again when the Subcommittee reconvenes in 2012; the Subcommittee can then explore the balance in more depth and determine if the public’s need for information can be satisfied without undermining the value of the Sentinel events program.

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

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**Sentinel Events**  
RTK AC 2011 recap

Public Records Exceptions Subcommittee  
September 29, 2011

54     22 MRSA §8754: *sentinel events*

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

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

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

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

November 17, 2011

54     22 MRSA §8754: *sentinel events*

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

**Sentinel Events**  
RTK AC 2011 recap

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

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

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

December 8, 2012

54      22 MRSA §8754: *sentinel events*

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

**Sentinel Events**  
RTK AC 2011 recap

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

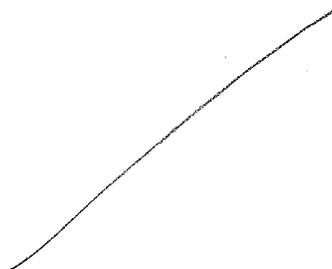
*Right to Know Advisory Committee*

December 8, 2011

Exception 54. The Subcommittee had discussed the complete confidentiality provided by the statute with regard to the reporting of “sentinel events” by hospitals and other providers to the Department of Health and Human Services. Ms. Pistner identified the tension that exists between helping hospitals to improve and giving consumers the information they need to make intelligent choices about which hospital to utilize. The Subcommittee did not recommend statutory changes with the understanding that the subject matter would be taken up again when the Subcommittee reconvenes in 2012; the Subcommittee can then explore the balance in more depth and determine if the public’s need for information can be satisfied without undermining the value of the Sentinel events program.

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

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\*47914 22 M.R.S.A. § 8754

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

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

**§ 8754. Division duties**

The division has the following duties under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CREDIT(S)**

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

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

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

2009 Legislation

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

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

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

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

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

*year.*"



# Sentinel EVENTS

CY 2011

Annual Report to the Maine State Legislature



*Paul R. LePage, Governor*

*Department of Health  
and Human Services*

*Maine People Living  
Safe, Healthy and Productive Lives*

*Mary C. Mayhew, Commissioner*

**Final Report June 2012**

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

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

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

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

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

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

## Executive Summary

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

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

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

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

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

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

## Background

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

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

### Definition of Sentinel Event

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

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

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

## National Quality Forum

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

## Reporting Requirements

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

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

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

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

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

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

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

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

### **Confidentiality Provisions**

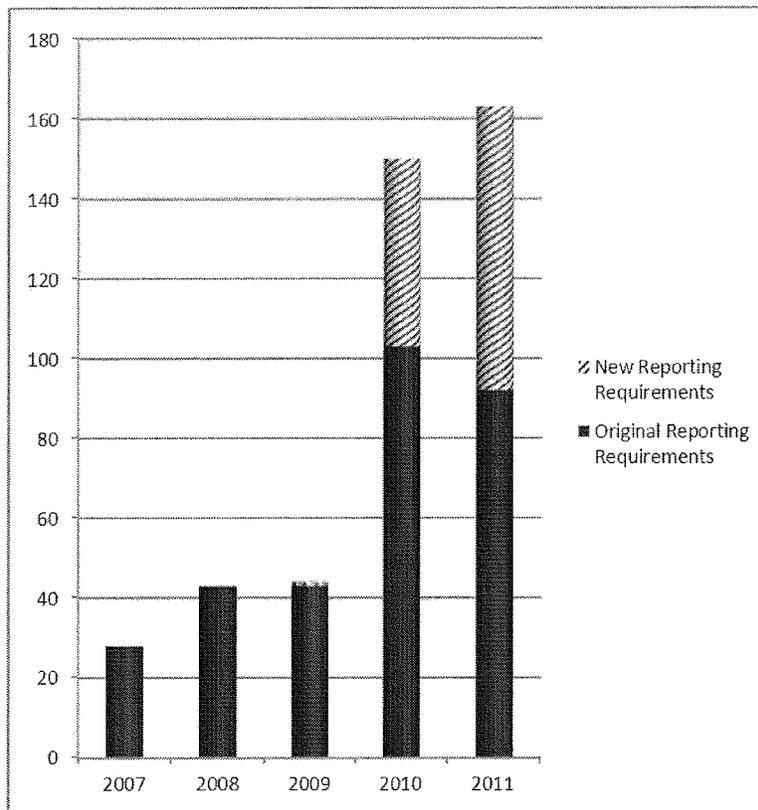
By law, all sentinel event information submitted to the Division is considered privileged and confidential. No information about facilities or providers is discoverable or made public. A firewall is maintained between the sentinel event program and the survey unit that regulates facility licensing within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

## Sentinel Events Historically Reported

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

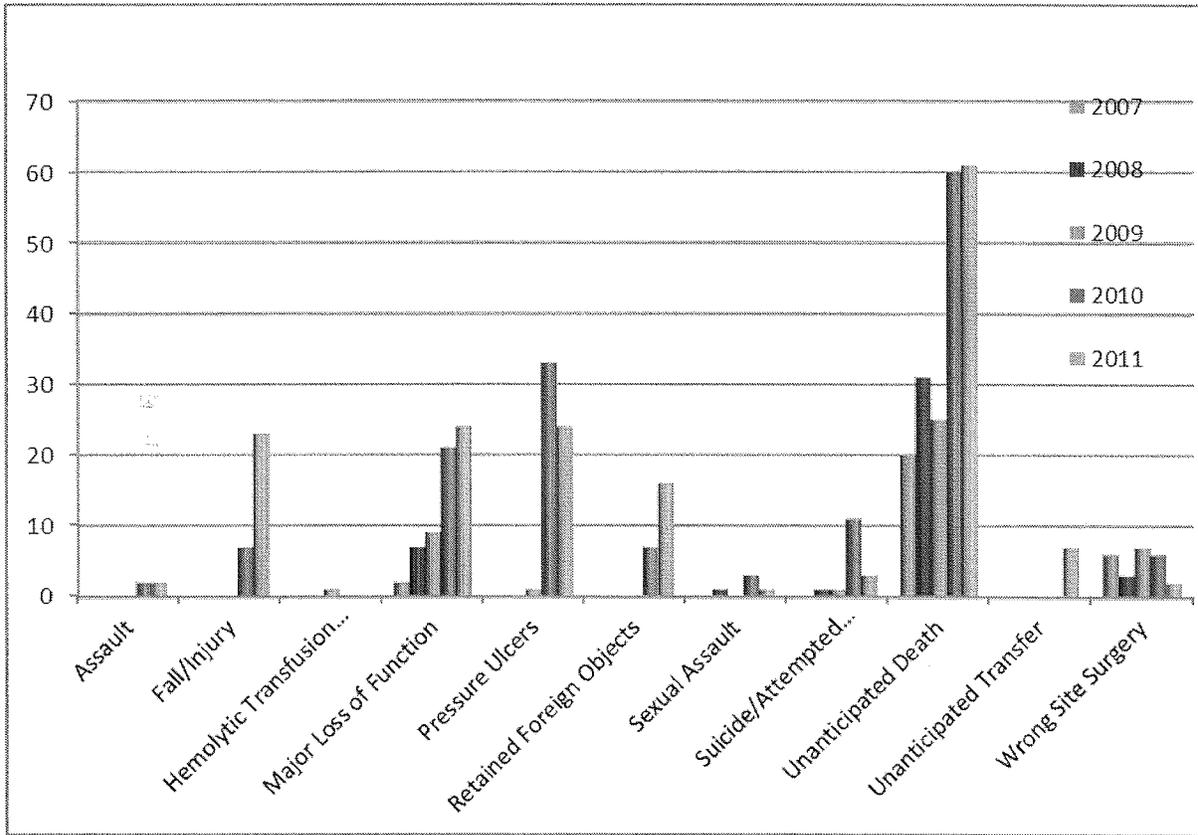
In 2010, a dramatic increase in sentinel event reporting occurred and continued through 2011. This spike in reports reflects a greater appreciation of the requirements and changes in the statutory requirements. There is also a growing awareness of the benefit of increased transparency with an emphasis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

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



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

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



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

\*New reporting requirements in 2010

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

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

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

# Sentinel Events Reported in 2011

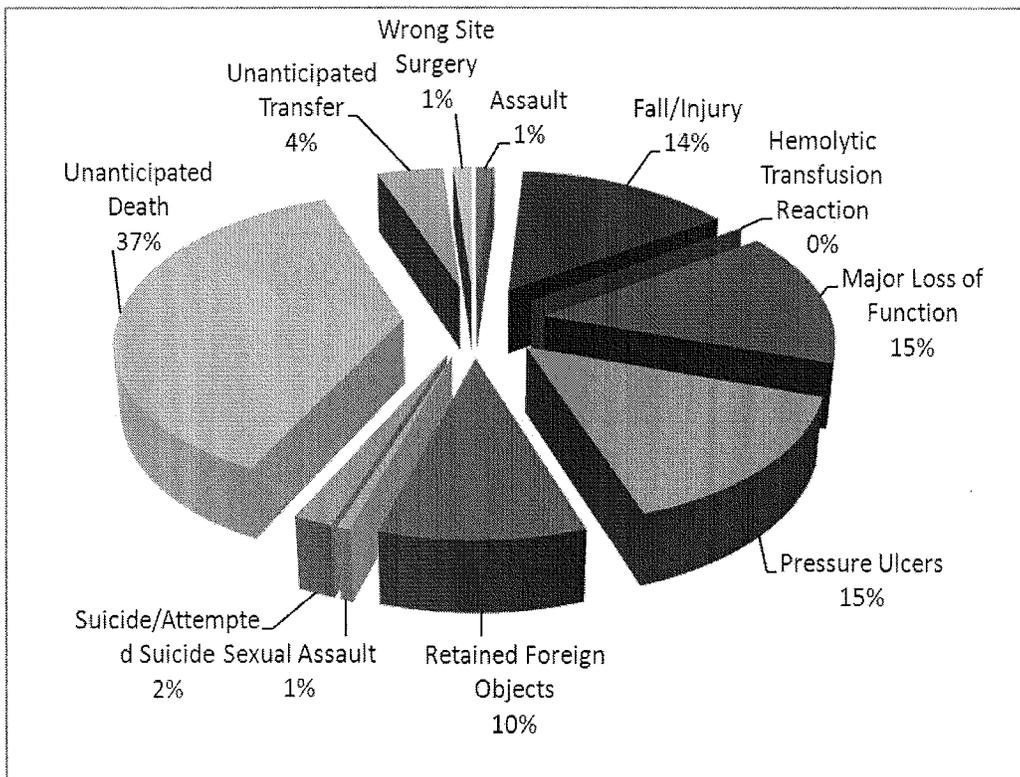
## NUMBER OF SENTINEL EVENTS REPORTED IN 2011

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

## CATEGORY OF SENTINEL EVENTS

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

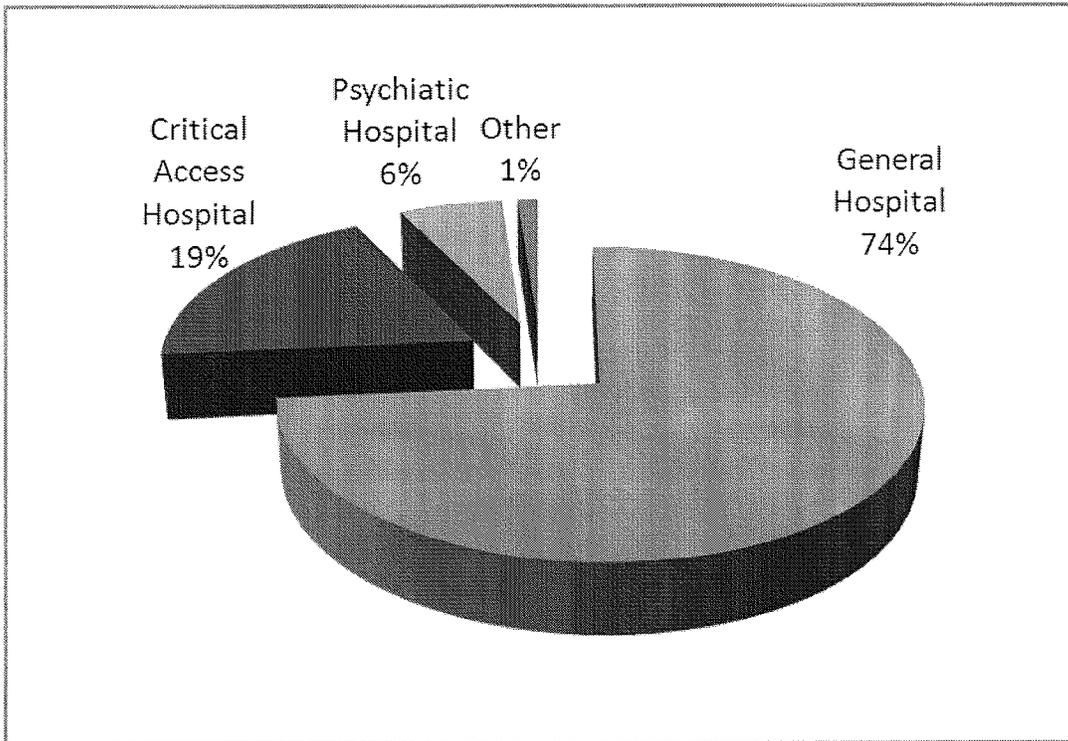
**Table 4. Sentinel Events Reported, by Category of Event, 2011**



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

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

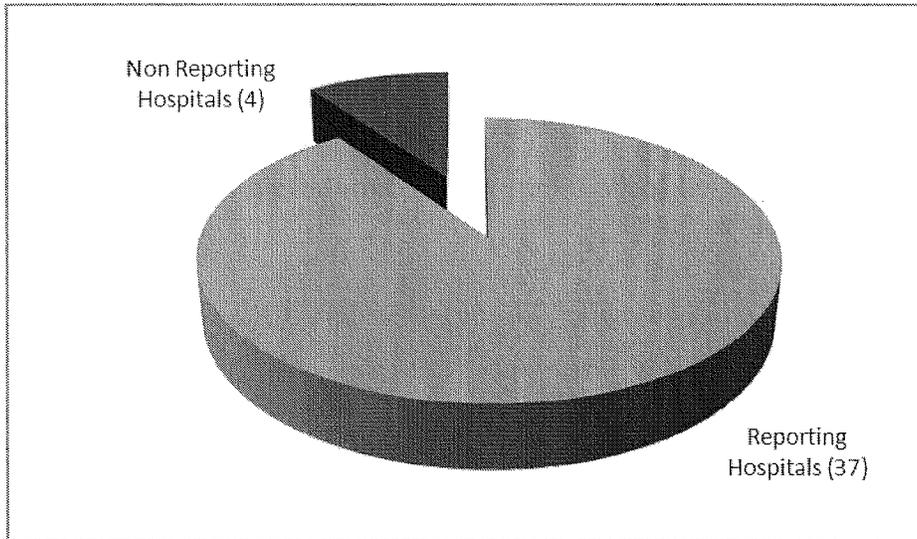
**Table 5. Sentinel Events Reported, by Facility Type, 2011**



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

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

Table 6. Reporting versus Non-Reporting Hospitals, 2011



## Conclusion

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

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

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

## Program Goals for 2012

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

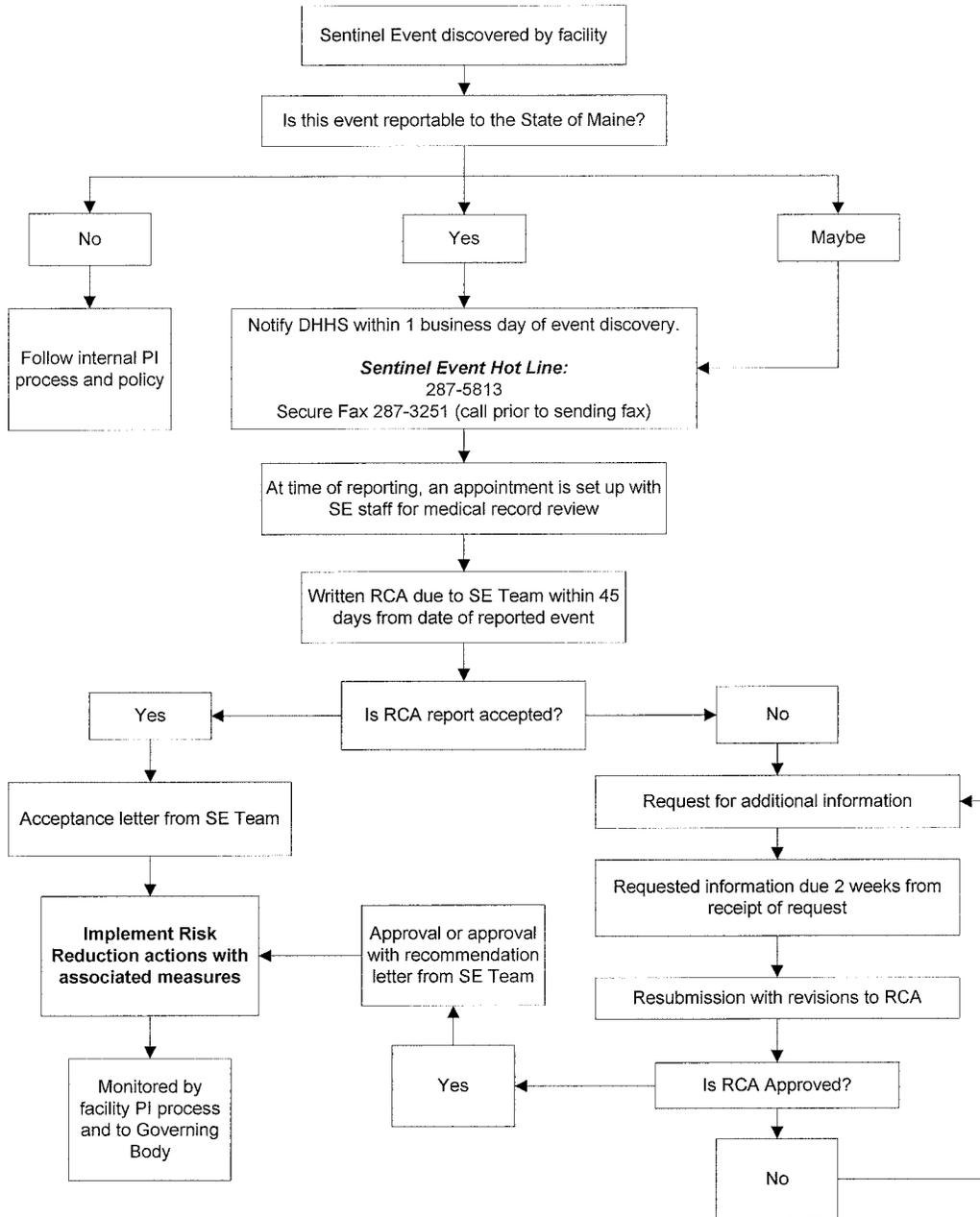
- Continue to utilize data from Maine's all-payer database to augment a review of events being reported.
- Work with the Maine Health Data Organization, the Maine Quality Forum and Maine hospitals to develop the analytical tools to identify reportable events that can reliably be detected through administrative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

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

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

Appendix A

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



### Non-Discrimination Notice

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



SENATE

EARLE L. MCCORMICK, District 21, Chair  
NICHI S. FARNHAM, District 32  
MARGARET M. CRAVEN, District 16

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PETER C. STUCKEY, Portland

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

January 25, 2012

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

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

Dear Senator Hastings:

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

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

Thank you for requesting the recommendations of the HHS Committee.

Sincerely,

  
Sen. Earle L. McCormick  
Senate Chair

  
Rep. Meredith N. Strang Burgess  
House Chair

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



\*44287 22 M.R.S.A. § 1696-D

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

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

**§ 1696-D. Response to requests**

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

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

**CREDIT(S)**

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

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

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

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

**REFERENCES**

**LIBRARY REFERENCES**

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



\*44289 22 M.R.S.A. § 1696-F

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

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

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

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

**CREDIT(S)**

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

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

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

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

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

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

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

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

**22 §1696-A. Findings and intent**

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

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

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

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

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

**22 §1696-B. Short title**

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

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

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

**22 §1696-D. Response to requests**

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

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

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Proposed draft language changes

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

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

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

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

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

**SUMMARY**

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



\*45998 22 M.R.S.A. § 3188

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CREDIT(S)**

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

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

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

1987 Legislation

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

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

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

1989 Legislation

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

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

2003 Legislation

Laws 2003, c. 689, § B-6, provides:

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

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\*46005 22 M.R.S.A. § 3192

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

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

**§ 3192. Community Health Access Program**

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

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

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

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

4. Eligible population. This subsection governs eligibility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CREDIT(S)**

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

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

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

Laws 2001, c. 439, § KK-2, provides:

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

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

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

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

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§ 27.

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

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

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

2003 Legislation

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

**REFERENCES**

**LIBRARY REFERENCES**

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



\*49329 23 M.R.S.A. § 4251

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CREDIT(S)**

2009, c. 648, § A-1.

[FN1] 5 M.R.S.A. § 8071 et seq.

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

\*49325 23 M.R.S.A. § 4244

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

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

**§ 4244. Design-build contracting**

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

- A. "Best value" means the highest overall value to the State, considering quality and cost.
- B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services.
- C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents.
- D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product.
- E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions.
- F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.
- G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county.
- H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State.

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

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

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

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

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

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

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



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

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

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

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

**CREDIT(S)**

2009, c. 648, § B-2.

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



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

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

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

DATE: March 4, 2010

RE: Public Records Exception Review

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

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

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

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

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

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L.D. 1639

Date:

(Filing No. H- )

**TRANSPORTATION**

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

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

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

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

**'PART A**

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

**SUBCHAPTER 5**

**PUBLIC-PRIVATE PARTNERSHIPS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **PART B**

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

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

7 **§4244. Design-build contracting**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 34 SUMMARY

35 This amendment replaces the bill.

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

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

FISCAL NOTE REQUIRED  
(See Attached)

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# COMMITTEE AMENDMENT

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Approved: 03/05/10 *MAC*

# 124th MAINE LEGISLATURE

LD 1639

LR 2033(02)

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

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

**Committee: Transportation**

**Fiscal Note Required: Yes**

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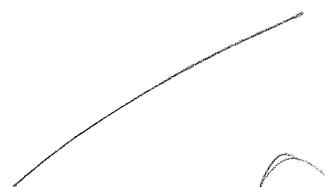
## Fiscal Note

Potential current biennium cost increase - Highway Fund

Potential current biennium cost increase - Federal Expenditures Funds

### Fiscal Detail and Notes

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



RECEIVED

SEP 22 2010

**Statute: 23 MRSA 4251**

**Agency: MaineDOT**

**Contact Person: Toni Kemmerle**

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

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

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

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

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

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

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

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

No.

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

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

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

No further information is available.

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