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Right to Know Advisory Committee  
Legislative Subcommittee  
September 10, 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

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

Subcommittee Chair Chris Spruce convened the Legislative Subcommittee and provided an overview of the planned agenda. Mr. Spruce explained that the focus of most of the meeting would be the discussions with representatives from the Department of Marine Resources and Secretary of State on the existing exceptions in Titles 12 and 21-A, but that the subcommittee would use the time before their scheduled appearances to review other exceptions for which survey responses have been received.

Mr. Spruce also suggested that the subcommittee schedule 2 meetings before the next full Advisory Committee meeting on November 17<sup>th</sup> so that the subcommittee will be able to develop recommendations for the Advisory Committee to consider at that meeting. The subcommittee agreed and scheduled one meeting on October 6<sup>th</sup>. The date for the 2<sup>nd</sup> meeting was tentatively set for October 21<sup>st</sup>, but this meeting was later rescheduled for November 13<sup>th</sup>.

### **Existing Public Records Exceptions—Review Process**

Staff distributed an updated chart outlining the actions taken by the subcommittee at the last meeting and including the survey responses received since the last meeting.

The subcommittee reviewed 3 exceptions and made the following recommendations.

#### **Exceptions Accepted without change:**

- # 9 on chart: 10 MRSA § 8002, sub-§ 10 relating to information provided to the Commissioner of Professional and Financial Regulation
- # 10 on chart: 10 MRSA § 8003-B, sub-§§ 1 and 2-A relating to complaints and investigations and client records of licensing boards and commissions within the Department of Professional and Financial Regulation

**Review of Exception Set Aside --- Statutory Change Proposed by Agency:**

# 9.1 on chart: 10 MRSA § 8003, sub-§ 2-A, ¶ I relating to information received by the Office of Licensing and Registration from other regulatory agencies that is shared only on condition that information not be disclosed

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 continue to follow up with the agencies that have yet to respond to the survey request.

**Title 21-A Exceptions Related to Election Laws**

At the request of the subcommittee, Julie Flynn, Deputy Secretary of State, presented an overview of the Secretary of State's survey responses for several public records exceptions in Title 21-A relating to election laws and responded to questions from the subcommittee. Ms. Flynn was joined by Nicole Ladner, Special Projects Director for the Secretary of State, who is responsible for overseeing the Address Confidentiality Program.

21-A MRSA § 22, sub-§ 2. This exception states that ballots cast in elections are not public records. Ms. Flynn explained that she believed the exception is needed to provide finality and resolution once elections are completed. She also described the recount process, which gives candidates and their representatives the opportunity to inspect ballots. As prescribed for federal elections by rule, ballots are kept by municipalities for 22 months and then destroyed. State-only referenda ballots in off-year elections are kept for 2 months and then destroyed. Ms. Flynn stated that, while other states have different laws and methods for elections, the election process in Maine is consistent statewide.

21-A MRSA § 22, sub-§ 3, ¶¶ A and B. This exception related to records of voters participating in the Address Confidentiality Program. Ms. Flynn explained the origins of the program which arose from concerns for the safety of those affected by domestic violence. In 2005, the election laws were amended to protect the confidentiality of voting records of those in the Address Confidentiality Program. For those voters in the program, Ms. Flynn stated that the voter registration lists include a number for those voters and does not identify them by name. Ms. Ladner told the subcommittee that 56 women, 2 men and 32 children are currently enrolled in the Address Confidentiality program, but that only 5 of them have registered to vote. The other program identified in the statute protects only the address of registered voters who have filed a statement expressing safety concerns.

21-A MRSA § 22, sub-§§ 5 and 6. This exception relates to certain information on voter registration applications. Ms. Flynn explained that concerns over identity fraud led to the limitation on releasing voter signature's and identification numbers (either driver's license number or social security number) in electronic format on the State's centralized voter registration system (CVR). All of the information on voter registration applications, including signatures and voter ID numbers, are public records in hard copy format. Ms. Flynn stated that there have been no FOA requests for this information electronically.

21-A MRSA § 196. This exception also relates to personally identifying voter information in the Central Voter Registration database. Ms. Flynn explained that the exception was put in place by the Legislature due to concerns about providing all voter information in one database; the provision is due to sunset in September 2009. The Secretary of State will submit a report to the

## DRAFT

Legal and Veterans Affairs Committee in March 2009 on their experience with the database, including the issue of public access to information in the CVR. Ms. Flynn said that after the election is over a stakeholder group would be convened to help determine what level of public access, including commercial access, to the voter registration database and lists of registered voters should be provided.

21-A MRSA § 624, sub-§ 1. This exception relates to information on voter registration lists pertaining to participants in the Address Confidentiality Program. Ms. Flynn explained that the law requires voter registration lists to be publicly posted at polling places and the exception is in place to maintain the confidentiality of ACP participants.

21-A MRSA § 737-A. This exception provides that disputed ballots are not public records. Ms. Flynn explained that those disputed ballots, like other ballots, are not public records once a recount is completed.

21-A MRSA § 764. This exception relates to applications and envelopes containing absentee ballots. Ms. Flynn stated the exception is a long-standing exception and there have not been any issues in administering the exception. Ms. Flynn explained that, although certain voter records are not public, the process in Maine is very open and uniform guidelines are used across the State. Ms. Bellows remarked that while the people have a right to know what Government does that doesn't mean we have a right to know what our neighbor does and that she appreciates the protection provided to individual ballots.

### **Title 12 Exceptions Related to the Department of Marine Resources**

As with the Title 21-A exceptions, David Etnier, Deputy Commissioner of Marine Resources, gave an overview of the exceptions in Title 12 relating to programs within DMR and responded to questions from the subcommittee. Mr. Etnier was joined by Samantha Horn Olsen, Aquaculture Policy Coordinator in DMR.

12 MRSA § 6072, sub-§ 10. This exception relates to certain business information contained in aquaculture lease seeding and harvesting reports. Mr. Etnier explained that the primary reason for the exception is due to concerns about the release of proprietary business information to competitors. Mr. Etnier also described that DMR can release certain information to municipalities and will also release information to the public if that information is public in other agencies, especially with regard to environmental monitoring. Mal Leary noted the inconsistency in the civil penalties for disclosing confidentiality information in Title 12 and asked about its origins. Mr. Etnier remarked that these exceptions may be held to a higher standard because the activity is being conducted in public waters.

12 MRSA § 6072-A, sub-§ 17-A, ¶ C. This exception relates to aquaculture leasing research and development information. Mr. Etnier noted a lack of clarity in the language of this exception and provided a draft amendment to this provision. Mr. Etnier described that there is a "challenge process" with regard to confidential business information and that the intent of the draft language is to clarify that the "challenge process" in § 6077 applies.

12 MRSA 6077, sub-§ 4. This exception relates to records in the aquaculture monitoring program. Mr. Etnier provided suggested draft language for this exception which would make clear that the department may release aggregate information publicly; he stated that this would be consistent with current DMR policy.

## DRAFT

12 MRSA § 6078-A, sub-§ 1. This exception relates to leaseholder records associated with the Aquaculture Monitoring Research and Development Fund. Mr. Etnier explained that the records are still held by DMR although the fund is no longer in existence; the exception must remain in place since a repeal of the law would have the effect of making those records public.

12 MRSA § 6082. This exception requires that DMR maintain the confidentiality of confidential information obtained from Canada and other jurisdictions. Mr. Etnier explained that DMR routinely works with Canada and that this exception gives other jurisdictions the ability to share information.

12 MRSA § 6173, sub-§ 1. This exception relates to statistics in the landings program. Mr. Etnier described the authority of DMR to collect information on the various fisheries from harvesters and dealers; he stated that information related to methods of operations are kept private, but that aggregate information is reported publicly and made available on DMR's website.

12 MRSA § 6173-A. This exception relates to information designated as proprietary information under the Working Waterfront Access Pilot Project. Mr. Etnier noted that this is a new program and that DMR has had no requests for information. Mr. Etnier explained that the law sets up a process for designating the information as confidential and defines "proprietary information." Mr. Spruce stated his preference for the definition of "proprietary information" and the use of that term rather than the phrase "confidential business record" or "confidential business information" used in other sections in Title 12.

12 MRSA § 6310, sub-§ 3. This exception applies to personal medical information submitted to DMR as part of license appeals. Mr. Etnier explained the licensing process and noted that a medical illness or medical condition is a recognized exception for those seeking a license who have not held the license in the previous year. Mr. Etnier said that medical information is necessary for DMR to determine the outcome of the appeal but that the private medical information should not be available publicly.

12 MRSA § 6445. This exception relates to logbooks maintained by certain lobster harvesters. Mr. Etnier explained that 10% of harvesters must maintain the logbooks. The information is collected by DMR and reported in the aggregate, but specific data is not released.

12 MRSA § 6749-S, sub-§ 1. This exception relates to logbooks maintained by certain sea urchin buyers and processors. Mr. Etnier explained that the information is collected by DMR and reported in the aggregate, but specific data is not released.

The meeting adjourned at 4:07 p.m.

### Future meetings:

- ◆ Legislative Subcommittee, October 6, 2008 at 1pm
- ◆ Legislative Subcommittee, November 13, 2008 at 1pm
- ◆ Education and Training Subcommittee, November 17, 2008 at 11:30 am;
- ◆ Full Advisory Committee, November 17, 2008, 12:00 pm.

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

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