

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1008

S.P. 325

March 6, 2007

### An Act To Improve the Legislative Ethics Laws

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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 EDMONDS of Cumberland.

Cosponsored by Speaker CUMMINGS of Portland and Senator: BARTLETT of Cumberland,  
Representative: CANAVAN of Waterville.

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

2 **Sec. 1. 1 MRSA §1003, sub-§2**, as enacted by PL 1975, c. 621, §1, is amended to  
3 read:

4 **2. Records.** Except as provided in section 1013, ~~subsection 2, paragraph J~~, all  
5 records of the commission, including business records, reports made to or by the  
6 commission, findings of fact and opinions, ~~shall~~ must be made available to any interested  
7 member of the public who may wish to review them. Any member of the public may  
8 request copies of any record held by the commission ~~which~~ that is available for public  
9 inspection. The commission shall furnish these copies upon payment of a fee covering the  
10 cost of reproducing them.

11 **Sec. 2. 1 MRSA §1005**, as amended by PL 2001, c. 430, §3, is further amended to  
12 read:

13 **§1005. Open meetings**

14 Notwithstanding chapter 13, all meetings, hearings or sessions of the commission are  
15 open to the general public except as provided in section 1013, subsection 4 and unless, by  
16 an affirmative vote of at least 3 members, the commission requires the exclusion of the  
17 public.

18 **Sec. 3. 1 MRSA §1008, sub-§1**, as enacted by PL 1975, c. 621, §1, is further  
19 amended to read:

20 **1. Legislative ethics.** To investigate and make advisory recommendations to the  
21 appropriate body of any apparent violations of ~~the ethical standards set by the Legislature~~  
22 legislative ethics;

23 **Sec. 4. 1 MRSA §1012, sub-§1**, as repealed and replaced by PL 1989, c. 561, §4,  
24 is amended to read:

25 **1. Close economic associate.** "Close economic ~~association~~ associate" means the  
26 employers, employees, partners or clients of the Legislator or a member of the  
27 Legislator's immediate family; ~~corporations~~ entities in which the Legislator or a member  
28 of the Legislator's immediate family is an officer, director or agent or owns 10% or more  
29 of the outstanding capital stock; a business ~~which~~ that is a significant unsecured creditor  
30 of the Legislator or a member of the Legislator's immediate family; or a business of  
31 which the Legislator or a member of the Legislator's immediate family is a significant  
32 unsecured creditor.

33 **Sec. 5. 1 MRSA §1012, sub-§10** is enacted to read:

34 **10. Violation of legislative ethics.** "Violation of legislative ethics" means a violation  
35 of the prohibitions in section 1014 and 1015.

36 **Sec. 6. 1 MRSA §1013**, as amended by PL 1989, c. 561, §§5 and 6, is further  
37 amended to read:

1    **§1013. Authority; procedures**

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

3       A. To issue, on request of any Legislator on an issue involving ~~himself that~~  
4       Legislator, or on its own motion, ~~written~~ advisory opinions and ~~guidelines~~ guidance  
5       on problems or questions involving possible ~~conflicts of interest in matters under~~  
6       ~~consideration by, or pertaining to, the Legislature~~ violations of legislative ethics;

7       B. To investigate complaints ~~filed by Legislators, or on its own motion,~~ alleging  
8       ~~conflict of interest~~ a violation of legislative ethics against any Legislator, to hold  
9       hearings ~~thereon~~ on those complaints if the commission ~~deems~~ determines it  
10      appropriate and to issue ~~publicly~~ findings of fact together with its opinion; and

11      C. To administer the disclosure of sources of income by Legislators as required by  
12      this subchapter.

13      **2. Procedures.** The following procedures ~~shall~~ apply:

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

24      B. ~~A Legislator making a complaint shall file the complaint under oath with the~~  
25      ~~chairman. The complaint shall specify the facts of the alleged conflict of interest. The~~  
26      ~~Legislator against whom a complaint is filed shall immediately be given a copy of the~~  
27      ~~complaint and the name of the complainant. Only those complaints dealing with~~  
28      ~~alleged conflicts of interest related to the current Legislature shall be considered by~~  
29      ~~the commission. Upon a majority vote of the commission, the commission shall~~  
30      ~~conduct such investigation and hold such hearings as it deems necessary. The~~  
31      ~~commission shall issue its findings of fact together with its opinion regarding the~~  
32      ~~alleged conflict of interest to the House of which the Legislator concerned is a~~  
33      ~~member. That House may take whatever action it deems appropriate, in accordance~~  
34      ~~with the Constitution of the State of Maine. Any person may file a complaint against~~  
35      ~~a Legislator alleging a violation of legislative ethics. The complaint must be filed in~~  
36      ~~writing and signed under oath and must specify the facts of the alleged violation and~~  
37      ~~such other information as the commission requires.~~

38                (1) The Legislator against whom a complaint is filed must immediately be given  
39                a copy of the complaint and the name of the complainant.

40                (2) The commission shall consider only complaints against Legislators in office  
41                at the time of the filing of the complaint and only complaints relating to activity  
42                that occurred or was ongoing within 2 years of the complaint. Upon a majority

1 vote of the commission, the commission shall conduct such an investigation and  
2 hold such hearings as it determines necessary. If one or more seats on the  
3 commission are vacant, the vote of 2 commissioners is sufficient to order an  
4 investigation and hearings.

5 (3) The commission shall issue its findings of fact together with its opinion  
6 regarding the alleged violation of legislative ethics to the legislative body of  
7 which the Legislator concerned is a member. That legislative body may take  
8 whatever action it determines appropriate, in accordance with the Constitution of  
9 Maine.

10 C. When the conduct of a particular Legislator is under inquiry and a hearing is to be  
11 held, the Legislator ~~shall~~ must be given written notification of the time and place at  
12 which the hearing is to be held. Such notification ~~shall~~ must be given not less than 10  
13 days prior to the date set for the hearing.

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

27 E. ~~Any person whose conduct is under inquiry shall be accorded due process and, if~~  
28 ~~requested, the right to a hearing. All witnesses shall be subject to cross-~~  
29 ~~examination.~~ The commission shall adopt rules consistent with due process for the  
30 conduct of investigations and hearings under this subchapter. Rules adopted pursuant  
31 to this paragraph are routine technical rules pursuant to Title 5, chapter 375,  
32 subchapter 2-A.

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

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

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

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

10 G. If the commission determines that a complaint filed under oath is ~~groundless and~~  
11 ~~without foundation~~ frivolous or was filed in bad faith, or if the ~~Legislator filing the~~  
12 ~~complaint~~ complainant fails to appear at the hearing without being excused by the  
13 commission, the commission may order the complainant to pay to the Legislator  
14 against whom the complaint has been filed ~~his~~ that Legislator's costs of investigation  
15 and defense, including any reasonable attorney's fees. ~~The~~ Such an order is deemed a  
16 final agency action and the complainant may appeal such an order ~~to the House of~~  
17 ~~which he is a member~~ pursuant to the Maine Administrative Procedure Act.

18 Such an order ~~shall~~ does not preclude any other remedy available to the Legislator  
19 against whom the complaint has been filed, including, but not limited to, an action  
20 brought in Superior Court against the complainant for damages to ~~his~~ the Legislator's  
21 reputation.

22 H. ~~A copy of the commission's~~ The commission shall file with the Clerk of the  
23 House and the Secretary of the Senate a copy of written advisory opinions and  
24 guidelines guidance issued by the commission, with such deletions and changes as  
25 the commission ~~deems~~ considers necessary to protect the identity of the person  
26 seeking the opinions, or others, ~~shall be filed with the Clerk of the House.~~ The clerk  
27 Clerk of the House shall keep them a copy of such opinions and guidance in a special  
28 binder and shall finally publish them in the Legislative Record. The commission may  
29 exempt an opinion or a part ~~thereof~~ of an opinion from release, publication or  
30 inspection; if it ~~deems~~ considers such action appropriate for the protection of 3rd  
31 parties and makes available to the public an explanatory statement to that effect.

32 I. A copy of the commission's findings of fact and opinions regarding complaints  
33 against Legislators ~~shall~~ must also be filed with the Clerk of the House ~~and the~~  
34 Secretary of the Senate. ~~The clerk~~ Clerk of the House shall keep them in a special  
35 binder and shall finally publish them in the Legislative Record.

36 ~~J. The records of the commission and all information received by the commission~~  
37 ~~acting under this subchapter in the course of its investigation and conduct of its~~  
38 ~~affairs shall be confidential, except that Legislators' statements of sources of income,~~  
39 ~~evidence or information disclosed at public hearings, the commission's findings of~~  
40 ~~fact and its opinions and guidelines are public records.~~

41 K. When a Legislator has a question or problem of an emergency nature about a  
42 possible ~~conflict of interest~~ violation of legislative ethics or an issue involving  
43 ~~himself which~~ that Legislator that arises during the course of legislative action, ~~he the~~  
44 Legislator may request an advisory opinion from the presiding officer of the

1 legislative body of which he the Legislator is a member. The presiding officer may, at  
2 ~~his discretion~~, issue an advisory opinion, ~~which shall~~. An advisory opinion issued by  
3 the presiding officer must be in accordance with the principles of this subchapter,  
4 ~~which shall~~ be in writing, and ~~which shall~~ be reported to the commission. The  
5 commission may then issue a further opinion on the matter. The presiding officer  
6 may refer such a question or problem directly to the commission, which shall meet as  
7 soon as possible to consider the question or problem.

8 L. The commission shall make reasonable efforts to resolve a complaint within 90  
9 days of its filing.

10 ~~**3. Confidentiality.** The subject of any investigation by the commission shall be~~  
11 ~~informed promptly of the existence of the investigation and the nature of the charges or~~  
12 ~~allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential~~  
13 ~~until the investigation is completed and a hearing ordered or until the nature of the~~  
14 ~~investigation becomes public knowledge. Any person, except the subject of the~~  
15 ~~investigation, who knowingly breaches the confidentiality of the investigation is guilty of~~  
16 ~~a Class D crime.~~

17 **4. Confidentiality of records and proceedings relating to screening complaints**  
18 **alleging a violation of legislative ethics.** Notwithstanding chapter 13, a complaint  
19 alleging a violation of legislative ethics is confidential and is not a public record until  
20 after the commission has voted pursuant to subsection 2, paragraph B to pursue the  
21 complaint, and a commission proceeding to determine whether to pursue a complaint  
22 must be conducted in executive session. If the commission does not vote to pursue the  
23 complaint, the complaint and records relating to the investigation of that complaint  
24 remain confidential and are not public records. This subsection does not prevent the  
25 commission from including general information about complaints in any report to the  
26 Legislature. Any person who knowingly breaches the confidentiality of a complaint  
27 investigation commits a Class D crime. This subsection does not prevent commission  
28 staff from disclosing information that is necessary to investigate a complaint.

29 **5. Confidentiality of records other than complaints.** Commission records other  
30 than complaints are governed by this subsection.

31 A. Investigative records relating to complaints that the commission has voted to  
32 pursue are confidential unless they are provided to commission members or otherwise  
33 distributed at a public hearing of the commission.

34 B. Legislators' statements of sources of income are public records.

35 C. Findings of fact and recommendations of the commission on complaints alleging  
36 violation of legislative ethics are public records.

37 D. Advisory opinions of the commission and requests for advisory opinions from  
38 the commission are public records, except as provided in subsection 2, paragraph H.

39 **6. Prohibited communications.** Communications concerning a complaint filed  
40 under this section between commission members and a complainant or between  
41 commission members and the subject of a complaint are prohibited until after the

1 commission has voted not to pursue a complaint or the commission has taken final action  
2 on the complaint.

3 **Sec. 7. 1 MRSA §1014**, as enacted by PL 1975, c. 621, §1, is amended to read:

4 **§1014. Violations of legislative ethics**

5 **1. Situations involving conflict of interest.** A Legislator engages in a violation of  
6 legislative ethics if that Legislator votes on a question in connection with a conflict of  
7 interest in committee or in either body of the Legislature or attempts to influence the  
8 outcome of that question. A conflict of interest ~~shall include~~ includes the following:

9 A. ~~Where~~ When a Legislator ~~or, a member of his the Legislator's~~ immediate family  
10 ~~has or acquires a direct substantial personal financial interest, distinct from that of the~~  
11 ~~general public, in an enterprise which would be financially benefited by proposed~~  
12 ~~legislation, or derives a direct substantial personal financial benefit from close~~  
13 ~~economic association with a person known by the Legislator to have a direct financial~~  
14 ~~interest in an enterprise affected by proposed legislation, or a close economic~~  
15 ~~associate of the Legislator will derive a benefit from, or be harmed by, proposed~~  
16 ~~legislation to a significantly greater extent than others in the same enterprise,~~  
17 ~~profession, trade, business or type of employment;~~

18 A-1. When a Legislator, a member of the Legislator's immediate family or a close  
19 economic associate of the Legislator is a member of a small group of persons or  
20 entities that will derive a significant benefit or harm from proposed legislation;

21 B. ~~Where~~ When a Legislator or a member of ~~his the Legislator's~~ immediate family  
22 accepts gifts, other than campaign contributions duly recorded as required by law,  
23 from persons affected by legislation or who have an interest in ~~a business an entity~~  
24 affected by proposed legislation, ~~where when~~ it is known or reasonably should be  
25 known that the purpose of the donor in making the gift is to influence the Legislator  
26 in the performance of ~~his the Legislator's~~ official duties or vote; or is intended as a  
27 reward for action on ~~his the Legislator's~~ part;

28 C. Receiving compensation or reimbursement not authorized by law for services,  
29 advice or assistance as a Legislator;

30 D. Appearing for, representing or ~~assisting~~ advocating on behalf of another ~~in respect~~  
31 ~~to a claim~~ before the Legislature, unless without compensation and for the benefit of  
32 a citizen; and

33 E. ~~Where~~ When a Legislator or a member of ~~his the Legislator's~~ immediate family  
34 accepts or engages in employment ~~which that~~ could impair the Legislator's judgment,  
35 or ~~where when~~ the Legislator knows that there is a substantial possibility that an  
36 opportunity for employment is being afforded ~~him the Legislator~~ or a member of ~~his~~  
37 ~~the Legislator's~~ immediate family with intent to influence ~~his conduct in~~ the  
38 performance of ~~his the Legislator's~~ official duties, ~~or where the Legislator or a~~  
39 ~~member of his immediate family stands to derive a personal private gain or loss from~~  
40 ~~employment, because of legislative action, distinct from the gain or losses of other~~  
41 ~~employees or the general community.~~



1 ~~F. — Where a Legislator or a member of his immediate family has an interest in~~  
2 ~~legislation relating to a profession, trade, business or employment in which the~~  
3 ~~Legislator or a member of his immediate family is engaged, where the benefit derived~~  
4 ~~by the Legislator or a member of his immediate family is unique and distinct from~~  
5 ~~that of the general public or persons engaged in similar professions, trades,~~  
6 ~~businesses or employment.~~

7 **2. Undue influence.** ~~It is presumed that a conflict of interest exists where there are~~  
8 ~~circumstances which involve a substantial risk of undue influence by a Legislator,~~  
9 ~~including but not limited to the following cases:~~

10 ~~A. — Appearing for, representing or assisting another in a matter before a state agency~~  
11 ~~or authority, unless without compensation and for the benefit of a constituent, except~~  
12 ~~for attorneys or other professional persons engaged in the conduct of their~~  
13 ~~professions.~~

14 ~~(1) Even in the excepted cases, an attorney or other professional person must~~  
15 ~~refrain from references to his legislative capacity, from communications on~~  
16 ~~legislative stationery and from threats or implications relating to legislative~~  
17 ~~action.~~

18 ~~B. — Representing or assisting another in the sale of goods or services to the State, a~~  
19 ~~state agency or authority, unless the transaction occurs after public notice and~~  
20 ~~competitive bidding.~~

21 **2-A. Undue influence.** ~~It is a violation of legislative ethics for a Legislator to~~  
22 ~~engage in conduct that constitutes the exertion of undue influence, including but not~~  
23 ~~limited to:~~

24 ~~A. Appearing for, representing or advocating for another in a matter before a state~~  
25 ~~agency or authority, for compensation other than compensation as a Legislator, if the~~  
26 ~~Legislator makes reference to that Legislator's legislative capacity, communicates~~  
27 ~~with the agency or authority on legislative stationery or makes threats or implications~~  
28 ~~relating to legislative action;~~

29 ~~B. Appearing for, representing or advocating for another in a matter before a state~~  
30 ~~agency or authority if the Legislator oversees the policies of the agency or authority~~  
31 ~~as a result of the Legislator's committee responsibilities, unless:~~

32 ~~(1) The appearance, representation or advocacy is provided without~~  
33 ~~compensation and for the benefit of a constituent;~~

34 ~~(2) The appearance, representation or advocacy is provided before a court or~~  
35 ~~office of the Judicial Branch; or~~

36 ~~(3) The representation consists of filing records, reports or performing other~~  
37 ~~routine tasks that do not involve the exercise of discretion on the part of the~~  
38 ~~agency or authority; and~~

39 ~~C. Representing or assisting another in the sale of goods or services to the State, a~~  
40 ~~state agency or state authority, unless the transaction occurs after public notice and~~  
41 ~~competitive bidding.~~

1       **3. Abuse of office or position.** It is ~~presumed that a conflict of interest exists where~~  
2 ~~a Legislator abuses his~~ a violation of legislative ethics for a Legislator to engage in  
3 conduct that constitutes an abuse of office or position, including but not limited to the  
4 following cases:

5       A. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family  
6 has a direct financial interest or an interest through a close economic ~~association~~  
7 associate in a contract for goods or services with the State, a state agency or state  
8 authority in a transaction not covered by public notice and competitive bidding or by  
9 unless the contract is awarded through competitive bidding or is exempt from  
10 competitive bidding pursuant to state purchasing laws or the payment provisions are  
11 based on uniform rates established by the State, a state agency, state authority or  
12 other governmental entity or by a professional association or organization;

13       B. Granting or obtaining special privilege, exemption or preferential treatment to or  
14 for oneself or another, which privilege, exemption or treatment is not readily  
15 available to members of the general community or class to which the beneficiary  
16 belongs; and

17       C. Use or disclosure of confidential information obtained because of office or  
18 position for the benefit of self or another.

19       **4. Contract with state governmental agency.** It is a violation of legislative ethics  
20 for a Legislator or an associated organization to enter with a state governmental agency  
21 into any contract that is to be paid in whole or in part out of governmental funds unless  
22 the contract has been awarded through a process of public notice and competitive bidding  
23 or is exempt from competitive bidding pursuant to state purchasing laws.

24       **Sec. 8. 1 MRSA §1015**, as amended by PL 2005, c. 301, §3, is further amended to  
25 read:

26       **§1015. Prohibited campaign contributions and solicitations**

27       ~~1. Actions precluded. When a member of the Legislature has a conflict of interest,~~  
28 ~~that member has an affirmative duty not to vote on any question in connection with the~~  
29 ~~conflict in committee or in either branch of the Legislature, and shall not attempt to~~  
30 ~~influence the outcome of that question.~~

31       ~~2. Reports. When the commission finds that a Legislator has voted or acted in~~  
32 ~~conflict of interest, the commission shall report its findings in writing to the house of~~  
33 ~~which the Legislator is a member.~~

34       **3. Campaign contributions and solicitations prohibited.** The following  
35 provisions prohibit certain campaign contributions and solicitation of campaign  
36 contributions during a legislative session.

37       A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist  
38 associate" have the same meanings as in Title 3, section 312-A, and the term  
39 "contribution" has the same meaning as in Title 21-A, section 1012.

1 B. The Governor, a member of the Legislature or any constitutional officer or the  
2 staff or agent of the Governor, a member of the Legislature or any constitutional  
3 officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist  
4 associate or employer during any period of time in which the Legislature is convened  
5 before final adjournment, except for a qualifying contribution as defined under Title  
6 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not  
7 intentionally give, offer or promise a contribution, other than a qualifying  
8 contribution, to the Governor, a member of the Legislature or any constitutional  
9 officer or the staff or agent of the Governor, a member of the Legislature or any  
10 constitutional officer during any time in which the Legislature is convened before  
11 final adjournment. These prohibitions apply to direct and indirect solicitation,  
12 acceptance, giving, offering and promising, whether through a political action  
13 committee, political committee, political party or otherwise.

14 C. This subsection does not apply to:

- 15 (1) Solicitations or contributions for bona fide social events hosted for  
16 nonpartisan, charitable purposes;
- 17 (2) Solicitations or contributions relating to a special election to fill a vacancy  
18 from the time of announcement of the election until the election;
- 19 (3) Solicitations or contributions after the deadline for filing as a candidate as  
20 provided in Title 21-A, section 335; and
- 21 (4) Solicitations or contributions accepted by a member of the Legislature  
22 supporting that member's campaign for federal office.

23 C-1. This subsection does not prohibit the attendance of the Governor, a member of  
24 the Legislature or any constitutional officer or the staff or agent of the Governor, a  
25 member of the Legislature or any constitutional officer at fund-raising events held by  
26 a municipal, county, state or national political party organized pursuant to Title 21-A,  
27 chapter 5, nor the advertisement of the expected presence of any such official at any  
28 such event, as long as any such official has no involvement in soliciting attendance at  
29 the event and all proceeds are paid directly to the political party organization hosting  
30 the event or a nonprofit charitable organization.

31 D. A person who intentionally violates this subsection is subject to a civil penalty not  
32 to exceed \$1,000, payable to the State and recoverable in a civil action.

33 ~~4. Contract with state governmental agency. A Legislator or an associated~~  
34 ~~organization may not enter with a state governmental agency into any contract that is to~~  
35 ~~be paid in whole or in part out of governmental funds, when such a contract is normally~~  
36 ~~awarded through a process of public notice and competitive bidding, unless the contract~~  
37 ~~has been awarded through a process of public notice and competitive bidding.~~

38 **Sec. 9. Application.** Notwithstanding the Maine Revised Statutes, Title 1, section  
39 1013, subsection 2, paragraph H as amended by this Act, a complaint filed under Title 1,  
40 chapter 25, subchapter 2 prior to the effective date of this Act and subjected to a vote of  
41 the commission may not be refiled, and the conduct at issue in that complaint may not be  
42 challenged in any other complaint.

1

## SUMMARY

2 This bill amends the legislative ethics laws, as recommended by a 15-member study  
3 group created during the Second Regular Session of the 122nd Legislature: the Presiding  
4 Officers' Advisory Committee on Legislative Ethics. It broadens the definition of  
5 "conflict of interest" and increases protection against possible undue influence by  
6 Legislators. It also changes the workings of the Commission on Governmental Ethics  
7 and Election Practices to require that most commission proceedings on legislative ethics  
8 be conducted in public and to allow members of the public to file complaints regarding  
9 possible violations of legislative ethics laws. Finally, the bill rearranges, rewrites and  
10 edits several provisions of the law to make it easier to read and understand.

11 Under current law and rules of the Legislature, a Legislator is prohibited from voting  
12 on legislation on the grounds of conflict of interest only if the Legislator or certain family  
13 members or business associates would derive a unique and distinct benefit from the  
14 legislation. This bill proposes that a Legislator faces a conflict of interest in voting if the  
15 Legislator or an immediate family member or close economic associate of the Legislator  
16 would be benefited or harmed by the legislation to a degree that is significantly greater  
17 than similarly situated persons or entities or the Legislator, a member of the Legislator's  
18 immediate family or a close economic associate is a member of a small group of persons  
19 or entities that derive a significant benefit or harm from the proposed legislation.

20 The bill revises the limits on Legislators appearing before state agencies. Current law  
21 allows Legislators who are lawyers or other professional persons to represent clients  
22 before state agencies as long as they do not refer to their legislative capacity, but prohibits  
23 other Legislators from doing so. This bill prohibits a Legislator from representing a  
24 client before a state agency if the Legislator is a member of the joint standing committee  
25 with jurisdiction over that state agency. In such instances, a department and its staff  
26 would be more likely to know the identity of the Legislator and be influenced in their  
27 decision making by the Legislator's influence over the agency's policies and budget.  
28 Exceptions to the prohibition are made for representation before courts, uncompensated  
29 representation for a constituent and representation involving only the agency's  
30 ministerial, nondiscretionary functions. The intent of the bill is that the committee  
31 jurisdiction be determined by definition of the Legislature, including matters such as  
32 jurisdiction for purposes of referencing bills or for budget review by a policy committee.

33 The bill allows members of the public to file complaints alleging a violation of  
34 legislative ethics with the Commission on Governmental Ethics and Election Practices. A  
35 complaint must relate to a sitting Legislator but may refer to conduct that occurred within  
36 2 years prior to the complaint. The bill requires the commission to conduct an initial  
37 review of all complaints in executive session to screen out frivolous or bad-faith  
38 accusations. If the commission does not have its full complement of 5 members, the bill  
39 proposes that a vote of 2 members would be sufficient to pursue a complaint. Once the  
40 commission votes to pursue a complaint, all commission meetings on the complaint must  
41 be conducted in public. Current law allows the commission to order a complainant to  
42 reimburse the subject of a complaint for costs incurred if the commission finds the  
43 complaint to be "groundless and without foundation." The bill changes the standard to  
44 "frivolous" complaints and those "filed in bad faith." These standards are more

1 commonly used in courts and other situations. The bill allows a person to appeal a  
2 commission order under this provision pursuant to the Maine Administrative Procedure  
3 Act.

4 The bill provides that a complaint and most investigative records relating to the  
5 complaint are public records once the commission votes to pursue the complaint. If the  
6 commission votes not to pursue the complaint, the complaint and investigative records  
7 remain confidential. As under current law, the commission's findings of fact and  
8 recommendations are public records. The bill prohibits communication between  
9 commission members and a complainant or the subject of a complaint while a complaint  
10 is pending before the commission. It also requires the commission to make reasonable  
11 efforts to resolve a complaint within 90 days of its filing and replaces current process  
12 provisions with a requirement that the commission adopt rules regarding the conduct of  
13 its investigations and hearings.

14 The bill revises the structure of the legislative ethics laws to create a definition of  
15 "violation of legislative ethics" and to designate the term "conflict of interest" as referring  
16 specifically to conflicts regarding voting or advocating on legislation. Other violations of  
17 legislative ethics are specifically set out as under current law, such as "undue influence"  
18 and "abuse of position." Rather than referring to these as "conflicts of interest," the bill  
19 classifies them as violations of legislative ethics. The law specifically authorizes the  
20 commission to hear complaints and make recommendations to the Senate and the House  
21 of Representatives regarding these violations of legislative ethics statutes.

22 The Presiding Officers' Advisory Committee on Legislative Ethics also proposed a  
23 number of changes to the Legislature's Joint Rules and the rules of the Senate and the  
24 House of Representatives relating to ethics and the process for addressing concerns about  
25 ethics. Recommendations for amendments to the rules, which are matters of internal  
26 procedure reserved for the House and Senate, will be presented separately from this bill  
27 to the Joint Select Committee on Joint Rules for their consideration.