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Right to Know Advisory Committee
December 5, 2007
(Draft) Meeting Summary

Convened 1:00 p.m., Room 438, State House, Augusta

Present:

Sen. Barry Hobbins, Chair
Rep. Deborah Simpson
Shenna Bellows
Karla Black
Suzanne Goucher
Judy Meyer
Linda Pistner
Harry Pringle
Chris Spruce

| Absent:

Sheriff Mark Dion
Robert Devlin
Richard Flewelling
Ted Glessner
Mal Leary
Maureen O'Brien

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Sen. Hobbins convened the Advisory Committee. He welcomed former Rep. Ed Benedikt who was attending the meeting.

Legislative Subcommittee Process for Review of Public Exceptions

Chris Spruce reported on the Legislative Subcommittee's review of existing public records exceptions. He distributed a chart updating the Advisory Committee on the progress made by the subcommittee during their morning meeting. The chart identified the 32 exceptions reviewed by the subcommittee that the subcommittee recommends be continued in law with no changes. He also noted that more than 35 exceptions still need to be reviewed at the next subcommittee meeting, but that he expected that process to move quickly as subcommittee members will identify their questions and comments on each of the tabled exceptions before the next meeting on December 12th. The Advisory Committee deferred taking preliminary action on these recommendations and will wait to consider the subcommittee's recommendations as a whole when the process is completed. Staff noted that the law requires the Advisory Committee to make recommendations to the Judiciary Committee at the start of the 2nd Regular Session. At the invitation of Sen. Hobbins, former Rep. Benedikt asked about the difference between italicized and non-italicized language in the chart. Staff explained that the italicized language was used to identify public records exceptions not currently included on the FOA website. He also commented that some provisions of the chart were not clear and asked if revised versions could be made clearer. Staff agreed to incorporate his suggestions in the preparation of revised documents.

LD 1881, An Act to Improve the Transparency and Accountability in Government

Chris Spruce reported on the Legislative Subcommittee's review and discussion of LD 1881. The subcommittee has not yet come to a resolution, but had a healthy discussion of the issues during its meeting. The subcommittee has asked staff to prepare a revised draft for the meeting next week. The subcommittee is considering adding a requirement that requests for most public

records requests be made in writing and a requirement that public entities respond, deny or acknowledge requests within a certain time frame.

Implementation of PL 2007, chapter 349---Mandatory Training and Education

Judy Meyer reported on the meeting of the Education and Training Subcommittee, which was held on November 27th. The subcommittee is proposing changes to PL 2007, chapter 349 that will address the difficulties identified with the practical application of the mandatory training law as first enacted. Staff distributed a proposed draft for the Advisory Committee's consideration.

At the recommendation of the Education and Training Subcommittee members, the proposed draft makes the following changes:

- The draft amends the training requirements to establish minimum content requirements for the training programs. The language specifically states that a thorough review of the information contained under the Frequently Asked Questions heading on the State's Freedom of Access law website meets the minimum requirements. A training course provided by other organizations is also satisfactory if it contains all the information on the State's Freedom of Access law website. The original bill directed the Right to Know Advisory Committee to establish standards and approve training programs. The draft deletes the role of the Advisory Committee in establishing standards and approving courses.
- The draft addresses the certification of completion for an elected official who completes the required training. The original law required the elected official to send notice of the completion to the Advisory Committee. The draft requires the elected official to make a written record of the completion information and either keep it or file it with the public entity to which that official was elected. The completion record is a public record. The Advisory Committee is directed to recommend to the Legislature a process for collecting the completion data and making it available to the public.
- The draft addresses the application of the mandatory training requirement to elected officials. Current law applies beginning July 1, 2008. The draft revises the application to legislators to begin for legislators elected after November 1, 2008. This avoids the unnecessary training requirement applying to legislators on July 1, 2008, but who are not reelected the following November. The draft also specifically spells out the elected officials who are subject to the training, with a general description of those who, as part of the duties of their office, exercise executive or legislative powers as elected officials of a regional or other political subdivision.

Ms. Meyer also explained that the subcommittee was unable to reach consensus on whether the law should be clarified relating to when and how often elected officials are required to complete the mandatory training. Ms. Meyer noted that there are different interpretations of the current law—some would interpret the law as requiring training each time an official is elected to office; others would interpret the law as requiring mandatory training once upon an official's first election after the mandatory training law goes into effect. Harry Pringle stated his belief that the current law is ambiguous and that his interpretation is that training is only required once. Mr. Pringle suggested requiring training once and allowing some time to see how the law works. Mr. Pringle cautioned against a requirement that officials be trained every time elected because of the variations on length of terms and the burden that may place on those who serve as part-time elected officials. Ms. Meyer disagreed and stated she believed elected officials should be trained once every 3 to 5 years because there is a real benefit in knowing the Freedom of Access laws.

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Senator Hobbins stated that one-time training wouldn't be enough to raise consciousness among elected officials about the Freedom of Access laws and he preferred a hybrid approach similar to what Ms. Meyer proposed. Shenna Bellows asked if any elected officials were elected for 1 year terms. Mr. Pringle answered that he was not aware of any 1 year terms for school officials, but he recalled that Richard Flewelling told the subcommittee that some municipal officers are elected for 1 year terms and he also wondered how those that are elected or appointed to fill vacancies would be treated.

Ms. Bellows reminded the Advisory Committee that there could be a sea change in the Freedom of Access laws if some or all of the exceptions under review were removed and that one-time training would not be adequate to address changes or amendments to the Freedom of Access laws. Sen. Hobbins agreed that there would be a need for modified training and updates on changes in the Freedom of Access laws as part of ongoing training. Ms. Meyer mentioned that it would be probably take less than 2 hours in successive years as elected officials repeat the training. Mr. Spruce stated he believed the Advisory Committee can play a role in monitoring the mandatory training law. Sen. Hobbins asked if the law should require the Advisory Committee to monitor completion of training. Mr. Pringle reminded everyone that there is no requirement that a person read all the laws that are changed annually and that the training requirement is to review the website not to become an expert in the Freedom of Access laws. Ms. Meyer asked how, as a practical matter, would the Advisory Committee determine if the training was working. Ms. Bellows agreed and felt that complaints would be made clear if there was a problem with the law. Ms. Bellows stated she was comfortable with not clarifying the law on this issue now and waiting to see if complaints are made.

Suzanne Goucher asked if the website could be modified to limit access to the sample form for certification until training material is reviewed, but the Advisory Committee agreed that electronic certification is not required under the revised draft.

Ms. Goucher also pointed out that the draft does not require the website to be maintained or updated by the Governor or the Governor's designee and asked whether that should be required. Karla Black agreed that this is a valid point and that such a requirement might be useful if future administrations do not have a similar interest in maintaining the website. Sen. Hobbins asked if it might be better for a neutral party, like the Attorney General, be responsible for the website. Ms. Black and Linda Pistner noted that the AG is responsible in several other states. Ms. Pistner said that the AG did review the website, but she believed it was valuable to carry message to agencies about the importance of complying with the Freedom of Access laws to agencies through the Governor's website. Staff noted that one of the Advisory Committee's statutory duties is to have a role in the development of the website. Mr. Pringle said that without money the Advisory Committee would have difficulties with maintaining the website and that the recommended draft was as much as could be done right now. Ms. Meyer agreed and said that the Advisory Committee should wait and see if this is a problem before making a change in the law.

Sen. Hobbins stated the discussion appeared to have come full circle and asked if the proposed draft should be left alone. Mr. Spruce moved that the Advisory Committee recommend to the Judiciary Committee the proposed draft of the Education and Training Subcommittee without changes. Ms. Goucher seconded the motion. The motion was approved unanimously.

Extern Update

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Maryann Nowak, a second year law student at the University of Maine Law School, will be the Advisory Committee's extern during the spring semester, beginning January 16th. Maryann was one of two applicants interviewed by Ms. Pistner and Advisory Committee staff. Externs are expected to devote 18 hours per week and will receive 6 hours of credit at the completion of the semester. The Attorney General's Office will provide access to a computer, e-mail and telephone to the extern and Ms. Pistner will provide direct supervision. Externs do not receive compensation. Sen. Hobbins said it would be his wish that funding could be found for stipends for law school students as the externship program continues.

The Advisory Committee reviewed a description of the Externship Proposal, including the tasks expected of the extern (identified by Ms. Pistner and staff). The committee noted that given the current timeline that Ms. Nowak may not be able to provide as much assistance as hoped with the review of exceptions in Titles 1-9-B, but that she could assist the Advisory Committee with presenting the recommendations to the Judiciary Committee. Mr. Spruce noted that having a legislative history of the exceptions under review would give the exceptions a context that would be very helpful to the subcommittee's review process. The Advisory Committee approved the list of tasks as presented, but agreed that additional tasks could be added as necessary.

Annual Report

The Advisory Committee discussed the format for the annual report due January 15th. It was agreed that the report would include information about the activities and discussions of the Advisory Committee and subcommittees, the recommended statutory changes to the mandatory training law, the exceptions review process and the externship. The Advisory Committee also agreed to include a listing or index of recent and pending litigation on Freedom of Access-related issues.

Future Meetings

The Advisory Committee scheduled its next meeting for Wednesday, December 19th from 10 am – 12pm. Staff will poll the full committee to determine if a quorum will be present on the 19th and confirm the meeting. The agenda for that meeting will include discussion of scheduling presentations to the Judiciary Committee and whether the Advisory Committee wants to have public hearings with stakeholders and other interested parties to gather input on the Freedom of Access laws. Staff will also contact Maryann Nowak to make sure any scheduled meetings accommodate her law school schedule.

The meeting adjourned at 2:50 p.m.

Prepared by Peggy Reinsch and Colleen McCarthy Reid, Right to Know Advisory Committee staff

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