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Public Law
124th Legislature
First Regular Session

Chapter 240
H.P. 823 - L.D. 1199

**An Act To Implement the Recommendations
of the Right To Know Advisory Committee**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, when the Public Access Division and the Public Access Ombudsman were created in statute by Public Law 2007, chapter 603, a sunset of June 30, 2009 was included; and

Whereas, the Public Access Division and the Public Access Ombudsman concept needs to be continued in case funding, other than from the General Fund, is identified; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 1 MRSA §403, as repealed and replaced by PL 1975, c. 758, is amended to read:

§ 403. Meetings to be open to public

Except as otherwise provided by statute or by section 405, all public proceedings ~~shall~~ must be open to the public, any person ~~shall~~ must be permitted to attend any public proceeding and any public record or minutes of such proceedings that is are required by law ~~shall~~ must be made promptly and ~~shall~~ must be open to public inspection.

Sec. 2. 1 MRSA §405, as amended by PL 2003, c. 709, §1, is further amended to read:

§ 405. Executive sessions

Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.

1. Not to defeat purposes of subchapter. ~~These sessions shall~~ An executive session may not be used to defeat the purposes of this subchapter as stated in section 401.

2. Final approval of certain items prohibited. ~~No ordinances, orders, rules, resolutions, regulations, contracts, appointments~~ An ordinance, order, rule, resolution, regulation, contract, appointment or other official actions shall action may not be finally approved at an executive sessions session.

3. Procedure for calling of executive session. ~~Executive sessions~~ An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.

4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.

5. Matters not contained in motion prohibited. ~~No~~ Matters other matters than those identified in the motion to go into executive session may not be considered in that particular executive session.

6. Permitted deliberation. Deliberations on only the following matters may be conducted in during an executive sessions ~~on the following matters and no others~~ session:

A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or persons subject to the following conditions:

(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the individual's reputation or the individual's right to privacy would be violated;

(2) Any person charged or investigated ~~shall~~ must be permitted to be present at an executive session if he that person so desires;

(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against ~~him~~ that person be conducted in open session. A request, if made to the agency, must be honored; and

(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion ~~shall~~ must be permitted to be present.

This paragraph does not apply to discussion of a budget or budget proposal;

B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, ~~provided that~~ as long as:

(1) The student and legal counsel and, if the student ~~be~~ is a minor, the student's parents or legal guardians ~~shall be~~ are permitted to be present at an executive session if the student, parents or guardians so desire. ;

C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;

D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;

E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to ~~his~~ the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage. ;

F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;

G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and

H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.

Sec. 3. 1 MRSA §407, sub-§2, as enacted by PL 1975, c. 758, is amended to read:

2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to ~~appraise~~ apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof ~~shall~~ must be kept by the agency and made available to any interested member of the public who may wish to review it.

Sec. 4. 1 MRSA §408, sub-§6, ¶B, as enacted by PL 2003, c. 709, §2, is amended to read:

B. Release of the public record requested is in the public interest because it doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

Sec. 5. 1 MRSA §409, sub-§1, as amended by PL 1987, c. 477, §5, is further amended to read:

1. Records. If any body or agency or official, who has custody or control of any public record, ~~shall refuse~~ refuses permission to so inspect or copy or abstract a public record, this denial ~~shall must~~ be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal ~~therefrom~~, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals ~~shall be~~ are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.

Sec. 6. 1 MRSA §409, sub-§3, as enacted by PL 1975, c. 758, is amended to read:

3. Proceedings not exclusive. The proceedings authorized by this section ~~shall~~ are not be exclusive of any other civil remedy provided by law.

Sec. 7. 5 MRSA §200-I, sub-§6, as enacted by PL 2007, c. 603, §1, is repealed.

Sec. 8. 12 MRSA §6072, sub-§10, ¶D, as repealed and replaced by PL 2003, c. 247, §6, is amended to read:

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered ~~confidential business record~~ proprietary information for the purposes of section 6077, subsection 4.

Sec. 9. 12 MRSA §6072-A, sub-§17-A, ¶B, as enacted by PL 2003, c. 247, §13, is amended to read:

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; ~~and~~

Sec. 10. 12 MRSA §6072-A, sub-§17-A, ¶C, as enacted by PL 2003, c. 247, §13, is amended to read:

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. ~~Upon written request, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located. ; and~~

Sec. 11. 12 MRSA §6072-A, sub-§17-A, ¶D is enacted to read:

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered proprietary information for the purposes of section 6077, subsection 4.

Sec. 12. 12 MRSA §6077, sub-§4, ¶A, as amended by PL 2003, c. 247, §17, is further amended to read:

A. Information submitted to the department under this section may be designated by the submitter as proprietary information and being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the United States Department of Agriculture, the Attorney General and employees of the municipality in which the aquaculture facility is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. Information that has been designated by the submitter as proprietary information may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph.

Sec. 13. 12 MRSA §6077, sub-§4, ¶E, as enacted by PL 1991, c. 381, §6, is amended to read:

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that the information is a trade secret or production, commercial or financial proprietary information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

Sec. 14. 12 MRSA §6077, sub-§4, ¶F is enacted to read:

F. For the purposes of this subsection, "proprietary information" means information that is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

Sec. 15. 12 MRSA §6078-A, sub-§1, as enacted by PL 2003, c. 247, §19, is amended to read:

1. Fund established. The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered ~~confidential business record~~ proprietary information for the purposes of section 6077, subsection 4.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 2, 2009.