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An Act To Further Regulate the Communications of Members of Public Bodies

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

Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

1-B. Electronic mail. "Electronic mail" means a communication sent or delivered by transmission over the Internet.

Sec. 2. 1 MRSA §402, sub-§1-C is enacted to read:

1-C. Group electronic mail. "Group electronic mail" means electronic mail sent to more than one person by means of a single transmission. "Group electronic mail" does not include an identical communication sent by a series of individual transmissions to individual recipients.

Sec. 3. 1 MRSA §402, sub-§3, as corrected by RR 2009, c. 1, §§1 to 3, is further amended to read:

3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:

- A. Records that have been designated confidential by statute;
- B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;
- C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;

D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;

E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Community College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;

F. Records that would be confidential if they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;

L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to

municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;

M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;

N. Social security numbers in the possession of the Department of Inland Fisheries and Wildlife;

O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;

P. Geographic information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information; and

Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the general public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure.

"Public records" includes electronic mail that is sent by a member of a body described in subsection 2, paragraphs A to G to a quorum of members of that same body regarding a substantive matter that is before the body.

Sec. 4. 1 MRSA §402, sub-§5 is enacted to read:

5. Substantive matter. "Substantive matter" means a matter of policy or substance as opposed to a matter of form or procedure. "Substantive matter" does not include administrative issues such as the scheduling of meetings, the dissemination of studies or reports or the development of agendas.

Sec. 5. 1 MRSA §413 is enacted to read:

§ 413. Prohibited communications

1. Group electronic mail to other members. A member of a body described in section 402, subsection 2, paragraphs A to G may not knowingly send a group electronic mail to a quorum of the members of that body regarding a substantive matter that is before the body.

2. Communicate majority agreement. A member of a body described in section 402, subsection 2, paragraphs A to G may not directly or through an intermediary communicate that a majority of the body is in agreement regarding a substantive matter that is before the body to a person who is not a member of the body, unless the agreement was previously reached at a public proceeding.

Sec. 6. 1 MRSA §414 is enacted to read:

§ 414. Electronic mail; disclosure requirement

If a member of a body described in section 402, subsection 2, paragraphs A to G sends electronic mail to a quorum of members of that same body regarding a substantive matter that is before the body, the member that sends the electronic mail must ensure that the electronic mail is printed and made available to the public at the next public meeting of the body before the body takes a vote on the substantive matter.

SUMMARY

This bill amends the law governing access to public records and proceedings. This bill:

1. Provides definitions of "electronic mail," "group electronic mail" and "substantive matter";
2. Prohibits a member of a public body from knowingly sending a group electronic mail to a quorum of the members of that body regarding a substantive matter that is before the body;
3. Prohibits a member of a public body from directly or through an intermediary communicating that a majority of that body is in agreement regarding a substantive matter that is before the body to interested persons who are not members of the body;
4. Specifies that "public records" includes electronic mail that is sent by a member of a public body to a quorum of members of that same body regarding a substantive matter that is before the body; and
5. Requires that if a member of a public body sends electronic mail to a quorum of members of that same body regarding a substantive matter that is before the body, the electronic mail must be printed and made available to the public at the next public meeting before the body takes a vote on that matter.