

# MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 2603

H. P. 2080

House of Representatives, March 22, 1974

Reported by Mr. Curtis from the Committee on State Government and printed under Joint Rules No. 18.

E. LOUISE LINCOLN, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

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**AN ACT Relating to Conflicts of Interest and Purchases by Governmental Units.**

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

Sec. 1. R. S., T. 17, § 3104, amended. Section 3104 of Title 17 of the Revised Statutes, as amended by section 1 of chapter 247 of the public laws of 1967, is further amended to read as follows:

**§ 3104. Conflicts of interest; purchases by the State**

No trustee, superintendent, treasurer or other person holding a place of trust in any state office or public institution of the State ~~or any officer of a quasi-municipal corporation~~ shall be pecuniarily interested directly or indirectly in any contracts made in behalf of the State or of the institution ~~or of the quasi-municipal corporation~~ in which he holds such place of trust, and any contract made in violation hereof is void. If such officer or person ~~or an official of any political subdivision of the State or an officer of a quasi-municipal corporation~~ receives any drawbacks, presents, gratuities or secret discounts to his own use on account of such contracts, or from the profits in any materials, supplies or labor furnished or done for the State or such institution ~~or such political subdivision~~ or such quasi-municipal corporation, he shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months. This section shall not apply to purchases of the State by the Governor and Council under authority of Title 1, section 814.

~~In the absence of actual fraud, no officer of a quasi-municipal corporation shall be deemed to be pecuniarily interested directly or indirectly in any~~

contracts made in behalf of the quasi-municipal corporation of which he is an officer merely because he is an officer, employee or stockholder of a private corporation contracting with the quasi-municipal corporation, unless such officer of a quasi-municipal corporation is directly or indirectly the owner of at least 10% of the stock of the private corporation

Sec. 2. R. S., T. 30, § 2250, additional. Title 30 of the Revised Statutes is amended by adding a new section 2250 to read as follows:

#### § 2250. Definitions

As used in section 2251, the following terms shall have the following meanings, unless the context otherwise indicates.

1. **Body.** "Body" means the governing unit of a municipality or county, and any subunit of government of a municipality or county, including, but not limited to, agencies, authorities, boards, commissions and offices.

2. **Official.** "Official" means any elected or appointed member of a municipal or county government or of a quasi-municipal corporation.

3. **Quasi-municipal corporation.** "Quasi-municipal corporation" means any governmental unit embracing a portion of a municipality, a single municipality or several municipalities which is created by law to deliver public services but which is not a general purpose governmental unit. This definition shall include, but not be limited to, utility districts under the jurisdiction of the Public Utilities Commission and School Administrative Districts.

Sec. 3. R. S., T. 30, § 2251, amended. Section 2251 of Title 30 of the Revised Statutes, as amended, is further amended to read as follows:

#### § 2251. Conflicts of interest

Certain proceedings of municipalities, counties and quasi-municipal corporations and ~~municipal~~ their officials are ~~void~~ voidable and actionable according to the following provisions.

1. **Voting.** The vote of a body is voidable ~~by~~ when any official of a ~~municipality~~ municipality in his official position votes on any question in which he has a direct or an indirect pecuniary interest ~~is void~~.

2. **Contracts.** A contract, other than a contract obtained through properly advertised bid procedures, made by a municipality, county or quasi-municipal corporation during the term of a ~~municipal~~ an official of a body of the municipality, county or quasi-municipal corporation involved in the negotiation or award of the contract who has a direct or an indirect pecuniary interest in it is ~~void~~ voidable, except as provided in subsection 4.

3. **Restrain proceedings.** The Superior Court may restrain proceedings ~~in a municipality~~ in violation of this section on the application of at least 10 ~~taxable~~ taxable residents of the municipality or county or area served by the quasi-municipal corporation.

Sec. 4. R. S., T. 30, § 2251, sub-§ 4, reenacted. Subsection 4 of section 2251 of Title 30 of the Revised Statutes, as amended and as last repealed by

section 2 of chapter 445 of the public laws of 1973, is reenacted to read as follows:

4. **Absence of actual fraud.** In the absence of actual fraud, an official of a body of the municipality or county government or of a quasi-municipal corporation involved in a question or in the negotiation or award of a contract shall be deemed to have a direct or indirect pecuniary interest in a question or in a contract where he is an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity to which the question relates or with which the unit of municipal or county government or the quasi-municipal corporation contracts only where the official is directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity.

Where an official is deemed to have a direct or indirect pecuniary interest, the vote on the question or the contract shall not be voidable and actionable if the official makes full disclosure of his interest prior to any action being taken and if he abstains from voting, from the negotiation or award of the contract, and from otherwise attempting to influence a decision in which he has an interest. The official's disclosure and a notice of his abstention from taking part in a decision in which he has an interest shall be recorded with the clerk or secretary of the municipal or county government or the quasi-municipal corporation.

#### STATEMENT OF FACT

The purpose of this Bill is to:

1. Remove certain references to officers of quasi-municipal corporations where these references are addressed in Title 30, section 2251 of the Revised Statutes.

2. Include officials of municipalities, counties and quasi-municipal corporations under a criminal provision regarding the receipt of drawbacks, gratuities, etc.

Section 2 of the Bill provides definitions of certain terms used in section 2251, including "official," "body" and "quasi-municipal corporation."

Section 3 of the Bill broadens Title 30, section 2251 of the Revised Statutes, relating to conflicts of interest of municipal officials to include the officials of counties and quasi-municipal corporations. This section provides that votes and contracts shall not be void due to an official's conflict of interest, but shall be voidable when such a conflict has occurred. The bill clarifies the statute by defining the circumstances in which there is a conflict of interest and also provides that a vote or a contract shall not be voidable where the official having the conflict of interest abstains from voting, makes a full disclosure of his interest in the vote, and does not in any other way attempt to influence the decision concerning the vote or contract.