

DRAFT

Right to Know Advisory Committee  
October 29, 2007  
(Draft) Meeting Summary

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

Present:

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

| Absent:

Sheriff Mark Dion  
Robert Devlin  
Ted Glessner  
Maureen O'Brien  
Ralph Stetson

Staff:

Peggy Reinsch  
Colleen McCarthy Reid

Sen. Hobbins convened the Advisory Committee and reminded everyone that audio of the meeting was being made available online through the Legislature's website.

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

Judy Meyer reported on the meeting of the Education and Training Subcommittee, which was held on October 3<sup>rd</sup>. The subcommittee discussed the implementation of PL 2007, chapter 349. The subcommittee does recommend that the FOA website be used as the basis for developing a training curriculum on FOA issues for elected officials, but also wants to permit groups like the Maine Municipal Association and Maine School Management Association to use their own training materials with some process for review by the Right to Know Advisory Committee. Linda Pistner provided the subcommittee with an outline of suggested elements of the training and the subcommittee agreed to use that as the basis (along with the website) for the curriculum. Staff developed a chart comparing the elements for training identified by Linda Pistner with the Frequently Asked Questions pages of the website (distributed to members at the meeting). Judy Meyer encouraged anyone with suggestions or ideas on the training curriculum to contact the subcommittee or attend the next meeting.

Judy Meyer also spoke about the subcommittee's discussion of how the Advisory Committee will account for the completion of training by elected officials. As written, PL 2007, chapter 349 directs that elected officials send a written or electronic certification to the Advisory Committee upon completion of the training. The subcommittee talked about the administrative and technological resources that would be needed to allow on-line certification and public access to those records and asked staff to see what technological resources may be available to the Advisory Committee to develop on-line certification. Peggy Reinsch, staff to the Advisory Committee, reported to the Advisory Committee that the Legislature is not able to provide any information technology resources to help the Advisory Committee meet its obligations under PL

## DRAFT

2007, c. 349. Peggy suggested that the Advisory Committee may want to explore changes in the certification requirement, such as delaying the certification requirement for one year (but not the training requirement) to give the Advisory Committee more time to discuss implementation or to require those entities that conduct FOA training to provide lists of those elected officials that have completed training.

Peggy also raised some legal concerns related to the approval of training courses and the certification requirement: Would the Administrative Procedures Act require the Advisory Committee to conduct rulemaking? Could decisions be appealed? Should legislators be involved in “voting” and approving training? Would it be counterproductive to the Advisory Committee’s role to act more like an “agency” if the Advisory Committee were required to conduct rulemaking? Peggy suggested that these issues could also be addressed in several ways by amending the law, such as amending the law to identify the minimum standards for training without requiring that the Advisory Committee approve the training. The Advisory Committee discussed how to respond to these issues. Rep. Simpson proposed amending the current law to list the criteria needed for training and endorsed by the Advisory Committee as satisfactory. Linda Pistner agreed with that solution, but suggested that fixing the question of certification was more difficult. Suzanne Goucher asked whether the ombudsman wouldn’t solve these problems if that position were funded. Mal Leary suggested that the Attorney General’s Office or the ombudsman be directed to approve training programs and oversee training. Shenna Bellows said having the Advisory Committee act as a “pseudo” agency that makes rules would not be comfortable. She agreed that writing criteria into the law would be her preferred approach. Mal Leary indicated his belief that certification (and penalties for failure to comply) shouldn’t be a problem and that he trusted that the law would be followed by elected officials.

Another issue that has been raised is the definition of what elected officials must complete the training. The subcommittee talked about the potential for different legal interpretations of who the law applies to. The law states that the law applies to “an elected official of a county, municipality, school district or school board or any regional or other political subdivision who, as part of the duties of the office, exercises executive or legislative powers.” Richard Flewelling stated that the legal interpretation of the Maine Municipal Association is that, within municipal governments, the law applies to boards of selectmen and city council persons and would not extend to other officials (even if they are elected) because they do not exercise executive or legislative powers. Others suggested that the law could be interpreted more broadly to include elected town clerks and other municipal position holders like road commissioners and animal control officers. Mal Leary suggested that the Attorney General’s Office be asked for an opinion. Linda Pistner stated that if there is disagreement in interpretation, the law should be clarified rather than the AG providing an opinion. Shenna Bellows remarked that she liked the “vagueness” in the definition. The Advisory Committee could recommend changes to the law to clarify this issue---it was suggested that perhaps the law could simply list the specific elected positions subject to training.

The Advisory Committee asked that the Education and Training Subcommittee discuss the issues outlined above at its next meeting and make recommendations to the Advisory Committee at the December 5<sup>th</sup> meeting.

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

Chris Spruce reported on the Legislative Subcommittee's review and discussion of LD 1881. The subcommittee met before the Advisory Committee meeting. The subcommittee has not completed its review of LD 1881 and does not have any recommendations yet. Sen. Carol Weston, sponsor of LD 1881, was at the subcommittee meeting and explained her rationale for the bill. The subcommittee asked staff to compile information on laws in other states with regard to the time required to respond to records requests for the next subcommittee meeting. Mal Leary, a subcommittee member who was not present at the meeting but had a chance to listen, gave the Advisory Committee examples of several other states that have specified timelines for responses to requests for records from the public. Mr. Leary suggested that the subcommittee consider the following standard---require the response to be made within a reasonable time frame, but not longer than  $x$  days and require that agencies outline a specific time to respond for complex requests. Harry Pringle stated that he is troubled by the timeline included in LD 1881 as written and wondered if there is a documented problem of a lack of timely responses to requests. He also spoke about the administrative burden of responding to pre-litigation requests. Mal Leary gave an example of a records request he made to the Dept. of Education last spring which had just been responded to in October. Shenna Bellows remarked that anecdotal evidence suggests that the "reasonable" standard in current law is an issue. Mal Leary stated that the current law is vague and that it would be worth it to look at how other states address this issue. Sen. Hobbins said that sophisticated records requests should be treated differently than simpler requests and suggested that a request be acknowledged immediately to the person making the request. Karla Black said that timelines are important, but that the subcommittee should also look at whether other states permit public officials to narrow the scope of a request to deny requests on the basis of the complexity or "burden" of the request. Judy Meyer remarked that IFW follows a process that includes an acknowledgment of a FOA request once it is received and asked staff to contact IFW for more information about how IFW responds to FOA requests.

### **Process for Review of Public Exceptions**

Chris Spruce also reported on the Legislative Subcommittee's discussion of the process for review of public exceptions. The subcommittee will use a modified version of the template used by the Judiciary Committee to review new proposed exceptions to review the existing exceptions in Titles 1-9-B. Staff has put together a binder of the responses received from states agencies and other stakeholders. The subcommittee members will begin reviewing the exceptions and discuss further at its December 5<sup>th</sup> meeting. Before the meeting, the subcommittee members plan to try and categorize the exceptions in two ways initially---those exceptions that are justified and should continue with no recommended changes and those exceptions that need further discussion and study. Then the subcommittee will formulate recommendations on the exceptions for consideration by the full Advisory Committee.

### **Internship Update**

The Advisory Committee continues to pursue providing an internship through the University of Maine Law School for the spring semester. Right to Know Advisory Committee staff, with the assistance of Linda Pistner, sent a proposal to Nancy Gibson, Director of the Legal Extern Program at the Law School describing the Right to Know Advisory Committee and the duties expected of an extern. The Attorney General's Office will provide access to a computer, e-mail and telephone to the extern and Linda Pistner will provide direct supervision. Externs are expected to devote 18 hours per week and will receive 6 hours of credit at the completion of the semester. Applications were due around October 25<sup>th</sup>. Staff has yet to hear of any applications and will follow up with the Law School after the meeting.

## **Ombudsman Proposal--LD 1923, An Act to Implement the Recommendations of the Right To Know Advisory Committee Creating the Public Access Ombudsman**

The Advisory Committee reiterated its support for LD 1923, An Act to . . . ., carried over by the Judiciary Committee and decided again to include the creation of an ombudsman position and funding for the position as a recommendation in its annual report. Chris Spruce talked about the need for the ombudsman to complement the work of the Advisory Committee and to assist the Advisory Committee in carrying out its duties. Shenna Bellows suggested having a press conference with prominent elected officials to advocate for state funding of the ombudsman and to demonstrate to the public that the \$50,000 investment would be productive. Suzanne Goucher echoed that the ombudsman is necessary for the Advisory Committee to be fully effective and mentioned some ideas for creative financing to fund the ombudsman such as establishing a dedicated fund by diverting sales tax revenue from digital television sales, increasing fees for automobile registrations or for lobbyist registrations or increasing the fees charged for copying certain documents. Mal Leary cautioned that he didn't believe the Governor would support the use of any "new" tax or fee to fund the position and that the Advisory Committee would need to convince the Governor and the Legislature that the ombudsman should be funded with General Fund revenue. However, Mal Leary did outline one alternative source for funding---to use monies already in the Broad Services Fund administered by DAFS, which is funded through fees charged to each state agency for the services provided by DAFS.

### **Review of Other Advisory Committee Duties**

Sen. Hobbins briefly reminded the Advisory Committee of its wide range of duties outlined in statute. One of the duties includes making a website available to the public. Thanks to Karla Black who has spearheaded this effort, the website is a valuable resource. Karla provided a quick update on the website and noted that she will be happy to add new questions and answers and other information to the website at the direction of the Advisory Committee. She also stated that the website was initially developed by InforME as a public service at no cost and that additional resources would be needed to make the website more interactive. Ms. Black reported that she fields 1-2 questions per month on FOA issues through the website.

The Advisory Committee also has the authority to hold public hearings. Sen. Hobbins asked whether the committee wanted to hold public hearings and if public hearings might help the Advisory Committee garner public support for its recommendations, namely the ombudsman position. Judy Meyer stated her interest in having a public hearing. Rep. Simpson concurred and suggested that any public hearing or hearings should be held outside of Augusta. Harry Pringle stated his opinion that the Advisory Committee focus its energy and time toward mandatory training and review of LD 1881 and wondered if a public hearing would detract the focus from those efforts. Mal Leary agreed and said that education and training and the ombudsman position should be the focus right now. Chris Spruce stated that a public hearing would be useful if the public comes and provides input and that without money to publicize a public hearing the value of a hearing might be lost. Rep. Simpson said that a public hearing would be useful to help educate elected officials that FOA issues are more than just a "press" issue. Shenna Bellows suggested that the Advisory Committee table the discussion until the committee makes recommendations on LD 1881. The Advisory Committee tabled the discussion of whether to hold a public hearing until the December 5<sup>th</sup> meeting.

### **Request from CivMind**

## DRAFT

The Advisory Committee review a letter from Dan Demeritt, co-founder of a company called CivMind. CivMind is a Web-based technology that allows organizations to create on-line work groups to provide access to documents and other information by stakeholders and the public. Mr. Demeritt wrote to ask the Advisory Committee for time on the agenda of a future meeting to demonstrate the application to the Advisory Committee. The Advisory Committee declined the request at this time and asked staff to draft a letter notifying Mr. Demeritt of their decision.

### **Future Meetings**

**December 5<sup>th</sup>.** The full Advisory Committee will meet on December 5<sup>th</sup> at 1:00 pm. Topics of discussion for the meeting will include implementation of the mandatory training law (with recommendations from the Education and Training Subcommittee), Law School intern/extern for Advisory Committee, the exceptions review process and LD 1881.

#### Subcommittee Meetings:

- ◆ **Education and Training Subcommittee---Date TBA.** Topic will be implementation of Public Law 2007, chapter 349---mandatory training for elected officials.
- ◆ **Legislative Subcommittee---Dec. 5<sup>th</sup> 9:30 a.m.** Topics will be LD 1881 and the process for review of public records exceptions.
- ◆ **Legislative Subcommittee---Dec. 12<sup>th</sup> 9:30 a.m.** Reserved for continued discussion of public records exceptions.

The meeting adjourned at 3:10pm.

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

G:\STUDIES-2007\Right to Know Advisory Committee\Meeting summaries\Summary for 10-29-07.doc (11/8/2007 12:39:00 PM)