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Tenth Annual Report
of the
Right to Know Advisory Committee

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EXECUTIVE SUMMARY

This is the tenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 17 members are appointed by the Governor, the Chief Justice of the Supreme Judicial Court, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website located at www.maine.gov/legis/opla/righttoknow.htm. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2015, the Advisory Committee met on September 15, October 6, November 13 and December 1.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2015 recommendations and a summary of relevant Maine court decisions from 2014 and 2015 on the freedom of access laws.

For its tenth annual report, the Advisory Committee makes the following unanimous recommendations:

- ❑ **Enact legislation authorizing the use of technology to permit remote participation in public proceedings by non-elected members of public bodies; and**

- ❑ **Continue without modification 24 existing public records exceptions enacted after 2004 and before 2013.**

In 2016, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and will continue its review of existing public records exceptions enacted from 2005 through 2012.

I. INTRODUCTION

This is the tenth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The Advisory Committee's authorizing legislation, located at Title 1, section 411, is included in **Appendix A**. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at www.maine.gov/legis/opla/righttoknowreports.htm.

The Right to Know Advisory Committee has 17 members. The chair of the Advisory Committee is elected annually by the members. Current Advisory Committee members are:

Sen. David C. Burns Chair	*Senate member of Judiciary Committee, appointed by the President of the Senate*
Rep. Kimberly Monaghan	*House member of Judiciary Committee, appointed by the Speaker of the House*
Suzanne Goucher	*Representing broadcasting interests, appointed by the Speaker of the House*
Frederick Hastings	*Representing newspaper and other press interests, appointed by the President of the Senate*
Richard LaHaye	*Representing law enforcement interests, appointed by the President of the Senate*
Mary Ann Lynch	*Representing the Judicial Branch, designated by the Chief Justice of the Supreme Judicial Court*
Judy Meyer	*Representing newspaper publishers, appointed by the Speaker of the House*
Kelly Morgan	*Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House*
Christopher Parr	*Representing state government interests, appointed by the Governor*
Linda Pistner	*Attorney General's designee*
Harry Pringle	*Representing school interests, appointed by the Governor*
Helen Rankin	*Representing the public, appointed by the Speaker of the House*

Luke Rossignol	*Representing the public, appointed by the President of the Senate*
William Shorey	*Representing county or regional interests, appointed by the President of the Senate*
[Vacancy]	*Representing municipal interests, appointed by the Governor*
[Vacancy]	*Representing broadcasting interests, appointed by the President of the Senate*
[Vacancy]	*A member with broad experience in and understanding of issues and costs in multiple areas of information technology, appointed by the Governor*

The complete membership list of the Advisory Committee, including contact information, is included in **Appendix B**.

II. COMMITTEE DUTIES

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- Providing guidance in ensuring access to public records and public proceedings;
- Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- Supporting the provision of information about public access to records and proceedings via the Internet;
- Serving as a resource to support training and education about Maine's freedom of access laws;
- Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the state of Maine's freedom of access laws and the public's access to public proceedings and records;
- Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;

- Examining inconsistencies in statutory language and proposing clarifying standard language; and

- Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws. The Advisory Committee is pleased to work with the Public Access Ombudsman, former Special Assistant Attorney General Brenda Kielty. Ms. Kielty is a valuable resource to the public and public officials and agencies.

By law, the Advisory Committee must meet at least four times per year. During 2015, the Advisory Committee met on September 15, October 6, November 13 and December 1. Due to building upgrades and conflicting meeting schedules, the meetings were held in the Judiciary Committee Room of the State House, the Insurance and Financial Affairs Committee Room, and the Labor, Commerce and Economic Development Committee Room in the Cross State Office Building in Augusta. Each meeting was open to the public and was also accessible through the audio link on the Legislature's webpage.

The Advisory Committee has also established a webpage, which can be found at www.maine.gov/legis/opla/righttoknow.htm. Agendas, meeting materials and summaries of the meetings are available on the webpage.

III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of recent developments in case law relating to Maine's freedom of access laws. For its tenth annual report, the Advisory Committee has identified and summarized the following court decisions related to freedom of access issues.

2014-2015 Maine Supreme Judicial Court Decisions

Doyle v. Town of Falmouth

In *Doyle v. Town of Falmouth*, 2014 ME 151, 106 A.3d 1145, Michael Doyle appealed a decision of the Superior Court that the Town of Falmouth and Falmouth School Department had properly redacted certain information in the work-issued cellular telephone records of the Falmouth School Department's Superintendent that were supplied to Doyle pursuant to his request under Maine's Freedom of Access Act (FOAA). The redacted information consisted of: 1) work-issued cellular telephone numbers of School District employees; 2) records of the Superintendent's personal telephone calls; and 3) the personal telephone numbers of Falmouth students' parents.

The Court looked to the legislative history of the FOAA exception from the definition of "public record" at 1 MRSA §402, sub-§3, paragraph O, for "personal contact information concerning public employees," which includes a "personal cellular telephone number," concluding that the provision had been enacted with the intent to protect the privacy rights of public employees. Applying this legislative intent to the language of the exception, the Court held that work-issued cellular telephone numbers of public employees fit within the exemption for "personal contact information," and therefore such information was properly redacted from the records supplied to Doyle. Regarding the Superintendent's personal calls, the Court held that these personal calls were unrelated to the transaction of public or government business and were therefore not "public records" within the gambit of the FOAA, despite their having been made with the work-issued cellular telephone. With respect to the redacted telephone numbers of students' parents, the Court concluded that these numbers were also outside the scope of the FOAA because they were designated as confidential under the federal Family Educational Rights and Privacy Act, which is incorporated into Maine law by statute.

Bowler v. State

In *Bowler v. State*, 2014 ME 157, 108 A.3d 1257, the Law Court held that under an unallocated provision of law passed as part of the Intelligence and Investigative Record Information Act, Public Law 1993, ch. 719, §11, (the "IIRIA"), an investigative file that was not confidential when it was created in 1953, but was made confidential retroactively by a later-enacted statute, remains confidential regardless of its date of creation. Although the individual requesting the document argued that the unallocated IIRIA language requires that documents be confidential "at the time of their creation" to enjoy continued confidentiality under the IIRIA, the Court found that 5 MRSA §200-D, which was enacted in 1979 and repealed as part of the enactment of the IIRIA, made the document confidential retroactive to the date of its creation.

The Court also held that the Attorney General did not waive confidentiality when it released the file to the grandniece of the investigation's subject, who had died, because the IIRIA allows confidential information to be released to an "immediate family member." The term "immediate family member" is not defined in the IIRIA, but the Court determined that it includes a grandniece "when it is likely that there are no closer surviving relatives."

IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEE

In prior years the Right to Know Advisory Committee has divided its workload among various subcommittees that have reported recommendations back to the full Advisory Committee for consideration and action. This year the Advisory Committee chose to appoint one subcommittee: the Public Records Exceptions Subcommittee. The Public Records Exceptions Subcommittee's focus is to review and evaluate public records exceptions as required of the Advisory Committee pursuant to 1 MRSA §433, sub-§2-A. The guidelines in the law require the Advisory Committee to review all public records exceptions enacted after 2004 and before 2013 no later than 2017. The Subcommittee reviewed 50 such exceptions this year, tabling 5 and passing along 25 for consideration and action by the full Advisory Committee. (Twenty exceptions were reviewed at the Subcommittee's last meeting, but will be not be referred to the full group until 2016.) As part of its review, the Subcommittee reached out to state and local bodies for information, comments and suggestions with respect to the relevant public records exceptions administered by that body. All inquiries to the public bodies were coupled with an invitation for a representative of the public body to attend the Subcommittee meeting to provide any additional information or answer questions from the Subcommittee. Review was undertaken in light of the criteria codified at 1 MRSA §434, and, after discussion and a vote, recommendations for either keeping a provision with no modification or otherwise striking or amending the provision were passed along to the full Advisory Committee for a final vote. Representative Monaghan was the chair of the Subcommittee and Mary Ann Lynch, Linda Pistner and Luke Rossignol served as members. As a legislator and the Advisory Committee chair, Senator Burns was an ex officio member.

During 2015, the Public Records Exception Subcommittee held three meetings. The recommendations from two of these meetings are encompassed in this report and summarized below. The recommendations from the Subcommittee's third meeting will be passed along to next year's full Advisory Committee for its consideration; final recommendations will be incorporated into the Advisory Committee's January 2017 report.

The Subcommittee discussed the following exceptions. (*Note: Reference numbers below are based on a spreadsheet of public records exceptions created by staff to facilitate the review. The spreadsheet is available on the Right to Advisory Committee's website, www.maine.gov/legis/opla/righttoknow.htm.)*

Ref# 20 - 27: 8 MRSA §1006, sub-§1, ¶¶A-H, relating to information or records required by the Gambling Control Board for licensure: trade secrets and proprietary information; would be unwarranted invasion of privacy of key executive, gaming employee or another person; key executive or gaming employee compensation; financial, statistical and surveillance information related to the applicant; creditworthiness, credit rating or financial condition of person or project; information from other jurisdictions conditioned on remaining confidential; information designated confidential under federal law; specific personal information, including Social Security Number, of any individual

Ref# 28: 8 MRSA §1006, sub-§3, relating to records and information developed as part of a suitability requirement to select an operator of a central site monitoring system, held by the Gambling Control Board and the Department of Public Safety

Ref# 29: 8 MRSA §1006, sub-§4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Department of Public Safety

Ref# 30: 8 MRSA §1007, sub-§2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement

Ref# 31: 8 MRSA §1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052

Ref# 32: 8 MRSA §1052, relating to reports, information or records compiled by the Gambling Control Board and Department of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive

The Subcommittee voted 5-0 to recommend no modification to all of the above provisions concerning the Gambling Control Board. The group initially reviewed these Gambling Control Board exceptions at its first meeting but tabled them until more information could be provided, particularly concerning the regulations and publicly accessible information regarding slot machine payouts. Additionally, the Subcommittee sought out stakeholder input from the State's casinos on the scope of confidentiality for information supplied by them to the State. At the subsequent Subcommittee meeting Mr. Fleming, the Executive Director of the Gambling Control Board, was not available to attend, but Advisory Committee staff reviewed the relevant statutory language and relayed information communicated by Mr. Fleming, as well as passing along input received from the Oxford and Bangor casinos. Additionally, Mike Mahoney appeared before the Subcommittee on behalf of the Bangor casino and answered Subcommittee questions regarding the industry's data privacy needs and existing regulatory oversight of slot machine payout data. He noted that these 2005 public records exceptions had been well vetted by the Judiciary Committee, balancing the public's right to know with the casinos' legitimate business needs to keep some sensitive information confidential. Ms. Pistner corroborated that the Judiciary Committee had worked hard to narrow these exceptions, noting that this is best left as a policy decision for the Legislature and that she felt confident in the current process.

Ref# 5: 1 MRSA §402, sub-§3, ¶P, relating to geographic information regarding recreational trails on private land held by the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry

The Subcommittee voted 5-0 to recommend no modification. The Department of Agriculture, Conservation and Forestry supports this exception – without it landowners may not be willing to permit a recreational trail system on their land.

Ref# 43: 20-A MRSA §13004, sub-§2-A, relating to complaints, charges and accusations concerning certification and registration of educational personnel and administered by the Department of Education

The Subcommittee voted 4-1 to recommend changes to this public records exception, as proposed by the Department of Education. Sen. Burns cast the dissenting vote citing his concern that parents did not have adequate access under the existing law or the proposed amendment to records and information concerning investigations into complaints about alleged teacher misconduct.

The Department of Education presented draft language to amend the existing exception, stating the Department's intent to clarify the exception and to eliminate redundant language in order for the exceptions to better fit with the original intent of the provision. The DOE representative noted that while records regarding the investigation are confidential, a final written decision to discipline is public.

Ref# 12: 4 MRSA §1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services

The Subcommittee voted 5-0 to recommend no modification. John Pelletier, Executive Director of the Maine Commission on Indigent Legal Services, addressed the Subcommittee, pointing out that the records covered by the exception contain highly personal information, including individuals' personal contact information (including date of birth and Social Security Number), sensitive details about case litigation, performance evaluations of individual attorneys and information privileged under the attorney-client privilege. The Commission is very supportive of keeping the exception in statute as is.

Ref# 8: 1 MRSA §538, sub-§3, relating to InforME subscriber information

The Subcommittee voted 5-0 to recommend no modification. During the discussion, Ms. Lynch noted that the Judicial Branch uses this system, for example in the public's paying of fines, and that this information is indeed best kept confidential.

Ref# 14: 5 MRSA §17057, sub-§3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff

The Subcommittee voted 5-0 to recommend no modification.

Ref# 15: 5 MRSA §17057, sub-§4, relating to Maine Public Employees Retirement System private market investment activity

The Subcommittee voted 5-0 to recommend no modification. The Maine Public Employees Retirement System (MePERS) in its written response noted that without this exception it could not make private market investments, and that it does post public information regarding private market investments on its website.

Ref# 16: 5 MRSA §17057, sub-§5, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information

The Subcommittee voted 5-0 to recommend no modification. MePERS noted that it has never received a public request relating to this information.

Ref# 17: 5 MRSA §90-B, sub-§7, relating to the Address Confidentiality Program administered by the Secretary of State

The Subcommittee voted 5-0 to recommend no modification.

Ref# 18: 7 MRSA §1052, sub-§2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers to the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification. There was some concern on the Subcommittee regarding how the public would know whether they were near a GMO crop, given the risk for cross-contamination with regular crops. The Subcommittee decided that the concerns were not necessarily germane to this exception, and that other sections of the statute seemed to address some of these concerns.

Ref# 19: 7 MRSA §2231, sub-§3, relating to criminal history records provided to the Commissioner of Agriculture, Conservation and Forestry as part of an application to grow industrial hemp for commercial purposes

This exception was repealed by Public Law 2009, chapter 320, section 1; the Subcommittee decided no review was necessary.

Ref# 33: 8 MRSA §270-A, relating to records and information included in application or materials required for issuance of commercial track license by the Department of Agriculture

The Subcommittee voted 5-0 to recommend no modification.

Ref# 34: 9-A MRSA §6-105-A, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions and administered by the Department of Professional and Financial Regulation

The Subcommittee voted 5-0 to recommend no modification.

Ref# 48: 22 MRSA §1494, relating to occupational disease reporting information held by the Department of Health and Human Services

The Subcommittee voted 5-0 to recommend no modification.

Ref# 35: 12 MRSA §8005, sub-§1, relating to Social Security numbers, addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres

This item was tabled.

The Subcommittee wished to reach out to stakeholders affected by this landowner privacy provision before making a decision on this item.

Ref# 36: 12 MRSA §8005, sub-§2, relating to Social Security numbers, forest management plans and supporting documents of activities for administering landowner assistance programs

This item was tabled.

Ref# 37: 12 MRSA §8005, sub-§4, relating to forest management information designated confidential by agency furnishing the information

This item was tabled.

Ref# 38: 12 MRSA §10110, relating to a person's e-mail address submitted as part of the application process for a hunting or fishing license

This item was tabled.

Members acknowledged general support for continuation of confidentiality for certain fishing records but more discussion would be needed. There was a request for clarification on how a member of the public that person's wish for the Department of Inland Fisheries and Wildlife to keep the person's address confidential – is it an opt-in or opt-out type system?

Ref# 39: 12 MRSA §12551-A, sub-§10, relating to smelt dealers reports, including name, location, gear and catch

This item was tabled.

V. COMMITTEE PROCESS

This year, the Right to Know Advisory Committee held four committee meetings, which are summarized below.

Summary of September 15, 2015 meeting

Summary of the FOAA legislative actions during the First Regular Session of the 127th Legislature

Staff summarized the following legislative actions that affected the Freedom of Access Act (FOAA) during the First Regular Session of the 127th Legislature:

- Public Law 2015, chapter 248 (LD 1086), An Act To Implement the Recommendations of the Right To Know Advisory Committee To Create a Remedy for Unduly Burdensome and Oppressive Requests (*based on Appendix I, RTKAC 2014 report);
- Public Law 2015, chapter 249 (LD 1087), An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Response Deadlines and Appeals (*based on Appendix G, RTKAC 2014 report);
- Public Law 2015, chapter 317 (LD 1085), An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Receipt of a Request for Public Records (*based on Appendices G and H, RTKAC 2014 report); and
- Public Law 2015, chapter 250 (LD 1088), An Act To Implement Recommendations of the Right To Know Advisory Committee (*based on Appendices D,E and F, RTKAC 2014 report).

The Advisory Committee briefly discussed the status of the Judiciary Committee's carryover bill LD 1241. Ms. Pistner explained that much of the discussion on this bill involved a need for clarification on remote participation as it stands under the current law, and whether or not the law should be broadened. The committee discussed the fact that the topic of remote participation has been a longstanding unresolved issue for which it has been difficult to identify a solution. The committee requested that staff provide an overview of remote participation and the challenges that are associated with meeting the public's expectations in light of advancements in technology. The Committee requested that the summary also include the RTKAC's prior recommendations on this topic and the most recent Judiciary Committee's work sessions on this issue, as well as a copy of the Governor's veto letter on the bill related to remote participation.

Update from the Public Access Ombudsman

Public Access Ombudsman Brenda Kielty provided the Committee with an update on her recent activities and presented the committee with the following materials: a mid-year data summary report that summarizes the activities of the Ombudsman for the first half of calendar year 2015; a summary of the interim report to the Government Oversight Committee (GOC) regarding compliance with public records laws; and a copy of the status of recommendations from the report to the GOC on records retention and management. These documents are posted on the RTKAC's website.

Ms. Kielty described that FOAA provides a right to public records; however there are significant challenges when public records are not created in the first place or properly retained. A brief overview was provided of the letter from the Secretary of State's Office that summarized the interim report to the GOC regarding the stakeholder group charged with reviewing the records retention and management issue. Ms. Kielty explained that she has been working with Tammy Marks, Director of the State Archives, to develop the report to the GOC with recommendations to improve public record retention policies and practices (a list of the stakeholder group is included in this letter, which is available on the RTKAC website, www.maine.gov/legis/opla/*righttoknow.htm.*). Ms. Kielty stated that the FOAA depends on adequate documentation and proper record retention. The Committee asked if it would be able to provide input on any proposed legislation that the GOC considers relating to the records retention issue and

management topic, and Ms. Kielty stated she would report back to the Committee on this request.

Ms. Marks explained that October is Archives Month in Maine and around the country. The Maine State Archives is using the month of October to highlight the training that it offers in the area of records management, records retention, email management and the Freedom of Access Act. The State Archives website has a link to allow people to sign up for the workshops (see the Maine State Archives website at: http://www.maine.gov/sos/arc/). Training is being provided for any interested State employees, records officers, directors/agency heads, as well as legislators and public officials. Ms. Kielty and Ms. Marks noted that training in this area across the state has been inconsistent and not far-reaching.

The Advisory Committee asked if this stakeholder group would be able to look at how these issues are affecting people at the municipal level. Ms. Kielty stated that the stakeholder group was primarily focused on issues at the state level and would not be able to address all issues seen at the municipal level. Ms. Kielty stated that she would recommend that the Archives Advisory Board receive input from a representative of a school or municipality to provide this perspective.

Ms. Kielty provided a review of the mid-year data summary report. Ms. Kielty explained that many members of the public have an expectation that public records should be easily or readily available and are surprised to learn of the technological challenges and costs associated with accessing public records. Ms. Kielty requested approval from the Committee to draft some FAQs regarding recent changes to the FOAA statute that could be placed on the website. The Committee approved this request. Ms. Kielty will be providing the Committee with a copy of the proposed FAQs for the website in order to allow the Committee to provide any suggested changes by October 15.

Topics and Projects for 2015

The Committee began exploring potential tasks to be undertaken in 2015.

Chris Parr recommended that the Advisory Committee review the topic of extremely burdensome FOAA requests that are voluminous and require considerable length of time to review for confidential information and to redact personal information. In addition, Mr. Parr mentioned that many cases involve individuals who are requesting information based on a personal interest and not for any broader public purpose. Mr. Parr asked if there was interest on behalf of the Committee to discuss crafting a potential remedy that would address these types of circumstances, suggesting a set number of hours that would be allowed for fulfilling the request, after which the agency would be allowed to charge the actual cost associated with the request. Ms. Kielty agreed that the State Police have a high volume of requests and discussed how the federal law allows full compensation to be charged and not a flat fee. Ms. Kielty explained that Maine has chosen to try to accommodate the need for access to public records for those that do not have the funds to pay large fees for FOAA requests. The Maine FOAA is not concerned with who the requester of records is, or their purpose, unlike the federal law which categorizes the requestor based on the purpose of the request and the corresponding fee schedule (whether serving a commercial, media or private interest). Ms. Kielty noted that another area that could

be discussed was the length of time for fulfilling a public records request and that there are no uniform standards that apply in order to hold an agency to a specific standard. The Committee agreed that the topic of burdensome requests should be addressed by the full committee.

The Committee also requested a summary of the most recent actions relating to remote participation in the Judiciary Committee, as well as the previous RTKAC recommendations that were designed to address this topic but have not yet been adopted.

Some members of the Committee also expressed an interest in discussing the legislative budget process and whether or not the FOAA applies to the Legislature and if so, how FOAA addresses the issue of small groups of legislators meeting privately to adopt language for the State budget. The Committee agreed to take up this topic at one of its meetings this fall.

Summary of October 6, 2015 meeting

Review of Public Records Exceptions Subcommittee meeting

Rep. Monaghan, chair of the Public Records Exceptions Subcommittee, gave the full Committee a synopsis of the Subcommittee's meeting from earlier that morning. The Subcommittee had reviewed a number of public records exceptions to the FOAA, including relevant agency input and survey results, but tabled discussion regarding the confidentiality provisions concerning the Gambling Control Board in order to get more information from the Board's Executive Director prior to a final vote on the provisions.

Remote participation by members of public bodies

Staff reviewed the legislative and committee history with the topic of remote participation by members of public bodies, going back to 2012. The first bill on this topic was LD 258, *An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies*, was introduced in the First Regular Session of the 126th Legislature. LD 258 was voted Ought Not To Pass in the Legislature's Judiciary Committee in 2013. In a letter from the Judiciary Committee to the Right to Know Advisory Committee, the Judiciary Committee highlighted areas of concern, including: 1) the bill did not grandfather agencies with an existing remote participation process; 2) the bill only addressed participation by telephone, which may not be sufficient to provide full public access; and 3) that further input should be solicited from other public bodies. The subsequent iteration of remote participation legislation put forward was LD 1809, *An Act Concerning Meetings of Public Bodies Using Communications Technology*. After development in the Right to Know Advisory Committee and amendment in the Judiciary Committee, LD 1809 was vetoed by the Governor. The veto letter cited concern that giving only specific entities the right to remote participation implies that others, including those already doing so, may not continue to allow their members to participate in meetings remotely. The Judiciary Committee considered two bills during the First Regular Session of the 127th Legislature dealing with remote participation: LD 448, *An Act Regarding the Use of Remote-access Technology at Public Meetings of the Public Utilities Commission*, and LD 1241, *An Act To Increase Government Efficiency*. LD 448 concerned only the Public Utilities Commission and was voted Ought Not To Pass. LD 1241 is a more comprehensive proposal and

is being carried over to the 2nd Regular session of the 127th Legislature. This bill would allow certain specific agencies to meet remotely under certain conditions (e.g., illness, dangerous travel conditions).

Staff presented a summary of research into other states' laws regarding remote participation. In general, many states do permit remote participation by members of public bodies, with the major difference in these laws being where the authorization to do so occurs. Some states allow remote participation for bodies with statewide jurisdiction, while denying it for more local bodies.

Committee members discussed the history of the topic, harkening back to 2009. Some members expressed the opinion that the former LD 258, along with its Judiciary Committee refinements, was about as good a job as could be done in setting guidelines designed to make sure the public is aware of what is happening at public meetings. Several members opined that the Committee should either take immediate action to recommend legislation, or decide to leave the topic and focus on other topics where the Advisory Committee can have an impact. The key for this Committee, a member noted, is to come to a conclusion of substance and then figure out the best technical way to bring it forward, because the law is currently unclear. Rep. Monaghan wondered how any policy recommendations or legislation would affect LD 1241, the related bill currently in carryover status in the Judiciary Committee.

Staff offered to prepare something to highlight the fundamental differences between prior and pending remote participation bills. Mr. Pringle suggested going over LD 258 as a starting point, using a decision-tree style discussion around the premise that public proceedings cannot be conducted remotely unless certain requirements are met (including a physical quorum, the public being able to hear remote participants, and removing voting power from remote participants when a quasi-judicial vote is being taken). The group also discussed including a provision for grandfathering prior statutory provisions for remote participation. There was some discussion of inviting stakeholder input, but the group ultimately abandoned this as premature.

Several members of the group discussed the need to address the concerns raised in the Governor's veto message of LD 1809. Ms. Meyer thought the main point of contention was the bill's application to only a few specified agencies and that a policy that applied statewide would be sufficient to address the Executive Branch concerns, noting that LD 258 would meet this requirement. Some members suggested soliciting input from the Governor's Office regarding its position on legislation similar to LD 258.

Mr. Parr suggested a contrary interpretation of the Governor's veto letter, positing that any bills premised on the idea that legislative authorization was needed would be objected to, that the Governor's stance seemed to be that this legislative authorization was not needed at all, and therefore legislation modeled after LD 258 stood no better chance of approval.

Sen. Burns asked Ms. Kielty, the Public Access Ombudsman, to weigh in on the remote participation issue in regards to FOAA. Ms. Kielty replied that given the underlying purpose of FOAA, that actions and deliberations are taken openly and publicly, the current FOAA mechanisms are not adequate to ensure this openness when there is remote participation by members of public bodies. FOAA needs to adapt and mature to ensure that this new situation

meets the public policy aim of FOAA. She is supportive of updating FOAA to accommodate remote participation, but also likes the idea of giving local bodies the option to set their own policies in this regard, with FOAA being the baseline or default.

The group's consensus was to draft new legislation, similar to LD 258, and then seek input from the Governor's Office on that proposed legislation. After some discussion, the group members agreed to each answer a series of questions posed over email by staff covering the various policy considerations addressed in prior legislation (e.g., whether/when elected members must be physically present, what constitutes a quorum, whether specific reasons would be required before remote participation, etc.). This feedback will be compiled by staff and used to guide the discussions around forming new legislative recommendations in this area in the Advisory Committee's next meeting.

Relief from abusive/burdensome FOAA requests

Staff reviewed the history of actions since the Advisory Committee discussions in 2013 concerning mechanisms to provide public agencies certain relief from overly burdensome or abusive FOAA requests. Those discussions developed recommended legislation to provide a cause of action for public bodies to seek injunctive relief through the courts in cases of abusive/burdensome FOAA requests. This legislation was rejected by the Judiciary Committee in the Second Regular Session of the 126th Legislature, at least in part because of concerns raised by the Judicial Branch around implementation of the new judicial standard. The Advisory Committee redrafted this recommended legislation, and it returned to the 127th Legislature as LD 1086, An Act To Implement the Recommendations of the Right To Know Advisory Committee To Create a Remedy for Unduly Burdensome and Oppressive Requests, which was enacted into law as P.L. 2015 c. 248 and is codified at 1 MRSA §408-A, sub-§4-A.

Staff next provided a summary of what other states are doing to address this issue and highlighted a few notable examples. Sen. Burns remarked that states' responses to this issue were quite varied. Mr. Pringle noted that the larger issue of relief from burdensome requests has been wrestled with by the Advisory Committee in one form or another for the last 10 years. For example, the $15 per hour fee an agency is permitted to charge for staff time beyond one hour was settled on as a reasonable balance between the competing interests of the agencies and the requesting public.

There was discussion about whether the requirements of the new law, P.L. 2015 c. 248, may be too burdensome for an agency. Mr. Parr favorably referenced the model used in some other states that permit an agency, after a certain time threshold was breached, to charge actual labor costs for staff time, as well as other costs. He also noted that the amount of time an agency spends on certain burdensome requests leaves less time to fulfill other requests. Ms. Meyers expressed her hesitancy to recommend something new before there was time to see how the new injunction provision was working out in practice.

Several members agreed that the distinction between commercial and noncommercial was almost nonexistent. Mr. Rossignol expressed concern that agencies at times may be using an estimated cost to deter would-be requestors.

The group reached a consensus to not move ahead on any new action in this area.

Public Access Ombudsman's proposed new "FAQs" for website

Ms. Kielty addressed the Advisory Committee, providing advance copies of her proposed updates to the FAQ section of the public website her office maintains. The changes are being made to accommodate FOAA amendments from the prior legislative session. Committee members voiced no issues or concerns with the new language.

Summary of November 13, 2015 meeting

Public Records Exceptions Subcommittee update and recommendations

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

While a majority of the Subcommittee voted to recommend the Department's proposed amendment to the full Committee, Mr. Burns noted his vote in opposition to this. He stated his concern with allowing other states to see teacher discipline information that is not available to parents. Mr. Burns reiterated that he would like to see a mechanism for the public to have access to disciplinary information or investigations, at least after the fact. Mr. Pringle raised his reluctance to vote his support for Advisory Committee movement on this issue. He cited his concern with the breadth of currently confidential information the amendment would allow Maine to share with other states. Additionally, Mr. Pringle noted that the Maine public has, and will continue to have under the amendment, no access to any of this disciplinary information. He recommended further thought on the issue. Mr. Burns concurred, requesting further information from the Department before the Committee voted. Mr. Pringle moved to table the item, and the group voted to table the item and to seek further information from the Department on the question of how exactly the confidential information in 20-A MRSA §§6101 and 6103 fit within the broadened exception in 20-A MRSA §13004, sub-§2-A sought by the Department.

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

Remote participation by members of public bodies

Staff reviewed the results of the remote participation questionnaires received from members. Results were received from 7 members, with answers showing significant variability and containing various contingencies. Although the questionnaire allowed some concerns to be compared among members, the group agreed that it did not help reach a consensus. Staff then reviewed a chart comparing various elements (e.g, applicability, voting requirements, etc.) of past and present remote participation bills, as well as a draft bill containing various language options reflecting this variability. (Materials from this meeting are available on the Right to Know Advisory Committee's website.) Sen. Burns noted that a broad recommendation for legislation would be more likely to get consensus. The group agreed to work through forming recommended legislation, agreeing to first address the issue of determining to which public bodies a law permitting remote participation would apply. Some members voiced support for the law applying to all public bodies, leaving to each body to determine through its policy whether or not to allow remote participation. Other members were opposed to elected officials being permitted to vote remotely. Some agreed with this limitation for reasons of implementing a more incremental change and ensuring the law would not apply to the Legislature.

After much discussion, a large majority of the group voted for the legislation to be written to apply to non-elected bodies subject to the Freedom of Access Act, with exclusions for public bodies currently permitted by statute to have remote participation by members. The Advisory Committee continued to work through consensus on the elements of what would be the group's recommended legislation. The Advisory Committee voted to not include reference to the type of electronic means of communication that may be used, instead allowing that decision to be made by the body adopting the remote participation policy; to not allow remote participation at executive sessions out of privacy concerns; to maintain otherwise applicable notice requirements; to ensure that members both present at the meeting location and participating remotely can hear all of the participants in the meeting and speak to other members of the body during the meeting; to ensure that documents discussed at the meeting be available to members not physically present; to prohibit members participating remotely from voting in quasi-judicial proceedings; and to allow a body to achieve a quorum by including members participating remotely in emergency circumstances. Staff reviewed the results of the discussion and the Committee voted unanimously in support of the resulting draft recommended legislation.

Records Management Stakeholder Group

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

Transparency in the Legislature's budget negotiations

Senator Burns and Representative Monaghan started a discussion about the budget negotiations and process during the past legislative session, which was an issue raised at the first Right to Know Advisory Committee meeting. Representative Monaghan stated that more information

and resources were needed to properly address the issue, and explained that there may be a bill on the issue coming up in the next legislative session. Sen. Burns noted that there is an existing mechanism for determining whether FOAA was violated: through the court system. The issue was tabled without objection.

Summary of December 1, 2015 meeting

Draft annual report review & vote

Staff reviewed the draft annual report with the Advisory Committee. Mr. Pringle wanted to ensure that the executive summary and the section of the report regarding the Advisory Committee's recommended legislation to permit remote participation by members of public bodies be explicit that it applies only to bodies with appointed members, not elected members. Members of the Advisory Committee discussed their understanding that elected officials serving on other public bodies as ex officio or appointed members would not be serving in their elected role, and therefore would not be prohibited under the recommended legislation from participating remotely in a proceeding of that public body (e.g., just because some members of the Advisory Committee are elected officials, since they were appointed to their seats on the Advisory Committee, not elected, remote participation in Advisory Committee meetings would not be prohibited under this proposed legislation). Ms. Meyer asked if the Legislature should be explicitly exempted in the legislation. Mr. Pringle noted that it was hard to reign in all possibilities, to solve all potential problems, but that instead the Advisory Committee was passing along more of a template with which the Judiciary Committee can work. It was further requested that the clarification about elected members be included in the summary portion of the proposed legislation. The Committee agreed to include Mr. Pringle's suggested clarifications into the report and the summary portion of the proposed remote participation legislation.

In regard to the text of the proposed legislation, Ms. Lynch suggested changing the first line of the proposed legislation with the following: "*A public proceeding subject to this subchapter, except a proceeding of a publicly elected body, may be conducted through telephonic, video . . .* ." This replaces the term "public body" with "public proceeding", because the latter term is already defined in the FOAA. The group was in agreement that all suggested drafting changes should be included in the final report.

Department of Education's proposed amendment to 20-A MRSA §13004, sub-§2-A

Staff reviewed the proposed amendment and the concerns previously raised by the Department of Education in its response to the standard questionnaire sent to agencies as part of the public records exceptions review. The proposed amendment is included in **Appendix E**. The Department raised its concern that information made confidential in 20-A MRSA §13004, sub-§2-A, paragraph B, by cross reference to §§6101 and 6103, is information it wants to release because releasing that information would allow the Department to participate in an interstate system of information sharing regarding teacher disciplinary actions and would allow other states to share their information regarding teachers previously licensed in those states. Staff discussed how the exception in §6101 is much broader than the information that would be relevant to disciplinary background pursuant to §13004, sub-§2-A, and raised the potential for the

Committee to specify in this confidentiality waiver only the relevant information required to be shared with other states if the breadth of released information is a countervailing concern.

Debra Plowman from the Department of Education and Assistant Attorney General Sarah Forster appeared before the Advisory Committee to explain the proposed amendment. According to Ms. Plowman and Ms. Forster, the goal of the amendment is to allow the Department to work with a national organization to share certification complaint information on Maine teachers with other jurisdictions, which would allow the Department to receive the same information about teachers coming to Maine from other jurisdictions. Ms. Forster explained that the subsection 2-A, paragraph B exception exempts the information that the Department actually wants to share, and that allowing the Department to share that information was the original intent of the legislation. Ms. Meyer asked what specific information the Department was looking to share. The reply was that generally the organization and other states are interested in information regarding the basis for teacher disciplinary action, including criminal history and complaints that could result in a teacher losing certification. Ms. Plowman said the idea is to make sure Maine students are safe, and to do so the State wants to know about individuals from other states coming here to teach our children, and that allowing Maine to release its teacher discipline information is the way to allow this information sharing.

On a motion by Mr. Pringle, seconded by Ms. Lynch, the Committee debated the idea of including a recommendation on amending the education statutes in the Committee's report. Mr. Pringle noted that this provision was confusing, and the proposed amendment was a bit of a blunderbuss: for example, it would allow the release of emotional disturbance information of a certified teacher's family member. Mr. Pringle also asked whether and how the confidentiality of information released could be maintained once released outside the Department of Education under the proposed exception.

Senator Burns and members of the Advisory Committee discussed their concern with proposed amendment, because current law prohibits the Department of Education from sharing certain information with the public (e.g., parents) or a school district within the State that might want to hire the concerned teacher, but this amendment would allow this information to be shared with other states or a national organization. The Advisory Committee further discussed whether it is outside the Committee's purview to address the larger policy issues surrounding the selective confidentiality of this information. The Advisory Committee debated whether to refer the issue to the Education and Cultural Affairs Committee of the Legislature for a more comprehensive solution rather than making a recommendation to address part of the issue. Ms. Meyer suggested that a final solution from the Education and Cultural Affairs Committee could specify information that may be shared to accomplish the goals discussed, rather than specifying what information cannot be shared. The Committee decided not to include a recommendation in its report at this time.

The Committee instead voted 11-0 to send a letter to the Education and Cultural Affairs Committee alerting them to the issues that came up in the Advisory Committee's review of the confidentiality exception in 20-A MRSA §13004, sub-§2-A, and specifically the following concerns regarding the existing exception and the proposed amendment: whether the amount and scope of information potentially released is appropriate; whether there should be limits on re-

dissemination once released by the Department; whether the information should also be permitted to be shared within the State, not just among other states; and whether the statutes should be revised to state what may be shared, rather than what cannot be shared. The letter from the Advisory Committee to the Education and Cultural Affairs Committee is included in **Appendix E**.

The Committee voted 11-0 to endorse the draft report, with the previously discussed additions, amendments and updated information.

VI. ACTIONS RELATED TO COMMITTEE RECOMMENDATIONS CONTAINED IN NINTH ANNUAL REPORT

The Right to Know Advisory Committee made several recommendations in its ninth annual report. The legislative actions taken in 2015 as a result of those recommendations are summarized below.

Recommendation:	**Action:**
Enact legislation adding an IT professional to the Right to Know Advisory Committee	The Judiciary Committee voted "Ought to Pass as Amended" on the recommendations of the Advisory Committee to expand the membership of the Right to Know Advisory Committee to add a member experienced in information technology issues in Part A of *LD 1088, An Act To Implement Recommendations of the Right To Know Advisory Committee.* Governor LePage vetoed LD 1088 as amended, but the veto was overridden *(see veto letter in Appendix F).*
Recommendation:	**Action:**
Enact legislation to align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee	The Judiciary Committee voted "Ought to Pass as Amended" on the recommendations of the Advisory Committee to align the annual reporting date for the Public Access Ombudsman with the annual reporting date for the Right to Know Advisory Committee in Part B of *LD 1088, An Act To Implement Recommendations of the Right To Know Advisory Committee*. Governor LePage vetoed LD 1088 as amended, but the veto was overridden *(see veto letter in Appendix F).*

Recommendation: Continue without modification, amend or repeal the existing public records exceptions in Title 26 through 39-A, and repeal the Community Right-to-Know Act	**Action:** The Judiciary Committee voted "Ought to Pass as Amended" on the recommendations of the Advisory Committee to amend or repeal the existing public records exceptions in Title 26 through 39-A, and repeal the Community Right-to-Know Act, in Part C of *LD 1088, An Act To Implement Recommendations of the Right To Know Advisory Committee.* The Judiciary Committee amendment struck the proposed amendment to Title 29-A, section 152, sub-section 3, which affected a requirement that the Secretary of State adopt rules regarding confidential data processing information, but otherwise accepted the Advisory Committee's recommendations. Governor LePage vetoed LD 1088 as amended, but the veto was overridden *(see veto letter in Appendix F).*
Recommendation: Establish a process for continuing the review of public records exceptions	**Action:** The Judiciary Committee voted "Ought to Pass as Amended" on the recommendations of the Advisory Committee to establish a process for continuing the review of public records exceptions in Part D of *LD 1088, An Act To Implement Recommendations of the Right To Know Advisory Committee.* Governor LePage vetoed LD 1088 as amended, but the veto was overridden *(see veto letter in Appendix F).*
Recommendation: Enact legislation to address deadlines and appeals under the Freedom of Access Act	**Action:** The Judiciary Committee voted "Ought to Pass as Amended" on the Advisory Committee's recommendation to address deadlines and appeals under the Freedom of Access Act in Section 2 of *LD 1085, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Receipt of a Request for Public Records*, and in Section 2 of *LD 1087, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Response Deadlines and Appeals*. Governor LePage allowed LD 1085 as amended to become law without his signature. Governor LePage vetoed LD 1087 as amended, but the veto was overridden *(see veto letter in Appendix F).*
Recommendation: Enact legislation to clarify the date of receipt of a request for public records	**Action:** The Judiciary Committee voted "Ought to Pass as Amended" on the Advisory Committee's recommendation to clarify the date of receipt of a request for public records in *LD 1085, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Receipt of a Request for Public Records*. LD 1085 became law without Governor LePage's signature.

Recommendation:	Action:
Enact legislation to provide government relief from unduly burdensome or oppressive public records requests	The Judiciary Committee voted "Ought to Pass as Amended" on the Advisory Committee's recommendation to clarify the date of receipt of a request for public records in *LD 1086, An Act to Implement the Recommendations of the Right to Know Advisory Committee to Create A Remedy for Unduly Burdensome and Oppressive Requests*. Governor LePage vetoed LD 1086 as amended, but the veto was overridden *(see veto letter in Appendix F)*.

VII. RECOMMENDATIONS

Arising from its activities and discussions in 2015, the Advisory Committee makes the following recommendations in this, its tenth annual report.

❑ Enact legislation authorizing the use of technology to permit remote participation in public proceedings by non-elected members of public bodies

The Advisory Committee recommends the enactment of legislation to authorize bodies subject to the Freedom of Access Act to adopt policies that permit remote participation in public proceedings by members; however the Advisory Committee does not recommend that elected bodies be permitted to adopt policies allowing members to participate in public proceedings other than when physically present. The Advisory Committee has made similar recommendations in its recent prior reports.

*See draft legislation in **Appendix C**.*

*See **Appendix D** for copies of LD 258, LD 1809, the Judiciary Committee's majority amendment to LD 1809, Governor LePage's veto letter for LD 1809, LD 448, LD 1241 and the Judiciary Committee's majority amendment to LD 1241.*

❑ Continue without modification 24 of the existing public records exceptions enacted after 2004 and before 2013

As required by law, the Advisory Committee reviewed existing public records exceptions enacted after 2004 and before 2013. The Advisory Committee's recommendations are summarized below.

The Advisory Committee recommends that the following exceptions enacted after 2004 and before 2013 be continued without modification.

- Title 1, section 402, subsection 3, relating to geographic information regarding recreational trails on private land held by the Department of Inland Fisheries and Wildlife and the Department of Agriculture, Conservation and Forestry
- Title 1, section 538, subsection 3, relating to InforME subscriber information

- Title 4, section 1806, relating to certain information and records in the possession of the Maine Commission on Indigent Legal Services
- Title 5, section 90-B, subsection 7, relating to the Address Confidentiality Program administered by the Secretary of State
- Title 5, section 17057, subsection 3, relating to home contact information of Maine Public Employees Retirement System members, benefit recipients and staff
- Title 5, section 17057, subsection 4, relating to Maine Public Employees Retirement System private market investment activity
- Title 5, section 17057, subsection 5, relating to Maine Public Employees Retirement System employees personal and complaint and disciplinary information
- Title 7, section 1052, subsection 2-A, relating to total potential acreage of genetically modified crops reported by individual manufacturers to the Department of Agriculture
- Title 8, section 1006, subsection 1, paragraph A, relating to trade secrets information or records required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph B, relating to information or records required by the Gambling Control Board for issuance of a gambling license that if released would constitute an unwarranted invasion of personal privacy of a key executive, gaming employee or another individual included in a gambling license application
- Title 8, section 1006, subsection 1, paragraph C, relating to key executive or gaming employee compensation information or records required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph D, relating to financial, statistical and surveillance information related to the applicant required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph E, relating to records that contain an assessment by a person who is not employed by the board or the department of the creditworthiness, credit rating or financial condition of any person or project required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph F, relating to information obtained from other jurisdictions designated as confidential by the jurisdiction from which it is obtained and that must remain confidential as a condition of receipt required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph G, relating to information that is designated confidential under federal law whether obtained from federal authorities or provided to the board or department by an applicant, licensee or key executive required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 1, paragraph H, relating to birth dates, social security numbers, home addresses and telephone numbers, passport numbers, driver's license numbers, fingerprints, marital status, family relationships and support information, health status, personal financial records and tax returns of any individuals required by the Gambling Control Board for issuance of a gambling license
- Title 8, section 1006, subsection 3, relating to records and information developed as part of a suitability requirement to select an operator of a central site monitoring system, held by the Gambling Control Board and the Department of Public Safety

- Title 8, section 1006, subsection 4, relating to financial, statistical and surveillance information from the central site monitoring system held by the Gambling Control Board and the Department of Public Safety
- Title 8, section 1007, subsection 2, relating to information or records received by the Gambling Control Board or Department of Public Safety from another agency pursuant to agreement
- Title 8, section 1008, relating to information or records used or produced by the Gambling Control Board or Department of Public Safety in connection with hearings, proceedings or appeals pursuant to Title 8, section 1052
- Title 8, section 1052, relating to reports, information or records compiled by the Gambling Control Board and Department of Public Safety concerning noncompliance with or violation of the chapter by an applicant, licensee, owner or key executive
- Title 8, section 270-A, relating to records and information included in application or materials required for issuance of commercial track license by the Department of Agriculture
- Title 9-A, section 6-105-A, relating to information concerning uniform multistate licensing system provided to Consumer Credit Protection by other jurisdictions and administered by the Department of Professional and Financial Regulation
- Title 22, section 1494, relating to occupational disease reporting information held by the Department of Health and Human Services

The Advisory Committee also considered an amendment to Title 20-A, section 13004, subsection 2-A, relating to relating to complaints, charges and accusations concerning certification and registration of educational personnel recommends that the following public records exceptions be amended, based upon information received from the Department of Education. As discussed above, the Advisory Committee communicated its concerns with the existing and proposed language related to this public records exception in a letter to the Joint Standing Committee on Education and Cultural Affairs for its consideration.

See the Advisory Committee's letter to the Joint Standing Committee on Education and Cultural Affairs; a copy of Title 20-A, section 13004; the Department of Education's proposed amendment to section 13004; and the Department of Education's response to the Subcommittee's questionnaire in ***Appendix E.***

VIII. FUTURE PLANS

In 2016, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions enacted after 2004 and before 2013. The Advisory Committee looks forward to a full year of activities working with the Public Access Ombudsman, the Judicial Branch and the Legislature to implement the recommendations included in this report.

APPENDIX A

Authorizing Legislation: 1 MRSA §411

Title 1: GENERAL PROVISIONS

Chapter 13: PUBLIC RECORDS AND PROCEEDINGS

§411. RIGHT TO KNOW ADVISORY COMMITTEE

1. **Advisory committee established.** The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

[2005, c. 631, §1 (NEW) .]

2. **Membership.** The advisory committee consists of the following members:

A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

C. One representative of municipal interests, appointed by the Governor; [2005, c. 631, §1 (NEW).]

D. One representative of county or regional interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

E. One representative of school interests, appointed by the Governor; [2005, c. 631, §1 (NEW).]

F. One representative of law enforcement interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

G. One representative of the interests of State Government, appointed by the Governor; [2005, c. 631, §1 (NEW).]

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

I. One representative of newspaper and other press interests, appointed by the President of the Senate; [2005, c. 631, §1 (NEW).]

J. One representative of newspaper publishers, appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House; [2005, c. 631, §1 (NEW).]

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; [2015, c. 250, Pt. A, §1 (AMD).]

M. The Attorney General or the Attorney General's designee; and [2015, c. 250, Pt. A, §1 (AMD).]

N. One member with broad experience in and understanding of issues and costs in multiple areas of information technology, including practical applications concerning creation, storage, retrieval and accessibility of electronic records; use of communication technologies to support meetings, including

teleconferencing and Internet-based conferencing; databases for records management and reporting; and information technology system development and support, appointed by the Governor. [2015, c. 250, Pt. A, §2 (NEW).]

The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

[2015, c. 250, Pt. A, §§1, 2 (AMD) .]

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years. [2005, c. 631, §1 (NEW).]

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed. [2005, c. 631, §1 (NEW).]

C. Members may serve beyond their designated terms until their successors are appointed. [2005, c. 631, §1 (NEW).]

[2005, c. 631, §1 (NEW) .]

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

[2005, c. 631, §1 (NEW) .]

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

[2005, c. 631, §1 (NEW) .]

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws; [2005, c. 631, §1 (NEW).]

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries; [2005, c. 2, §1 (COR).]

C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws; [2005, c. 2, §1 (COR).]

D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written

question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making that information publicly available; [2007, c. 576, §1 (AMD).]

E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation; [2005, c. 631, §1 (NEW).]

F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which that information may appropriately be released; [2005, c. 631, §1 (NEW).]

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations; [2005, c. 631, §1 (NEW).]

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered; [2005, c. 631, §1 (NEW).]

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records; [2005, c. 631, §1 (NEW).]

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and [2005, c. 631, §1 (NEW).]

K. May undertake other activities consistent with its listed responsibilities. [2005, c. 631, §1 (NEW).]

[2007, c. 576, §1 (AMD) .]

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

[2005, c. 631, §1 (NEW) .]

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

[2005, c. 631, §1 (NEW) .]

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

[2005, c. 631, §1 (NEW) .]

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

[2005, c. 631, §1 (NEW) .]

SECTION HISTORY
RR 2005, c. 2, §1 (COR). 2005, c. 631, §1 (NEW). 2007, c. 576, §1 (AMD). 2015, c. 250, Pt. A, §§1, 2 (AMD).

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APPENDIX B

Membership List

Right to Know Advisory Committee
Membership List

Appointments by the Governor

Christopher Parr Department of Public Safety 104 State House Station Augusta, ME 04333	Representing state government interests
Harry R. Pringle Drummond, Woodsum & MacMahon 84 Marginal Way, Suite 600 Portland, ME 04101-2480	Representing school interests
Vacant	Representing municipal interests
Vacant	A member with broad experience in information technology

Appointments by the President of the Senate

Senator David C. Burns 159 Dodge Road Whiting, ME 04691	Senate member of the Judiciary Committee
Richard LaHaye Chief, Searsport Police Department 3 Union Street Searsport, ME 04974	Representing law enforcement interests
Frederick Hastings 2413 Cutler Road Cutler, ME 04626	Representing the press
Luke Rossignol Bemis & Rossingol 1019 State Road Mapleton, ME 04757	Representing the public
William D. Shorey Board of Waldo County Commissioners 39-B Spring Street Belfast, ME 04915	Representing county or regional interests
Vacant	Representing broadcasting interests

Right to Know Advisory Committee
Membership List

Appointments by the Speaker of the House

Representative Kimberly Monaghan
6 Russet Lane
Cape Elizabeth, ME 04107
House member of the Judiciary Committee

Helen Rankin
84 Sebago Road
Hiram, ME 04041
Representing the public

Suzanne Goucher
Maine Association of Broadcasters
69 Sewall Street, Suite 2
Augusta, ME 04330
Representing broadcasting interests

Judy Meyer
Lewiston Sun Journal
104 Park Street
Lewiston, ME 04243-4400
Representing newspaper publishers

Kelly Morgan
90 Loggin Road
Cape Neddick, ME 04072
Representing a statewide coalition of advocates of freedom of access

Attorney General's Designee

Linda Pistner
Chief Deputy Attorney General
6 State House Station
Augusta, ME 04333-0006
Designee of the Attorney General

Chief Justice of the Supreme Judicial Court's Designee

Mary Ann Lynch
Government and Media Counsel
Administrative Office of the Courts
Maine Judicial Branch
P.O. Box 4820
Portland, ME 04112-4820
Member of the Judicial Branch

Staff:
Natalie Haynes
Henry Fouts
Craig Nale

APPENDIX C

Recommended Draft Legislation: Remote Participation by Members of Public Bodies

PART A

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

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

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

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

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

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

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

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

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

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

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

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

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior

to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

2. Voting; quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

3. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

PART B

Sec. B-1. 32 MRSA §88, sub-§1, ¶D, is amended to read:

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The~~Notwithstanding Title 1, section 403-A, the board may use video conferencing and other technologies to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1~~. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Sec. B-2. 39-A MRSA §151, sub-§5, is amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. ~~The~~Notwithstanding Title 1, section 403-A, the board may hold sessions at its central office or at any other place within the State and shall establish procedures through which

members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

SUMMARY

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

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

APPENDIX D

Prior and pending remote participation legislation and related materials: LD 258, LD 1809, the Judiciary Committee's majority amendment to LD 1809, Governor LePage's veto letter for LD 1809, LD 448, LD 1241 and the Judiciary Committee's majority amendment to LD 1241

126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document **No. 258**

H.P. 195 House of Representatives, February 5, 2013

An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Meetings of Public Bodies

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

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

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

PART A

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

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

This section governs public proceedings, including executive sessions, during which public or governmental business is discussed or transacted through telephonic, video, electronic or other similar means of communication.

1. Requirements. A body subject to this subchapter may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication only if the following requirements are met:

A. The body has adopted a policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other similar means of communication in accordance with this section. The policy may establish circumstances under which a member may participate when not physically present;

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

C. Except as provided in subsection 3, a quorum of the body is assembled physically at the location identified in the notice required by section 406;

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

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

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

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

2. Voting; judicial or quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a judicial or quasi-judicial public proceeding through telephonic, video, electronic or other similar means of

communication may not vote on any issue concerning testimony or other evidence provided during the judicial or quasi-judicial public proceeding.

3. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum under subsection 1, paragraph C if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742;

B. The public proceeding is necessary to take action to address the emergency; and

C. The body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency.

4. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

PART B

Sec. B-1. 10 MRSA §384, sub-§5 is enacted to read:

5. Meetings. The board shall have a physical location for each meeting. Notwithstanding Title 1, section 403-A, board members may participate in meetings by teleconference. Board members participating in the meeting by teleconference are not entitled to vote and are not considered present for the purposes of determining a quorum, except in cases in which the chair of the board determines that the counting of members participating by teleconference and the allowance of votes by those members is necessary to avoid undue hardship to an applicant for an investment.

Sec. B-2. 32 MRSA §88, sub-§1, ¶D, as amended by PL 2007, c. 274, §19, is further amended to read:

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. ~~The~~ Notwithstanding Title 1, section 403-A, the board may use video conferencing and other technologies to conduct its business ~~but is not exempt from Title 1, chapter 13, subchapter 1~~. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting.

Sec. B-3. 39-A MRSA §151, sub-§5, as amended by PL 2003, c. 608, §9, is further amended to read:

5. Voting requirements; meetings. The board may take action only by majority vote of its membership. ~~The~~ Notwithstanding Title 1, section 403-A, the board may hold sessions at its central office or at any other place within the State and shall establish procedures through which members who are not physically present may participate by telephone or other remote-access technology. Regular meetings may be called by the executive director or by any 4 members of the board, and all members must be given at least 7 days' notice of the time, place and agenda of the meeting. A quorum of the board is 4 members, but a smaller number may adjourn until a quorum is present. Emergency meetings may be called by the executive director when it is necessary to take action before a regular meeting can be scheduled. The executive director shall make all reasonable efforts to notify all members as promptly as possible of the time and place of any emergency meeting and the specific purpose or purposes for which the meeting is called. For an emergency meeting, the 4 members constituting a quorum must include at least one board member representing management and at least one board member representing labor.

SUMMARY

This bill implements the majority recommendation of the Right To Know Advisory Committee.

Part A authorizes the use of remote-access technology to conduct public proceedings. Subject to the following requirements, it authorizes a body to conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or government business through telephonic, video, electronic or other similar means of communication.

1. The body must adopt a policy that authorizes such participation and establishes the circumstances under which a member may participate when not physically present.

2. Notice of any proceeding must be provided in accordance with the Freedom of Access Act.

3. A quorum of the body must be physically present, except that under certain emergency circumstances, a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum assembled physically at one location.

4. Members of the body must be able to hear and speak to each other during the proceeding.

5. A member who is participating remotely must identify the persons present in the location from which the member is participating.

6. All votes taken during the public proceeding must be taken by roll call vote.

7. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication must have received, prior to the proceeding, any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented.

8. A member of a body who is not physically present may not vote on any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

9. If a body conducts one or more public proceedings using remote-access technology, the body must also hold at least one public proceeding annually during which all members of the body in attendance are physically assembled at one location.

Under current law, the following state agencies are authorized to use remote-access technology to conduct meetings: the Finance Authority of Maine, the Commission on Governmental Ethics and Election Practices, the Emergency Medical Services' Board and the Workers' Compensation Board. Part B provides a specific exemption from the new requirements for the Small Enterprise Growth Board, the Emergency Medical Services' Board and the Workers' Compensation Board.

126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document **No. 1809**

H.P. 1300 House of Representatives, March 11, 2014

An Act Concerning Meetings of Public Bodies Using Communications Technology

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

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Printed on recycled paper

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

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

§403-A. Public proceedings through communications technology

1. Elected membership; prohibition. A public body composed of elected members of a municipality, quasi-municipal entity or school administrative unit may not conduct a public proceeding in which a member participates in the discussion or transaction of public or governmental business when that member is not physically present at the location of the public proceeding.

2. Authorized participation. A public body, except a public body composed of elected members, of a municipality, quasi-municipal entity or school administrative unit may conduct a public proceeding during which one or more members of the body participate in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication only if all of the following requirements are met:

A. The body has adopted a written policy that authorizes a member of the body who is not physically present to participate in a public proceeding through telephonic, video, electronic or other similar means of communication in accordance with this section. The policy must establish criteria that must be met before a member may participate when not physically present. If the policy allows a member who is not physically present to participate in an executive session, the policy must specifically address the circumstances under which the executive session may be conducted to ensure privacy;

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

C. Except as provided in subsection 4, a quorum of the body is assembled physically at the location identified in the notice required by section 406;

D. Each member of the body participating in the public proceeding is able to hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to hear all members participating from other locations. If documents or materials that include pictures, graphs, illustrations or other information presented in a visual format are part of the discussion, either the communications technology used must ensure that all members can see the documents and materials while the documents and materials are being discussed or the documents and materials must be provided to all members not physically present before or during the proceeding;

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

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

G. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a body in a public proceeding.

3. Voting; judicial or quasi-judicial proceeding. A member of a body who is not physically present and who is participating in a judicial or quasi-judicial public proceeding through telephonic, video, electronic or other similar means of communication may not vote on any issue concerning testimony or other evidence provided during the judicial or quasi-judicial public proceeding.

4. Exception to quorum requirement. A body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum under subsection 2, paragraph C if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742 and:

(1) The public proceeding is necessary to take action to address the emergency; and

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

B. The body is expressly authorized by its governing statute to convene a public proceeding by telephonic, video, electronic or other similar means of communication with less than a quorum of the body assembled physically at the location identified in the notice required by section 406.

5. Annual meeting. If a body conducts one or more public proceedings pursuant to this section, it shall also hold at least one public proceeding annually during which members of the body in attendance are physically assembled at one location and where no members of the body participate by telephonic, video, electronic or other similar means of communication from a different location.

SUMMARY

This bill prohibits the use of telephonic, video, electronic or other similar means of communication to conduct public proceedings of elected public bodies of municipalities, quasi-municipal entities and school administrative units. It allows nonelected public bodies of municipalities, quasi-municipalities and school administrative units to do so only if specific requirements are met. Subject to the listed requirements, a body may conduct a public proceeding during which a member of the body participates in the discussion or transaction of public or governmental business through telephonic, video, electronic or other similar means of communication.

1. The body must adopt a policy that authorizes such participation and establishes the criteria that must be met under which a member may participate when not physically present. If the policy authorizes such participation in an executive session, the policy must spell out the circumstances for conducting the executive session that will ensure the required privacy.

2. Notice of any proceeding must be provided in accordance with the Freedom of Access Act.

3. A quorum of the body must be physically present, except that under certain circumstances a body may convene a public proceeding by telephonic, video, electronic or other similar means of communication without a quorum assembled physically at one location. One such circumstance is if the body's governing statute authorizes a meeting using the remote-access technology with less than a quorum physically present in the location listed in the meeting notice.

4. Members of the body must be able to hear and speak to each other during the proceeding. If discussions are based on documents or materials that are in visual format, the technology used must also allow all members to see the materials unless the documents and materials are provided before or during the proceedings to all members not physically present.

5. A member who is participating remotely must identify the persons present in the location from which the member is participating.

6. All votes taken during the public proceeding must be taken by roll call vote.

7. Each member who is not physically present and who is participating through telephonic, video, electronic or other similar means of communication must have received, prior to the proceeding, any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented.

8. A member of a body who is not physically present may not vote on any issue concerning testimony or other evidence provided during the public proceeding if it is a judicial or quasi-judicial proceeding.

9. If a body conducts one or more public proceedings using the remote-access technology, the body must also hold at least one public proceeding annually during which all members of the body in attendance are physically assembled at one location.

L.D. 1809

Date: (Filing No. H-)

JUDICIARY

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

STATE OF MAINE

HOUSE OF REPRESENTATIVES

126TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1300, L.D. 1809, Bill, "An Act Concerning Meetings of Public Bodies Using Communications Technology"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services'

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

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

§403-A. Public proceedings using communications technology by governing bodies of quasi-municipal corporations and districts

1. Application. This section applies to public proceedings conducted by a governing body, including a board of trustees, of a quasi-municipal corporation or district, as defined in Title 30-A, section 2351, subsection 4, that provides water, sewer or sanitary services.

2. Authorized participation. A governing body may conduct a public proceeding during which one or more members of the governing body participate in the discussion or transaction of public or governmental business when not physically present only if all of the following requirements are met:

A. The governing body has adopted a written policy that authorizes a member of the governing body who is not physically present to participate in a public proceeding through combined audio and video means of communication in accordance with this section. The policy must establish criteria that must be met before a member may participate when not physically present. The policy may not allow a member who is not physically present to participate in an executive session;

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

C. Except as provided in subsection 4, a quorum of the governing body is assembled physically at the location identified in the notice required by section 406;

D. Each member of the governing body participating in the public proceeding is able to see and hear all the other members and speak to all the other members during the public proceeding, and members of the public attending the public proceeding in the location identified in the notice required by section 406 are able to see and hear all members participating from other locations. If documents or materials that include pictures, graphs, illustrations or other information presented in a visual format are part of the discussion, either the communications technology used must ensure that all members can see the documents and materials while the documents and materials are being discussed or the documents and materials must be provided to all members not physically present before or during the proceeding;

E. Each member who is not physically present and who is participating through combined audio and video means of communication identifies the persons present at the location from which the member is participating;

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

G. Each member who is not physically present and who is participating through combined audio and video means of communication has received prior to the public proceeding any documents or other materials that will be discussed at the public proceeding, with substantially the same content as those documents actually presented. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available. Failure to comply with this paragraph does not invalidate the action of a governing body in a public proceeding.

3. Voting; quasi-judicial proceeding. A member of a governing body who is not physically present and who is participating through combined audio and video means of communication may vote in all proceedings other than quasi-judicial proceedings. A member of a governing body who is not physically present may participate in a quasi-judicial proceeding through combined audio and video means of communication, but may not vote on any issue concerning testimony or other evidence provided during the quasi-judicial proceeding. For the purposes of this subsection, "quasi-judicial proceeding" means a proceeding in which the governing body is obligated to objectively determine facts and draw conclusions from the facts so as to provide the basis of an official action when that action may affect the legal rights, duties or privileges of specific persons.

4. Exception to quorum requirement. A governing body may convene a public proceeding by combined audio and video means of communication without a quorum under subsection 2, paragraph C if:

A. An emergency has been declared in accordance with Title 22, section 802, subsection 2-A or Title 37-B, section 742 and:

(1) The public proceeding is necessary to take action to address the emergency; and

(2) The governing body otherwise complies with the provisions of this section to the extent practicable based on the circumstances of the emergency; or

B. The governing body is expressly authorized by its governing statute to convene a public proceeding by combined audio and video means of communication with less than a quorum of the body assembled physically at the location identified in the notice required by section 406.

5. Annual meeting. If a governing body conducts one or more public proceedings pursuant to this section, it also shall hold at least one public proceeding annually during which members of the governing body in attendance are physically assembled at one location and at which no members of the governing body participate by combined audio and video means of communication from a different location.'

SUMMARY

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

This amendment limits the application of the bill to the governing bodies of quasi-municipal corporations and districts, as defined in the Maine Revised Statutes, Title 30-A, section 2351, subsection 4, that provide water, sewer or sanitary services if the governing bodies adopt policies that meet specified requirements.

This amendment limits the type of communication technology that may be used to participate remotely to combined audio and video means of communication that permit all the members of the governing body and the public that are in attendance to see and hear all the members that are participating.

This amendment prohibits a member who is not physically present from participating in an executive session.

This amendment clarifies that a member who is not physically present may participate and vote remotely, but a member who is not physically present may not vote in a quasi-judicial proceeding on any issue concerning testimony or other evidence provided during the quasi-judicial public proceeding. The amendment defines "quasi-judicial proceeding."

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

22 April 2014

The 126th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 126th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1809, "An Act Concerning Meetings of Boards of Trustees and Governing Bodies of Quasi-municipal Corporations and Districts That Provide Water, Sewer and Sanitary Services."

This legislation purports to allow certain quasi-municipal entities to use audio and video technology to conduct meetings. Unfortunately, this legislation is unnecessary and may actually have the impact of reducing the use of technology by governmental entities.

I support increased use of technology to conduct government business. In a rural state like Maine, technology has the potential to create significant efficiencies in the way we govern. It reduces costs and allows entities to recruit better qualified (but often busier) individuals who want to serve, but travel, work and the demands of life may limit the number of meetings these individuals may attend in person. In Maine's island communities, the use of video and teleconferencing to conduct business is not just a convenience, but an absolute necessity.

Many public entities use modern means to conduct a portion of their business. Entities doing this must meet the requirements of Maine statute governing public proceedings. Meetings must be noticed, conducted in public, and records must be kept. A meeting is legal based on whether or not these requirements are met, not on the use of technology.

It is currently legal to conduct a remote meeting as long as it complies with the other requirements of law. Island communities and others do so regularly. This law would call that practice into question. By specifically prescribing and authorizing the use of technology for this very limited sub-set of entities, it implies that other entities can no longer do so. At best, this ambiguous situation creates uncertainty and could have the effect of discouraging the use of common-sense means to conduct government business.

For these reasons, I return LD 1809 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor

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FAX: (207) 287-1034

127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document **No. 448**

S.P. 177 In Senate, February 24, 2015

An Act Regarding the Use of Remote-access Technology at Public Meetings of the Public Utilities Commission

Submitted by the Public Utilities Commission pursuant to Joint Rule 204.

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator WOODSOME of York.
Cosponsored by Representative DION of Portland.

Printed on recycled paper

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

Sec. 1. 35-A MRSA §108-A, first ¶, as enacted by PL 1993, c. 36, §2, is amended to read:

A majority of the duly appointed commissioners constitutes a quorum and the act or decision of a majority of commissioners present, if at least a quorum is present, is the act or decision of the commission in any formal proceeding before the commission. Commissioners may participate in proceedings through telephonic, video, electronic or similar means of communication.

SUMMARY

This bill specifically authorizes the commissioners of the Public Utilities Commission to participate in proceedings of the commission through telephonic, video, electronic or similar means of communication.

127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document **No. 1241**

S.P. 446 In Senate, April 7, 2015

An Act To Increase Government Efficiency

Reference to the Committee on Judiciary suggested and ordered printed.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator KATZ of Kennebec.
Cosponsored by Representative HARLOW of Portland and
Senators: DAVIS of Piscataquis, SAVIELLO of Franklin, Representative: MALABY of Hancock.

Printed on recycled paper

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

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

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

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

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

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

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

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

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

4. Powers of authority. The powers of the authority ~~shall be~~ are vested in ~~the~~ its members ~~thereof in office from time to time~~, and 5 members of the authority ~~shall~~ constitute a quorum at any meeting of the authority. ~~No~~ A vacancy in the membership of the authority ~~shall~~ does not impair the right of ~~such members~~ a quorum to exercise all the rights and perform all the duties of the authority. ~~Any~~ An action taken by the authority

under this chapter may be authorized by resolution approved by a majority of the members present at any regular or special meeting, which resolution ~~shall take~~ takes effect immediately, or an action taken by the authority may be authorized by a resolution circularized or sent to each member of the authority, which ~~shall take~~ resolution takes effect at such time as a majority of the members ~~shall~~ have signed an assent to such resolution. Resolutions of the authority need not be published or posted. The authority may delegate by resolution to one or more of its members or its executive director such powers and duties as it ~~may deem~~ considers proper.

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

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

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

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

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

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

B. The Maine State Housing Authority, as authorized by Title 5, chapter 379, must have 10 commissioners, 8 of whom must be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over economic development and to confirmation by the Legislature. The 9th commissioner is the Treasurer of State who serves as an ex officio voting member. The Treasurer of State may designate the Deputy Treasurer of State to serve in place of the Treasurer of State. The 10th commissioner is the director of the Maine State Housing Authority who serves as an ex officio nonvoting member. At least 3 gubernatorial appointments must include a representative of bankers, a representative

of elderly people and a resident of housing that is subsidized or assisted by programs of the United States Department of Housing and Urban Development or of the Maine State Housing Authority. In appointing the resident, the Governor shall give priority consideration to nominations that may be made by tenant associations established in the State. Of the 5 remaining gubernatorial appointments, the Governor shall give priority to a representative involved in the housing business and a representative of people with disabilities. The powers of the Maine State Housing Authority are vested in the commissioners. The commissioners may delegate such powers and duties to the director of the Maine State Housing Authority as they determine appropriate.

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

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

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

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

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

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

(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the

transmission technology is available. Failure to comply with this subparagraph does not invalidate an action taken by the Maine State Housing Authority at the public proceeding.

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

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

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

A. Each commissioner can hear all other commissioners and speak to all other commissioners during the public proceeding, and members of the public attending the public proceeding at the location identified in the notice required by Title 1, section 406 are able to hear all commissioners participating from other locations;

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

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

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

SUMMARY

This bill authorizes the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank to conduct public proceedings with one or more members of the board or commission participating via remote access technology in certain circumstances.

L.D. 1241

Date: (Filing No. S-)

JUDICIARY

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

STATE OF MAINE

SENATE

127TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 446, L.D. 1241, Bill, "An Act To Increase Government Efficiency"

Amend the bill in section 1 in subsection 3 by striking out all of paragraphs C and D (page 1, lines 21 to 34 in L.D.) and inserting the following:

'C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only if the member is needed for a quorum as determined by the executive director or when the member's attendance is not reasonably practical for one of the following reasons:

(1) Illness of the member;

(2) Weather that makes driving hazardous; or

(3) Unexpected traffic delays or vehicle breakdowns when the member is traveling to the meeting.

The reason that the member is not physically present at the location must be stated in the minutes of the meeting;

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available; and

E. Any executive session includes only members who are physically present at the location of the public proceeding identified in the notice.'

Amend the bill in section 2 in subsection 4 by striking out all of paragraphs C and D (page 2, lines 20 to 33 in L.D.) and inserting the following:

'C. A member who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only if the member is needed for a quorum as determined by the executive director or when the member's attendance is not reasonably practical for one of the following reasons:

(1) Illness of the member;

(2) Weather that makes driving hazardous; or

(3) Unexpected traffic delays or vehicle breakdowns when the member is traveling to the meeting.

The reason that the member is not physically present at the location must be stated in the minutes of the meeting;

D. Each member who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or other materials made available at the public proceeding may be transmitted to the member not physically present during the public proceeding if the transmission technology is available; and

E. Any executive session includes only members who are physically present at the location of the public proceeding identified in the notice.'

Amend the bill in section 3 in paragraph B by striking out all of subparagraphs (3) and (4) (page 3, lines 33 to 44 and page 4, lines 1 to 3 in L.D.) and inserting the following:

'(3) A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only if the commissioner is needed for a quorum as determined by the director or when the commissioner's attendance is not reasonably practical for one of the following reasons:

(a) Illness of the commissioner;

(b) Weather that makes driving hazardous; or

(c) Unexpected traffic delays or vehicle breakdowns when the commissioner is traveling to the meeting.

The reason that the commissioner is not physically present at the location must be stated in the minutes of the meeting;

(4) Each commissioner who is not physically present at the location of the public proceeding and who is participating through telephonic, video, electronic or other similar means of communication has received prior to the public proceeding all documents and materials discussed at the public proceeding, with substantially the same content as those presented at the public proceeding. Documents or

other materials made available at the public proceeding may be transmitted to the commissioner not physically present during the public proceeding if the transmission technology is available; and

(5) Any executive session includes only commissioners who are physically present at the location of the public proceeding identified in the notice.'

Amend the bill in section 4 in subsection 4 by striking out all of paragraphs C and D (page 4, lines 27 to 40 in L.D.) and inserting the following:

'C. A commissioner who participates while not physically present at the location of the public proceeding identified in the notice required by Title 1, section 406 does so only if the commissioner is needed for a quorum as determined by the executive director or when the commissioner's attendance is not reasonably practical for one of the following reasons:

(1) Illness of the commissioner;

(2) Weather that makes driving hazardous; or

(3) Unexpected traffic delays or vehicle breakdowns when the commissioner is traveling to the meeting.

The reason that the commissioner is not physically present at the location must be stated in the minutes of the meeting; and

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

E. Any executive session includes only commissioners who are physically present at the location of the public proceeding identified in the notice.'

SUMMARY

This amendment is the majority report of the Joint Standing Committee on Judiciary and amends the bill to bar remote participation in executive sessions of the board and authorities subject to the bill and lists specific and limited situations when a member may participate remotely in the public proceedings.

APPENDIX E

Letter to Joint Standing Committee on Education regarding confidentiality of complaints, charges and accusations concerning certification and registration of education personnel confidentiality (Title 20-A, section 13004, subsection 2-A); Amendment proposed by Department of Education; and Department of Education response to Subcommittee questionnaire

Hon. David C. Burns, Chair
Hon. Kimberly Monaghan
Suzanne Goucher
Frederick Hastings
Richard LaHaye
Mary Ann Lynch
Judy Meyer

Kelly Morgan
Christopher Parr
Linda Pistner
Harry Pringle
Helen Rankin
Luke Rossignol
William Shorey

STATE OF MAINE

RIGHT TO KNOW ADVISORY COMMITTEE

January 6, 2016

Sen. Brian D. Langley, Chair
Rep. Victoria P. Kornfield, Chair
Committee on Education and Cultural Affairs
127th Maine Legislature

Dear. Sen. Langley and Rep. Kornfield:

The Right to Know Advisory Committee is established under Title 1, Chapter 13 of the Maine Revised Statutes as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 17 members of the Advisory Committee are appointed by the Governor, the President of the Senate, the Speaker of the House, the Chief Justice of the Supreme Judicial Court and the Attorney General.

Although Maine's Freedom of Access Act generally provides for public access to government meetings and documents, there are numerous exceptions to these requirements. One of the Advisory Committee's duties is to review those exceptions according to statutorily prescribed schedule: prior to 2017 the Advisory Committee must review all of the public records exceptions that were enacted from 2005 through 2012. The Advisory Committee evaluates the suitability of these exceptions with the help of statutory review criteria and input from the agency or body that keeps the record.

This year, the Advisory Committee reviewed a statute within Title 20-A for which the Department of Education recommended an amendment. The statute, 20-A MRSA §13004(2-A)(A)&(B), affects the confidentiality of information in complaints and responses related to the revocation or suspension of a teacher or administrator certificate. The Department explained to the Advisory Committee that the statute does not achieve its intended purpose, which was to allow the Department to share complaint information with other educator certification units in other states, because the statute makes so much information confidential through its cross-reference with sections 6101 and 6103. The Department described its concerns in its response to a questionnaire about the exception, *see* **Exhibit A**, and proposed an amendment to the statute, *see* **Exhibit B**.

The Advisory Committee agreed with the Department that section 13004 as written does keep a significant amount of information related to complaints and responses in certification actions confidential. However, the Advisory Committee expressed the following concerns about the proposed amendment.

- Is it necessary or desirable for all of the information listed in sections 6101 and 6103 to be released in the circumstances identified in section 13004?
- If information is released to other states, are there limits on re-dissemination by those states?

- If information is released to other states, should that information also be available to schools within the State and to parents?
- Perhaps the statute should be amended to describe what *can* be shared with other states, rather than what cannot.

In addition, the Advisory Committee felt that the Education and Cultural Affairs Committee may be better positioned to elicit the necessary testimony to fully evaluate the policy implications of any amendment.

We are hopeful that we've provided enough information to assist you in evaluating this public records exception, but we would also be happy to receive any recommendations from you to consider when we meet again after the adjournment of the Second Regular Session.

Thank you for your time and consideration,

Sen. David C. Burns, Chair
Right to Know Advisory Committee

STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0023

PAUL R. LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
ACTING COMMISSIONER

EXHIBIT
A

TO: Members of the Right to Know Advisory Committee

FROM: Debra Plowman, Director of Policy, Department of Education

DATE: November 5, 2015

SUBJECT: (Ref # 43) 20-A MRSA §13004, sub-§2-A

Thank you for the opportunity to comment on the provisions contained in Title 20-A MRSA Section 13004(2-A).

Section 13004(2-A) has been confusing from the outset. As written it seems to prohibit exactly the actions that it was designed to allow. Legal Counsel for the Department and the Department of Education (DOE) employees both share frustrations in trying to sort this out.

The following contains comments from Assistant Attorney General (AAG) Sarah Forster and are submitted to the RTKAC by the Department:

"First, subpart A of this section declares the documents which support a potential certification action (complaints, responses, investigative materials) to be confidential. Then, in subpart B, it purports to make some of that information subject to limited disclosure for specific purposes, but maintains confidentiality for information designated confidential under Sections 6101 and 6103. Section 6103 is criminal history records information, and Section 6101 is essentially any information about a certificate holder other than directory information in the possession of a school administrative unit to which the Department is specifically allowed access in Section 6101(3). Simply put: these two exceptions obliterate the rule.

My understanding from Certification Legal Counsel is that without the ability to disclose that information, Sections (B)(2) and (B)(3) – the ability to share information nationally with other educator certification units in other states – are rendered meaningless. I recall from my brief involvement in the 2009 work on this change in the law that the Department was motivated by the desire to be able to participate fully in these interstate exchanges and was afraid that if Maine could not share this information, we would not be able to receive information from other states.

Also, subsection (B)(1) makes no sense, since both 6101 and 6103 are intended to make the information available to the Department to perform certification investigations – so that subsection is either redundant, or hopelessly circular.

I would advise you to ask the Committee to work with the Department to get this section straightened out so that it can either be used as intended, or eliminated. As written, I'm just not sure what it does."

Question 1:

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

In partial response to Question 1: The Department has wrestled with this quite a bit this year as different parties attempt to FOAA information on the certification of an educator or educators, including the endorsements an educator may hold, and sometimes the date of the SBI report issued for certification or recertification purposes. Other requests have come from commercial sources with an eye towards reaching out to educators with a unique certification such as school psychologists. There has been a level of frustration expressed by community members that they cannot ascertain whether a local educator has an endorsement in the area they are teaching.

Question 2:

Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: Returning to the comments above, the Department cannot urge the continuation of the policy as written.

Question 3:

Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: See above comments from AAG Sarah Forster

Question 4:

Does your agency recommend changes to this exception?

Response: Yes. The statute needs not only clarification, but needs to be written to reflect the policy objective of fully participating in the sharing of certification information in interstate exchanges, creating the reciprocity necessary to participate.

Question 5:

Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: Stakeholders: Sarah Forster, AAG at Sarah.Forster@maine.gov, Suzan Beaudoin, DOE, Suzan.Beaudoin@maine.gov; Katherine.Hollicker@maine.gov, and Debra.Plowman@maine.gov.

Question 6:

Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: Please see above.

Thank you again for the opportunity to comment. The Department looks forward to working with you on this issue. If you have any questions, please contact me at 207-624-6614 or debra.plowman@maine.gov.

EXHIBIT
B

Maine Revised Statutes

Title 20-A: EDUCATION

Chapter 501: CERTIFICATION AND REGISTRATION OF TEACHERS

§13004. LIST OF PERSONS CERTIFIED; RECORDS CONFIDENTIAL

1. Records. The commissioner shall keep a list of certified teachers. This list shall be a public record. The commissioner shall send copies of the list to school boards and superintendents on their request.

2. Records confidential. Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification records and maintained in the office of the commissioner shall be confidential. They may only be made available to the following:

A. School boards and superintendents;

B. Authorized personnel of the department in fulfilling assigned duties; and

C. Individuals and their representatives who request to examine their own records.

2-A. Confidentiality. The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. ~~Except for information designated confidential under section 6101 or section 6103, information~~ Information designated confidential under paragraph A may be released ~~or used by the department as necessary~~ to:

~~(1) Complete its own investigations;~~

~~(2)~~ (1) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

~~(3)~~ (2) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

~~(4)~~ (3) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

~~(5)~~ (4) Report child abuse or neglect under Title 22, section 4011-A.

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.

D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding certification is a public record:

(1) The name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The grounds for the action taken;

(4) The relevant dates of the action;

(5) The type of certification and endorsements held, including relevant dates;

(6) The schools where the person was or is employed; and

(7) The dates of employment.

2-B. Teacher addresses. Home addresses held by the department of teachers certified to teach in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function.

The use of these addresses by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.

3. Duplication costs. Individuals requesting copies of their records shall bear the costs of copying them.

4. Rules. The state board may adopt rules to carry out this section.

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Maine Revised Statutes

Title 20-A: EDUCATION

Chapter 501: CERTIFICATION AND REGISTRATION OF TEACHERS

§13004. LIST OF PERSONS CERTIFIED; RECORDS CONFIDENTIAL

1. Records. The commissioner shall keep a list of certified teachers. This list shall be a public record. The commissioner shall send copies of the list to school boards and superintendents on their request.

2. Records confidential. Transcripts, recommendations and other documents submitted in support of an application for certification or collected by the department for verification of certification records and maintained in the office of the commissioner shall be confidential. They may only be made available to the following:

A. School boards and superintendents;

B. Authorized personnel of the department in fulfilling assigned duties; and

C. Individuals and their representatives who request to examine their own records.

2-A. Confidentiality. The provisions of this subsection govern confidentiality. For the purposes of this subsection, the term "certification" means certification, authorization or approval under this chapter and chapter 502.

A. Complaints and responses pursuant to section 13020 and any other information or materials that may result in an action to deny, revoke or suspend certification are confidential, except when submitted in court proceedings to revoke or suspend certification.

B. ~~Except for information designated confidential under section 6101 or section 6103, information~~ Information designated confidential under paragraph A may be released ~~or used by the department as necessary~~ to:

~~(1) Complete its own investigations;~~

~~(2)~~ (1) Provide information to a national association of state directors of teacher education and certification to which the State belongs;

~~(3)~~ (2) Assist other public authorities to investigate the same teacher's certification in another jurisdiction;

~~(4)~~ (3) Report or prevent criminal misconduct or assist law enforcement agencies in their investigations; or

~~(5)~~ (4) Report child abuse or neglect under Title 22, section 4011-A.

C. The department may publish and release as public information statistical summaries of complaints and dispositions as long as the release of such information does not jeopardize the confidentiality of individually identifiable information.

D. Notwithstanding paragraph A, the following information concerning final written decisions relating to disciplinary action taken by the commissioner against a person holding certification is a public record:

(1) The name of the person;

(2) The type of action taken, consisting of denial, revocation, suspension, surrender or reinstatement;

(3) The grounds for the action taken;

(4) The relevant dates of the action;

(5) The type of certification and endorsements held, including relevant dates;

(6) The schools where the person was or is employed; and

(7) The dates of employment.

2-B. Teacher addresses. Home addresses held by the department of teachers certified to teach in the State may be made available in response to the following:

A. Formal request from a commissioner or chief executive officer of other state agencies, including the judicial branch when access to that information may be necessary in carrying out an official function; and

B. Formal request by majority vote of any joint standing committee of the Legislature when access to that information may be necessary in carrying out an official function.

The use of these addresses by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies, or acquired in the course of the performance of official duties. Any person violating this subsection shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.

3. Duplication costs. Individuals requesting copies of their records shall bear the costs of copying them.

4. Rules. The state board may adopt rules to carry out this section.

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STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0023

PAUL R. LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
ACTING COMMISSIONER

TO: Members of the Right to Know Advisory Committee

FROM: Debra Plowman, Director of Policy, Department of Education

DATE: November 5, 2015

SUBJECT: (Ref # 43) 20-A MRSA §13004, sub-§2-A

Thank you for the opportunity to comment on the provisions contained in Title 20-A MRSA Section 13004(2-A).

Section 13004(2-A) has been confusing from the outset. As written it seems to prohibit exactly the actions that it was designed to allow. Legal Counsel for the Department and the Department of Education (DOE) employees both share frustrations in trying to sort this out.

The following contains comments from Assistant Attorney General (AAG) Sarah Forster and are submitted to the RTKAC by the Department:

"First, subpart A of this section declares the documents which support a potential certification action (complaints, responses, investigative materials) to be confidential. Then, in subpart B, it purports to make some of that information subject to limited disclosure for specific purposes, but maintains confidentiality for information designated confidential under Sections 6101 and 6103. Section 6103 is criminal history records information, and Section 6101 is essentially any information about a certificate holder other than directory information in the possession of a school administrative unit to which the Department is specifically allowed access in Section 6101(3). Simply put: these two exceptions obliterate the rule.

My understanding from Certification Legal Counsel is that without the ability to disclose that information, Sections (B)(2) and (B)(3) – the ability to share information nationally with other educator certification units in other states – are rendered meaningless. I recall from my brief involvement in the 2009 work on this change in the law that the Department was motivated by the desire to be able to participate fully in these interstate exchanges and was afraid that if Maine could not share this information, we would not be able to receive information from other states.

Also, subsection (B)(1) makes no sense, since both 6101 and 6103 are intended to make the information available to the Department to perform certification investigations – so that subsection is either redundant, or hopelessly circular.

I would advise you to ask the Committee to work with the Department to get this section straightened out so that it can either be used as intended, or eliminated. As written, I'm just not sure what it does."

Question 1:

Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

In partial response to Question 1: The Department has wrestled with this quite a bit this year as different parties attempt to FOAA information on the certification of an educator or educators, including the endorsements an educator may hold, and sometimes the date of the SBI report issued for certification or recertification purposes. Other requests have come from commercial sources with an eye towards reaching out to educators with a unique certification such as school psychologists. There has been a level of frustration expressed by community members that they cannot ascertain whether a local educator has an endorsement in the area they are teaching.

Question 2:

Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

Response: Returning to the comments above, the Department cannot urge the continuation of the policy as written.

Question 3:

Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

Response: See above comments from AAG Sarah Forster

Question 4:

Does your agency recommend changes to this exception?

Response: Yes. The statute needs not only clarification, but needs to be written to reflect the policy objective of fully participating in the sharing of certification information in interstate exchanges, creating the reciprocity necessary to participate.

Question 5:

Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

Response: Stakeholders: Sarah Forster, AAG at Sarah.Forster@maine.gov, Suzan Beaudoin, DOE, Suzan.Beaudoin@maine.gov; Katherine.Hollicker@maine.gov, and Debra.Plowman@maine.gov.

Question 6:

Please provide any further information that you believe is relevant to the Advisory Committee's review.

Response: Please see above.

Thank you again for the opportunity to comment. The Department looks forward to working with you on this issue. If you have any questions, please contact me at 207-624-6614 or debra.plowman@maine.gov.

APPENDIX F

Governor LePage veto letters relating to bills enacting recommendations contained in the Right to Know Advisory Committee's Ninth Annual Report dated January 2015: LD 1086, "An Act To Implement the Recommendations of the Right To Know Advisory Committee To Create a Remedy for Unduly Burdensome and Oppressive Requests"; LD 1087, "An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Response Deadlines and Appeals"; LD 1088, "An Act to Implement Recommendations of the Right to Know Advisory Committee"

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Paul R. LePage
GOVERNOR

22 June 2015

The 127th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1086, "An Act To Implement the Recommendations of the Right to Know Advisory Committee To Create a Remedy for Unduly Burdensome and Oppressive Requests."

This bill seeks to amend the Freedom of Access Act (FOAA) to authorize an Executive Branch agency to deny a request for public records on the basis that the request is unduly burdensome or oppressive. That said, the only option for the agency seeking to avoid having to fill an unduly burdensome request is to engage in an unduly burdensome court process.

Ironically, the bill does not have much impact on the Legislature, itself. This is so because the Legislature has exempted the vast majority of its own documents "including working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee ..." from the requirements of FOAA. I oppose this bill because despite the fact that our government is supposed to operate as three separate but equal branches of government all of which should be transparent in their processes, the Legislature does not hold itself to the same standard. Instead, it makes the Executive Branch alone shoulder the weight of government transparency.

For these reasons, I return LD 1086 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor

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Paul R. LePage
GOVERNOR

22 June 2015

The 127th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1087, "An Act To Implement the Recommendations of the Right to Know Advisory Committee Concerning Response Deadlines and Appeals."

Much like LD 1086, this bill seeks to amend the Freedom of Access Act (FOAA) to authorize an Executive Branch agency to deny a request for public records after reviewing records subject to the request. That said, this bill further establishes that an Executive Branch agency that seeks to deny a records request in whole or in part must still provide a written response within 5 days of the receipt of the request and is still subject to court process for the denial.

Like LD 1086, the bill does not have much impact on the Legislature, itself. This is so because the Legislature has exempted the vast majority of its own documents "including working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee ..." from the requirements of FOAA. I oppose this bill because despite the fact that our government is supposed to operate as three separate but equal branches of government all of which should be transparent in their processes, the Legislature does not hold itself to the same standard. Instead, it makes the Executive Branch alone shoulder the weight of government transparency.

For these reasons, I return LD 1087 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor

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Paul R. LePage
GOVERNOR

22 June 2015

The 127th Legislature of the State of Maine
State House
Augusta, ME

Dear Honorable Members of the 127th Legislature:

Under the authority vested in me by Article IV, Part Third, Section 2 of the Constitution of the State of Maine, I am hereby vetoing LD 1088, "An Act To Implement the Recommendations of the Right to Know Advisory Committee."

Much like LDs 1086 and 1087, this bill also seeks to amend the Freedom of Access Act (FOAA) in ways that impact Executive Branch agencies, including clarifying that additional agency records are public records.

Like LDs 1086 and 1087, the bill does not have much impact on the Legislature, itself. This is so because the Legislature has exempted the vast majority of its own documents "including working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee ..." from the requirements of FOAA. I oppose this bill because despite the fact that our government is supposed to operate as three separate but equal branches of government all of which should be transparent in their processes, the Legislature does not hold itself to the same standard. Instead, it makes the Executive Branch alone shoulder the weight of government transparency.

For these reasons, I return LD 1088 unsigned and vetoed. I strongly urge the Legislature to sustain it.

Sincerely,

Paul R. LePage
Governor