

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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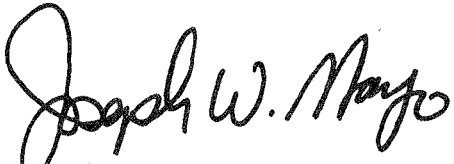
House of Representatives, April 15, 1997

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**An Act Regarding the Activities of Nonprofit Corporations.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.

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

4 Sec. 1. 13-B MRSA c. 10-A is enacted to read:

6 CHAPTER 10-A

8 TRANSFER, RESTRUCTURING OR CONVERSION OF

10 NONPROFIT CORPORATION

12 §1051. Application

14 This chapter applies to the transfer, restructuring or  
16 conversion of any nonprofit corporation, whether established  
18 through a special act of the Legislature or under the general  
laws of the State, and is in addition to any review, analysis or  
approval required by law.

20 §1052. Prior consent from Attorney General; notice; decision

22 1. Prior consent from Attorney General. A nonprofit  
24 corporation that intends to transfer, restructure or convert its  
26 activities in conjunction with for-profit activities shall obtain  
written consent from the Attorney General before entering into  
any agreement or transaction to:

28 A. Sell, transfer, lease, exchange, option, convey,  
30 restructure or convert or otherwise dispose of its assets to  
32 a for-profit corporation or entity or to a mutual benefit  
34 corporation or entity when a material amount of the assets  
of the nonprofit corporation are involved or will be  
involved in the agreement or transaction; or

36 B. Transfer control, responsibility or governance of a  
38 material amount of the assets, operations or business of the  
nonprofit corporation to a for-profit corporation or entity  
or to a mutual benefit corporation or entity.

40 2. Notice to Attorney General; notice of proposal. A  
42 nonprofit corporation shall give written notice to the Attorney  
44 General at least 90 days before it sells, transfers, leases,  
46 exchanges, options, conveys, converts, gives, merges or otherwise  
48 disposes of its assets. The nonprofit corporation shall submit  
50 with the notice a copy of the proposed agreement or transaction  
required by section 1053. Within 5 working days of submitting  
the notice and the proposed agreement or transaction to the  
Attorney General, the nonprofit corporation shall publish, at  
least once a week for 3 successive weeks, a notice of the  
proposed agreement or transaction in a form approved by the

2 Attorney General in newspapers of general circulation in the  
3 affected communities in the nonprofit corporation's service area.

4 3. Decision of Attorney General. Within 90 days of the  
5 receipt of the written notice required by subsection 2, the  
6 Attorney General shall notify the nonprofit corporation in  
7 writing of the decision to approve or disapprove the proposed  
8 agreement or transaction. The Attorney General may extend this  
9 period for an additional 60 days.

10 **§1053. Proposed agreement or transaction**

11 Before approving a proposed agreement or transaction, the  
12 Attorney General shall find that:

13 1. Terms and conditions. The terms and conditions of the  
14 proposed agreement or transaction are fair and reasonable to the  
15 citizens of the State, the public, recipients and potential  
16 recipients of services, the subscribers and policyholders of the  
17 nonprofit corporation, and the nonprofit corporation;

18 2. Public interest. The proposed agreement or transaction  
19 is in the public interest. A proposed agreement or transaction  
20 is not in the public interest unless appropriate steps have been  
21 taken to safeguard the value of charitable assets and ensure that  
22 any proceeds of the transaction are irrevocably dedicated to  
23 charitable purposes;

24 3. Private benefits. The proposed agreement or transaction  
25 does not result in inurement to any private person or entity,  
26 including stock options, agreements not to compete and other  
27 private benefits;

28 4. Availability of services. The proposed agreement or  
29 transaction does not create or have the likelihood of creating an  
30 adverse effect on the availability of services provided by the  
31 nonprofit corporation to the affected community and sufficient  
32 safeguards are included to ensure that the affected community has  
33 continued access to those services;

34 5. Due diligence. The nonprofit corporation submitting the  
35 proposed agreement or transaction used due diligence in selecting  
36 the for-profit corporation or entity or mutual benefit  
37 corporation or entity and negotiating the terms and conditions of  
38 the transaction when deciding to sell, lease, transfer, exchange,  
39 option, convey, convert, give, merge or similarly dispose of its  
40 assets;

41 6. Charitable trust value. A charitable trust is set aside  
42 equal to the fair market value of the nonprofit corporation.  
43 Fair market value is determined at the time of conversion as if

2 it had voting stock outstanding and 100% of its stock were freely  
3 transferable and available for purchase without restrictions.  
4 Consideration must be given to market value investment or  
5 earnings value, net asset value and a control premium, if any.  
6 The Attorney General may permit all or a portion of the  
7 consideration conveyed to the charitable organization to consist  
8 of stock of the for-profit corporation;

10 7. Charitable trust distribution. The charitable trust  
11 distribution must be dedicated to an existing or new tax-exempt  
12 charitable organization operating pursuant to the Internal  
13 Revenue Code, Section 501(c)(3);

14 8. Independent charitable trust recipients. Each nonprofit  
15 charitable corporation receiving the charitable assets, its  
16 directors, officers and staff shall remain independent of the  
17 for-profit or stock company or mutual benefit corporation and its  
18 affiliates. A person who is an officer, director or staff member  
19 of the nonprofit corporation submitting the plan, at the time the  
20 plan is submitted or at the time of the agreement or transaction  
21 or thereafter, may not be an officer, director or staff member of  
22 the nonprofit charitable corporation receiving the charitable  
23 assets. A director, officer, agent or employee of the nonprofit  
24 corporation submitting the plan or the nonprofit charitable  
25 corporation receiving the charitable assets may not benefit  
26 directly or indirectly from the agreement or transaction;

28 9. Conflict of interest. The nonprofit charitable  
29 corporation receiving the charitable assets shall establish  
30 mechanisms to avoid conflicts of interest and to prohibit grants  
31 benefiting the board of directors and management and grants  
32 benefiting the for-profit corporation or entity or mutual benefit  
33 corporation or entity;

34 10. Continuation of purposes. The charitable mission and  
35 grant functions of the charitable corporation receiving the  
36 charitable trust assets shall serve the same purposes as the  
37 nonprofit corporation prior to the transaction; and

40 11. Annual report. The charitable corporation receiving  
41 the charitable assets shall submit to the Attorney General an  
42 annual report of its grant and other charitable activities  
43 related to its use of the charitable assets received. The annual  
44 report must be made available to the public at the office of the  
45 Attorney General and the office of the nonprofit charitable  
46 corporation by July 1st each year.

48 **§1054. Review and evaluation of proposed agreement or transaction**

50 1. Assistance. In reviewing and evaluating whether the

2 proposed agreement or transaction meets the requirements of  
3 section 1053, the Attorney General may:

4 A. Contract with, consult and receive advice from any state  
5 agency on terms and conditions that the Attorney General  
6 determines appropriate; and

8 B. Contract with experts or consultants to assist in  
9 reviewing the proposed agreement or transaction when  
10 reasonable and necessary.

12 2. Contract costs. Contract costs may not exceed an amount  
13 necessary to conduct the review and evaluation. The Attorney  
14 General may charge the nonprofit corporation submitting the  
15 proposed plan an assessment fee to pay the cost of expert  
16 consultants required to help review public benefit and charitable  
17 trust proposals and to assess the fair market value of the  
18 charitable assets.

20 3. Cooperation. The Attorney General may cooperate with  
21 state officials responsible for review, analysis or approval of  
22 the transfer, restructuring or conversion required by law to  
23 avoid unnecessary duplication of review, reports and public  
24 hearings.

26 **§1055. Public participation**

28 1. Public hearing. No later than 45 days after the  
29 Attorney General has received notice from the nonprofit  
30 corporation under section 1052, subsection 2, the Attorney  
31 General shall hold at least one public hearing in the service  
32 area of the nonprofit corporation. The number of public hearings  
33 held must correspond to the size of the community in the  
34 nonprofit corporation's service area and the nature and value of  
35 the agreement or transaction.

36 2. Notice. At least 21 days before the public hearing, the  
37 Attorney General shall provide written notice of the time and  
38 place of the hearing through publication in one or more  
39 newspapers of general circulation in the affected communities.  
40 The Attorney General shall provide notice to the county  
41 commissioners in which the nonprofit corporation is located. The  
42 Attorney General shall identify and provide notice to additional  
43 stakeholders or interested parties.

44 3. Additional information and witnesses. The Attorney  
45 General may subpoena additional information or witnesses, require  
46 and administer oaths and require sworn statements at any time  
47 before making a decision on an application.

2           4. Public access to records. The Attorney General shall  
4 provide access to nonconfidential, public records concerning the  
proposed agreement or transaction at no cost to the public at the  
6 office of Attorney General and the office of the nonprofit  
corporation.

8           5. Costs of notice and access. The Attorney General may  
10 charge a nonprofit corporation for the costs of providing notice  
to the public and reasonable access to records relating to the  
12 proposed agreement or transaction of the nonprofit corporation.

14 **§1056. Charitable trust obligation**

16           1. Charitable trust obligation; conversion. Any nonprofit  
18 corporation that converts into a mutual benefit corporation or  
entity retains a charitable trust obligation to preserve its  
20 assets for charitable purposes. The obligation must be paid any  
time the mutual benefit corporation or entity enters into an  
22 agreement or transaction with a for-profit corporation or  
otherwise generates sufficient funds to fulfill its charitable  
24 trust obligation. The fair market value of the nonprofit  
corporation on the date of conversion to a mutual benefit  
26 corporation or entity augmented by any increase in value of the  
mutual benefit corporation or entity attributable to the use of  
the charitable trust assets or to its prior status as a nonprofit  
28 corporation, is the basis for the valuation of the  
trust obligation, under section 1053.

30           2. Charitable trust obligation; agreement or transaction.  
32 A mutual benefit corporation or entity that enters into any  
agreement or transaction with a nonprofit corporation acquires  
34 and retains a charitable trust obligation to preserve the assets  
of the nonprofit corporation for charitable purposes. The  
36 obligation must be paid any time the mutual benefit company  
enters into an agreement or transaction with a for-profit  
38 corporation. The fair market value of the nonprofit corporation  
on the date of conversion to a mutual benefit corporation or  
entity augmented by any increase in value of the mutual benefit  
40 corporation or entity attributable to the use of the charitable  
trust assets or to its prior status as a nonprofit corporation is  
42 the basis for the valuation of the trust obligation under section  
1053.

44           3. Agreement to demutualize. When the mutual benefit  
46 corporation or entity enters into an agreement or transaction to  
demutualize, it shall submit to the Attorney General an asset  
48 distribution plan to fulfill its charitable obligations under  
section 1053. The Attorney General shall hold public hearings  
50 pursuant to section 1054. An agreement or a transaction of a

2 mutual benefit corporation or entity to demutualize may not occur  
4 unless the Attorney General determines that the plan is fair and  
6 equitable to the public pursuant to this chapter.

8 **§1057. Annual report**

10 If a nonprofit corporation exists after the agreement or  
12 transaction, the nonprofit corporation shall submit an annual  
14 report pursuant to section 1053, subsection 11 describing its  
16 public and community benefit activities.

18 **§1058. Continuing commitment to affected community**

20 If the Attorney General receives information indicating that  
22 the for-profit corporation is not fulfilling the commitment to  
24 the affected community under section 1053, the Attorney General  
26 shall hold a public hearing after 10 days' notice to the affected  
28 parties. If, after the hearing, the Attorney General determines  
30 that the information is true, the Attorney General shall  
32 institute proceedings to require a corrective action plan from  
34 the for-profit corporation. The Attorney General shall retain  
36 oversight of the for-profit corporation's obligations under the  
38 corrective action plan to ensure compliance with this chapter.

40 **§1059. Judicial review**

42 A final decision by the Attorney General approving or  
44 disapproving the proposed agreement or transaction is a final  
46 agency action for the purposes of judicial review under Title 5,  
48 chapter 375, subchapter VII. Any person adversely affected by  
50 the final agency decision is considered a party to the  
proceeding, including consumers or community groups representing  
the citizens of the State.

**SUMMARY**

This bill provides a procedure that all nonprofit corporations shall follow when converting or restructuring into a for-profit or mutual benefit corporation or entity or when transferring assets to a for-profit or mutual benefit corporation or entity. The procedure is in addition to any other review, analysis or approval required by law.

The nonprofit corporation must give the Attorney General at least 90 days' notice and provide a copy of the proposed agreement or transaction to the Attorney General. The agreement or transaction may not be acted upon until the Attorney General approves it. The Attorney General shall hold at least one public hearing in the affected service area of the nonprofit



2 corporation. The Attorney General may not approve the proposed  
agreement or transaction unless it meets the specific  
4 requirements of the Maine Revised Statutes, Title 13-B, chapter  
10-A.

6 The Attorney General may cooperate with other state  
officials required to review, analyze or approve the transaction  
8 to avoid unnecessary duplication of review, reports and public  
hearings.