

MAINE STATE LEGISLATURE

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L.D. 2219

Date: 4/4/8

Majority

(Filing No. H-938)

LEGAL AND VETERANS AFFAIRS

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1585, L.D. 2219, Bill, "An Act To Promote Transparency and Accountability in Campaigns and Governmental Ethics"

Amend the bill by striking out all of sections 1 and 2.

Amend the bill by striking out all of sections 6 and 7 and inserting the following:

'Sec. 6. 1 MRSA §1012, sub-§4, as amended by PL 1995, c. 33, §§1 and 2, is further amended to read:

4. Gift. "Gift" means anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. "Gift" does not include:

- A. Gifts received from a single source during the reporting period with an aggregate value of ~~\$300~~ \$200 or less;
- B. A bequest or other form of inheritance;
- C. A gift received from a relative; ~~and~~
- D. A subscription to a newspaper, news magazine or other news publication; ~~;~~ or
- E. Legal services provided in a matter of legislative ethics.'

Amend the bill in section 9 in §1013 in subsection 2 by striking out all of paragraphs A and B (page 3, lines 16 to 41 and page 4, lines 1 to 16 in L.D.) and inserting the following:

'A. Requests for advisory opinions by members of the Legislature ~~shall~~ must be filed with the commission in writing, ~~and~~ signed by the Legislator requesting the opinion and ~~shall~~ must contain such supporting data as the commission ~~shall require~~ requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into

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1 the legislative record. When preparing an advisory opinion on its own motion, the
2 commission shall notify the Legislator concerned and allow him the Legislator to
3 provide additional information to the commission. In preparing an advisory opinion,
4 either upon request or on its own motion, the commission may make such an
5 investigation as it deems determines necessary. A copy of the commission's advisory
6 opinion shall must be sent to the Legislator concerned and to the presiding officer of
7 the House legislative body of which the Legislator is a member;

8 ~~B. A Legislator making a complaint shall file the complaint under oath with the~~
9 ~~chairman. The complaint shall specify the facts of the alleged conflict of interest. The~~
10 ~~Legislator against whom a complaint is filed shall immediately be given a copy of the~~
11 ~~complaint and the name of the complainant. Only those complaints dealing with~~
12 ~~alleged conflicts of interest related to the current Legislature shall be considered by~~
13 ~~the commission. Upon a majority vote of the commission, the commission shall~~
14 ~~conduct such investigation and hold such hearings as it deems necessary. The~~
15 ~~commission shall issue its findings of fact together with its opinion regarding the~~
16 ~~alleged conflict of interest to the House of which the Legislator concerned is a~~
17 ~~member. That House may take whatever action it deems appropriate, in accordance~~
18 ~~with the Constitution of the State of Maine.~~

19 B-1. Any person may file a complaint against a Legislator alleging a violation of
20 legislative ethics. The complaint must be filed in writing and signed under oath and
21 must specify the facts of the alleged violation citing the specific provisions of
22 sections 1014 and 1015 that are alleged to have been violated, the approximate date
23 of the alleged violation and such other information as the commission requires. A
24 complainant shall agree in writing not to disclose any information about the
25 complaint during the time the commission is determining whether or not to pursue the
26 complaint or during the investigation of a complaint. A complaint that does not meet
27 the criteria of this paragraph is considered incomplete and will not be forwarded to
28 the commission.

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

31 (2) The commission shall consider only complaints against Legislators in office
32 at the time of the filing of the complaint and only complaints relating to activity
33 that occurred or was ongoing within 2 years of the complaint. Upon a majority
34 vote of the commission, the commission shall conduct an investigation and hold
35 hearings as it determines necessary.

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

41 (4) If the commission determines that a Legislator has potentially violated
42 professional standards set by a licensing board, its opinion and such other
43 information as may be appropriate must be referred to the licensing board that
44 oversees the Legislator's professional conduct.'

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1 Amend the bill in section 9 in §1013 in subsection 2 in paragraph G in the last line
2 (page 5, line 26 in L.D.) by inserting after the following: "Act." the following: 'If the
3 commission determines that the complaint was filed in bad faith, the commission shall
4 refer the case to the Attorney General for investigation.'

5 Amend the bill in section 9 in §1013 by striking out all of subsection 3-A (page 6,
6 lines 26 to 39 in L.D.) and inserting the following:

7 '3-A. Confidentiality of records and proceedings relating to screening
8 complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a
9 complaint alleging a violation of legislative ethics is confidential and is not a public
10 record until after the commission has voted pursuant to subsection 2, paragraph B-1 to
11 pursue the complaint, and a commission proceeding to determine whether to pursue a
12 complaint must be conducted in executive session. If the commission does not vote to
13 pursue the complaint, the complaint and records relating to the investigation of that
14 complaint remain confidential and are not public records. This subsection does not
15 prohibit a complainant from disclosing information that the complainant provided to the
16 commission as part of the complaint or investigation once the commission has determined
17 not to pursue the complaint or the investigation of a complaint is complete. This
18 subsection does not prevent the commission from including general information about
19 complaints in any report to the Legislature. Any person who knowingly breaches the
20 confidentiality of a complaint investigation commits a Class D crime. This subsection
21 does not prevent commission staff from disclosing information to a person from whom
22 the commission is seeking information or evidence relevant to the complaint that is
23 necessary to investigate the complaint or prevent the complainant or the Legislator
24 against whom the complaint is made from discussing the complaint with an attorney or
25 other person assisting them with the complaint. The commission or commission staff
26 shall inform any person with whom they communicate regarding the complaint of the
27 requirement to keep information regarding the complaint confidential.'

28 Amend the bill in section 9 in §1013 in subsection 5 in the first line (page 7, line 6 in
29 L.D.) by inserting after the following: "Communications" the following: 'outside official
30 proceedings'

31 Amend the bill by striking out all of section 10 and inserting the following:

32 'Sec. 10. 1 MRSA §1014, as enacted by PL 1975, c. 621, §1, is amended to read:

33 §1014. Violations of legislative ethics

34 1. Situations involving conflict of interest. A Legislator engages in a violation of
35 legislative ethics if that Legislator votes on a question in connection with a conflict of
36 interest in committee or in either body of the Legislature or attempts to influence the
37 outcome of that question unless a presiding officer in accordance with the joint rules
38 adopted by the Legislature requires a Legislator to vote or advises the Legislator that the
39 Legislator does not have a conflict in accordance with section 1013, subsection 2,
40 paragraph K. A conflict of interest shall include the following includes:

41 A. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family
42 has or acquires a direct substantial personal financial interest, distinct from that of the

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1 general public, in an enterprise ~~which~~ that would be financially benefited by proposed
2 legislation, or derives a direct substantial personal financial benefit from close
3 economic association with a person known by the Legislator to have a direct financial
4 interest in an enterprise affected by proposed legislation;

5 B. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family
6 accepts gifts, other than campaign contributions duly recorded as required by law,
7 from persons affected by legislation or who have an interest in a business affected by
8 proposed legislation, ~~where it is known~~ and the Legislator knows or reasonably
9 should ~~be known~~ know that the purpose of the donor in making the gift is to influence
10 the Legislator in the performance of ~~his~~ the Legislator's official duties or vote; or is
11 intended as a reward for action on ~~his~~ the Legislator's part;

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

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

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

26 F. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family
27 has an interest in legislation relating to a profession, trade, business or employment in
28 which the Legislator or a member of ~~his~~ the Legislator's immediate family is
29 engaged, ~~where~~ and the benefit derived by the Legislator or a member of ~~his~~ the
30 Legislator's immediate family is unique and distinct from that of the general public or
31 persons engaged in similar professions, trades, businesses or employment.

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

35 ~~A. Appearing for, representing or assisting another in a matter before a state agency~~
36 ~~or authority, unless without compensation and for the benefit of a constituent, except~~
37 ~~for attorneys or other professional persons engaged in the conduct of their~~
38 ~~professions.~~

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

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

4 2-A. Undue influence. It is a violation of legislative ethics for a Legislator to
5 engage in conduct that constitutes the exertion of undue influence, including, but not
6 limited to:

7 A. Appearing for, representing or advocating for another person in a matter before a
8 state agency or authority, for compensation other than compensation as a Legislator,
9 if the Legislator makes reference to that Legislator's legislative capacity,
10 communicates with the agency or authority on legislative stationery or makes threats
11 or implications relating to legislative action;

12 B. Appearing for, representing or advocating for another person in a matter before a
13 state agency or authority if the Legislator is a member of legislative leadership or the
14 Legislator oversees the policies of the agency or authority as a result of the
15 Legislator's committee responsibilities, unless:

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

18 (2) The Legislator is engaged in the conduct of the Legislator's profession and is
19 in good standing with a licensing board that oversees the Legislator's profession;

20 (3) The appearance, representation or advocacy is provided before a court or
21 office of the judicial branch; or

22 (4) The representation consists of filing records or reports or performing other
23 routine tasks that do not involve the exercise of discretion on the part of the
24 agency or authority; and

25 C. Representing or assisting another person in the sale of goods or services to the
26 State, a state agency or a state authority, unless the transaction occurs after public
27 notice and competitive bidding.

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

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

40 B. Granting or obtaining special privilege, exemption or preferential treatment to or
41 for oneself or another, which privilege, exemption or treatment is not readily

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1 available to members of the general community or class to which the beneficiary
2 belongs; and

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

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

10 Amend the bill by striking out all of sections 12 to 14 and inserting the following:

11 'Sec. 12. 21-A MRSA §1013-A, sub-§1, ¶A, as corrected by RR 1995, c. 2, §35,
12 is amended to read:

13 A. No later than 10 days after becoming a candidate and before accepting
14 contributions, making expenditures or incurring obligations, a candidate for state or
15 county office or a candidate for municipal office who has not filed a written notice in
16 accordance with section 1011, subsection 2, paragraph A shall appoint a treasurer.
17 The candidate may serve as treasurer, except that a candidate certified in accordance
18 with section 1125 may not serve as treasurer. The candidate may have only one
19 treasurer, who is responsible for the filing of campaign finance reports under this
20 chapter. A candidate shall register the candidate's name and address and the name
21 and address of the treasurer appointed under this section no later than 10 days after
22 the appointment of the treasurer. A candidate may accept contributions personally or
23 make or authorize expenditures personally, as long as the candidate reports all
24 contributions and expenditures to the treasurer. The treasurer shall make a
25 consolidated report of all income and expenditures and provide this report to the
26 commission.

27 (1) A candidate may appoint a deputy treasurer to act in the absence of the
28 treasurer. The deputy treasurer, when acting in the absence of the treasurer, has
29 the same powers and responsibilities as the treasurer. A candidate certified in
30 accordance with section 1125 may not serve as deputy treasurer. When a
31 treasurer dies or resigns, the deputy treasurer may not assume the position of
32 treasurer unless the candidate appoints the deputy treasurer to the position of
33 treasurer. The candidate shall report the name and address of the deputy treasurer
34 to the commission no later than 10 days after the deputy treasurer has been
35 appointed.'

36 Amend the bill by striking out all of sections 16 and 17 and inserting the following:

37 'Sec. 16. 21-A MRSA §1125, sub-§5-B is enacted to read:

38 **5-B. Restrictions on serving as treasurer.** A certified candidate may not serve as a
39 treasurer or deputy treasurer for that candidate's campaign.

40 **Sec. 17. Report.** The Commission on Governmental Ethics and Election Practices
41 shall report no later than January 15, 2010 to the joint standing committee of the

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1 Legislature having jurisdiction over legal and veterans affairs on the effects of the
2 legislative ethics and elections changes to the Maine Revised Statutes, Title 1, subchapter
3 2 and Title 21-A made by this Act. The joint standing committee of the Legislature
4 having jurisdiction over legal and veterans affairs may submit legislation concerning
5 legislative ethics and elections to the Second Regular Session of the 124th Legislature.

6 **Sec. 18. Commission on Governmental Ethics and Election Practices to**
7 **provide report and analysis of possible revisions to legislative conflict of**
8 **interest statute.** The Commission on Governmental Ethics and Election Practices shall
9 provide to the joint standing committee of the Legislature having jurisdiction over legal
10 and veterans affairs a report with detailed analysis on the legal consequences and
11 potential benefits and drawbacks of changes made in this Act to the Maine Revised
12 Statutes, Title 1, section 1014. The commission shall consider in its analysis the balance
13 between serving in a citizen legislature and the need to prevent conflicts of interest. It
14 shall also consider the relationship between citizen legislators and employers and the
15 relationship between legislative duties and the direct purview of the Legislator's work
16 responsibilities as well as the extent to which a Legislator is able to interpret the
17 definition of "conflict of interest." The report must make a recommendation on proposed
18 changes. The executive director of the commission shall submit this report by February
19 15, 2009, including any proposed legislation. The joint standing committee of the
20 Legislature having jurisdiction over legal and veterans affairs is authorized to submit
21 legislation to the First Regular Session of the 124th Legislature based on the information
22 included in the report.'

23 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
24 section number to read consecutively.

25 SUMMARY

26 This amendment is the majority report of the committee. This amendment:

27 1. Removes sections that addressed qualifications and removal of members of the
28 Commission on Governmental Ethics and Election Practices that were addressed in
29 another bill;

30 2. Changes the definition of "gift" within the laws governing legislative ethics to
31 exclude legal services provided in a matter of legislative ethics and reduces the threshold
32 from \$300 to \$200 of aggregate gifts received from a single source when a Legislator
33 must report gifts from that source;

34 3. Clarifies that written advisory opinions issued and considered at a public meeting
35 by the Commission on Governmental Ethics and Election Practices are submitted to the
36 Clerk of the House and the Secretary of the Senate and are entered into the legislative
37 record;

38 4. Strikes language that allows a vote of 2 commissioners on the Commission on
39 Governmental Ethics and Election Practices to be sufficient to order an investigation and
40 hearings on matters of legislative ethics;

41 5. Specifies that complainants who file a complaint alleging violation of legislative
42 ethics in bad faith will be referred to the Attorney General for investigation;

R.S.

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- 1 6. Clarifies confidentiality provisions with regard to complaints filed against
2 legislators alleging a violation of legislative ethics;
- 3 7. Clarifies language in current law that provides that a presiding officer may require
4 a member to vote on a matter in which the Legislator may have a conflict of interest in
5 accordance with the Joint Rules of the Legislature or if the presiding officer advises that
6 no conflict exists;
- 7 8. Does not make changes regarding conflict of interest as proposed by the bill but
8 directs the Commission on Governmental Ethics and Election Practices to conduct an
9 analysis of certain proposals for changes to the definition considering the balance
10 between serving as a citizen legislator with outside employment and the duty to avoid
11 conflicts of interest;
- 12 9. Clarifies the provisions regarding undue influence to include members of
13 legislative leadership;
- 14 10. Strikes changes to lobbying registration requirements that are addressed in
15 another bill;
- 16 11. Removes the provision that a candidate and the candidate's spouse may not serve
17 as treasurer or deputy treasurer of that candidate's campaign and replaces it with a
18 provision that a Maine Clean Election Act candidate may not serve as that candidate's
19 treasurer or deputy treasurer;
- 20 12. Changes the \$10,000 contribution limitation that applies to political action
21 committees; and
- 22 13. Adds a reporting requirement directing the Commission on Governmental Ethics
23 and Election Practices to report in 2010 the impact of the changes made by the amended
24 version of the bill.

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FISCAL NOTE REQUIRED
(See attached)

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123rd MAINE LEGISLATURE

LD 2219

LR 2853(03)

An Act To Promote Transparency and Accountability in Campaigns and Governmental Ethics

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Legal and Veterans Affairs

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Additional costs to the Commission on Governmental Ethics and Election Practices can be absorbed within existing budgeted resources.