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An Act To Implement the Recommendations of the Right To Know Advisory Committee Concerning Public Records Exceptions

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

Sec. 1. 5 MRSA §244-E is enacted to read:

§ 244-E. Referral service; confidentiality; public records

1. Identity confidential. The identity of a person making a complaint alleging fraud, waste, inefficiency or abuse through a hotline or other referral service established by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in State Government is confidential and may not be disclosed, unless the person making the complaint agrees in writing to the disclosure of that person's name.

2. Contents of complaint confidential. A complaint alleging fraud, waste, inefficiency or abuse made through a hotline or other referral service established by the State Auditor for the confidential reporting of fraud, waste, inefficiency and abuse in State Government and any resulting investigation is confidential and may not be disclosed except as provided in subsections 3 and 4.

3. Coordination with Office of Program Evaluation and Government Accountability and Attorney General. The State Auditor may disclose information that is confidential under this section to the Director of the Office of Program Evaluation and Government Accountability and the Attorney General to ensure appropriate agency referral or coordination between agencies to respond appropriately to all complaints made under this section.

4. Reports. For each complaint under this section, the State Auditor shall submit a written report to the Governor and publish the report on the auditor's publicly accessible website. The report must include a detailed description of the nature of the complaint, the office, bureau or division within the department or any agency that is the subject of the complaint, the determination of potential cost savings, if any, any recommended action and a statement indicating the degree to which the complaint has been substantiated. The report must be submitted no later than 120 days after the State Auditor receives the complaint. In addition, the State Auditor shall publish a semiannual report to the Governor and Legislature of the complaints received by the hotline or other referral service, which may be electronically published. The report must include the following information:

- A. The total number of complaints received;
- B. The number of referrals of fraud or other criminal conduct to the Attorney General;
- C. The number of referrals of agency performance issues to the Office of Program Evaluation and Government Accountability; and

D. The number of investigations by the State Auditor by current status whether opened, pending, completed or closed.

Sec. 2. 10 MRSA §945-J, first ¶, as enacted by PL 1995, c. 648, §5, is amended to read:

The following records and proceedings of the center are confidential and are not open to public inspection for the purposes of Title 1, chapter 13, except as otherwise provided in this section.

Sec. 3. 10 MRSA §945-J, sub-§1, as enacted by PL 1995, c. 648, §5, is amended to read:

1. Proprietary information; other information. Information provided to or developed by the center and included in a business or marketing plan is ~~confidential so long as public unless~~ the person to whom the information belongs or pertains requests that it be designated as confidential and if, ~~when made available, the~~ center has determined it contains proprietary information would allow a person to obtain a business or competitive advantage over another person or would result in significant detriment to the person to whom the information belongs and when the information is not otherwise available in the public domain. 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 center or the person submitting the information and would make available information not otherwise publicly available.

Sec. 4. 10 MRSA §975-A, as amended by PL 2003, c. 537, §17 and affected by §53, is repealed.

Sec. 5. 10 MRSA §975-B is enacted to read:

§ 975-B. Freedom of access; confidentiality of records

The records of the authority are subject to the freedom of access laws, Title 1, chapter 13, except as specifically provided in this section.

1. Confidential records. The following records are designated as confidential:

A. A record obtained or developed by the authority that:

(1) A person, including the authority, to whom the record belongs or pertains has requested be designated confidential; and

(2) The authority has determined contains information that gives the owner or a user an opportunity to obtain business or competitive advantage over another person who does not have access to the information, except through the record, or access to which by others would result in a business or competitive disadvantage, loss of business or other significant detriment to any person to whom the record belongs or pertains; and

B. A financial statement or tax return.

The authority shall provide to a legislative committee, on written request signed by the chairs of that committee, any information or record, including information designated confidential under this subsection, specified in the written request. The information or record may be used only for the lawful purposes of the committee and in any action arising out of any investigation conducted by the committee and may not be released for any other purpose.

2. Exceptions. Notwithstanding subsection 1, the following are public records and are not confidential:

- A. Any otherwise confidential information the confidentiality of which the authority determines to have been satisfactorily and effectively waived;
- B. Any otherwise confidential information that has already lawfully been made available to the public; and
- C. Impersonal, statistical or general information.

3. Disclosure prohibited; further exceptions. A person may not knowingly divulge or disclose records designated confidential by this section, except that the authority, in its discretion and in conformity with legislative freedom of access criteria in Title 1, chapter 13, subchapter 1A, may make or authorize any disclosure of information of the following types or under the following circumstances:

- A. If necessary in connection with processing any application for, obtaining or maintaining financial assistance for any person;
- B. Information requested by a financing institution or credit reporting service;
- C. Information necessary to comply with any federal or state law or rule or with any agreement pertaining to financial assistance;
- D. If necessary to ensure collection of any obligation in which the authority has or may have an interest;
- E. In any litigation or proceeding in which the authority has appeared, introduction for the record of any information obtained from records designated confidential by this section; and
- F. Pursuant to a subpoena, request for production of documents, warrant or other order by competent authority, as long as the order appears to have first been served on the person to whom the confidential information sought pertains or belongs and as long as the order appears on its face or otherwise to have been issued or made upon lawful authority.

Sec. 6. 10 MRSA §9202, sub-§1-B, as enacted by PL 2003, c. 506, §7, is amended to read:

1-B. Records disclosure and confidentiality. Records of the corporation, as a subsidiary of the authority, are subject to the disclosure and confidentiality provisions governing the records of the authority under section 975A975-B.

Sec. 7. 12 MRSA §549-B, sub-§5, ¶D, as enacted by PL 1985, c. 201, §2, is amended to read:

D. An affidavit of investigatory and exploratory work ~~shall~~must be filed each year with the director of the survey on June 30th. At the time of filing that affidavit, the claimant shall demonstrate to the director that investigatory work has been performed on that claim at a rate of at least \$5 per acre during the year ending June 30th. For claims recorded after April 1st and before June 30th, the first affidavit of investigatory and exploratory work ~~shall~~must be filed on the 2nd June 30th following. All work done ~~shall~~must be described in the affidavit and shall include work ~~which~~that tends to reveal such characteristics of the material sought as length, width, depth, thickness, tonnage and mineral or metal content, or, with respect to nonmetallic minerals, other physical characteristics of the deposit relating directly to the commercial exploitation of the deposit and such other information relating to the exploration work as the director of the survey may require. ~~This information may be shared with other governmental agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408, during the period of time in which the claim is in effect.~~During the period of time in which the claim is in effect, this information is confidential and may not be disclosed, except that the information may be shared with other governmental agencies.

Sec. 8. 12 MRSA §549-B, sub-§13, as enacted by PL 1985, c. 201, §2, is amended to read:

13. Annual reports. Any person with a mining lease engaged in mine development or mining under this subchapter shall, in the month of June following the year the operation was carried on, pay all applicable fees, rentals and royalties and file an annual report with the director of the survey and director of the agency having jurisdiction over the state-owned land setting forth:

- A. The location of the operation;
- B. The quality and grade of mineral products or ores produced;
- C. The amount of royalty ~~which~~that has accrued on material extracted;
- D. The number of persons ordinarily employed at operation below ground and above ground; and
- E. Any other information, relating to the mining lease, mine development or mining, the director of the bureau and the director of the agency having jurisdiction over the state-owned lands may require by regulation.

~~This information may be shared with other governmentis confidential and may not be disclosed, except that the information may be shared with other governmental agencies, but shall not constitute records available for public inspection or disclosure pursuant to Title 1, section 408.~~

Sec. 9. 12 MRSA §550-B, sub-§6, as amended by PL 1999, c. 556, §17, is further amended to read:

6. Information use. Information collected by the Bureau of Geology and Natural Areas, Maine Geological Survey under this ~~chapter~~section is ~~exempt from~~subject to Title 1, chapter 13, subchapter H1, unless the well drilling company to whom the information belongs or pertains requests that it be designated as confidential and the bureau has determined it contains proprietary information. 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 person submitting the information and would make available information not otherwise publicly available. The Bureau of Geology and Natural Areas, Maine Geological Survey shall make information collected under this chapter available to any federal, state or municipal entity or authorized agent of such entity.

Sec. 10. 12 MRSA §6455, sub-§1-A, ¶C, as enacted by PL 1993, c. 545, §1, is amended to read:

C. Notwithstanding any provisions of paragraphs A and B:

(1) All meetings and records of the council are subject to the provisions of Title 1, chapter 13, subchapter ~~I~~, except that, by majority vote of the members, the council may designate market studies or promotional plans developed or funded by the council as confidential ~~as provided in subsection 1B~~. The commissioner and those members of the Legislature appointed to serve on the joint standing committee of the Legislature having jurisdiction over marine resource matters have access to all material designated confidential by the council;

(2) Except as required by subsection 2, members of the council are governed by the conflict of interest provisions set forth in Title 5, section 18; and

(3) For the purposes of the Maine Tort Claims Act, the council is a "governmental entity" and its employees are "employees" as those terms are defined in Title 14, section 8102.

Sec. 11. 12 MRSA §6455, sub-§1-B is enacted to read:

1-B. Market studies and promotional plans; proprietary information. Information provided to or developed by the council and included in a promotional plan or market study is public unless the council determines that it contains proprietary information. 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 council or the person submitting the information and would make available information not otherwise publicly available.

Sec. 12. 12 MRSA §8869, sub-§13, as amended by PL 2007, c. 271, §5, is further amended to read:

13. Confidential information. Information provided to the bureau voluntarily or to fulfill reporting requirements for the purposes of establishing and monitoring outcome-based forest policy experimental areas, as created pursuant to section 8003, subsection 3, paragraph Q, is designated as confidential for the purposes of Title 1, section 402, subsection 3, paragraph A if the bureau has determined that failure to designate the information as confidential would provide competitors an opportunity to obtain business or competitive advantage over the person to whom the information belongs or pertains or would result in loss or other significant detriment to that person public unless the person to whom the information belongs or pertains requests that it be designated as confidential and the bureau

has determined it contains proprietary information. 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 person submitting the information and would make available information not otherwise publicly available. The bureau, working with the landowner and the panel of technical experts appointed under subsection 3A, may publish reports as long as those reports do not reveal confidential information. This subsection is repealed July 1, 2012.

Sec. 13. 20-A MRSA §11481, as enacted by PL 1997, c. 732, §4, is amended to read:

§ 11481. Release of information

Notwithstanding any other provision of law, including, without limitation, Title 1, chapter 13, subchapter I and ~~Title 10, section 975A1~~, the authority may provide information regarding individual participation accounts as required by federal law and laws of the state of residence of any participant or beneficiary.

Sec. 14. 20-A MRSA §13004, sub-§2-A, ¶D is enacted to read:

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.

Sec. 15. Requests for bulk data. The Right To Know Advisory Committee shall review and make recommendations concerning the issues involved with requests for public records in bulk, including:

1. Public access to databases;

2. Protection of personal information that is not designated as confidential but is contained in databases that include public records;

3. Reasonable costs for copies when public records are requested in bulk;
4. Whether access or costs should be based on the intended or subsequent use of the information requested in bulk;
5. The acceptable formats for responses to requests, including electronic and paper;
6. The appropriate role for InforME in responding to requests for public records in bulk; and
7. Any other issues the advisory committee considers appropriate.

The advisory committee shall include its recommendations in the 2011 annual report required under the Maine Revised Statutes, Title 1, section 411, subsection 10.

SUMMARY

This bill enacts provisions providing confidentiality concerning complaints made to the State Auditor's hotline or referral service as enacted by Public Law 2005, chapter 682, and repealed by its own terms on July 1, 2009. This bill allows the person making a complaint through a hotline or other referral service to allow that person's name to be disclosed if the person agrees in writing. It imposes a requirement that the State Auditor publicly report the identification of cost savings as a result of the investigation. The report must include recommendations for any action necessary to achieve the cost savings. This bill also requires the State Auditor to submit a written report to the Governor and publish on the auditor's publicly accessible website all other complaints within 120 days of the receipt of the complaint, indicating the nature of the complaint, the agency that is the subject of the complaint and the degree to which the complaint was substantiated. This bill also requires the State Auditor, the Attorney General and the Director of the Office of Program Evaluation and Government Accountability to jointly establish criteria for the referral to the appropriate agency of complaints received by that hotline or other referral service maintained by the State Auditor and for coordination of response. The State Auditor is required to report the criteria to the joint standing committee of the Legislature having jurisdiction over state and local government matters no later than 30 days following development of the criteria or at the next convenient meeting of the committee.

This bill contains the recommendations concerning public records exceptions of the Right To Know Advisory Committee as described in its fourth annual report. This bill includes the recommended amendments to existing public records exceptions to provide as much consistency as possible across the statutes.

This bill amends the laws concerning the Maine International Trade Center to treat all proceedings and records as open to the public, with exceptions for proprietary information.

This bill amends the laws concerning the Finance Authority of Maine with regard to records. This bill uses the template recommended by the Right To Know Advisory Committee to provide that proprietary information provided by an applicant is confidential, as is an applicant's financial statement and tax return. Exceptions to confidentiality include information for which confidentiality has been satisfactorily and effectively waived, information that has already been made available to the public and

impersonal, statistical and general information. This bill also provides exceptions to the nondisclosure of the confidential information.

This bill amends the laws governing mineral exploration claims on state lands to make the language consistent with other confidentiality language.

This bill amends the laws governing well drilling information to provide that the information required to be reported to the Department of Conservation, Bureau of Geology and Natural Areas, Maine Geological Survey is public unless the well drilling company reporting the information requests that the information be designated confidential and the bureau determines that it is proprietary information.

This bill amends the laws governing the Lobster Promotion Council to establish that information provided to or developed by the council and included in a promotional plan or market study is public unless the council determines that it contains proprietary information.

This bill amends the laws governing confidentiality of information related to experimental forestry practice areas to provide that the information is public unless the person to whom the information belongs or pertains requests that it be designated as confidential and the Department of Conservation, Bureau of Forestry determines that it is proprietary information.

This bill amends the laws governing the confidentiality of information about the Commissioner of Education's disciplinary actions with regard to educational personnel. This bill makes public certain information concerning final written decisions relating to disciplinary action taken by the commissioner against persons holding certifications.

This bill directs the Right To Know Advisory Committee to review and make recommendations concerning issues involved with requests for public records in bulk. The recommendations must be included in the advisory committee's annual report to be submitted by January 15, 2011.