

MAINE STATE LEGISLATURE

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L.D. 2219

Date: 4/4/8

Minority

(Filing No. H-939)

LEGAL AND VETERANS AFFAIRS

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

COMMITTEE AMENDMENT "B" 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 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 only as described in section 1014 and 1015. The complaint must be
21 filed in writing and signed under oath and must specify the facts of the alleged
22 violation citing the specific provisions of sections 1014 and 1015 that are alleged to
23 have been violated, the approximate date of the alleged violation and such other
24 information as the commission requires. A complainant shall agree in writing not to
25 disclose any information about the complaint during the time the commission is
26 determining whether or not to pursue the complaint or during the investigation of a
27 complaint. A complaint that does not meet the criteria of this paragraph is considered
28 incomplete and will not be forwarded to 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 by striking out all of paragraphs
2 G and H (page 5, lines 19 to 40 in L.D.) and inserting the following:

3 'G. If the commission determines that a complaint filed under oath is ~~groundless and~~
4 ~~without foundation, frivolous or was filed in bad faith~~ or if the ~~Legislator filing the~~
5 ~~complaint~~ complainant fails to appear at the hearing without being excused by the
6 commission, the commission may order the complainant to pay to the Legislator
7 against whom the complaint has been filed ~~his that Legislator's~~ costs of investigation
8 and defense, including any reasonable attorney's fees. ~~The~~ This order is considered a
9 final agency action, and the complainant may appeal such an the order to the House
10 of which he is a member pursuant to the Maine Administrative Procedure Act. If the
11 commission determines that the complaint was filed in bad faith, the commission
12 shall refer the case to the Attorney General for investigation.

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

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

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

31 '3-A. Confidentiality of records and proceedings relating to screening
32 complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a
33 complaint alleging a violation of legislative ethics is confidential and is not a public
34 record until after the commission has voted pursuant to subsection 2, paragraph B-1 to
35 pursue the complaint, and a commission proceeding to determine whether to pursue a
36 complaint must be conducted in executive session. If the commission does not vote to
37 pursue the complaint, the complaint and records relating to the investigation of that
38 complaint remain confidential and are not public records. This subsection does not
39 prohibit a complainant from disclosing information that the complainant provided to the
40 commission as part of the complaint or investigation once the commission has determined
41 not to pursue the complaint or the investigation of a complaint is complete. This
42 subsection does not prevent the commission from including general information about
43 complaints in any report to the Legislature. Any person who knowingly breaches the

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1 confidentiality of a complaint investigation commits a Class D crime. This subsection
2 does not prevent commission staff from disclosing information to a person from whom
3 the commission is seeking information or evidence relevant to the complaint that is
4 necessary to investigate the complaint or prevent the complainant or the Legislator
5 against whom the complaint is made from discussing the complaint with an attorney or
6 other person assisting them with the complaint. The commission or commission staff
7 shall inform any person with whom they communicate of the requirement to keep any
8 information regarding the complaint investigation confidential.'

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

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

11 **§1014. Violations of legislative ethics**

12 **1. Situations involving conflict of interest.** A Legislator engages in a violation of
13 legislative ethics if that Legislator votes on a question in connection with a conflict of
14 interest in committee or in either body of the Legislature or attempts to influence the
15 outcome of that question unless a presiding officer in accordance with the Joint Rules of
16 the Legislature requires a Legislator to vote or advises the Legislator that there is no
17 conflict in accordance with section 1013, subsection 2, paragraph K. A conflict of interest
18 shall include the following includes:

19 A. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family
20 has or acquires a direct substantial personal financial interest, distinct from that of the
21 general public, in an enterprise ~~which that~~ that would be financially benefited by proposed
22 legislation, or derives a direct substantial personal financial benefit from close
23 economic association with a person known by the Legislator to have a direct financial
24 interest in an enterprise affected by proposed legislation;

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

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

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

37 E. ~~Where~~ When a Legislator or a member of ~~his~~ the Legislator's immediate family
38 accepts or engages in employment ~~which that~~ that could impair the Legislator's judgment,
39 or ~~where~~ when the Legislator knows that there is a substantial possibility that an
40 opportunity for employment is being afforded ~~him~~ the Legislator or a member of ~~his~~
41 the Legislator's immediate family with intent to influence ~~his conduct in~~ the
42 performance of ~~his~~ the Legislator's official duties, or ~~where~~ when the Legislator or a

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1 member of his immediate family stands to derive a personal private gain or loss from
2 employment, because of legislative action, distinct from the gain or losses of other
3 employees or the general community; and

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

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

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

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

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

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

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

36 B. Granting or obtaining special privilege, exemption or preferential treatment to or
37 for oneself or another, which privilege, exemption or treatment is not readily
38 available to members of the general community or class to which the beneficiary
39 belongs; and

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

42 **4. Contract with state governmental agency.** It is a violation of legislative ethics
43 for a Legislator or an associated organization to enter with a state agency into any

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1 contract that is to be paid in whole or in part out of governmental funds unless the
2 contract has been awarded through a process of public notice and competitive bidding or
3 is exempt from competitive bidding pursuant to state purchasing laws.'

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

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

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

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

30 Amend the bill by striking out all of section 16 and inserting the following:

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

32 5-B. Restrictions on serving as treasurer. A certified candidate may not serve as a
33 treasurer or deputy treasurer for that candidate's campaign.

34 **Sec. 17. Report.** The Commission on Governmental Ethics and Election Practices
35 shall report no later than January 15, 2010 to the joint standing committee of the
36 Legislature having jurisdiction over legal and veterans affairs on the effects of the
37 legislative ethics and elections changes to the Maine Revised Statutes, Title 1, subchapter
38 2 and Title 21-A made by this Act. The joint standing committee of the Legislature
39 having jurisdiction over legal and veterans affairs may submit legislation concerning
40 legislative ethics and elections to the Second Regular Session of the 124th Legislature.'

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

3 **SUMMARY**

4 This amendment is the minority report of the committee. This amendment:

5 1. Removes sections that addressed qualifications and removal of members of the
6 Commission on Governmental Ethics and Election Practices that were addressed in
7 another bill;

8 2. Changes the definition of "gift" within the laws governing legislative ethics to
9 exclude legal services provided in a matter of legislative ethics;

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

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

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

19 6. Clarifies confidentiality provisions with regard to complaints filed against
20 Legislators alleging a violation of legislative ethics;

21 7. Clarifies language in current law that provides that a presiding officer may require
22 a member to vote on a matter in which the Legislator might have a conflict of interest in
23 accordance with the Joint Rules of the Legislature or if the presiding officer advises that
24 no conflict exists;

25 8. Strikes the changes made by the bill regarding conflict of interest and undue
26 influence;

27 9. Strikes changes to lobbying registration requirements that are addressed in another
28 bill;

29 10. Removes the provision that a candidate and the candidate's spouse may not serve
30 as treasurer or deputy treasurer of that candidate's campaign and replaces it with a
31 provision that a Maine Clean Election Act candidate may not serve as that candidate's
32 treasurer or deputy treasurer;

33 11. Strikes the \$10,000 contribution limitation for political action committees and
34 ballot measure committees; and

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123rd MAINE LEGISLATURE

LD 2219

LR 2853(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "B"
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.