

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAW & LEGISLATIVE
REFERENCE LIBRARY
43 STATE HOUSE STATION
AUGUSTA, ME 04333

**Report of the
Presiding Officers' Advisory Committee on Legislative Ethics to the
Presiding Officers of the 122nd Maine Legislature**

December 5, 2006

Advisory Committee Members

Dr. Sandra Featherman, Chair
Senator Phillip Bartlett II
Senator Debra Plowman
Rep. Marilyn Canavan
Rep. John Robinson
The Honorable Michael Carpenter
The Honorable Mark Lawrence
The Honorable Harrison Richardson
The Honorable Richard Thompson

Edith Leary
Dr. Calvin Mackenzie
Roger Mallar
Kristine Ossenfort
Peter Pitegoff
Dr. John Rensenbrink

Phyllis Gardiner, Ex Officio
Jonathan Wayne, Ex Officio

JK

2874.6

.M36

2006

c.2

lman, Special Assistant to the Senate President
Chief of Staff to the Speaker of the House

MAY 14 2007

Introduction

Public awareness of ethics abuses in Washington has generated a demand in Maine for higher ethical standards for state lawmakers. While Maine law and legislative rules contain many provisions relating to legislative ethics, many of those provisions date back to 1975, when issues and circumstances were different. As a result of these factors, the Presiding Officers of the 122nd Maine Legislature -- Senate President Beth Edmonds, and Speaker of the House of Representatives John Richardson -- created the Presiding Officers' Advisory Committee on Legislative Ethics [Advisory Committee] to review Maine's laws and rules governing legislative ethics.

The Advisory Committee was composed of 15 voting members and two non-voting ex-officio members. The voting members included two State Senators and two State Representatives equally representing the two major parties, four former legislators, the Dean of the University of Maine Law School, a representative of the business community, a university president, two professors of political science, and two lobbyists. The non-voting members represented the Office of the Attorney General and the Commission on Governmental Ethics and Election Practices.

The Advisory Committee held three public hearings in Augusta at which public testimony was presented. The Advisory Committee heard testimony from individuals, lobbyists, and organizations, including the Conservation Law Foundation, the Natural Resources Council of Maine and the Maine Association of Broadcasters. In addition, the Advisory Committee held five work sessions that were open to the public.

There is general agreement among those most familiar with Maine State Government that, compared to many other states, the conduct of Maine's legislators over the past several decades, for the most part, has been both admirable and honorable. Nevertheless, there is a consensus that Maine law is vague, inconsistent, and difficult to understand.

With a small population scattered over a large geographical area, Maine's citizens develop a wide network of friends and colleagues throughout the State. It is not uncommon for two Maine residents from different parts of the State who do not know each other to have a mutual friend somewhere in the State. Maine feels more like a family than a State.

The state has a part-time citizens' Legislature that pays Legislators \$18,000 over a two year period. As a result of low legislative pay, extensive distances between Augusta and municipalities in other regions of the State, and more rapid turn-over of Legislators, it is difficult to recruit residents to serve in the Legislature. It is also a priority of Maine residents to maintain a part-time citizens' Legislature and to provide a high degree of public access to this institution.

In order to keep a part-time Legislature, attract good-quality lawmakers, and involve the public with respect to issues before the Legislature, it is necessary to provide flexibility, foster a spirit of trust and honor, and provide for transparency in the legislative process.

While there is a general consensus that Maine legislators, by far, are honorable individuals, they are also faced with pressures from conflicting interest groups that often have substantial resources. It is important, therefore, to develop clear and consistent guidelines with respect to legislative ethics.

Major concerns of the Ethics Advisory Committee include the definitions of "conflict of interest," "undue influence," and "abuse of position," and procedures relating to the operation of the Commission on Governmental Ethics and Election Practices. This report includes recommendations on those issues.

Committee members began discussion of other important issues – including restrictions on gifts and lobbyist disclosure laws, but did not have sufficient time to develop consensus on recommendations related to those issues. Nonetheless, the Committee wishes to urge the Legislature to give continued attention to them.

Conflict of Interest

A major concern to the Advisory Committee is the definition of "conflict of interest." Under current Maine law¹, a legislator does not have a conflict of interest -- and is therefore not prohibited from voting on legislation -- unless the legislator, an immediate family member of the legislator, or a close economic associate of the legislator would derive from that legislation:

"A direct substantial personal financial interest, *distinct from that of the general public*²,"

A benefit that is "*unique and distinct* from that of the general public or persons engaged in similar professions, trades, businesses, or employment³,"
or

"A personal private gain or loss from employment because of legislative action, *distinct from the gain or losses of other employees or the general community*⁴."

Most other states have broader legislative "conflict of interest" laws that less narrowly define conflict of interest and apply to more situations than Maine law. In some instances, a legislator who has a conflict of interest must simply disclose the interest. But in most cases, as in Maine, the legislator is prohibited from voting on the matter. This prevents a legislator from acting in a manner that may not be consistent with the public interest, but it also prevents the legislator from giving voice to the wishes of his or her constituents. A balance is needed to ensure that legislators are prohibited from voting only on matters that present the greatest likelihood of conflict between a legislator's personal interest and the interest of the public.

Current law deals most directly with actual conflicts of interest, and makes minor reference to avoiding the appearance of conflict. The Committee believes it is important to provide for greater disclosure of a legislator's personal interest in a matter, even if the interest does not rise to the level of a legal conflict of interest.

The Presiding Officers' Advisory Committee on Legislative Ethics recommends more disclosure, clearer guidelines, and a more comprehensive "conflict of interest" law that would raise the standard on Legislative ethics and, at the same time, preserve Maine's part-time citizens' Legislature.

¹ Title 1 of the Maine Revised Statutes, section 1014

² Title 1, section 1014, subsection 1, paragraph A

³ Title 1, section 1014, subsection 1, paragraph F

⁴ Title 1, section 1014, subsection 1, paragraph E

Findings - Conflict of Interest

- ❑ The current definition of a conflict of interest as requiring that a legislator, immediate family member or close economic associate would obtain a "unique and distinct" benefit or harm from legislation or other matters is very narrow, making it highly unlikely that a legislator would ever be restrained by conflict of interest rules.
- ❑ The current definition of conflict of interest includes "undue influence" and "abuse of office or position." Undue influence and abuse of office or position are more properly described as separate violations of legislative ethics, ones that occur outside the halls of the Legislature.
- ❑ The Advisory Committee considers the size of a class that is impacted by legislation to be very important. If there are 200 or 2000 members of a class who are similarly benefited or harmed, the benefit or harm to a legislator, a legislator's immediate family, or close economic association is apt to be less of an impact than a class with two or three members of which the legislator, family member or associate is a member.
- ❑ Disclosure is a proper and effective means of avoiding the appearance of a conflict of interest.
- ❑ A broader and more comprehensive conflict of interest law in Maine that applies the law beyond individual legislators, legislators' immediate family members, and close economic associates of legislators would make it more difficult to recruit members for and maintain a citizens' part-time legislature.
- ❑ Violations of conflict of interest can be avoided by:
 - Providing clearer guidelines for legislators to consider when voting on legislation in Committee or on the floor of the Legislature,
 - Assigning legislators to Legislative committees that address issues in which legislators could participate without being significantly limited as a result of potential conflicts of interest.

Recommendations – Conflict of Interest

- ❑ The definition of conflict of interest should be changed from a situation giving rise to a "unique and distinct" harm or benefit" to a situation giving rise to a benefit or harm that is "significantly greater than" the harm or benefit experienced by others in the same enterprise, profession, trade, business, or type of employment.
- ❑ Conflict of interest restrictions should apply when a legislator, legislator's immediate family, or a close economic associate of the legislator is a member of a small group

of persons or entities that will derive a significant benefit or harm from proposed legislation.

- ❑ The Joint Rules of the Legislature, the Rules of the Senate, and the Rules of the House of Representatives should be amended to provide guidelines for Legislators to assist them to avoid conflict of interest or the appearance of conflict of interest situations by considering whether:
 - The issue before the Legislature impedes the Legislator's independence of judgment,
 - The Legislator's participation will harm public confidence in the integrity of the Legislature,
 - A pecuniary interest is involved or a potential occupational, personal, or family benefit could arise from the Legislator's participation,
 - The Legislator's business, employer, or a close relative's employer would receive a greater benefit or loss than the general class or group of persons impacted
- ❑ Members should seek advice from their Presiding Officers when in doubt about a conflict of interest situation.
- ❑ With respect to an appearance of a conflict when an actual conflict of interest does *not* exist, Legislators should disclose information to the committee or the body of the Legislature of which the legislator is a member that dispels the perception of a conflict of interest.
- ❑ The Presiding Officers, in appointing legislators to committees, should inquire of each legislator the extent to which, if any, the legislator's participation in that committee would be significantly limited as a result of potential conflicts of interest.

Undue Influence

Under current Maine law, “undue influence” is considered to be a form of “conflict of interest.” Advisory committee members decided early in the study process that combining the concepts of undue influence and conflict of interest is confusing. Instead, they decided to separate the concepts and to use the term “conflict of interest” to refer specifically to ethics relating to voting in committee and in the House and Senate, and to use the term “undue influence” to refer to activity outside the halls of the State House, especially representation before the executive branch of government.

Current law prohibits a legislator from representing clients, for compensation, before state agencies. However, lawyers and “other professional persons” may engage in such representation, as long as they refrain from referring to their legislative capacity, from using legislative stationery, and from making threats relating to action in the Legislature.

Many advisory committee members expressed concern that this type of activity was particularly disturbing to the public. While legislators may not intend to intimidate agency staff, it may appear to the agency staff and to the public that the legislator’s position of influence over the agency is affecting the agency’s decision.

Other members were concerned that limiting a legislator’s ability to interact professionally with state agencies could limit a person’s willingness to serve in the Legislature. Such a limit might make it impossible for a person to support himself or herself during their legislative term without the income from such representation. Advisory committee members wanted to make sure that any changes they propose would not deprive the Legislature of people with expertise in a variety of areas.

After extensive discussion, and some questions about whether there is a problem that merits any change in the law, the Committee divided on a proposal to impose additional limits on legislators’ representation of clients before state agencies.

Findings – Undue Influence:

- Maine’s law on undue influence needs to be more clearly separated from the concept of conflict of interest.
- Conflicts regarding representation before state agencies are particularly disturbing to the public.
- Many legislators need to continue practicing their professions during their legislative term, but some additional limitations on representing clients before a state agency is not expected to have a major adverse effect on the willingness of professionals to serve in the Legislature.

- A legislator who serves on the committee of jurisdiction that oversees the policies and budget of a state agency creates the greatest threat of real or perceived undue influence. The agency staff is likely to know the identity of that legislator, and likely to perceive that an individual legislator can create problems for the agency on the committee level.
- Court proceedings and ministerial functions are less likely to be a threat of undue influence. Judges are less likely to be unduly influenced, since they are more insulated from direct legislative pressure, and proceedings are conducted in public. Ministerial functions such as filing of documents do not involve agency discretion and are thus less likely to be subject to pressure.

Recommendation – Undue Influence:

The majority of the committee (5-2) recommends that “undue influence” be categorized as a separate ethics violation and that it be amended to prohibit legislators from referring to their legislative capacity, using legislative stationery or making threats about legislative action in their appearances before a state agency or authority, and that legislators be prohibited from representing clients before an agency when they serve on the committee of jurisdiction over the policies and budget of that agency.

Ethics Commission Procedures

During the course of the 122nd Legislature, interest groups filed a complaint with the Ethics Commission, alleging conflict of interest and undue influence on the part of a legislator. The Commission, after considerable public attention, declined to pursue the complaint. The experience, however, brought forth a number of concerns with the Ethics Commission's process for addressing such complaints. The Commission has not often been asked to address high-profile legislative ethics complaints in the past, so the procedures for doing so have not undergone extensive scrutiny. The Advisory Committee found it to be a good time to review and revise Commission procedures, in light of concerns raised about this most recent case.

Among the concerns cited are:

- (1) It is not clear whether a member of the general public can file a complaint alleging a violation of legislative ethics;
- (2) Concern that Ethics Commission proceedings on complaints are conducted in executive session⁵; and
- (3) Concern about written communication to Commission members from the subject of a complaint when the complainant did not have an opportunity to respond.

Many Advisory Committee members, as well as members of the public who gave testimony to the committee, expressed a desire to make the ethics complaint process more transparent and responsive to concerns of the public. Attempts to limit the public airing of complaints can be damaging to the integrity of the political process. Other members, while expressing agreement with the concept of openness, were concerned about the possibility of abuse by persons or organizations with harmful intent. Opening the complaint process to the general public, and making the process completely public, could result in damage to a person's reputation, especially from frivolous, groundless allegations.

The majority of committee members felt that the concerns about abuse and damage to reputations could be dealt with by requiring the Ethics Commission to screen complaints and weed out the frivolous complaints before they became public. Frivolous claims would be thrown out immediately, would remain confidential, and could result in the Commission ordering the complainant to pay attorney's fees or other costs to the subject of the complaint.

Once the Commission determined a complaint to have some potential merit, any further commission proceedings on the complaint would be conducted in public.

⁵ Ethics complaints are confidential under current law, and the Maine Freedom of Access law allows agencies to conduct executive sessions when discussing confidential records.

The Advisory Committee divided, however, on whether to change current law that makes it a Class D crime for any person to “breach the confidentiality of [an ethics] investigation.”⁶ The majority of members voted to continue the language -- with the exception of the provision allowing the subject of the complaint to breach confidentiality – in order to ensure that legislators’ reputations are not harmed by disclosure of groundless accusations. Once the Commission votes to pursue a complaint, parties to the complaint would not be prohibited from talking about it. Two members of the Advisory Committee disagreed with continuing the penalty, saying that it was an unnecessary and ill advised limit on free speech of members of the public who want to criticize the actions of a legislator.

The Committee also reviewed several other procedural aspects and determined that speeding up the process, allowing complaints for action within the past 2 years, and prohibiting communications between Commission members and participants in the process would be helpful.

Findings – Ethics Commission Procedures:

- The public needs a forum for addressing concerns about legislator ethics. Opening the Ethics Commission complaint process to the public can provide a forum for airing concerns and, with the proper protections, can be governed in such a way as to minimize the chance of abuse.
- Once a complaint is considered to have potential merit, the public interest in information about legislator’s actions will generally outweigh the reasons for keeping the complaint confidential.

Recommendations – Ethics Commission Procedures

- The committee majority recommends that members of the public be allowed to file complaints alleging violation of legislation ethics with the Ethics Commission.
- The committee recommends that Ethics Commission proceedings on complaints be open to the public, except for the initial meeting of the Commission to screen out frivolous or groundless complaints
- The committee recommends that Commission members be prohibited by law from communicating outside of Commission meetings with a complainant or the subject of a complaint.

⁶ Title 1, section 1013, subsection 3

Ethics Training

Current law requires the Ethics Commission and the Attorney General to conduct an “ethics seminar” for incoming legislators. In recent practice, this has involved a one-hour to two-hour presentation in the week before the convening of the 1st Regular session of each Legislature.

Committee members expressed a desire to expand the training provided to legislators and to make it more relevant and lively. At its August meeting, committee members discussed 7 scenarios presented by staff, each offering a potential ethics issue. Given the time and opportunity, legislators might benefit from a similar exercise, moderated by someone with expertise in the area of legislative ethics.

In addition, the committee reviewed Kentucky law, which provides for annual “current issues” seminars and lays out more specifically the content of the seminars.⁷ The seminars must include discussion of changes in ethics laws and rules, new advisory opinions, ethical issues confronting public servants, practical application of ethics laws and principles to specific issues and situations, and development of problem-solving skills.

Finding:

- Legislators must be provided with relevant and ongoing training in ethics issues, to help them identify potential violations of legislative ethics, and to understand how to address them properly.

Recommendation:

- The Committee recommends that the Legislature revise the ethics training provided to legislators as follows:
 - Ensure that attendance is mandatory;
 - Ensure that legislators are required to sign a code of ethics or other written document pledging adherence to legislative ethics rules and laws;
 - Provide for ongoing, interactive and engaging training to ensure that legislators absorb and internalize an understanding of ethics laws and rules; and
 - Seek guidance and proposals from knowledgeable organizations about providing training. The National Conference of State Legislatures (NCSL) has materials and expertise that could be shared with the Maine Legislature. Other organizations, such as the Institute for Global Ethics and the Muskie Institute here in Maine could provide training resources as well.

⁷ Kentucky Revised Statutes, 6.716

Recommendations for Further Consideration

The Advisory Committee recommends that the Legislature give further consideration to the issue of gifts and to the structure of the Ethics laws.

- With regard to gifts, the Committee believes that the \$300 threshold in the definition of “gift” in the ethics laws (Title 1, section 1012, subsection 4) is too high and that a lower threshold is needed. The Committee also suggests that the Legislature consider whether and how to make the gift restrictions in the ethics law more parallel to those in the criminal bribery laws.
- The Advisory Committee’s recommended legislation makes several changes to the structure of the legislative ethics subchapter of Title 1 (chapter 25, subchapter II). However, further restructuring to clarify the law and eliminate duplication may be in order. One item that needs particular attention is section 1015, subsection 3 (prohibition on soliciting or accepting campaign contributions during the legislative session). There is a specific civil penalty in this subsection, and it is not clear whether a violation of this subsection is intended to be a violation of legislative ethics as well as a civil violation, or whether it is more in the nature of a violation of campaign finance laws and should be moved to Title 21-A and treated as such. It is also not clear whether the Ethics Commission is the entity that can enforce the law through a civil action. The Committee did not have sufficient time to study this question, but urges the committee that reviews ethics and campaign finance laws to give this some consideration.

AUTHORIZING DOCUMENT and COMMITTEE MEMBERSHIP

**PRESIDING OFFICERS'
ADVISORY COMMITTEE on LEGISLATIVE ETHICS**

The Presiding Officers' Advisory Committee on Legislative Ethics

Whereas, Congressional ethics and ethics laws have been criticized as a result of revelations of abuse as personified by Jack Abramoff and other lobbyists, and

Whereas, the public has demanded a much higher standard of governmental ethics as a result of Congressional ethical transgressions; and

Whereas, some provisions of Maine's current statutes governing Legislative ethics are vague, and in some cases, inconsistent, and

Whereas, the statutes governing Legislative ethics originated in 1975, and some provisions have not been amended since that time, and

Whereas, it is necessary to immediately address this issue to ensure Maine citizens that their legislators in Augusta are meeting the highest ethical standards, now, therefore,

1. Taskforce established. We, the President of the Senate and the Speaker of the House establish the "Presiding Officers' Advisory Committee on Legislative Ethics", referred to in this enabling Declaration of the Presiding Officers as the "Ethics Advisory Committee."

2. Membership. The task force consists of 15 voting members and two non-voting members appointed as follows.

- A. One member of the public registered in Maine as a Democrat,
- B. One member of the public registered in Maine as a Republican,
- C. One member of the public registered in Maine as a Green-Independent,
- D. Three members of the General Public,
- E. One former member of the Commission on Governmental Ethics and Election Practices,
- F. Two former members of the Maine Legislature,
- G. Four current members of the Maine Legislature,
- H. Two members representing the interest of citizen lobbyists, and
- I. Two Ex Officio, non-voting members representing the Office of the Attorney General and the Commission on Governmental Ethics and election Practices.

The President of the Senate shall appoint Senate members, the Speaker of the House shall appoint House members, and the remaining members shall be appointed jointly by the Senate President and the Speaker of the House.

3. Task force chairs. The President and Speaker shall name the chair of the Ethics Advisory Committee.

4. Appointments; convening of task force; number of meetings. When the appointment of all members has been completed, the Presiding Officers shall call and convene the first meeting of the Ethics Advisory Committee. The Ethics Advisory Committee may not meet more than 6 times.

5. Duties. The Ethics Advisory Committee shall examine Maine Statutes related to Maine's legislative ethics laws. In particular the Ethics Advisory Committee shall:

- A. Examine 1 MRSA Chapter 25 Subchapter 2; [Legislative Ethics], 3 MRSA Chapter 15 [Lobbyist Disclosure Practices], 17 MRSA §3104, and 17-A Chapter 25 [Bribery and Corrupt Practices] to determine the degree of consistency and effectiveness of these laws.
- B. Examine any other issues that the Ethics Advisory Committee considers important and relevant to maintaining high ethical standards among Legislative members.
- C. The Ethics Advisory Committee shall not undertake a review of campaign finance laws, which fall under the jurisdiction of the Commission on Governmental Ethics and Election Practices

6. Staff assistance. The Presiding Officers shall provide for the necessary staffing services to the Ethics Advisory Committee.

7. Compensation. The members of the Ethics Advisory Committee force who are Legislators are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses for attendance at authorized meetings of the task force.

8. Report. The Ethics Advisory Committee shall submit its report that includes its findings and recommendations, including suggested legislation, to the Presiding Officers no later than November 22, 2006. The Presiding Officers may submit the legislation to the First Regular Session of the 123rd Legislature.

9. Extension. If the Ethics advisory Committee requires a limited extension of time to complete its study and make its report, it may apply to the Presiding Officers, who may grant an extension. Upon submission of its required report, the Ethics Advisory Committee terminates.

10. Ethics Advisory Committee workplan. The chair of the Ethics Advisory Committee, within 30 days after its first meeting, shall present a work plan to the Presiding Officers for their joint approval. The Ethics Advisory Committee may not incur expenses that have not been previously approved by the Presiding Officers.

Presiding Officers' Advisory Committee on Legislative Ethics

One member of the public registered in Maine as a Democrat

- **Michael Carpenter**, former Attorney General, former State Representative; and former State Senator

One member of the public registered in Maine as a Republican

- **Roger Mallar**, former Commissioner of Transportation;

One member of the public registered in Maine as a Green-Independent

- **John Rensenbrink**, co-founder of the Green Party and former US Senate Candidate;

Three members of the general public

- **Sandra Featherman**, President of the University of New England;
- **Kristine Ossenfort**, Governmental Affairs Specialist, Maine State Chamber of Commerce;
- **Peter Pitegoff**, Dean and Professor of Law, University of Maine School of Law;

One former member of the Commission on Governmental Ethics

- **G. Calvin Mackenzie**, Goldfarb Family Distinguished Professor of American Government, Colby College;

Two former members of the Maine Legislature

- **Mark Lawrence**, Former President of the Senate, current District Attorney, York County;
- **Harrison Richardson**, former House Majority Leader, former State Senator, and partner, Richardson Whitman Large & Badger

Four current members of the Maine Legislature

- **Senator Phillip Bartlett**, (D – Gorham);
- **Representative Marilyn Canavan**, (D – Waterville), former Executive Director of the Commission on Governmental Ethics;
- **Senator Debra Plowman**, (R – Hampden);
- **Representative John Robinson**, (R – Raymond);

Two members who represent the interest of citizen lobbyists

- **Edith Leary**, Eaton Peabody, Bangor;
- **Richard Thompson**, Capitol Consulting, Readfield;

Invited to attend as Ex Officio, nonvoting members

- **G. Steven Rowe**, **Attorney General**, or his designee (Phyllis Gardiner, Assistant Attorney General, represented the Office of the Attorney General); and
- **Jonathan Wayne**, Executive Director of the Commission on Governmental Ethics

LEGISLATION and RULES CHANGES
Recommended by the
PRESIDING OFFICERS'
ADVISORY COMMITTEE on LEGISLATIVE ETHICS

December 5, 2006

**DRAFT LEGISLATION to IMPLEMENT the RECOMMENDATIONS of the
ADVISORY COMMITTEE on LEGISLATIVE ETHICS**

Subchapter 1 –

§ 1003. Procedures, rules and regulations

1. Procedures, rules and regulations. The commission shall adopt such procedures, rules and regulations as may appear necessary for the orderly, prompt, fair and efficient carrying out of its duties, consistent with this chapter.

2. Records. Except as provided in section 1013, ~~subsection 2, paragraph J,~~ all records of the commission, including business records, reports made to or by the commission, findings of fact and opinions, shall be made available to any interested member of the public who may wish to review them. Any member of the public may request copies of any record held by the commission which is available for public inspection. The commission shall furnish these copies upon payment of a fee covering the cost of reproducing them.

§ 1005. Open meetings

Notwithstanding chapter 13, all meetings, hearings or sessions of the commission are open to the general public except as provided in section 1013, subsection 5 and unless, by an affirmative vote of at least 3 members, the commission requires the exclusion of the public.

§ 1008. General duties

The general duties of the commission shall be:

1. Legislative ethics. To investigate and make advisory recommendations to the appropriate body of any apparent violations of the legislative ethics ethical standards set by the Legislature;

Subchapter 2

§ 1012. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Close economic association associate. ~~"Close economic association"~~ "Close economic associate" means the employers, employees, partners or clients of the Legislator or a member of the Legislator's immediate family; ~~corporations entities~~ in which the Legislator or a member of the Legislator's immediate family is an officer, director or agent or owns 10% or more of the outstanding capital stock; a business which is a significant unsecured creditor of the Legislator or a member of the Legislator's immediate family; or a business of which the Legislator or a member of the Legislator's immediate family is a significant unsecured creditor.

10. Violation of legislative ethics. Violation of legislative ethics means violation of the prohibitions in section 1014 or 1015.

§ 1013. Authority; procedures

1. Authority. The commission ~~shall have the~~ has authority:

A. To issue, on request of any Legislator on an issue involving ~~himself that Legislator~~, or on its own motion, written advisory opinions and ~~guidelines~~ guidance on problems or questions involving possible violations of legislative ethics ~~conflicts of interest in matters under consideration by, or pertaining to, the Legislature;~~

B. To investigate complaints ~~filed by Legislators, or on its own motion,~~ alleging a violation of legislative ethics ~~conflict of interest~~ against any Legislator, to hold hearings ~~thereon~~ on those complaints if the commission deems appropriate and to issue publicly findings of fact together with its opinion; and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

2. Procedure. The following procedures shall apply:

A. Requests for advisory opinions by members of the Legislature shall be filed with the commission in writing, signed by the Legislator requesting the opinion and shall contain such supporting data as the commission shall require. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow him to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it deems necessary. A copy of the commission's advisory opinion shall be sent to the Legislator concerned and to the presiding officer of the House of which the Legislator is a member;

A-1. The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidance issued by the commission, with such deletions and changes as the commission considers necessary to protect the identity of the person seeking the opinions, or others. The Clerk of the House shall keep a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part of an opinion from release, publication or inspection, if it considers such action appropriate for the protection of 3rd parties and the commission makes available to the public an explanatory statement to that effect. (***) *Note: This is the language from paragraph H, with some minor editing changes* (***)

B. A Legislator Any person may file a complaint against a legislator alleging a violation of legislative ethics. The complaint must be filed in writing, signed under oath, and must specify the facts of the alleged violation and such other information as the commission requires making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest.

(1) The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant.

(2) The commission shall consider only complaints against legislators in office at the time of the filing of the complaint, and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. If one or more seats on the Commission are vacant, the vote of 2 Commissioners is sufficient to order an investigation and hearings.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged ~~conflict of interest~~ violation of legislative ethics to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine.

[Drafting note: Paragraph B above has been broken into subparagraphs (1), (2) and (3), but the wording is the same as paragraph B original language]

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator shall be given written notification of the time and place at which the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing.

D. The commission ~~shall have the~~ has authority, through its ~~chair~~ chairman or any member designated by ~~the chair him~~, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the committee deems relevant. ~~The commission shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed.~~ The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents which the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, shall have jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. The Commission shall adopt rules consistent with due process, for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are routine technical rules. Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross examination.

~~Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he~~

~~complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.~~

~~All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall not be is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.~~

~~Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.~~

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate shall be referred to the Attorney General. Any determination by the commission or by a House of the Legislature that a violation of legislative ethics conflict of interest has occurred does not preclude any criminal action relating to the conflict violation which may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is frivolous or was filed in bad faith ~~groundless and without foundation~~, or if the Legislator filing the ~~complaint~~ complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed his that legislator's costs of investigation and defense, including any reasonable attorney's fees. Such an order is deemed a final agency action and the ~~The~~ complainant may appeal such an order pursuant to the Maine Administrative Procedures Act to the house of which he is a member.

Such an order ~~shall~~ does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to ~~his~~ the Legislator's reputation.

H. A copy of the commission's advisory opinions and guidelines issued by the commission, with such deletions and changes as the commission deems necessary to protect the identity of the person seeking the opinions, or others, shall be filed with the Clerk of the House. ~~The clerk shall keep them in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof from release, publication or inspection, if it deems such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.~~

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators shall also be filed with the Clerk of the House and the Secretary of the Senate. ~~The clerk~~ Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. ~~The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.~~

K. When a Legislator has a question or problem of an emergency nature about a possible ~~conflict of interest~~ violation of legislative ethics or an issue involving himself which arises during the course of legislative action, he may request an advisory opinion from the presiding officer of the legislative body of which he is a member. The presiding officer may, at his discretion, issue an advisory opinion, which shall be in accordance with the principles of this subchapter, which shall be in writing, and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The Commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

~~3. Confidentiality. The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.~~

4. Confidentiality of records and proceedings relating to screening complaints alleging a legislative ethics violation. Notwithstanding Title 1, chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the Commission has voted pursuant to subsection 2, paragraph B to pursue the complaint and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the Commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records. This subsection does not prevent the Commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation is guilty of a Class D crime. This subsection does not prevent commission staff from disclosing such information as is necessary to investigate a complaint.

5. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the Commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. Finding of fact and recommendations of the Commission on complaints alleging violation of legislative ethics are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.

6. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members

and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint

§ 1014. Conflict of interest Violations of legislative ethics

1. Situations involving conflict of interest. A legislator engages in a violation of legislative ethics if that legislator votes on a question in connection with a conflict of interest in committee or in either branch of the Legislature, or attempts to influence the outcome of that question. A conflict of interest shall include the following:

A. ~~Where a Legislator or a member of his~~ the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation or a close economic associate will derive a benefit from, or be harmed by, proposed legislation to a significantly greater extent than others in the same enterprise, profession, trade, business or type of employment.

A-1. Where a Legislator, or a member of the Legislator's immediate family, or a close economic associate of the legislator is a member of a small group of persons or entities that will derive a significant benefit or harm from proposed legislation.

B. Where a Legislator or a member of ~~his~~ the Legislator's immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in ~~a business an entity~~ affected by proposed legislation, where it is known or reasonably should be known that the purpose of the donor in making the gift is to influence the Legislator in the performance of his official duties or vote, or is intended as a reward for action on ~~his~~ the Legislator's part.

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator.

D. Appearing for, representing or ~~assisting~~ advocating on behalf of another ~~in respect to a claim~~ before the Legislature, unless without compensation and for the benefit of a citizen.

E. Where a Legislator or a member of ~~his~~ the Legislator's immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded ~~him~~ the Legislator or a member of ~~his~~ the Legislator's immediate family with intent to influence ~~his conduct in~~ the performance of ~~his~~ the Legislator's official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

F. ~~Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.~~

2. Undue influence. ~~It is presumed that a conflict of interest exists where there are circumstances which involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases:~~

~~A. Appearing for, representing or assisting another in a matter before a state agency or without compensation and for the benefit of a constituent, except for attorneys or other professional persons engaged in the conduct of their professions.~~

~~(1) Even in the excepted cases, an attorney or other professional person must refrain from references to his legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.~~

~~B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding.~~

2-A. Undue influence. It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes the exertion of undue influence, including but not limited to:

A. Appearing for, representing or advocating for another in a matter before a state agency or authority, for compensation other than compensation as a legislator, if the legislator makes reference to his or her legislative capacity, communicates with the agency or authority on legislative stationery, or makes threats or implications relating to legislative action;

B. Appearing for, representing or advocating for another in a matter before a state agency or authority if the Legislator oversees the policies of the agency or authority as a result of the Legislator's committee responsibilities, unless:

(1) The appearance, representation or advocacy is provided without compensation and for the benefit of a constituent;

(2) The appearance, representation or advocacy is provided before a court or office of the Judicial Branch; or

(3) The representation consists of filing records, reports or performing other routine tasks that do not involve the exercise of discretion on the part of the agency or authority; and

C. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding

3. Abuse of office or position. It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes an abuse of office or position, presumed that a conflict of interest exists where a Legislator abuses his office or position, including but not limited to the following cases.

A. Where a Legislator or a member of his immediate family has a direct financial interest or an interest through a close economic association ~~associate~~ in a contract for goods or services with the State, a state agency or authority ~~in a transaction not covered by public notice and competitive bidding or by~~ unless the contract is awarded through competitive bidding, is exempt from competitive bidding pursuant to state purchasing laws, or the payment provisions are based on uniform rates established by the State, a state agency, authority or other governmental entity ~~or by a professional association or organization~~.

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs.

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

4. Contract with state governmental agency. It is a violation of legislative ethics for a Legislator or an associated organization to enter with a state governmental agency into any contract that is to be paid in whole or in part out of governmental funds, unless the contract has been awarded through a process of public notice and competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws.

§ 1015. Actions precluded; reports Prohibited campaign contributions and solicitations

~~**1. Actions precluded.** When a member of the Legislature has a conflict of interest, that member has an affirmative duty not to vote on any question in connection with the conflict in committee or in either branch of the Legislature, and shall not attempt to influence the outcome of that question.~~

~~**2. Reports.** When the commission finds that a Legislator has voted or acted in conflict of interest, the commission shall report its findings in writing to the house of which the Legislator is a member.~~

3. Campaign contributions and solicitations prohibited. The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session.

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A and the term "contribution" has the same meaning as in Title 21-A, section 1012.

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions

apply to direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise.

C. This subsection does not apply to:

- (1) Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- (2) Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election;
- (3) Solicitations or contributions after the deadline for filing as a candidate as provided in Title 21-A, section 335; and
- (4) Solicitations or contributions accepted by a member of the Legislature supporting that member's campaign for federal office.

C-1. This subsection does not prohibit the attendance of the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer at fund-raising events held by a municipal, county, state or national political party organized pursuant to Title 21-A, chapter 5, nor the advertisement of the expected presence of any such official at any such event, as long as any such official has no involvement in soliciting attendance at the event and all proceeds are paid directly to the political party organization hosting the event or a nonprofit charitable organization.

D. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action.

~~4. Contract with state governmental agency. A Legislator or an associated organization may not enter with a state governmental agency into any contract that is to be paid in whole or in part out of governmental funds, when such a contract is normally awarded through a process of public notice and competitive bidding, unless the contract has been awarded through a process of public notice and competitive bidding.~~

Sec. xxx of the Bill. Application. Notwithstanding the amendments to Title 1, section 1013, subsection 2 enacted by this Act, a complaint filed under Title 1, chapter 25, subchapter 2 prior to the effective date of this Act and subjected to a vote of the Commission may not be refiled and the conduct at issue in that complaint may not be challenged in any other complaint.

RECOMMENDED CHANGES to the SENATE, HOUSE and JOINT RULES

Joint Rules

1. Amend Joint Rule 104 as follows:

104. Conflict of Interest

A member may not vote on any question in committee when that question immediately involves that member's private right, as distinct from the public interest member has a conflict of interest. If the Legislator believes that he or she would have a conflict of interest by voting on a specific piece of legislation pending in the committee on which the legislator is a member, the Legislator must disclose the conflict of interest to the committee.

2. Add Joint Rules 104-A, 105, 106 and 107 to read:

104-A. Advice on Voting

In determining whether a member should seek advice with respect to voting on legislation in committee, the member shall consider, among other things:

1. Whether the interest impedes the legislator's independence of judgment,
2. The effect of the legislator's participation on public confidence in the integrity of the Legislature,
3. Whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the Legislator's participation,
4. Whether the Legislator's business, employer or a close relative's employer would receive a greater benefit or loss than a general class or group of persons, and
5. Whether the Legislator's participation in the decision-making process with respect to proposed legislation would create an appearance of a conflict of interest that could not be dispelled by the Legislator's disclosure of pertinent information.

105. Requests for Clarification - Conflict of Interest

After reviewing the guidelines on conflict of interest in Joint Rule 104 and Joint Rule 104-A, members are encouraged to seek advice from the Commission on Governmental Ethics and Election Practices or the Presiding Officers of the Maine Senate or the Maine House of Representatives if they remain uncertain as to whether they may be in a potential conflict of interest situation if they participate in the decision-making process with respect to legislation before the Senate, House, or a Committee of the Legislature.

106. Voluntary Disclosure

If a Legislator does not believe that he or she has a conflict of interest with respect to legislation pending before the committee to which the Legislator has been appointed, but the Legislator is concerned about the appearance of a conflict of interest, he or she should disclose to the Chairs and members of the Committee that the Legislator does not have a conflict of interest. The Legislator should provide an explanation as to why the Legislator does not have an actual conflict of interest.

107. Committee Appointments Made By the Presiding Officers

In making appointments to committees of the Legislature, the Presiding Officers should inquire of each legislator the extent to which, if any, that legislator's participation in a committee would be significantly limited as a result of potential conflicts of interest.

Senate Rules

1. Add Senate Rules 402, 403, 404 and 405 to read:

Rule 402. Conflict of Interest.

A member may not vote on any question in the Senate when that member has a conflict of interest. If the Senator believes that he or she would have a conflict of interest by voting on a specific piece of legislation pending before the Maine Senate, the Senator must disclose the conflict of interest to the President and members of the Senate.

Rule 403. Guidelines for Determining A Conflict of Interest

In determining whether a member should seek advice with respect to voting on legislation, the member shall consider, among other things, the following:

1. Whether the interest impedes the legislator's independence of judgment;
2. The effect of the legislator's participation on public confidence in the integrity of the Legislature;
3. Whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the Legislator's participation;
4. Whether the Legislator's business, employer or a close relative's employer would receive a greater benefit or loss than a general class or group of persons;
and

5. Whether the Legislator's participation in the decision-making process with respect to proposed legislation would create an appearance of a conflict of interest that could not be dispelled by the Legislator's disclosure of pertinent information.

404. Requests for Clarification - Conflict of Interest

After reviewing the guidelines on conflict of interest in Senate Rule 403, members are encouraged to seek advice from the Commission on Governmental Ethics and Election Practices or the President of the Senate when members remain uncertain as to whether they may be in a potential conflict of interest situation if they participate in the decision-making process with respect to legislation before the Senate.

405. Voluntary Disclosure

If a Senator does not believe that he or she has a conflict of interest with respect to legislation pending before the Senate, but the Senator is concerned about the appearance of a conflict of interest, he or she should disclose to the President and members of the Senate that the Senator does not have a conflict of interest. The Senator should provide an explanation as to why he or she does not have an actual conflict of interest.

House Rules

Add House Rules 402, 403, 404 and 405 to read:

Rule 402. Conflict of Interest

A member may not vote on any question in the House of Representatives when that member has a conflict of interest. If the Representative believes that he or she would have a conflict of interest by voting on a specific piece of legislation pending before the Maine House of Representatives, the Representative must disclose the conflict of interest to the Speaker and members of the House.

Rule 403. Guidelines for Determining A Conflict of Interest

In determining whether a member should seek advice with respect to voting on legislation, the member shall consider, among other things, the following:

1. Whether the interest impedes the legislator's independence of judgment;
2. The effect of the legislator's participation on public confidence in the integrity of the Legislature;
3. Whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the Legislator's participation;

4. Whether the Legislator's business, employer or a close relative's employer would receive a greater benefit or loss than a general class or group of persons; and

5. Whether the Legislator's participation in the decision-making process with respect to proposed legislation would create an appearance of a conflict of interest that could not be dispelled by the Legislator's disclosure of pertinent information.

404. Requests for Clarification - Conflict of Interest

After reviewing the guidelines on conflict of interest in House Rule 403, members are encouraged to seek advice from the Speaker of the House when they remain uncertain as to whether they may be in a potential conflict of interest situation if they participate in the decision-making process with respect to legislation before the House or a Committee of the Legislature.

405. Voluntary Disclosure

If a Representative does not believe that he or she has a conflict of interest with respect to legislation pending before the House, but the Representative is concerned about the appearance of a conflict of interest, he or she should disclose to the Speaker of the House and members of the House that the Representative does not have a conflict of interest. The Representative should provide an explanation as to why he or she does not have an actual conflict of interest.