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Right to Know Advisory Committee
Legislative Subcommittee
July 30, 2008
(Draft) Meeting Summary

Convened following adjournment of Advisory Committee meeting, Room 438, State House, Augusta

Present:

Chris Spruce, Chair
Shenna Bellows
Karla Black
Suzanne Goucher
Mal Leary
Linda Pistner
Harry Pringle
Rep. Deborah Simpson

Staff:

Peggy Reinsch
Colleen McCarthy Reid

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee and explained that the focus of the meeting was to begin the subcommittee's review of public records exceptions in Titles 10 through 21-A. Discussion of the other issues before the Legislative subcommittee will be continued at future subcommittee meetings, including teacher confidentiality; Title 23, section 63 relating to certain records of the Maine Turnpike Authority and Department of Transportation; and requirements for minutes of public proceedings.

Existing Public Records Exceptions—Review Process

Mr. Spruce recommended that the subcommittee follow the same process as last year using the summary chart prepared by staff to work through each exception. Mr. Spruce explained the goal of the meeting was to make a first cut through all of the exceptions and make one of the following initial recommendations for each:

- Move “in” those exceptions that the subcommittee has determined are appropriate (and non-controversial) and should continue in statute without change;
- Table those exceptions where an agency has not yet responded;
- Table discussion of those exceptions that a subcommittee member has questions about or wants further review of; or
- Table discussion of those exceptions that a survey respondent has recommended consideration of a statutory change.

Existing Public Records Exceptions Accepted without Changes

Upon initial review, the subcommittee recommended that 25 exceptions be continued in law with no changes:

- 10 MRSA § 1079, sub-§ 4 (#4 on chart)
- 10 MRSA § 1392, sub-§ 2 (# 6)

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- 10 MRSA § 1495-G, sub-§3 (# 7)
- 10 MRSA § 9012, sub-§ 1 (# 11)
- 10 MRSA § 9202, sub-§ 1-B (# 11.1)
- 13 MRSA § 1957, sub-§ 8 (# 30)
- 15 MRSA § 393, sub-§ 4-A (# 36)
- 15 MRSA § 3009, sub-§ 2 (# 37)
- 17-A MRSA § 1176, sub-§ 1, pending any new information (# 42-A)
- 17-A MRSA § 1176, sub-§ 5, pending any new information (# 42-B)
- 19-A MRSA § 1753, sub-§ 5 (# 51.1)
- 19-A MRSA § 4008, pending any new information (# 55.1)
- 20-A MRSA § 4008, sub-§ 2 (# 57)
- 20-A MRSA § 5001-A, sub-§ 3 (# 58)
- 20-A MRSA § 6001, sub-§ 3 (# 59)
- 20-A MRSA § 6205 (# 62)
- 20-A MRSA § 6357, sub-§ 1 (# 63)
- 20-A MRSA § 7451, sub-§ 2 (# 63-A)
- 20-A MRSA § 11418, sub-§§ 1 and 2 (# 65)
- 20-A MRSA § 11444, sub-§§ 1 and 2 (# 66)
- 20-A MRSA § 11494, sub-§§ 1 and 2 (# 67)
- 20-A MRSA § 13015, sub-§ 5 (# 70)
- 20-A MRSA § 13034 (# 71)
- 21-A MRSA § 1003, sub-§ 3-A (# 79)
- 21-A MRSA § 1125, sub-§ 3 (# 80)

Action on the remaining exceptions not listed has been tabled; review and discussion of the tabled exceptions will continue at the next subcommittee meeting. Staff will prepare an updated chart that will note the action taken by the subcommittee on each exception.

Title 12 Exceptions Related to the Department of Marine Resources

Mr. Spruce noted the number of exceptions contained in Title 12 related to the Department of Marine Resources and suggested that the subcommittee ask David Etnier, Deputy Commissioner of the Department, who responded to the surveys, to come to a future meeting to discuss the rationale for the exceptions with the subcommittee. The subcommittee members agreed; Shenna Bellows remarked that, after reviewing these exceptions and discussing them with DMR, the subcommittee may want to hear public comment as well.

Title 16, Chapter 3, Subchapter 8 Related to Criminal History Record Information

With regard to Title 16, chapter 3, subchapter 8, Criminal History Record Information Act, staff told the subcommittee that they are working with the Attorney General's Office and other interested parties to solicit comments on the Act and the exceptions contained in it. The Act was originally enacted in response to federal law and uses language inconsistent with other statutory language in Maine law that identifies public records exceptions. Staff has set a deadline of August 22nd for comments from agencies, law enforcement and attorneys familiar with the Act. Once all of the comments are received, staff will prepare a draft for the subcommittee's review.

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The subcommittee agreed to defer discussion of Title 16, chapter 3, subchapter 8. Ms. Bellows stated her strong belief that a public hearing would be needed and noted the competing interests involved of law enforcement and civil liberties. Mr. Spruce agreed that a public hearing may be appropriate and suggested that the subcommittee would have a better idea of the timetable for looking at this issue on September 10th after staff has received responses to their request for comments.

Mal Leary recommended that the full Advisory Committee be included in the discussion of the Act from the beginning due to the subject matter. The subcommittee requested that a brief presentation and background information on the Criminal History Record Information Act be included on the agenda for the next Advisory Committee meeting.

Title 21-A Exceptions Related to Election Laws

As with the Title 12 exceptions, Mr. Spruce noted the number of exceptions contained in Title 21-A related to election laws. The Secretary of State's Office provided responses to the survey for many of these exceptions. Mr. Spruce suggested that the subcommittee defer discussion of these exceptions and invite Julie Flynn, Deputy Secretary of State, who responded to the surveys, to join that discussion. The subcommittee members agreed.

At the request of the subcommittee, staff will invite representatives from the Department of Marine Resources and Secretary of State to the next subcommittee meeting to permit a more thorough discussion of the exceptions contained in Titles 12 and 21-A. Before the next subcommittee meeting, staff will also follow up with agencies that have not responded to the surveys and provide that information in advance of the meeting, if possible.

Future meetings:

- ◆ Full Advisory Committee, September 10, 2008, 12:00 pm (bring your lunch)
- ◆ Legislative Subcommittee, September 10, 2008, immediately following Advisory Committee meeting

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

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