

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2113

S.P. 786

In Senate, January 20, 1998

An Act to Establish Ethical Standards for the Office of Governor.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President LAWRENCE of York.
Cosponsored by Representative TUTTLE of Sanford and
Senators: AMERO of Cumberland, CAREY of Kennebec, PINGREE of Knox,
Representatives: MITCHELL of Vassalboro, SAXL of Portland, TRUE of Fryeburg.

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

2 **Sec. 1. 1 MRSA §1001**, as enacted by PL 1975, c. 621, §1, is
4 amended to read:

6 **§1001. Statement of purpose**

8 It is essential under the American system of representative
10 government that the people have faith and confidence in the
12 integrity of the election process and ~~the--members--of--the~~
14 Legislature their elected officers. In order to strengthen this
16 faith and confidence that the election process reflects the will
18 of the people and that each Legislator considers and casts his
20 vote votes on the enactment of laws according to the best
22 interests of the public and his the Legislator's constituents and
that the Governor fulfill the Governor's duty to consider the
best interests of the public and the entire State, there is
created an independent commission on governmental ethics and
election practices to guard against corruption or undue
influencing of the election process and against acts or the
appearance of misconduct by Legislators and the Governor.

24 **Sec. 2. 1 MRSA §1005**, as amended by PL 1997, c. 562, Pt. D,
§1 and affected by §11, is further amended to read:

26 **§1005. Open meetings**

28 Notwithstanding any other provision of law, all meetings,
30 hearings or sessions of the commission shall must be open to the
32 general public unless, by an affirmative vote of at least 3 4
members, the commission requires the exclusion of the public.

34 **Sec. 3. 1 MRSA §1007**, as amended by PL 1989, c. 561, §1, is
further amended to read:

36 **§1007. Annual report**

38 The commission shall submit to the Legislature, the Governor
40 and the public an annual report discussing its activities under
this chapter and any changes it considers necessary or
appropriate regarding ethical standards.

42 **Sec. 4. 1 MRSA §1008, sub-§1-A** is enacted to read:

44 1-A. Gubernatorial ethics. To investigate and make
46 advisory recommendations to the appropriate body of any apparent
48 violations of the ethical standards set by the Legislature and
required of the Governor;

2 **Sec. 9. 1 MRSA §1012, sub-§§5, 6 and 8,** as enacted by PL 1989,
c. 561, §4, are amended to read:

4 **5. Honorarium.** "Honorarium" means a payment of money or
anything with a monetary resale value to a Legislator or the
6 Governor for an appearance or a speech by the Legislator or
Governor. Honorarium does not include reimbursement for actual
8 and necessary travel expenses for an appearance or speech.
Honorarium does not include a payment for an appearance or a
10 speech that is unrelated to the person's official capacity or to
that person's duties as a member of the Legislature.

12 **6. Immediate family.** "Immediate family" means a
14 Legislator's or the Governor's spouse or dependent children.

16 **8. Relative.** "Relative" means an individual who is related
to the Legislator or Governor or the Legislator's or Governor's
18 spouse as father, mother, son, daughter, brother, sister, uncle,
aunt, great aunt, great uncle, first cousin, nephew, niece,
20 husband, wife, grandfather, grandmother, grandson, granddaughter,
father-in-law, mother-in-law, son-in-law, daughter-in-law,
22 brother-in-law, sister-in-law, stepfather, stepmother, stepson,
stepdaughter, stepbrother, stepsister, half brother or half
24 sister, and ~~shall-be~~ **is** deemed to include the fiance or fiancée
of the Legislator or Governor.

26 **Sec. 10. 1 MRSA §1013, sub-§1,** as amended by PL 1989, c. 561,
28 §5, is further amended to read:

30 **1. Authority.** The commission ~~shall-have~~ **has** the authority:

32 A. To issue, on request of any Legislator or the Governor
on an issue involving ~~himself~~ that Legislator or the
34 Governor, or on its own motion, advisory opinions and
guidelines on problems or questions involving possible
36 conflicts of interest in matters under consideration by, or
pertaining to, the Legislature or the Governor;

38 B. To investigate complaints filed by Legislators or the
Governor, or on its own motion, alleging conflict of
40 interest against any Legislator or the Governor, to hold
hearings thereon if the commission ~~deems~~ **determines**
42 appropriate and to issue publicly findings of fact together
with its opinion; and
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46 C. To administer the disclosure of sources of income by
Legislators and the Governor as required by this subchapter.
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50 **Sec. 11. 1 MRSA §1013, sub-§2,** as amended by PL 1977, c. 252,
§2, is further amended to read:

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2. Procedure. The following procedures shall apply.

A. Requests for advisory opinions by members of the Legislature shall or the Governor must be filed with the commission in writing, signed by the Legislator or Governor requesting the opinion and shall must contain such supporting data as the commission ~~shall require~~ requires. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator or Governor concerned and allow ~~him~~ the Legislator or Governor to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it ~~deems~~ determines necessary. A copy of the commission's advisory opinion shall must be sent to the Legislator or Governor concerned and, if the concerned party is a Legislator, to the presiding officer of the House of which the Legislator is a member.

B. A Legislator or Governor making a complaint shall file the complaint under oath with the ~~chairman~~ chair. The complaint shall must specify the facts of the alleged conflict of interest. The Legislator or Governor against whom a complaint is filed shall must immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall or Governor may be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it ~~deems~~ determines necessary. The In the case of a Legislator, the commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it ~~deems~~ determines appropriate, in accordance with the Constitution of the State of Maine. If the Governor is the concerned party, the commission shall issue its findings of fact and its opinion to the President of the Senate and the Speaker of the House. In addition, the commission shall submit its findings to the public in the form of a press release. If the commission finds that the Governor has continued to violate this chapter, or that the Governor has committed a 2nd or subsequent violation, the commission shall refer the matter or matters to the Attorney General.

C. When the conduct of a particular Legislator or of the Governor is under inquiry and a hearing is to be held, the Legislator shall or Governor must be given written

2 notification of the time and place at which the hearing is
to be held. Such notification shall must be given not less
than 10 days prior to the date set for the hearing.

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6 D. The commission shall ~~have~~ has the authority, through its
7 chairman chair or any member designated by him the chair, to
8 administer oaths, subpoena witnesses and compel the
9 production of books, records, papers, documents,
10 correspondence and other material and records which that the
11 committee ~~deems~~ determines relevant. The commission shall
12 subpoena such witnesses as the complainant Legislator or
13 Governor or the Legislator or Governor against whom the
14 complaint has been filed may request to be subpoenaed. The
15 State, its agencies and instrumentalities shall furnish to
16 the commission any information, records or documents which
17 that the commission designates as being necessary for the
18 exercise of its functions and duties. In the case of
19 refusal of any person to obey an order or subpoena of the
20 commission, the Superior Court, upon application of the
21 commission, shall ~~have~~ has jurisdiction and authority to
22 require compliance with the order or subpoena. Any failure
23 of any person to obey an order of the Superior Court may be
24 punished by that court as a contempt thereof.

26 E. Any person whose conduct is under inquiry shall must be
27 accorded due process and, if requested, the right to a
28 hearing. All witnesses shall ~~be~~ are subject to
cross-examination.

30 Any person whose name is mentioned in an investigation or
31 hearing and who believes that testimony has been given which
32 that adversely affects him ~~shall have~~ that person has the
33 right to testify, or at the discretion of the commission and
34 under such circumstances as the commission shall ~~determine~~
35 determines to protect the rights of the Legislator or
36 Governor under inquiry, to file a statement of facts under
37 oath relating solely to the material relevant to the
38 testimony of which he that person complains. Any witness at
39 an investigation or hearing, subject to rules and
40 ~~regulations promulgated~~ adopted by the commission, shall ~~be~~
41 is entitled to a copy of such that testimony when the same
42 becomes relevant to a criminal proceeding or subsequent
43 investigation or hearings.

44 All witnesses shall must be sworn. The commission may
45 sequester witnesses as it ~~deems~~ determines necessary. The
46 commission shall is not be bound by the strict rules of
47 evidence, but its findings and opinions must be based upon
48 competent and substantial evidence.

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2 Time periods and notices may be waived by agreement of the
commission and the person whose conduct is under inquiry.

4 F. If the commission concludes that it appears that a
Legislator or the Governor has violated a criminal law, a
6 copy of its findings of fact, its opinion and such other
information as may be appropriate shall must be referred to
8 the Attorney General. Any determination by the commission or
by a House of the Legislature that a conflict of interest
10 has occurred does not preclude any criminal action relating
to the conflict which that may be brought against the
12 Legislator or Governor.

14 G. If the commission determines that a complaint filed
under oath is groundless and without foundation, or if the
16 Legislator or Governor filing the complaint fails to appear
at the hearing without being excused by the commission, the
18 commission may order the complainant to pay to the
Legislator or Governor against whom the complaint has been
20 filed his the costs of investigation and defense, including
any reasonable attorney's fees. The complainant may appeal
22 such an order, if a Legislator, to the House of which he the
complainant is a member or, if the Governor, to the Senate.

24 Such an order shall does not preclude any other remedy
26 available to the Legislator or Governor against whom the
complaint has been filed, including, but not limited to, an
28 action brought in Superior Court against the complainant for
damages to his the Legislator's or Governor's reputation.

30 H. A copy of the commission's advisory opinions and
32 guidelines, with such deletions and changes as the
commission deems determines necessary to protect the
34 identity of the person seeking the opinions, or others,
shall must be filed with the Clerk of the House. The clerk
36 shall keep them in a special binder and shall finally
publish them in the Legislative Record. The commission may
38 exempt an opinion or a part thereof from release,
publication or inspection, if it deems determines such
40 action appropriate for the protection of 3rd parties and
makes available to the public an explanatory statement to
42 that effect.

44 I. A copy of the commission's findings of fact and opinions
regarding complaints against Legislators shall or the
46 Governor must also be filed with the Clerk of the House.
The clerk shall keep them in a special binder and shall
48 finally publish them in the Legislative Record.

2 J. The records of the commission and all information
3 received by the commission acting under this subchapter in
4 the course of its investigation and conduct of its affairs
5 shall-be are confidential, except that Legislators' and the
6 Governor's statements of sources of income, evidence or
7 information disclosed at public hearings, the commission's
8 findings of fact and its opinions and guidelines are public
9 records.

10 K. When a Legislator or the Governor has a question or
11 problem of an emergency nature about a possible conflict of
12 interest or an issue involving ~~himself-which~~ the Legislator
13 or the Governor that arises during the course of legislative
14 action, he the Legislator or the Governor may request an
15 advisory opinion, if a Legislator, from the presiding
16 officer of the legislative body of which he the Legislator
17 is a member, or if the Governor, from the President of the
18 Senate. The presiding officer may, at ~~his~~ the presiding
19 officer's discretion, issue an advisory opinion, ~~which-shall~~
20 that must be in accordance with the principles of this
21 subchapter, ~~which-shall~~ must be in writing, and ~~which-shall~~
22 must be reported to the commission. The commission may then
23 issue a further opinion on the matter. The presiding
24 officer may refer ~~such~~ the question or problem directly to
25 the commission, which shall must meet as soon as possible to
26 consider the question or problem.

27 **Sec. 12. 1 MRSA §1014**, as enacted by PL 1975, c. 621, §1, is
28 amended to read:

29 **§1014. Conflict of interest**

30 **1. Situations involving conflict of interest.** A conflict of
31 interest ~~shall-include~~ includes the following:

32 **A.** ~~Where~~ When a Legislator or the Governor or a member of
33 ~~his~~ the Legislator's or Governor's immediate family has or
34 acquires a direct substantial personal financial interest,
35 distinct from that of the general public, in an enterprise
36 ~~which~~ that would be financially benefited by proposed
37 legislation, or derives a direct substantial personal
38 financial benefit from close economic association with a
39 person known by the Legislator or Governor to have a direct
40 financial interest in an enterprise affected by proposed
41 legislation.;

42 **B.** ~~Where~~ When a Legislator or the Governor or a member of
43 ~~his~~ the Legislator's or Governor's immediate family accepts
44 gifts, other than campaign contributions duly recorded as
45 required by law, from persons affected by legislation or who
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2 have an interest in a business affected by proposed
3 legislation, ~~where~~ when it is known or reasonably should be
4 known that the purpose of the donor in making the gift is to
5 influence the Legislator in the performance of ~~his~~ the
6 Legislator's official duties or vote, or the Governor in the
7 signature or veto of legislation, or is intended as a reward
8 for action on ~~his~~ the Legislator's or Governor's part;

10 C. Receiving compensation or reimbursement not authorized
11 by law for services, advice or assistance as a Legislator,
12 or as the Governor;

14 D. Appearing for, representing or assisting another in
15 respect to a claim before the Legislature, unless without
16 compensation and for the benefit of a citizen;

18 E. ~~Where~~ When a Legislator or the Governor or a member of
19 his the Legislator's or Governor's immediate family accepts
20 or engages in employment ~~which~~ that could impair the
21 Legislator's or Governor's judgment, or ~~where~~ when the
22 Legislator or the Governor knows that there is a substantial
23 possibility that an opportunity for employment is being
24 afforded ~~him~~ the Legislator or Governor or a member of ~~his~~
25 the Legislator's or Governor's immediate family with intent
26 to influence ~~his~~ the Legislator's or Governor's conduct in
27 the performance of ~~his~~ his official duties, or ~~where~~ when the
28 Legislator or the Governor or a member of ~~his~~ the
29 Legislator's or Governor's immediate family stands to derive
30 a personal private gain or loss from employment, because of
31 legislative action or executive action, distinct from the
32 gain or losses of other employees or the general community;
33 and

34 F. ~~Where~~ When a Legislator or the Governor or a member of
35 ~~his~~ the Legislator's or Governor's immediate family has an
36 interest in legislation relating to a profession, trade,
37 business or employment in which the Legislator or the
38 Governor or a member of ~~his~~ the Legislator's or Governor's
39 immediate family is engaged, ~~where~~ when the benefit derived
40 by the Legislator or the Governor or a member of ~~his~~ the
41 Legislator's or Governor's immediate family is unique and
42 distinct from that of the general public or persons engaged
43 in similar professions, trades, businesses or employment.

44
45 **2. Undue influence.** It is presumed that a conflict of
46 interest exists ~~where~~ when there are circumstances ~~which~~ that
47 involve a substantial risk of undue influence by a Legislator or
48 the Governor, including, but not limited to, the following cases:

2 A. Appearing for, representing or assisting another in a
3 matter before a state agency or authority, unless without
4 compensation and for the benefit of a ~~constituent~~
5 constituent, except for attorneys or other professional
6 persons engaged in the conduct of their professions.

7 (1) Even in the excepted cases, an attorney or other
8 professional person must refrain from references to ~~his~~
9 that person's legislative capacity, from communications
10 on legislative stationery and from threats or
11 implications relating to legislative action.

12 (2) The Governor may not assist a party before a state
13 agency; and

14 B. Representing or assisting another in the sale of goods
15 or services to the State, a state agency or authority,
16 unless the transaction occurs after public notice and
17 competitive bidding.

18 3. **Abuse of office or position.** It is presumed that a
19 conflict of interest exists where when a Legislator or the
20 Governor abuses his the Legislator's or Governor's office or
21 position, including, but not limited to, the following cases:
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23 A. ~~Where~~ When a Legislator or the Governor or a member of
24 his the Legislator's or Governor's immediate family has a
25 direct financial interest or an interest through a close
26 economic association in a contract for goods or services
27 with the State, a state agency or authority in a transaction
28 not covered by public notice and competitive bidding or by
29 uniform rates established by the State, a state agency,
30 authority or other governmental entity or by a professional
31 association or organization;
32

33 B. Granting or obtaining special privilege, exemption or
34 preferential treatment to or for oneself or another, which
35 privilege, exemption or treatment is not readily available
36 to members of the general community or class to which the
37 beneficiary belongs;
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39 C. Use or disclosure of confidential information obtained
40 because of office or position for the benefit of self or
41 another.
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43 **Sec. 13. 1 MRSA §1015, sub-§1**, as amended by PL 1989, c. 561,
44 §7, is further amended to read:

45 1. **Actions precluded.** When a member of the Legislature has
46 a conflict of interest, that member has an affirmative duty not
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2 to vote on any question in connection with the conflict in
committee or in either branch of the Legislature, and ~~shall~~ may
4 not attempt to influence the outcome of that question. When the
Governor has a conflict of interest, the Governor shall disclose
6 the conflict of interest to the commission, the President of the
Senate and the Speaker of the House.

8 **Sec. 14. 1 MRSA §1015, sub-§2**, as enacted by PL 1975, c. 621,
§1, is amended to read:

10 **2. Reports.** When the commission finds that a Legislator
12 has voted or acted in conflict of interest, the commission shall
report its findings in writing to the ~~house~~ House of which the
14 Legislator is a member. When the commission finds that the
Governor has acted in conflict of interest, the commission shall
16 report its finding in writing to the President of the Senate and
the Speaker of the House. In addition, the commission shall
18 submit its findings to the public in the form of a press
release. In the event of a continued violation, or a 2nd or
20 subsequent violation, the commission shall report its findings in
writing to the Attorney General.

22 **Sec. 15. 1 MRSA §1016-A**, as amended by PL 1989, c. 734, is
24 further amended to read:

26 **§1016-A. Disclosure of specific sources of income**

28 Each Legislator and the Governor shall file a statement of
specific sources of income received in the preceding calendar
30 year with the commission by 5:00 p.m. on February 15th of each
year on forms provided by the Secretary of State. Prior to the
32 end of the first week in January of each year, the Secretary of
State shall deliver a form to each Senator and each member of
34 the House of Representatives and the Governor. The statement of
specific sources of income filed under this subchapter must be on
36 a form prescribed by the commission and prepared by the Secretary
of State and is a public record.

38 **1. Disclosure of Legislator's or Governor's income.** The
40 Legislator or Governor filing the statement shall name and give
the address of each specific source of income received as follows.

42 **A.** A Legislator or Governor who is an employee of another
44 shall name the employer and each other source of income of
\$1,000 or more.

46 **B.** A Legislator or Governor who is self-employed shall
48 state that fact and the name and address of the Legislator's
or Governor's business. The Legislator or Governor shall
50 name each source of income derived from self-employment that

2 represents more than 10% of the Legislator's or Governor's
3 gross income or \$1,000, whichever is greater, provided that
4 if this form of disclosure is prohibited by law, rule or an
5 established code of professional ethics, the Legislator or
6 Governor shall only specify the principal type of economic
7 activity from which the income is derived. With respect to
8 all other sources of income, a self-employed Legislator or
9 Governor shall name each source of income of \$1,000 or
10 more. The Legislator or Governor shall also indicate major
11 areas of economic activity and, if associated with a
12 partnership, firm, professional association or similar
13 business entity, the major areas of economic activity of
14 that entity.

15
16 C. In identifying the source of income, it ~~shall--be~~ is
17 sufficient to identify the name and address and the
18 principal type of economic activity of the corporation,
19 professional association, partnership, financial
20 institution, nonprofit organization or other entity or
21 person directly providing the income to the Legislator or
22 Governor.

23
24 D. With respect to income from a law practice, it ~~shall--be~~
25 is sufficient for attorneys-at-law to indicate their major
26 areas of practice and, if associated with a law firm, the
27 major areas of practice of the firm, in such manner as the
28 commission may require.

29
30 2. **Campaign contributions.** Campaign contributions duly
31 recorded as required by law ~~shall~~ may not be considered income.

32
33 3. **Disclosure of gifts.** The Legislator or Governor shall
34 name the specific source of each gift that the Legislator or
35 Governor receives.

36
37 4. **Disclosure of income of immediate family.** The
38 Legislator or Governor shall disclose the type of economic
39 activity representing each source of income of \$1,000 or more
40 that any member of the immediate family of the Legislator or
41 Governor received.

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43 5. **Disclosure of honoraria.** The Legislator or Governor
44 shall disclose the name of each source of honoraria that the
45 Legislator or Governor accepted.

46
47 6. **Representation before state agencies.** The Legislator
48 shall identify each executive branch agency before which the
49 Legislator has represented or assisted others for compensation.
50 The Governor may not represent any party before a state agency.

2 7. **Business with state agencies.** The Legislator shall
4 identify each executive branch agency to which the Legislator or
6 the Legislator's immediate family has sold goods or services with
a value in excess of \$1,000. The Governor and the Governor's
immediate family may not sell goods or services to any state
agency.

8 **Sec. 16. 1 MRSA §1016-B, first ¶,** as enacted by PL 1989, c.
10 561, §10, is amended to read:

12 Each Legislator and the Governor shall include on the
14 statement of income under section 1016-A all reportable
liabilities incurred during the Legislator's or Governor's term
of office.

16 **Sec. 17. 1 MRSA §1016-B, sub-§2,** as enacted by PL 1989, c.
18 561, §10, is amended to read:

20 **2. Reporting.** A Each Legislator and the Governor shall
22 make a supplementary statement to the commission of any
reportable liability within 30 days after it is incurred. The
report ~~shall~~ must identify the creditor in the manner of section
24 1016-A, subsection 1, paragraph C.

26 **Sec. 18. 1 MRSA §1016-C,** as enacted by PL 1991, c. 880, §2,
is amended to read:

28 **§1016-C. Reports by gubernatorial or legislative candidates**

30 A candidate, as defined in Title 21-A, section 1, subsection
32 5, for the Legislature or for Governor who is not required to
file a report under section 1016-A or 1016-B shall file a report
34 containing the same information required of Legislators or the
Governor under sections 1016-A and 1016-B no later than 5 p.m. on
36 the first Monday in August preceding the general election unless
the candidate withdraws from the election in accordance with
38 Title 21-A, section 374-A by that date.

40 **Sec. 19. 1 MRSA §1018,** as repealed and replaced by PL 1977,
c. 242, §4, is amended to read:

42 **§1018. Updating statement**

44 A Legislator and the Governor shall file an updating
46 statement with the commission on a form prescribed by the
commission and prepared by the Secretary of State. ~~Sueh~~ The
48 statement ~~shall~~ must be filed within 30 days of addition,
deletion or change to the information relating to the preceding
50 year supplied under this subchapter.

