

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2419

H.P. 1766 House of Representatives, March 3, 1988
Reported by Representative CARROLL from the Committee on
State and Local Government. Sent up for concurrence and
ordered printed. Approved by the Legislative Council on June
19, 1987.

Reference to the Committee on State and Local Government
suggested and printing ordered under Joint Rule 19.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

AN ACT Relating to Conflict of Interest for
Certain Governmental Officials and Employees.

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

6 Sec. 1. 5 MRSA §18, sub-§1, ¶B, as amended by
7 PL 1985, c. 779, §7, is further amended to read:

8 B. "Executive employee" means the constitutional
9 officers, the State Auditor, members of state

1 boards and commissions as defined in chapter 379,
2 except professional and occupational licensing
3 boards, advisory boards and compensated members of
4 the classified or unclassified service employed by
5 the Executive Branch, but it shall not include:

6 (1) The Governor;

7 (2) Employees of and members serving with
8 the National Guard;

9 (3) Employees of the University of Maine
10 System, the Maine Maritime Academy and
11 State state vocational-technical institutes;
12 and

13 (4) Employees who are employees solely by
14 their appointment to an advisory body.

15 Sec. 2. 5 MRSA §18, sub-§2, ¶A, as enacted by
16 PL 1979, c. 734, §2, is repealed and the following
17 enacted in its place:

18 A. Executive employee, the executive employee's
19 spouse, children or parents;

20 Sec. 3. 5 MRSA §18, sub-§3, as enacted by PL
21 1979, c. 734, §2, is amended to read:

22 3. Former executive employee. A former executive
23 employee commits a civil violation if he the
24 executive employee, within one year after his the
25 executive's employment has ceased, either knowingly
26 acts as an agent or attorney for, or appears
27 personally in any proceeding before a state or
28 quasi-state agency for anyone other than the State
29 in connection with a proceeding in which: by which
30 the executive employee was previously employed or
31 before the state board of which the executive employee
32 was a member; except that nothing may prohibit a
33 former executive employee from appearing before any
34 state agency, quasi-state agency or any board on
35 behalf of or at the request of the State.

36 ~~A. The State is a party or has a direct and~~

1 substantial-interest;-and

2 A-1. No former executive employee may knowingly
3 act as an agent or attorney for or appear
4 personally in any proceeding for anyone other than
5 the State in connection with a proceeding in which
6 the particular matter at issue was pending before
7 the executive employee's agency and was directly
8 within the responsibilities of the executive
9 employee at any time within one year prior to the
10 termination of the executive employee's employment.

11 B. The particular matter at issue was pending
12 before his agency and was directly within his
13 official responsibilities as an executive employee
14 at any time within one year prior to the
15 termination-of-his-employment.

16 Sec. 4. 5 MRSA §18, sub-§§6 to 9 are enacted to
17 read:

18 6. Avoidance of appearance of conflict of
19 interest. Every executive employee shall avoid the
20 appearance of a conflict of interest. To achieve this
21 purpose, an executive employee shall:

22 A. In any proceeding, place the public interest
23 before the employee's private interest;

24 B. Not accept outside business or other
25 obligations regulated by the agency or
26 organizations with which the executive employee
27 serves;

28 C. Not engage in unprofessional conduct or
29 improprieties, or give the appearance of
30 improprieties, by which the objective judgment of
31 the employee in a proceeding may be impaired or
32 the confidence or trust of the public in the
33 proceeding is jeopardized;

34 D. Reject gifts or favors from persons whose
35 influence or interests are likely to be the
36 subject of the official's or employee's action; and

1 E. Disclose at the beginning of any proceeding
2 any of the following that apply:

3 (1) Any direct or substantial financial
4 interest in the proceeding of any person,
5 firm or organization defined in subsection 2;

6 (2) Any relationships, including close
7 personal friendships, of the executive
8 employee with any person, firm or
9 organization defined in subsection 2 which is
10 appearing in a proceeding before the board or
11 agency;

12 (3) Any gifts or loans of more than \$100
13 provided to the executive employee in the
14 previous 2 years by any person, firm or
15 organization appearing in a proceeding before
16 the board; and

17 (4) Any close personal friendships with any
18 person, firm or organization in a proceeding
19 before the board or agency.

20 7. Abstention. In the event that an executive
21 employee, by participating in any proceeding, is in
22 violation of this section, including subsection 4, the
23 executive employee shall abstain from the proceeding
24 and from participating in or contributing to any
25 decision rendered in the proceeding.

26 A. For the purpose of this section, abstention
27 shall require the executive employee to vacate the
28 room in which the proceeding is being held and
29 avoid contact with those people involved in the
30 proceeding.

31 Nothing in this section prevents an executive
32 employee from abstaining in any proceeding which
33 the employee believes would constitute a conflict
34 of interest, or give the appearance of a conflict
35 of interest, or would adversely affect the public
36 trust or confidence in the proceeding.

37 8. Application of common law. The courts shall

1 apply common law to any issue or aspect of conflict of
2 interest that is not governed or addressed by any
3 provision of the Maine Revised Statutes.

4 9. Application of more stringent statutory
5 provisions. In the event that other statutory
6 conflict of interest provisions pertaining to any
7 state agency, quasi-state agency or state board are
8 more stringent than the provisions in this section,
9 the more stringent provisions shall apply.

10 Sec. 5. 5 MRSA §19, sub-§1, ¶A, as enacted by
11 PL 1979, c. 734, §2, is amended to read:

12 A. "Appointed executive employee" means a
13 compensated member of the classified or
14 unclassified service employed by the Executive
15 Branch, who is appointed by the Governor and
16 confirmed by the Legislature, serves in a major
17 policy-influencing position as set forth in
18 chapter 71, advises or recommends policy or
19 decisions to an executive employee, or is a member
20 of a board or commission as defined in section
21 12004, except professional and occupational
22 licensing boards and advisory boards.

23 Sec. 6. 5 MRSA §19, sub-§2, as enacted by PL
24 1979, c. 734, §2, is repealed.

25 Sec. 7. 5 MRSA §19, sub-§2-A is enacted to read:

26 2-A. Statement of sources of income. Each
27 executive employee shall annually file with the
28 Secretary of State a sworn and notarized statement of
29 finances for the preceding calendar year. The
30 statement shall indicate:

31 A. The name and address of, the nature of
32 association with, the share of equity in, if
33 applicable, and the amount of income if greater
34 than \$1,000 derived from each business with which
35 the executive employee is associated;

36 B. The identity of all securities and other
37 investments with a fair market value of greater

1 than \$1,000 which were beneficially owned, not
2 otherwise reportable under this subsection, and
3 the amount of income if over \$1,000 from any such
4 security which is issued by the State, any
5 political subdivision of the State or any public
6 agency or authority created by the Legislature;

7 C. The name and address of the donor and the fair
8 market value, if determinable, of any gifts
9 aggregating more than \$100 in the calendar year,
10 if the recipient is an executive employee and the
11 source of the gift or gifts was a person now
12 having a direct interest in a matter before the
13 governmental body by which the recipient is
14 employed;

15 D. The name and address of any business from
16 which the reporting person is taking a leave of
17 absence; and

18 E. The identity of any equity in a business with
19 which the reporting person is associated which has
20 been transferred to a member of the reporting
21 person's immediate family, provided that a member
22 of the reporting person's family need not report
23 any such transfer.

24 Nothing in this subsection may be construed to require
25 the disclosure of information which is privileged by
26 law.

27 No executive employee may be required to file a
28 statement of financial interest for the year in which
29 the executive employee ceased to be a public employee
30 and served less than 30 days in that year.

31 Sec. 8. 30 MRSA §2251, as amended by PL 1975,
32 c. 544, §§1 and 2, is repealed.

33 Sec. 9. 30 MRSA §2251-A is enacted to read:

34 §2251-A. Conflicts of interest

35 1. Definitions. As used in this section, unless
36 the context indicates otherwise, the following terms

1 have the following meanings.

2 A. "County official" means any elected or
3 appointed member of a county government and any
4 director of any department or office of county
5 government.

6 B. "Municipal official" means any elected or
7 appointed member of a municipal government,
8 including directors of departments and offices of
9 municipal government.

10 C. "Official" means any county or municipal
11 official.

12 D. "Participate in an official capacity" means to
13 take part in reaching a decision or recommendation
14 in a proceeding that is within the authority of
15 the position held.

16 E. "Proceeding" means an application, request,
17 ruling, determination, award, contract, claim,
18 controversy, charge, accusation, arrest or other
19 matter relating to governmental action or inaction.

20 2. Restrictions and violations. An official
21 commits a civil violation if that official personally
22 and substantially participates in an official capacity
23 in any proceeding in which, to the official's
24 knowledge, any of the following have a direct and
25 substantial financial interest:

26 A. The official, the official's spouse, children
27 or parents;

28 B. The official's partners;

29 C. A person or organization with whom the
30 official is negotiating or has agreed to an
31 arrangement concerning prospective employment;

32 D. An organization in which the official has a
33 direct and substantial financial interest; or

34 E. Any person with whom the official has been

1 associated as a partner or a fellow shareholder in
2 a professional service corporation pursuant to
3 Title 13, chapter 22, during the preceding year.

4 3. Former official. A former official commits a
5 civil violation if that former official, within one
6 year after the official's employment has ceased, either
7 knowingly acts as an agent or attorney for, or appears
8 personally before, the municipal or county agency or
9 board by which the former official was previously
10 employed or of which the former official was a member;
11 except that nothing may prohibit a former official
12 from appearing before any municipal or county agency
13 or any board on behalf of or at the request of the
14 county or municipality.

15 4. Avoidance of appearance of conflict of
16 interest. Every official shall avoid the appearance
17 of a conflict of interest. To achieve this purpose,
18 an official shall:

19 A. In any proceeding, place the public interest
20 before the official's private interest;

21 B. Not accept outside business or other
22 obligations regulated by the agency or
23 organization with which the official serves;

24 C. Not engage in unprofessional conduct or
25 improprieties, or give the appearance of
26 improprieties, by which the objective judgment of
27 the official in a proceeding may be impaired or
28 the confidence or trust of the general public in
29 the proceeding is jeopardized;

30 D. Reject gifts or favors from persons whose
31 influence or interests are likely to be the
32 subject of the official's or employee's action; and

33 E. Disclose at the beginning of any proceeding
34 any of the following that apply:

35 (1) Any direct or substantial financial
36 interest in the proceeding of any person,
37 firm or organization defined in subsection 2;

1 (2) Any relationships of the official with
2 any person, firm or organization defined in
3 subsection 2 which is appearing in a
4 proceeding before the board or agency;

5 (3) Any gifts or loans of more than \$100
6 provided to the official within the previous
7 2 years by any person, firm or organization
8 appearing in a proceeding before the board; or

9 (4) Any close personal friendships of the
10 official with any person, firm or
11 organization appearing before the agency or
12 board.

13 5. Abstention. If an official, by participating
14 in any proceeding, would be in violation of this
15 section, including subsection 4, the official shall
16 abstain from the proceeding and from participating in
17 or contributing to any decision considered in the
18 proceeding.

19 A. For the purpose of this section, abstention
20 shall require the official to vacate the room in
21 which the proceeding is being held and avoid
22 contact with those people involved in the
23 proceeding.

24 B. Nothing in this section may prevent an
25 official from abstaining in any proceeding which
26 the official believes would constitute a conflict
27 of interest, give the appearance of a conflict of
28 interest or adversely affect the public trust or
29 confidence in the proceeding.

30 6. Application of common law. The court shall
31 apply common law to any issue or aspect of conflict of
32 interest that is not governed or addressed by any
33 provision of the Maine Revised Statutes.

34 7. Application of more stringent statutory
35 provisions. In the event that other statutory
36 conflict of interest provisions, ordinances or charter
37 provisions pertaining to any county or municipal

1 agency or board are more stringent than the provisions
2 in this section, the more stringent provisions shall
3 apply.

4 8. Construction of section. This section may not
5 be construed to prohibit former officials from doing
6 personal business with the municipality or county.
7 This section shall not limit the application of any
8 provisions of Title 17-A, chapter 25.

9 9. Penalty. A violation of this section is a
10 civil violation for which a forfeiture of not more
11 than \$1,000 may be adjudged.

12 Sec. 10. 30 MRSA §2251-B is enacted to read:

13 §2251-B. Financial disclosure by municipal and county
14 officials

15 1. Definitions. As used in this section, unless
16 the context indicates otherwise, the following terms
17 have the following meanings.

18 A. "Official" means a county or municipal
19 official, as defined in §2251-A.

20 B. "Income" means economic gain from any source,
21 including compensation for services, including
22 fees, commissions and payments in kind; income
23 derived from business; gains derived from property
24 transactions, rents or royalties; income from
25 investments, including interest, capital gains and
26 dividends; alimony or separate maintenance
27 payments; annuities; income from life insurance or
28 endowment contracts; pensions; discharges of
29 indebtedness; distributive share of partnership
30 income; income from an interest in an estate or
31 trust; and prizes, awards, grants or gifts.

32 2. Statement of sources of income. Each
33 municipal official shall annually file with the
34 municipal clerk, and each county official shall file
35 with the county clerk or county administrator, a sworn
36 and notarized statement of finances for the preceding
37 calendar year. The statement shall indicate:

1 A. The name and address of, the nature of
2 association with, the share of equity in, if
3 applicable, and the amount of income if greater
4 than \$1,000 derived from each business with which
5 the official is associated;

6 B. The identity of all securities and other
7 investments with a fair market value of greater
8 than \$1,000 which were beneficially owned, not
9 otherwise reportable under this section and the
10 amount of income if over \$1,000 from any such
11 security which is issued by the State, any
12 political subdivision of the State or any public
13 agency or authority created by the Legislature,
14 county or municipality;

15 C. The name and address of the donor and the fair
16 market value, if determinable, of any gifts
17 aggregating more than \$100 in the calendar year,
18 if the recipient is an official and the source of
19 the gift or gifts is a person now having a direct
20 interest in a matter before the governmental body
21 by which the recipient is employed; and

22 D. The name and address of any business from
23 which the reporting person is taking a leave of
24 absence;

25 E. The identity of any equity in a business with
26 which the reporting person is associated which has
27 been transferred to a member of the reporting
28 person's immediate family, provided that a member
29 of the reporting person's family need not report
30 any such transfer.

31 Nothing in this section may be construed to require
32 the disclosure of information which is privileged by
33 law.

34 No official may be required to file a statement of
35 financial interest for the year in which that official
36 ceased to be a public employee and served less than 30
37 days in that year.

1 3. Time for filing. The times for filing reports
2 are as follows.

3 A. An elected official shall file an initial
4 report within 30 days of election. An appointed
5 official shall file an initial report prior to
6 assuming official responsibilities.

7 B. Each official shall file the annual report
8 prior to the close of the 2nd week in April,
9 unless the official has filed an initial or
10 updated report during the preceding 30 days.

11 C. Each official whose income substantially
12 changes shall file a report of that change within
13 30 days of the change.

14 4. Penalties. Failure to file the statement,
15 within 15 days of notification by the municipal clerk
16 of failure to meet the requirements of subsection 2,
17 is a civil violation for which a forfeiture of not
18 more than \$100 may be adjudged.

19 STATEMENT OF FACT

20 This bill is the product of a study conducted by
21 the Joint Standing Committee on State and Local
22 Government with respect to conflict of interests
23 involving governmental officials and employees,
24 excluding Legislators. The committee, through public
25 hearings, questionnaire results and analysis of state
26 laws governing conflict of interest, found that there
27 is a significant potential for a conflict of interest
28 problem that can easily be addressed by several
29 changes in the statutes governing conflict of interest.

30 This bill proposes the following:

31 1. That members of state boards and commissions
32 be subject to the same statutory conflict of interest
33 provisions governing state employees;

34 2. That municipal and county officials along with
35 municipal and county department directors be subject

1 to similar statutory conflict of interest provisions
2 governing state employees;

3 3. That state employees, members of boards and
4 commissions and municipal and county officials:

5 A. Be required to abstain in any proceeding in
6 which these people or the children or parents of
7 these employees, board members or officials are
8 involved;

9 B. Avoid all appearances of a conflict of
10 interest;

11 C. Remove themselves from the room or site of the
12 proceedings in which a decision is being made from
13 which they are required or wish to abstain;

14 D. Disclose at the beginning of any proceeding
15 any:

16 (1) Direct or substantial financial interest
17 they may have in the proceeding;

18 (2) Close personal friendships or blood
19 relations with any person appearing in a
20 proceeding; and

21 (3) Gifts or loans of more than \$100
22 provided by persons involved in the
23 proceedings; and

24 E. File a disclosure statement annually with the
25 Secretary of State or the town clerk, for
26 municipal officials, in which the following
27 information is provided:

28 (1) Equity investments on which more than
29 \$1,000 of income is derived from any business
30 in which the employees, officials or board
31 members are associated;

32 (2) All securities and investments issued by
33 the State or state agency or political
34 subdivision in which the officials, board

1 members or state employees derived more than
2 \$1,000 of income;

3 (3) All gifts of more than \$100 if the gift
4 is derived from a person having a direct
5 interest in a matter before the governmental
6 body in which the recipient is appointed or
7 employed; and

8 (4) Equity investment in a business with
9 which the reporting person is associated and
10 which has been transferred to the reporting
11 person's immediate family;

12 4. That former state employees, board members and
13 municipal and county officials be required for one
14 year not to personally appear in a proceeding for a
15 client, unless requested by the State or political
16 subdivision, before any board or agency with which
17 they were previously employed;

18 5. That common law provisions apply to any
19 conflict of interest issue or provision not governed
20 or addressed by statute; and

21 6. That existing statutory conflict of interest
22 provisions, governing individual boards, commissions
23 and agencies, that are more stringent than the
24 provisions of this bill shall apply.

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