

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 302

H.P. 222

House of Representatives, February 21, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script, reading "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CARROLL of Gray.

Cosponsored by Representative HANDY of Lewiston, Senator BOST of Penobscot and Senator BALDACCI of Penobscot.

STATE OF MAINE

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

An Act Relating to Conflict of Interest and Financial Disclosure for
Government Officials and Employees.



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

3 Sec. 1. 1 MRSA §1014, sub-§4 is enacted to read:

5 4. Former legislator. Former Legislators shall be subject
7 to this subsection with respect to proceedings in which the
Legislature is a party or has a direct and substantial interest.

9 A. No former Legislator may knowingly act as an agent or
11 attorney for, or appear personally before, the Legislature
13 for anyone other than the State for a one-year period
15 following termination of the Legislator's term in connection
with a proceeding in which the specific issue was pending
before the Legislature during a period terminating at least
12 months prior to the termination of that Legislator's term.

17 B. No former Legislator may knowingly act as an agent or
19 attorney for, or appear personally before, the Legislature
21 for anyone other than the State at any time following
23 termination of the Legislator's term in connection with a
proceeding in which the specific issue was pending before
the Legislature during the 12-month period immediately
preceding the termination of the Legislator's term.

25 For purposes of this subsection, "Legislature" includes any
27 legislative committee, subcommittee or any board or commission in
29 which a member of the Legislature participates. No former
31 Legislator shall be prohibited from appearing before the
Legislature on an issue in which the former Legislator's only
official action was to vote on a bill in the Maine Senate or in
the Maine House of Representatives.

33 Sec. 2. 1 MRSA §1016, as enacted by PL 1975, c. 621, §1, is
35 repealed and the following enacted in its place:

37 §1016. Financial disclosure

39 Every Legislator shall complete a financial disclosure form
41 prescribed by the commission and prepared by the Secretary of
43 State. The financial disclosure statement shall be filed with
45 the commission prior to the close of the 2nd week in February of
each year. The statement is a matter of public record. Prior to
the end of the first week in January of each year, the Secretary
of State shall deliver a form to each of the members of the
Senate and House of Representatives.

47 1. Disclosure of income. The Legislator filing the
49 statement shall specify the names of each source of income which
51 accounts for 10% or more of the Legislator's total household
income according to the range of income derived from each
source. The following ranges of income shall apply, except for

1 ranges which comprise less than 10% of the Legislator's total
2 household income:

3 A. \$ 300 - \$ 999;

5 B. \$ 1,000 - \$ 4,999;

7 C. \$ 5,000 - \$ 9,999;

9 D. \$ 10,000 - \$ 24,999;

11 E. \$ 25,000 - \$ 49,999;

13 F. \$ 50,000 - \$ 74,999;

15 G. \$ 75,000 - \$ 99,999; and

17 H. \$100,000 or more.

19 For the purpose of this subsection, owners of retail sales and
21 service establishments, except professional services, shall not
22 be required to list individual customers or clients for the
23 purpose of identifying sources of income. "Professional
24 services" means any service for which licensing, certification or
25 registration is required except professional health services,
26 clerical services and skilled or unskilled trade services.

27 2. In-kind income. The Legislator shall report income
28 received in-kind, including, but not limited to, the transfer of
29 property, options to buy or lease and stock certificates by:

31 A. Identifying the specific name of each source of in-kind
32 income;

34 B. Describing each type of in-kind income; and

36 C. The estimated value of each type of income according to
37 the ranges established in this subsection.

38 3. Income not subject to disclosure. Campaign
39 contributions, duly recorded as required by law, are deemed not
40 to be income for the purposes of this section.

41 4. Business with state agencies. Each Legislator shall
42 identify each state agency to which that Legislator or any member
43 of that Legislator's immediate family has sold goods or services
44 and the estimated income derived from each agency during the
45 previous calendar year.

46 Sec. 3. 1 MRSA §1017, as amended by PL 1981, c. 698, §2, is
47 repealed and the following enacted in its place:

1 §1017. Disclosure of information to protect public interest

3 Each Legislator shall complete a disclosure form prescribed
5 by the commission and prepared by the Secretary of State
7 disclosing information for protection of the public interest as
9 required in this section. The requirements of this disclosure
11 form may be incorporated with the requirements of the financial
13 disclosure form as defined in section 1016, except that the
15 financial disclosure information and the public interest
 information shall be separate sections on the same form. Prior
 to the end of the first week in January of each year the
 Secretary of State shall deliver the form to each of the members
 of the Senate and House of Representatives. This disclosure
 shall be filed with the commission prior to the close of the 2nd
 week in February of each year.

17 1. Representation before state agencies. The Legislator
19 shall identify each state agency before which the Legislator has
21 represented or assisted others for compensation during the
23 preceding 2 calendar years. The Legislator shall identify the
 persons, firms, corporations and interest groups which the
 Legislator represented or assisted for compensation before these
 state agencies.

25 2. Attorneys serving as Legislators. Attorneys who are
27 elected to the Maine Legislature shall indicate their major areas
29 of law practice and, if associated with a law firm, the major
 areas of law practice of the firm in such manner as the
 commission requires.

31 3. Officers and directorships. Each Legislator shall
33 identify each office or position on the board of directors of any
35 private profit-making or nonprofit firm, corporation or
 organization that the Legislator holds or has held for the
 previous 2 calendar years.

37 4. Transfer of business equity. Each Legislator shall
39 identify any equity in a business with which the Legislator is
41 associated which has been transferred to a member of the
 Legislator's family, provided that a member of the Legislator's
 family need not report this equity transfer.

43 Nothing in this section may be construed to require the
45 disclosure of information which is privileged by law.

47 Sec. 4. 5 MRSA §18, sub-§2, ¶A, as enacted by PL 1979, c. 734,
 §2, is repealed and the following enacted in its place:

49 A. The employee or the employee's spouse, children or
51 parents;

1 Sec. 5. 5 MRSA §18, sub-§§3-A, 3-B and 3-C are enacted to read:

3 3-A. Disclosure of information to protect public interest.
5 Every executive employee shall disclose at the beginning of any
7 proceeding any of the following that apply and shall not
 participate in the proceeding, including the rendering of a
 decision:

9 A. Any direct or substantial financial interest in the
11 proceeding before a board or state agency involving any
 person, firm or organization defined in subsection 2;

13 B. Any relationships defined in subsection 2, paragraph A
15 of the executive employee with any person, firm or
 organization defined in subsection 2 which is appearing in a
17 proceeding before the board or agency; and

19 C. Any gifts or loans of more than \$100 provided to the
21 executive employee in the previous 2 years by any person,
 firm or organization appearing in a proceeding before the
 board or agency.

23 3-B. Abstention. If an executive employee, by
25 participating in any proceeding, is in violation of this section,
27 the executive employee shall abstain from the proceeding and from
 participating in or contributing to any decision rendered in the
 proceeding.

29 A. For the purpose of this section, abstention shall
31 require the executive employee to withdraw from the room in
33 which the proceeding is being held and from those people
 involved in the proceeding.

35 B. Nothing in this section may prevent an executive
37 employee from abstaining in any proceeding which the
39 employee believes would constitute a conflict of interest or
 give the appearance of a conflict of interest or would
 adversely effect the public trust or confidence in the
 proceeding.

41 3-C. Rejection of gifts or favors. Every executive
43 employee shall reject gifts or favors from persons whose
45 influence or interests could reasonably be expected to be the
 subject of the official's or employee's action.

47 Sec. 6. 5 MRSA §19, sub-§2, as enacted by PL 1979, c. 734, §2,
 is repealed and the following enacted in its place:

49 2. Financial disclosure required. Each executive employee
51 shall annually complete a financial disclosure form prescribed by
 the Director of the Bureau of Human Resources. The financial

1 disclosure statement shall be a sworn and notarized statement of
3 finances for the preceding calendar year. The statement shall be
5 filed with the Secretary of State prior to the close of the 2nd
7 week in February of each year. The statement is a matter of
9 public record.

11 The executive employee filing the statement shall specify the
13 names of each source of income accounting for \$300 or more of the
15 executive employee's total household income according to the
17 range of income that applies to each source of income. The
19 following ranges of income shall apply:

21 A. \$ 300 - \$ 999;

23 B. \$ 1,000 - \$ 4,999;

25 C. \$ 5,000 - \$ 9,999;

27 D. \$ 10,000 - \$ 24,999;

29 E. \$ 25,000 - \$ 49,999;

31 F. \$ 50,000 - \$ 74,999;

33 G. \$ 75,000 - \$ 99,999; and

35 H. \$100,000 or more.

37 For the purpose of this section, executive employees who are
39 owners of retail sales and service establishments, except
41 professional services, shall not be required to list individual
43 customers or clients for the purpose of identifying sources of
45 income. "Professional services" means any service for which
47 licensing certification or registration is required, except
49 professional health services, clerical services and skilled or
51 unskilled trade services.

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

2-A. Transfer of business equity. Each executive employee
shall identify in the financial disclosure statement any equity
in a business with which the employee is associated which has
been transferred to any person, firm or organization as defined
in subsection 2, provided that a member of the executive
employee's family need not report the equity transfer.

Sec. 8. 30-A MRSA §§2605-A and 2605-B are enacted to read:

§2605-A. Conflicts of interest

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

1 A. "County officer" means any elected member of a county
3 government.

5 B. "Municipal officer" means any elected member of a
7 municipal government and excludes members of municipal
9 boards and commissions and independent municipal
 organizations such as water districts and similar
 organizations.

11 C. "Officer" means any county or municipal officer.

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

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

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

29 A. The officer or the officer's spouse, children or parents;

31 B. The officer's partners;

33 C. A person or organization with whom the officer is
35 negotiating or has agreed to an arrangement concerning
 prospective employment;

37 D. An organization in which the officer has a direct and
 substantial financial interest; or

39 E. Any person with whom the officer has been associated as
41 a partner or a fellow shareholder in a professional service
43 corporation pursuant to Title 13, chapter 22, during the
 preceding year.

45 3. Disclosure of information required. Each officer, at
47 the beginning of any proceeding, shall disclose any of the
 following that apply:

49 A. Any direct or substantial financial interest in the
51 proceeding of any person, firm or organization defined in
 subsection 2;

1 B. Any relationship of the officer with any person, firm or
3 organization defined in subsection 2 which is appearing in a
 proceeding before the officer; and

5 C. Any gifts or loans of more than \$100 provided to the
7 officer within the previous 2 years by any person, firm or
 organization appearing in a proceeding before the officer.

9 If any of the provisions of this subsection apply, the officer
11 shall not participate in the proceeding or in the rendering of a
 decision.

13 4. Abstention. If an officer, by participating in any
15 proceeding, is in violation of this section, the officer shall
 abstain from the proceeding and from participating in or
17 contributing to any decision considered in the proceeding.

19 A. For the purpose of this section, abstention shall
21 require the officer to withdraw from the room in which the
 proceeding is being held and from those people involved in
 the proceeding.

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

29 5. Application of more stringent statutory provisions. If
31 other statutory conflict of interest provisions, ordinances or
 charter provisions pertaining to any county or municipal officer
33 are more stringent than the provisions in this section, the more
 stringent provisions shall apply.

35 6. Construction of section. This section may not be
37 construed to prohibit former officers from doing personal
 business with the municipality or county. This section shall not
39 limit the application of any provisions of Title 17-A, chapter 25.

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

45 **§2605-B. Financial disclosure by municipal and county officers**

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

49 1. Definitions. As used in this section, unless the
51 context indicates otherwise, the following terms have the
 following meanings.

1 A. "Officer" means a county or municipal officer as defined
3 in section 2605-A.

5 B. "Income" means economic gain from any source, including
7 compensation for services, including fees, commissions and
9 payments in kind; income derived from business; gains
11 derived from property transactions, rents or royalties;
13 income from investments, including interest, capital gains
15 and dividends; alimony or separate maintenance payments;
 annuities, income from life insurance or endowment
 contracts; pensions; discharges of indebtedness;
 distributive share of partnership income; income from an
 interest in an estate or trust; and prizes, awards, grants
 or gifts.

17 C. "Professional services" means any service for which
19 licensing, certification or registration is required, except
21 clerical services, skilled or unskilled trade services and
 professional health services.

23 2. Financial disclosure. Every officer shall annually
25 complete a financial disclosure form similar to the form
27 prescribed for state Legislators under Title 1, chapter 25.
29 County officers shall file the financial disclosure statement
31 with the county clerk or county administrator and municipal
 officers shall file financial disclosure statements with the
 municipal clerk or municipal administrator prior to the close of
 the 2nd week in February of each year. The financial disclosure
 statement is a matter of public record.

33 The officer filing the statement shall specify the names of each
35 source of income which accounts for 10% or more of the officer's
 total household income according to the range of income that
 applies to the specific income source. The following ranges of
 income shall apply:

37 A. \$ 300 - \$ 999;

39 B. \$ 1,000 - \$ 4,999;

41 C. \$ 5,000 - \$ 9,999;

43 D. \$ 10,000 - \$ 24,999;

45 E. \$ 25,000 - \$ 49,999;

47 F. \$ 50,000 - \$ 74,999;

49 G. \$ 75,000 - \$ 99,999; and

51 H. \$100,000 or more.

1 For the purpose of this section, officers who are owners of
3 retail sales and service establishments, except professional
5 services, shall not be required to list individual customers or
 clients for the purpose of identifying sources of income.

7 Each officer shall identify each municipal or county agency to
9 which the officer or an immediate family member of the officer
11 sold goods and services. This disclosure shall include the
 income derived from each agency during the previous calendar year.

13 3. Income not subject to disclosure. Campaign
15 contributions, duly recorded as required by law, are deemed not
 to be income for the purposes of this section.

17 4. Attorneys serving as county or municipal officers.
19 Attorneys who serve as county or municipal officers as defined in
21 section 2605-A shall indicate their major areas of law practice
 and, if associated with a law firm, the major areas of law
 practice of the firm.

23 5. Officers and directorships. Each officer shall identify
25 each office or position on the board of directors of any private
 profit-making or nonprofit firm, corporation or organization that
 the officer holds or has held for the previous 2 calendar years.

27 6. Transfer of business equity. Each officer shall
29 identify any equity in a business with which the officer is
31 associated which has been transferred to a member of the
 officer's family, provided that a member of an officer's family
 need not report this equity transfer.

33 7. Time for filing. Reports shall be filed according to
35 this subsection.

37 A. An elected officer shall file an initial report within
 30 days of the election.

39 B. Each officer shall file the annual report prior to the
41 close of the 2nd week in April, unless the officer has filed
 an initial or updating report during the preceding 30 days.

43 C. Each officer whose income substantially changes shall
45 file a report of that change within 30 days of the income
 change.

47 **Sec. 9. Effective date.** Section 1 of this Act shall take effect
49 on December 1, 1991.

STATEMENT OF FACT

This bill strengthens statutory conflict of interest provisions for Legislators, executive employees and elected county and municipal officers. With respect to Legislators and elected county and municipal officers, this bill proposes:

1. A "revolving door" provision that prohibits Legislators from serving as lobbyists and agents before legislative committees for one year with respect to issues that were before them in committee 12 months or longer prior to their termination of office. Legislators are prohibited from appearing before legislative committees on any issue that was pending before them in committee within the last 12 months of their terms of office;

2. That Legislators and elected county and municipal officers name the sources of their household income for sources which comprise 10% or more of their total household income. No Legislator or officer would have to identify sources of income of less than \$300;

3. That Legislators and elected county and municipal officers identify the income range of each source of reportable household income;

4. That Legislators and elected county and municipal officers identify any position they may hold on a board of directors of a private profit-making or nonprofit corporation; and

5. That each Legislator and elected county and municipal officer identify any equity in a business with which the Legislator or officer is associated which has been transferred to a member of the Legislator's or officer's family.

With respect to executive employees, the bill proposes:

1. To include children and parents of executive employees in current law relating to conflict of interest. The intent of this provision is to prevent executive employees in making decisions that would create financial benefits for their children or parents;

2. To require executive employees to disclose, at the beginning of any proceeding, any immediate family relationships or business partner relationships that executive employees have with persons or firms appearing before them in proceedings. In addition, executive employees are prohibited in this case from participating in the proceeding, including the rendering of a decision;

3. To require executive employees to disclose, at the

1 beginning of a proceeding, any gifts of more than \$100 provided
2 to an executive employee by any person or organization within the
3 previous 2 years; and

5 4. That executive employees, including persons in major
6 policy decisions, to disclose the name of each source of income
7 of \$300 or more. Executive employees will identify a range of
8 income for each source of income.

9
10 For the purposes of disclosing income as required in this
11 bill, any person who is the owner of a retail sales establishment
12 or service, except professional services, is not required to list
13 individual customers or clients for the purpose of identifying
14 sources of income.

15