

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1798

S. P. 565

In Senate, April 3, 1973

Referred to Committee on State Government. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Richardson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Legislative Ethics and the Disclosure
of Certain Information by Lobbyists and Legislators.

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

Sec. 1. R. S., T. 3, c. 15, repealed and replaced. Chapter 15 of Title 3 of the Revised Statutes is repealed and the following enacted in place thereof:

CHAPTER 15

LEGISLATIVE ETHICS COMMISSION

§ 300. Legislative Ethics Commission

There is hereby created a Legislative Ethics Commission which shall be composed of 5 members, not more than 3 of whom shall be members of the same political party and who shall be appointed by the Governor with the consent of the Council. Two of the original members shall be appointed for terms of one year and 3 for terms of 3 years. Their successors shall be appointed for terms of 3 years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The commission shall elect one member to serve as chairman of the commission and one member to serve as vice-chairman. The vice-chairman shall act as chairman in the absence or disability of the chairman or in the event of a vacancy in that office.

A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission and 3 members thereof shall constitute a quorum.

The commission shall at the close of each fiscal year report to the Legislature and the Governor concerning the action it has taken; the names,

salaries and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on the matters within its jurisdiction and such recommendations for further legislation as may appear desirable.

Members of the commission shall, while serving on the business of the commission, be entitled to receive compensation at a rate of \$50 per day in lieu of all other expenses.

The office of the commission shall be in or near the State Capitol, but it may meet or exercise any or all of its powers at any other place in the State.

The commission shall appoint an executive director to serve at the pleasure of the commission. The executive director shall be responsible for the administrative operations of the commission and shall perform such other duties as may be delegated or assigned to him from time to time by regulations or orders of the commission.

§ 301. Duties

In addition to other duties prescribed by law, it shall be the duty of the commission:

1. To prescribe forms for statements and reports required to be filed with it, and to furnish such forms to persons required to file such statements and reports;
2. To accept and file any information voluntarily supplied that exceeds the requirements of this chapter;
3. To develop a filing, docketing, coding and cross-indexing system consonant with the purposes of this chapter;
4. To make statements and reports filed with it available for public inspection and copying during regular office hours and to make copying facilities available free of charge or at a charge not to exceed actual cost;
5. To preserve such statements and reports for a period of 5 years from date of receipt;
6. To prepare and publish monthly, quarterly and annual summaries of the statements and reports received; these summaries shall list separately individual lobbyists and other persons;
7. To prepare and publish such other reports as it may deem appropriate;
8. To provide for wide public dissemination of its summaries and reports;
9. To make investigations with respect to statements and reports filed under this chapter, and with respect to alleged failures to file any statement or reports required under this chapter, and, upon complaint by any individual with respect to alleged violation of any part of this chapter;
10. To report suspected violations of law to the appropriate law enforcement authorities;
11. To prescribe and publish rules and regulations to carry out this chapter.

SUBCHAPTER I
LEGISLATIVE COUNSEL AND AGENTS

§ 309. Purpose; intent

The Legislature hereby declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the Legislature and to committees of the Legislature, their opinions on legislation, on pending executive actions, and on current issues; and that, to preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures and activities of certain persons who engage in efforts to persuade members of the Legislature or the executive branch to take specific actions, either by direct communication to such officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

§ 310. Definitions

As used in this subchapter, unless the context requires otherwise, the following words shall have the following meanings:

1. Legislative action. "Legislative action" means introduction, sponsorship, debate, voting and any other official action on any bill, resolution, amendment, nomination, appointment, report and any other matter pending or proposed in a legislative committee or in either House of the Legislature, or any matter which may be the subject of action by the Legislature;

2. Legislative agent. "Legislative agent" shall mean any person, firm, association or corporation that for hire or reward does any act to promote or oppose proposed legislation except to appear at public hearings before committees of the Legislature, and shall include all persons who for compensation shall approach individual members of the Legislature or members-elect thereof with the intent in any manner, directly or indirectly, to influence their action upon proposed legislation;

3. Legislative counsel. "Legislative counsel" shall mean any person who for compensation appears at any public hearing before committees of the Legislature in regard to proposed legislation;

4. "Official in the legislative branch. "Official in the legislative branch" means any candidate for the Legislature in a primary, special or general election, any member or member-elect of the Legislature, any member of a commission established by and responsible to the Legislature or either house thereof, and any staff person, assistant or employee of same, whether or not they receive compensation from the State;

5. Person. "Person" means an individual, corporation, association, firm, partnership, committee, club or other organization or group of persons.

§ 311. Registration

Any person or persons accepting employment to act as legislative counsel or agent to promote or oppose, directly or indirectly, legislation by the Legis-

lature shall within 48 hours after such employment cause his or their name or names to be entered upon a docket as provided, and all employers of such legislative counsel or agents shall within the same time, upon payment of a \$10 fee to the commission for each registrant, cause their names to be entered upon the same docket as provided.

§ 312. Registration docket; maintenance and inspection

The Legislative Ethics Commission shall prepare and keep a docket for the registration of legislative counsel or agents and of their employers, which docket shall be open to public inspection during the office hours of said commission and shall contain the names of legislative counsel and agents and of their employers, the addresses of each, the date and subject matter of the employment, and, by appropriate words, a designation of whether such employment is as counsel or agent or both. The docket shall also disclose the date on which the legislative counsel or agent expects his employment to end, a description of any and all fee arrangements and if the legislative counsel proposes to act on behalf of members of an association, group or other similar organization, the docket shall also include a statement of the number of members and a full description of the methods by which the legislative counsel or agent and his employer develops and makes decisions about positions on policy. Such docket shall be so arranged and indexed that under the name of each employer shall appear the names of all legislative counsel or agents employed by him and that the name or names of each employer represented by any counsel or agent shall appear under the name of such counsel or agent.

Each legislative counsel or agent shall file with the commission a report concerning his activities during the preceding calendar quarter by January 10th, March 10th, June 10th and September 10th of each year as long as he continues to engage in any activity requiring legislation. Such report shall be on a form prescribed by the commission, and shall include a complete and up-to-date statement of the information required to be supplied under this chapter, plus the following information for the preceding calendar quarter:

1. The legislative counsel or agent's total expenditures on lobbying;
2. A list of each fee paid to the legislative counsel or agent regardless of whether it was paid solely for acting as legislative counsel or agent, with the full name and complete address of each payer and the issue area, if any, for which such fee was earmarked;
3. A list of each honorarium, gift, loan or political contribution, including a service or anything of value, paid to an official in the legislative or executive branch, or to support or oppose a candidate for elective public office, by the legislative counsel or agent, or any employee or employer of the legislative counsel or agent;
4. A list of each legislative action and each administrative action supported or opposed by the legislative counsel or agent, or by his employee, or by any person retained or employed by the legislative counsel or agent or appearing on his behalf, together with a statement of the legislative counsel or agent's position for or against such action.

Each person about whose activities a legislative counsel or agent is required to report shall provide a full account of such activities to the legislative counsel or agent at least 5 days before his report is due to be filed.

Each person shall file a supplementary registration form with the commission no later than 5 days after any change in the information supplied in his last registration form. Such supplementary registration form shall include a complete description of the information that has changed.

Each registration form and report required to be filed under this section shall be signed and certified as true and correct by the legislative counsel or agent, or if the legislative counsel or agent is a person other than an individual, by an appropriate officer of such legislative counsel or agent.

Each person required to file a registration form or report under this chapter shall file a registration form or report that conforms to law and to the truth.

§ 313. No Contingent compensation

No person shall be employed as a legislative counsel or agent for compensation dependent upon a cotingency.

§ 314. Application of terms

This subchapter shall not apply to state, county, municipal or quasi-municipal officials, or their regularly elected or appointed subordinates, who act for no compensation other than their ordinary salary or compensation as such public officials or subordinates.

§ 315. Penalties

Whoever violates any provision of this subchapter shall be punished by a fine of not less than \$100 nor more than \$500, and the Attorney General shall cause prosecutions to be instituted for the violation of any of the provisions of said subchapter. Any person, firm or corporation who shall falsely enter upon the docket the name or names of any person or firm as his or their legislative counsel or agent shall be punished by a fine of \$100 and shall be answerable in damages to the person or firm whose name or names has been so falsely entered.

SUBCHAPTER II LEGISLATIVE ETHICS

§ 320. Statement of purpose

The Maine Legislature enjoys a high reputation for progressive accomplishment. The vast majority of its members are public officers of integrity and dedication, seeking at all times to maintain high standards of ethical conduct.

The public interest is best served by attracting and retaining in the Legislature men of high caliber and attainment. The public interest will suffer if unduly stringent requirements deprive government "of the services of all but princes and paupers."

Membership in the Legislature is not a full-time occupation and is not compensated on that basis; moreover, it is measured in 2-year terms, requiring each member to recognize and contemplate that his election will not provide him with any career tenure.

Most Legislators must look to income from private sources, not their public salaries, for their sustenance and support for their families; moreover, they must plan for the day when they must return to private employment, business or their professions.

The increasing complexity of government at all levels, with broader intervention into private affairs, makes conflicts of interest almost inevitable for all part-time public officials, and particularly for Legislators who must cast their votes on measure affecting the lives of almost every citizen or resident of the State. The adoption of broader standards of ethics for Legislators does not impugn either their integrity or their dedication; rather it recognizes the increasing complexity of government and private life and will provide them with helpful advice and guidance when confronted with unprecedented or difficult problems in that gray area involving action which is neither clearly right nor clearly wrong.

If public confidence in government is to be maintained and enhanced, it is not enough that public officers avoid acts of misconduct. They must also scrupulously avoid acts which may create an appearance of misconduct.

The Legislature cannot legislate morals and the resolution of ethical problems must indeed rest largely in the individual conscience. The Legislature may and should, however, define ethical standards, as most professions have done, to chart the areas of real or apparent impropriety.

§ 321. Legislative ethics

1. Authority. The commission shall have the authority:

A. To issue, on request of any Legislator, or on its own motion, advisory opinions and guidelines, on problems or questions involving possible conflicts of interest in matters under consideration by, or pertaining to the Legislature.

B. To investigate conflicts of interest, hold hearings and issue opinions thereon.

2. Procedure. The following procedures shall apply to all matters within the jurisdiction of the commission:

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 contain such supporting data as the commission may require.

B. The commission shall conduct such investigations and hold such public hearings as it deems necessary upon a majority vote of the members of the commission. When the conduct of a particular person is under inquiry, and a hearing is to be held, the person shall be given written noti-

cation of the conflicts alleged and of the time and place the hearing is to be held. Such notification shall be given not less than 10 days prior to the date set for the hearing.

C. The commission shall have the authority, through its chairman or any member designated by him, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records which the commission deems relevant. 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.

D. Any person whose conduct is under inquiry shall be provided with the fullest measure of due process, including the right to appeal to the Superior Court pursuant to Rule 80(b) of the Maine Rules of Civil Procedure and if requested, the right to a hearing. All witnesses shall be subject to cross examination. If the person who files the complaint fails to appear at the hearing, the complaint shall be dismissed with prejudice and the defendant legislator may bring an action in Superior Court against the complainant for damages to his reputation and for his reasonable attorney's fees.

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, 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 his testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearing, provided that the furnishing of such copy will not prejudice the public interest.

All witnesses shall be sworn. The commission shall not be 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.

E. A copy of the commission's advisory opinions and guidelines 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 and 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 it is appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

F. The records of the commission and all information received by the commission in the course of its investigation and conduct of its affairs, other than that disclosed at public hearings and its opinions and guidelines shall be confidential.

G. In addition to the foregoing, the commission shall have the authority to adopt, amend and repeal any rules and regulations it deems necessary to carry out this chapter, and it shall exercise all other powers and duties necessary to effect the purpose of this chapter.

§ 322. Conflict of interests

1. Actions affecting a Legislator's independence of judgment. It is presumed that a conflict of interest tending to impair a Legislator's independence of judgment exists in the following cases:

A. Having or acquiring a direct personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or deriving a direct personal financial benefit from close economic association with, or close relationship to, a person who the Legislator knows, or from the facts is presumed to know, has a direct financial interest in an enterprise affected by proposed legislation.

B. Close relationship to, or close economic association with, persons who are lobbying or persons who have employed a lobbyist to influence proposed legislation.

C. Acceptance of gifts from persons affected by legislation or who have an interest in a business 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 part.

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

E. Appearing for, representing or assisting another in respect to a claim before the Legislature, unless without compensation and for the benefit of a constituent.

F. Accepting or engaging in employment which could impair the Legislator's judgment, e.g., where the Legislator knows, or should know, that there is a substantial possibility that the opportunity for employment is being afforded him with intent to influence his conduct in the performance of his official duties or where the Legislator stands to derive a personal private gain or loss from his employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

G. Interest in legislation relating to a trade, business or employment in which the Legislator is engaged, where the benefit derived by the Legislator is unique and distinct from that of the general public or persons engaged in similar trades, businesses or employment.

H. Service as a member or chairman of a committee of a special interest organization, which organization is not charitable in nature, where it can be reasonably expected that the purpose of such service is to give advice on legislative matters or to influence or monitor legislation pertaining to the interests of the organization.

The following phrases, when used in the above provisions have the meaning ascribed to them as follows:

(1) "Close economic association" includes the Legislator's employer; employees; partner; corporations in which he is an officer, director or agent; corporations in which he owns 10% or more of the outstanding capital stock; clients; a business which is his significant unsecured creditor or a business of which he is a significant unsecured creditor.

(2) "Close relationship" includes natural and adopted members of the Legislator's immediate family.

2. Undue influence. It is presumed that a Legislator's personal interest conflicts with the public interest where there are circumstances which involve a substantial risk of undue influence as in the following cases:

A. Appearing for, representing or assisting another in a matter before a State agency or authority unless 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.

(2) 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 presumed that a conflict of interest based upon a Legislator's abuse of office or position exists in the following cases:

A. Having a financial interest, direct or indirect, 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 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.

The above provisions apply to all conflicts of interest of Legislators, whether those conflicts arise in the context of floor votes, committee action or attempts to influence the outcome of legislation.

If a member of the Legislature has a conflict of interest he shall be precluded from voting on any question in connection with the conflict in committee or in either branch of the Legislature and from attempting to influence the outcome of the legislation relating to the conflict.

§ 323. Voting

If a member of the Legislature has a conflict of interest under section 382 or as determined by the commission, he shall be precluded from voting on any question in connection with the conflict, in committee or in either branch of the Legislature and from attempting to influence the outcome of the legislation to which the conflict relates.

§ 324. Penalty for false accusations

Any person who files a false or groundless charge of a conflict of interest with the Legislative Ethics Commission, or any member of the commission, or whoever induces another to do so shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

§ 325. Membership on boards, authorities or commissions

It shall not be a conflict of interest for a Legislator to serve on a public board, authority or commission created by the Legislature so long as there is no consideration paid to the Legislator other than his actual expenses.

SUBCHAPTER III

DISCLOSURE OF ECONOMIC INTERESTS BY LEGISLATORS

SUBCHAPTER I

DISCLOSURE OF ECONOMIC INTERESTS

§ 330. Statement of economic interests

Each member of the Senate and House of Representatives shall file a statement of economic interests, as defined in this chapter, with the Legislative Ethics Commission within 30 days following his election to office.

§ 331. Form; contents

The statement of economic interests filed under this chapter will be on a form prescribed by the commission and shall be a matter of public record, and the person filing the statement shall supply the following information:

1. The identity, by name, of all offices, directorships and fiduciary relationships held by him directly or indirectly;
2. The description, including address, of all real estate in the State in which he has any interest, direct or indirect, including an option to buy;

3. The name of each creditor to whom he, his spouse, or any member of his immediate family, directly or indirectly, owes moneys in excess of \$1,000, the amount owed and the interest rate;

4. The name of each business, insurance policy, or trust which he, his spouse, or any member of his immediate family has a direct or indirect financial interest in and the nature and amount of such interest. Attorneys-at-law need not disclose the names of their clients;

5. Each source, by name, of any income to him, his spouse, or any member of his immediate family, exceeding \$100, including capital gains, whether or not taxable, received directly or indirectly during the preceding year.

§ 332. Updating statement

Any person who is required to file a statement of economic interests under this subchapter shall file an updating statement with the commission and on a form prescribed by the commission within one month of any addition, deletion, or change to the information supplied under this subchapter; provided that if the person has filed with the commission the description by name, amount and schedule of payments of a continuing arrangement relating to an item required to be reported. An updating statement need not be filed for each payment under such continuing arrangement, unless the arrangement is terminated or altered.

§ 333. False statement; failure to file

The failure to file a statement required by this subchapter or the filing of a false statement shall be punishable by a fine of not more than \$1,000 or imprisonment for not more than eleven months.

Sec. 2. R. S., T. 3, c. 19, repealed. Chapter 19 of Title 3 of the Revised Statutes, as enacted by chapter 146 of the public laws of 1971 and as amended, is repealed.

STATEMENT OF FACT

It is the intent of this legislation to create a Commission on Legislative Ethics and to give it the broad authority which it needs to regulate the ethical conduct of Legislators; to require disclosure of economic interests by Legislators; and to provide for the disclosure of certain information by lobbyists.