

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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**Legislative Document**

**No. 29**

H. P. 18

Office of the Clerk of the House

Filed January 3, 1977, under Joint Rule No. 6 by Mrs. Kany of Waterville.  
To be printed and delivered to the House of Representatives of the 108th  
Legislature.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Concerning Conflicts of Interest in Offices Subject to Legislative  
Confirmation.**

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**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature, beginning January 4, 1977, will begin confirming certain gubernatorial nominees for appointive office who were formerly confirmed by the Executive Council; and

Whereas, one of the concerns in confirmation is over any possible conflict of interest on the part of a nominee were he confirmed to office; and

Whereas, it is vital that the Legislature has a clear and understandable standard whereby it may judge nominees for possible conflicts of interest; and

Whereas, it is also vital that this standard govern legislative confirmations at the earliest possible date in order to avoid any harm to the conduct of State Government because of conflicts of interest; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as necessary for the preservation of the public peace, health and safety; now, therefore,

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

3 MRSA § 153 is enacted to read:

§ 153. Legislative review of conflicts of interest in appointments subject to confirmation

1. **Definitions; conflict of interest.** "Conflict of interest" occurs whenever a nominee's private financial interests which have survived the nominee's appointment to office tend to interfere with the complete fidelity in the exercise of the powers and duties of the office which the officeholder owes to the State or whenever a nominee's appointment results in his holding 2 or more incompatible offices. If a definition or standard of conflict of interest in a particular office is set forth in the statutes relating to the powers and duties of the office, that definition or standard shall be applicable pursuant to this section.

2. **Legislative review.** Any legislative committee which reviews a Governor's nomination to an office, which by the Constitution or by law is subject to confirmation by the Legislature, shall have the authority to inquire into the income, assets and background of the nominee in order to determine whether or not a conflict of interest would exist in the nominee's exercise of the powers and duties of the office. When this duty so requires, the Legislature may grant to this committee the power to administer oaths, to issue subpoenas, to compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony and to cause the deposition of witnesses as provided in section 165, subsection 7. If the committee determines that a conflict of interest would exist if the nominee were confirmed, the committee shall recommend denial of the nomination.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

#### STATEMENT OF FACT

This bill would apply to legislative review of a Governor's nominations to office under the new constitutional procedure which took effect on January 4, 1977. The bill establishes a definition of conflict of interest derived in part from the common-law definition which the Supreme Judicial Court has employed. In **Opinion of the Justices**, (330 A. 2nd 912 at 916) the court stated:

"(t)he law requires of . . . (public officers) **perfect fidelity** in the exercise of . . . (the powers and duties of their office), . . . **whatever has a tendency to prevent their exercise of such fidelity is contrary to the policy of the law, and should not be recognized as lawful . . .**"  
(emphasis supplied) (113 Me. p. 321, 93 A. p. 829)."

A legislative committee would be required to inquire into the possibility of a conflict of interest on the part of a nominee and would have to recommend denial of the nomination if it determined that a conflict did exist.