

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
113TH LEGISLATURE  
SECOND REGULAR SESSION

AN EVALUATION OF MAINE'S  
CONFLICT OF INTEREST LAWS

JANUARY 1988

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I.

INTRODUCTION

During the First Regular Session of the 113th Legislature, the Joint Standing Committee on State and Local Government considered LD 1219, "AN ACT Concerning Conflicts of Interest Relating to Department of Environmental Protection Employees." This bill proposed to prohibit any former supervisory employee within the DEP from accepting employment or operating a business involving any activity regulated by the DEP for a 2 year period from the date of the employee's departure from the DEP.

LD 1219 raised several fundamental legal and constitutional questions that could not be adequately addressed during the session. As a result, the Committee on State and Local Government requested authorization which was granted by the Legislative Council, to study this issue.

II.

BACKGROUND

LD 1219 arose, in part, from complaints about certain former employees in the DEP who left that agency to accept employment or operate businesses requiring the former DEP employees to represent these firms before the DEP in regulatory proceedings or for license applications.

One DEP employee formed his own company while he was an employee of the DEP and investigated possible sites around the State for his solid waste facility. The firm did not begin operation until he left the DEP, but he may have made decisions affecting his "soon-to-be" competitors while he remained in the DEP.

The activities of the former DEP employees are not the only incidents that have raised concern about state employees who leave state employment for work in the private sector. Professional employees have left the Public Utilities Commission (PUC) and the Public Advocate's Office to work for utilities regulated by the PUC. In the alternative, some professional staff and managerial people of state agencies have been acquired from private sector firms.

The issue raised by LD 1219 as well as the other examples described above, concern the extent to which former state employees may provide private sector firms with an unfair advantage with respect to license applications and regulatory proceedings involving the state agencies for which they previously worked. To some people, the former state employees' knowledge of the process as well as their camaraderie or association with their previous colleagues in the state agency

either presents the opportunity for an unfair advantage or constitutes a clear conflict of interest. Others believe that current law, possibly with some minor revisions, is adequate.

A second aspect of the study assigned to the Committee on State and Local Government concerns the conflict of interest with which members of boards and commissions may be confronted as various times as they render decisions that may affect their financial well-being or the financial well-being of a friend or relative. This issue has been a major concern of a number of people including legislators and members of the public.

If members of boards and commissions may not represent any private interest or economic sector regulated or served by the boards and commissions, it may be difficult to find effective people to serve on boards and commissions. If there is too much latitude provided with respect to the decisions that board members may render, the opportunity for conflicts of interest are too great.

Currently, the major problem with respect to conflicts of interest as they relate to members of boards and commissions is the absence of any general law that addresses this issue. The law that establishes each board and commission may contain a conflict of interest provision, but some laws may be very strict, some may be very flexible, and some laws may not address the issue at all.

Since the State of Maine has established professional and occupational licensing boards composed of members of professions and occupations regulated by these boards to license and otherwise regulate professions and occupations, the committee decided to exclude these boards from the scope of its study.

### III.

#### STUDY PROCEDURE

The Joint Standing Committee on State and Local Government appointed a 5 member subcommittee to undertake the study. The subcommittee adopted the following study procedure:

1. A review of conflict-of-interest law of other states and on the federal level;
2. A review of Maine conflict-of-interest laws;
3. A survey of state agencies to determine whether there is a conflict-of-interest problem from the perspective of state regulators;
4. A survey of firms and corporations to determine whether there is a conflict of interest problem involving

regulators and regulated interests from the perspective of the private sector;

5. A survey of membership organizations representing specific constituencies to determine whether there is a conflict of interest problem from the perspective of these organizations.

#### IV. OVERVIEW OF CONFLICT-OF-INTEREST LAWS IN MAINE AND IN OTHER STATES

##### A. Conflict-of-Interest Laws in Other States

According to the results of research conducted by the Legislative Research Office of the Oregon Legislature and the Council of State Governments, approximately 25 states have established commissions to enforce ethics or conflict of interest codes that prohibit or restrict certain activities of public officials and state employees. Table I describes the most common types of activities regulated in these states.

TABLE I

##### Types of Prohibited or Restricted Activities

Activity	Number of States
Use of position for personal benefit	25
Providing benefits to influence official action	24
Representing private clients before public entities	24
Competitive bidding on public contracts	24
Use of confidential information	23
Receipt of gifts by officials/employees	23
Outside employment or business activities of official/employee	23
Nepotism	20
Receipt of honoraria by officials/employees	19
Post-government employment	17

SOURCE: Council of State Governments, Campaign Finance, Ethics, and Lobby Law Blue Book, 1986-87, p. 58, and state statutes.

The laws governing conflicts of interest vary among the states. In 14 states, such as Massachusetts, the laws govern local government officials and employees as well as those on the state level. In Maryland, the law applies to state employees earning more than a specified salary and those

holding policy-making positions. Louisiana, Minnesota, Nebraska, and Rhode Island have established procedures for the reporting of potential conflicts of interest.

According to the Oregon Legislative Research study, 28 states require certain public officials or employees to file an annual financial statement as shown in Table II. Maine requires only state legislators, and persons appointed by the Governor and confirmed by the Legislature to file financial information.

TABLE II

Personal Financial Disclosure Statements  
Types of Officials and Employees Required to File

Type of Official or Employee	Number of States
Candidates for statewide office	26
Legislators	26
Statewide elective officials	25
Officials of state agencies and departments	25
Paid members of state boards and commissions	22
Volunteer members of state boards and commissions	18
Nominees for appointment to state agencies or departments	17
County elective officials	16
Municipal elective officials	15
Certain municipal employees	14
Certain county employees	12
Paid members of local boards and commissions	11
Volunteer members of local boards and commissions	10
State employees earning in excess of a specified amount	8

SOURCE: Council of State Governments, Campaign Finance, Ethics, and Lobby Law Blue Book, pp. 51-52, and state statutes

The filing of financial data in the 28 states covers a variety of activities as shown in Table III.

TABLE III

Types of Information Disclosed

Types of Information	Number of States	Types of Information	Number of States
Real estate interests	27	Sources of personal income	26
Offices or directorships held	23	Investments	22
Creditor indebtedness	21	Private employer]nature of employment	20
Sources of business income if partner or shareholder	19	Fees or honoraria	18
Financial interests of spouse	18	Financial interests of dependents	15
Names of immediate family members	14	Professional services rendered	13
Identification of trust interests by beneficiary	12	Leases or other public contracts	11
Identification of trusts by trustee	11	Identification of trust interests by trustee	11
Compensated representation before public agencies	10	Retainers	9
Private reimbursement of travel expenses	8	Identification of trusts by beneficiary	8
Deposits in financial institutions	7	Cash surrender value of insurance	4
Professional]occupations licenses held	2	Tax Returns	2

SOURCE: Council of State Governments, Campaign Finance, Ethics, and Lobby Law Blue Book, pp. 51-52, and state statutes



## B. Conflict-of-Interest Laws in Maine

There are several laws relating to various aspects of the conflict of interest issue as it relates to state, county, and local government officials and employees in Maine. These laws include provisions for:

1. Legislative ethics and the protection of the public from conflicts of interest involving State legislators. See 1 MRSA Chapter 22 (§§1002-1017).

a. This law is enforced by the Commission on Governmental Ethics and Election Practices

2. Lobbyist disclosure, and the protection of the legislative process from the abuse of lobbyists' influence and power. See 3 MRSA Chapter 15 (§§312-A - 326).

a. This law is implemented by the Secretary of State.

3. Conflict of interest prevention among state employees (5 MRSA §18). This law regulates the decision making process of "Executive" or state employees and restricts, for one year, the activities of certain former state employees following their departure from state government as a means of preventing the occurrence of conflicts of interest. "Executive" employees are defined in the law as classified and unclassified state employees except the Governor; the National Guard; University of Maine, Maine Maritime and Vocational Technical Institute employees; and advisory people.

Executive employees are prohibited by this law from participating in their official capacity in any proceeding in which the following have a direct and substantial interest:

- a. executive employees, themselves;
- b. the immediate families of executive employees;
- c. partners of executive employees;
- d. an organization with which an executive employee is negotiating or has agreed to prospective employment;
- e. an organization in which the executive employee has a direct and substantial financial interest;
- f. a professional service corporation in which the executive employee is a shareholder or has a partner.

The revolving door issue in 5 MRSA §18 relates to former state employees. By current law a former executive employee may not represent a firm before the department or the board in a proceeding for 1 year following his or her departure from that department or board if:

- a. the State is a party or has a direct and substantial interest; and
  - b. the particular matter was pending before the agency prior to the departure of the employee from the agency and the matter was within the employee's realm of official responsibilities.
4. Financial disclosure for certain state employees. See 5 MRSA §19.
- a. Violation of this law constitutes a civil violation with a penalty of no more than \$100 for each offense.

Financial disclosure with respect to state employees is limited to classified or unclassified employees appointed by the Governor and confirmed by the Legislature and also includes the constitutional officers and the State Auditor. Financial disclosure therefore does not apply to major policy influencing positions or any other position below the level of commissioner unless the position requires confirmation such as the Deputy Commissioner for Information Services.

5. Regulation of activities of municipal, county, and "quasi-municipal" corporation officials (See 30 MRSA §2251). The provisions of this law provide for the voiding of a contract or the vote of a body (e.g., town/city council, directors of a municipal corporation, etc.) whenever a conflict of interest has occurred. "Conflict of interest" is defined in 30 MRSA §2251, sub-§1, as the vote of an official on any question, including a contract, in which he or she has a direct or indirect pecuniary interest.

In 30 MRSA §2251, sub-§4, a "direct or indirect pecuniary interest" is held to exist when all of the following conditions exist or occur:

- a. The official is involved in a question or in the negotiation of an award or contract, and
- b. The official is also an officer, director, partner, associate, employee or stockholder of a private corporation, business or other economic entity to which the question relates or with which the political subdivision or municipal corporation contracts, and

c. "...only where the official is directly or indirectly the owner of at least 10% of the stock of the private corporation or owns at least a 10% interest in the business or other economic entity."

It is clear, therefore, that a municipal, county, or quasi-municipal corporation official must possess a minimum ownership interest of 10% in any business or other economic entity and be involved in a decision or negotiation of a contract with that business or entity in order for a conflict of interest to exist. The law also provides that when an official discloses his or her interests and abstains from taking part in the decision, the vote on the question or the contract is not voidable.

V

## RESULTS OF SURVEYS

### A. Survey of Maine Firms

A total of 300 firms in Maine were surveyed to determine whether there is a conflict of interest from the perspective of the private sector with respect to regulation of business activities in the State. Of the 300 firms queried, 142 responded for a response rate of 47.3 percent. Forty five (49) firms, or 34.5% of the total number of respondents, indicated that they had been involved in regulatory proceedings before state agency or regulatory boards within the last 5 years. Table IV describes the response to this survey.

TABLE IV  
 RESPONDENTS TO SURVEY OF FIRMS  
 BY NUMBER AND TYPE OF FIRM

<u>Type of Respondent</u>	<u>Total # Respondents</u>	<u>Type of Respondent As A % Of Total</u>	<u># Respondents In Regulatory Proceeding</u>	<u>Type of Regulated Respondent As A % Of Total Regulated Respondents</u>
1. Manufacturing	59	41.5	17	34.7
2. Wholesale Trade	11	7.7	3	6.1
3. Retail Trade	14	9.8	1	2.0
4. Service	39	27.5	21	42.8
a. Utilities	9	6.3	9	18.4
5. Construction	3	2.1	1	2.0
6. Finance	12	8.4	5	10.2
7. No Description or No Identification	5	3.5	1	2.0
TOTAL	142		49	

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The survey results show that 8 respondents or 16.3% of those involved in regulatory proceedings before state boards or agencies account for 224 proceedings or 67.5% of the total number (322) of proceedings involving the 49 respondents. Of the remaining respondents involved in regulatory proceedings, 37 or 75.5% account for 97 or 30.1% of the total number of regulatory proceedings. Three (3) respondents indicated involvement in "numerous" regulatory proceedings but did not specify the number of proceedings (please refer to the aggregate response to the Survey in the appendix).

The survey results also show that 20 firms were involved in regulatory proceedings with more than 1 state agency or state board. Of the 49 respondents involved in regulatory proceeding, 57% had proceedings with the Department/Board of Environmental Protection, 26.5% had proceedings with the Maine Public Utilities Commission, and 22% had proceedings with the Department of Professional and Financial Regulation.

The survey also provided the following results:

- 1) 9 respondents indicated that their firms had been represented by a relative, close personal friend, or former business partner or associate to a member of a state board or regulatory agency.
- 2) 4 respondents indicated that their firms had been represented by former members or employees of the board or agency with which the respondents had proceedings in the last 5 years.
- 3) Firms with representatives tied in some way to state agencies and boards indicated that in 11 cases, the decisions of the boards/agencies were favorable to the firm and in 5 cases, the decisions were unfavorable.
- 4) Five of the firms indicated that the ties of their representatives to the board or agency were helpful.
- 5) 3 of the respondents assert that there is a conflict-of-interest problem with respect to proceedings before state boards and agencies. The remaining respondents had not experienced any conflict of interest problems.
- 6) Of the 49 respondents, 31 agreed that decisions of state boards and state agencies require members or state agency personnel with specific expertise or experience in the field in which they regulate.
  - a) Two (2) of the respondents do not believe that board members or agency regulators should personally possess experience or expertise in the

area of agency or board regulation. In their opinion, experience or expertise should be available to these people, but greater objectivity in decision making is more assured with non-experts in these positions.

7) Most of the respondents believe that the "regulators in state government are honest, professional, and capable people who possess considerable integrity.

a) Many respondents indicated that disclosure of ties, application of current law, careful selection of regulators, and removal of politics from the selection process, will prevent a conflict-of-interest problem from developing in Maine.

8) Eighteen (18) of the 49 respondents favor some form of disclosure by state regulators and regulated interests.

#### B. Survey of Membership Organizations

Approximately 15 surveys were sent to membership organizations such as the Maine Audubon Society, the Maine Chamber of Commerce and Industry, the Natural Resources Council of Maine, the Maine Civil Liberties Union, the Maine Organic Farmers & Gardeners Association, etc. These surveys were intended to provide the committee with information from organizations that were not personally or economically affected by decisions of state regulatory organizations.

Of the 15 membership organizations surveyed, 10 or 75% responded. Two (2) of the 10 respondents did not complete the questionnaires, but provided interesting information relating to the subject matter of the survey.

The survey of membership organizations produced the following results:

1. None of the respondents observed a proceeding before a state regulatory organization in which a regulator or the employee of a regulatory organization had a direct and substantial financial interest in the proceeding.

a. One respondent witnessed several proceedings in which regulators have had an indirect financial interest.

2. Two (2) of the respondents witnessed proceedings in which a state regulator either had a close personal friend or a relative with a direct substantial financial interest in the decision of the organization. In neither case did the regulator abstain from voting.

3. Two (2) of the respondents indicated that they had witnessed proceedings in which the person representing the applicant was a close personal friend of the regulator.

4. Three (3) of the respondents have witnessed proceedings in which former board members or state regulatory personnel appeared before the same organization representing himself or herself or a client. In 2 of these cases, the former board member or regulatory personnel reappeared before the organization in less than 1 year from his or her departure from the board or agency.

a) In 2 of these 3 cases, the applicant received a favorable decision.

5. Of the 10 respondents, 4 believe that there is no conflict-of-interest problem and that current law satisfactorily addresses the issue. The remaining respondents believe that there is a problem, some aspects of which may not be addressed through the law-making process.

a) One (1) respondent indicated that the problem may not be one involving a direct financial interest, but is often only indirectly financial. The problem may be more subtle and may involve protection of a set of interests or principles obtained from the work place.

b) One (1) respondent believes the definition of conflict of interest is too narrow and concentrates only on cases pending before a regulatory organization.

c) One (1) respondent points out that current law does not prevent regulatory people from using "inside information and contacts" and setting up opportunities in the private sector while serving in the regulatory capacity.

## VI

### FINDINGS

1. From the data available to the committee, there does not appear to be a major conflict-of-interest problem that permeates state government.

a. For the most part, state regulators and state regulatory proceedings are perceived to be honest, objective, and fair, and regulators are described as persons with a high degree of integrity.

2. While the Committee did not investigate regulatory proceedings or subpoena witnesses and records, a few

respondents to the Committee's surveys indicated, at least, some cases of an appearance of a conflict of interest in regulatory proceedings.

3. There is potential, however, for a conflict of interest problem as a result of some omissions from current law and as demonstrated by the responses of some of the business firms and membership organizations to the committee survey.

a. Given the fact that 20.5% of the respondents who had been involved in proceedings before state regulatory boards or agencies had been represented at these proceedings by a person or persons who had been associated with a member or employee of the regulatory board or agency before which they were testifying, and that 55.6% of these respondents felt that these connections were helpful, it appears that the potential for conflict of interest problems exists.

b. In the survey of membership organizations, 2 respondents had witnessed proceedings in which a state regulator had a close personal friend or a relative with a direct, substantial and financial interest in the decision of the organization. In neither case did the regulator abstain from voting.

4. The conflict of interest provisions of The Maine Revised Statutes Annotated (Title 30, §2251) pertaining to county and municipal officials are much less restrictive and punitive than the conflict of interest provisions governing state employees.

a. Current law governing county and municipal officials require these officials to have at least 10% ownership in a firm or corporation which has a contract on which the official has participated in awarding before a conflict of interest occurs.

b. The issue as to whether common law is replaced by or supplements 30 MRSA §2251 is not clear.

c. Current statutory law fails to provide any penalty or prohibition against conflict of interest violations.

d. Current statutory law does not define conflict of interest to include a county or municipal official's decision that enriches a relative, former business partner or associate, or business of the official.

e. Current statutory law restricting county and municipal officials does not contain a "revolving door" provision.



5. The conflict of interest provisions in 5 MRSA §18 and §19 governing state employees lack some provisions that several other states have adopted. In addition, 5MRSA §18 and §19 may define a conflict of interest too narrowly.

a. Provisions adopted by other states but not included in Maine law are provisions requiring state officials to

- 1) place the public interest before the public official's or employee's private interest;
- 2) avoid the acceptance of outside business or other obligations inconsistent with the public office or position;
- 3) avoid unprofessional conduct, improprieties, the appearance of improprieties, and the impression that the official's or employee's acts may be unduly influenced by the kinship, rank, position, or influence of any person;
- 4) reject gifts or favors from persons whose influence or interests are likely to be the subject of the official's or employee's action;
- 5) disclose financial information along with the names of associations, businesses, and other organization with which the official or employee is or has been associated;

b. Current statutory law relating to state employees is not clear with respect to the application of common law and whether the latter supplements current statutes.

c. The revolving door provisions in 5 MRSA §18 relate only to matters that were pending before former state regulators and were not resolved at the time of the departure of the regulators from their regulatory positions.

- 1) A state regulator can make decisions with respect to potential competitors' applications, leave that regulatory position, and submit an application to undertake the same activity as proposed previously by his or her competitors based on "inside information and contacts."

6. The disclosure provisions of 5 MRSA §19 are superficial and apply only to executive employees appointed by the Governor and confirmed by the Legislature. The disclosure provisions do not apply to most major policy-influencing positions or to members of boards and commission.

a. The disclosure provisions fail to require disclosure of specific financial information or disclosure by regulators of ties to applicants.

b. Applicants are not required by 5 MRSA §19 to disclose any ties with regulators.

7. One example of a possible glaring conflict of interest problem is the statutory composition of the Pesticides Control Board. The issue concerns the extent to which the public interest is protected when private sector economic interests are at stake.

a. Of the 7 board members, 3 represent the private sector. A commercial pesticides applicator, a forest manager with experience in pesticides use, and an agriculturalist with experience in pesticides use are involved in board decisions that determine the types of pesticides to be registered and used in Maine, the application of pesticides, the recipients of applicator licenses, penalties for violations, and enforcement.

1) one member may be an agronomist or entomologist from the University of Maine;

2) only 2 members represent the general public.

b. The composition of the Pesticides Control Board is very similar to an occupational or professional licensing board which is a self-regulating board. But, the Pesticides Control Board is for more than an occupational licensing board. It is concerned with environmental issues that profoundly affect all residents of the state.

c. Testimony to the State and Local Government Committee alleged improprieties by certain private sector members at board meetings when their economic interests were involved.

8. More specific financial disclosure should be required of state employees; municipal and county officials, and members of boards and commissions to reduce the potential for conflicts of interest and to more accurately define conflict of interest.

## VII.

### RECOMMENDATIONS

The Committee proposes the following recommendations:

1. That members of state boards and commissions be subject to the same statutory conflict of interest provisions governing state employees.

2. That municipal and county officials along with municipal and county department directors be subject to similar statutory conflict of interest provisions governing state employees.

3. That state employees, members of boards and commissions, and municipal and county officials

a. be required to abstain in any proceeding in which he or she or the children or parents of these employees, board members, or officials are involved

b. abstain in any proceeding in which other close family relations are involved which will in anyway bias the decision made by these decision makers.

c. avoid all appearances of a conflict of interest

d. remove themselves from the room or site of the proceedings in which in a decision is being made from which they are required or wish to abstain.

e. disclose at the beginning of any proceeding any:

1) direct or substantial financial interest they may have in the proceeding.

2) any close personal friendships or blood relations with any person appearing in a proceeding.

3) any gifts or loans of more than \$100 provided by persons involved in the proceedings.

f. file a disclosure statement annually with the Secretary of State or the Town Clerk (for municipal officials) in which the following information is provided:

1) equity investments on which more than \$1,000 of income is derived from any business in which the employee, official, or board member is associated.

2) all securities and investments issued by the State or state agency or political sub-division in which the official, board member, or state employee derived more than \$1,000 of income.

3) all gifts of more than \$100 if the gift is derived from a person having a direct interest in a matter before the governmental body in which the recipient is appointed or employed.

4) equity investment in a business with which the reporting person is associated and which has been transferred to the reporting person's immediate family.

4. That former state employees, board members, and municipal and county officials be required for 1 year not to personally appear in a proceeding for a client, unless requested by the state or political subdivision, before any board or agency with which he was previously employed.

5. That common law provisions apply to any conflict of interest issue or provision not governed or addressed by statute,

6. That a more stringent conflict of interest provision governing individual boards, commissions, agencies compared to the proposed legislation would prevail, and

7. That the Joint Standing Committee on Agriculture and the Joint Standing Committee on Energy and Natural Resources separately review the structure and operation of the Pesticides Control board as well as the agency to which the board is attached. Specifically, each committee should consider whether the board more properly belongs in the Department of Environmental Protection. In addition, each committee should consider whether board membership should exclude the three private sector members now required and whether the board should be more focused on the protection of the public interest.

a. Each committee is requested to report its recommendations and the reasons for these recommendations to the Joint Standing Committee on State and Local Government no later than March 1, 1988.

8. The problem of conflicts of interest involving members of professional and occupational licensing boards, particularly with respect to the issue, suspension, and revocation of licenses and permits needs further study. At a minimum, standards are needed by which members of these boards abstain from license revocation, suspension, or granting proceedings when the licensee or applicant is a close personal friend, partner, associate, or relative to the board member.

a. The Department of Professional and Financial Regulation should study this issue and report its findings to the Joint Standing Committee on State and Local Government.

APPENDIX

PROPOSED LEGISLATION ON  
CONFLICT OF INTEREST

SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY SEVEN

AN ACT Relating to Conflict of Interest.

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

Sec. 1. 5 MRSA §18, as last amended by PL 1985, c. 779, §7 is further amended to read:

§18. Disqualification of executive employees from participation in certain matters

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Constitutional officers" means the Attorney General, Secretary of State and Treasurer of State.

B. "Executive employee" means the constitutional officers, the State Auditor, members of state boards and commissions as defined in chapter 379, except professional and occupational licensing boards advisory boards, and compensated members of the classified or unclassified service employed by the Executive Branch, but it shall not include:

(1) The Governor;

(2) Employees of and members serving with the National Guard;

(3) Employees of the University of Maine System, the Maine Maritime Academy and State vocational-technical institutes; and

(4) Employees who are employees solely by their appointment to an advisory body.

C. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.

D. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction.

2. Executive employee. An executive employee commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse, or his dependent children, or his parents;

B. His partners;

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;

D. An organization in which he has a direct and substantial financial interest; or

E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22, during the preceding year.

3. Former executive employee. A former executive employee commits a civil violation if he, within one year after his employment has ceased, either knowingly acts as an agent or attorney for, or appears personally in any proceeding before a state or quasi state agency for anyone other than the State in connection with a proceeding in which state agency by which he was previously employed or before the state board of which he was a member; except that nothing shall prohibit a former executive employee from appearing before any state agency, quasi state agency or any board on behalf of or at the request of the State.

~~A--The State is a party or has a direct and substantial interest; and~~

~~B--The particular matter at issue was pending before his agency and was directly within his official responsibilities as an executive employee at any time-~~

~~within one year prior to the termination of his employment.~~

A. No former executive employee may knowingly act as an agent or attorney for or appear personally in any proceeding for anyone other than the State in connection with a proceeding in which the particular matter at issue was pending before his agency and was directly within his responsibilities as an executive employee at any time within one year prior to the termination of his employment.

4. Avoidance of an appearance of a conflict of interest. Every executive employee shall avoid the appearance of a conflict of interest. To achieve this purpose, an executive employee shall:

A. in any proceedings, place the public interest before the employee's private interest;

B. not accept outside business or other obligations regulated by the agency or organizations with which the executive employee serves;

C. not engage in unprofessional conduct or improprieties, or give the appearance of improprieties, by which the objective judgment of the employee in a proceeding may be impaired or the confidence or trust of the public in the proceeding is jeopardized;

D. reject gifts or favors from persons whose influence or interests are likely to be the subject of the official's or employee's action; and

E. disclose at the beginning of any proceeding any of the following that apply

(1) any direct or substantial financial interest in the proceeding of any person, firm, or organization defined in subsection 2;

(2) any relationships, including close personal friendships, of the executive employee with any person, firm, or organization defined in subsection 2 which is appearing in a proceeding before the board or agency;

(3) any gifts or loans of more than \$100 provided to the executive employee in the previous 2 years by any person, firm or organization appearing in a proceeding before the board; and

(4) any close personal friendships with any person, firm or organization in a proceeding before the board or agency.



5. Abstention. In the event that an executive employee, by participating in any proceeding, shall be in violation of this section, including subsection 4, the executive employee shall abstain from the proceeding and from participating in or contributing to any decision rendered in the proceeding.

A. For the purpose of this section, abstention shall require the executive employee to remove himself or herself from the room in which the proceeding is being held and from those people involved in the proceeding.

B. Nothing in this section shall prevent an executive employee from abstaining in any proceeding which the employee believes would constitute a conflict of interest or give the appearance of a conflict of interest or would adversely effect the public trust or confidence in the proceeding.

6. Application of common law. The courts shall apply common law shall apply to any issue or aspect of conflict of interest that is not governed or addressed by any provision of the Maine Revised Statutes Annotated.

7. Application of more stringent statutory provisions. In the event that other statutory conflict of interest provisions pertaining to any state agency, quasi state agency or state board are more stringent than the provisions in this section, the more stringent provisions shall apply.

~~4-8.~~ Construction of section. This section may not be construed to prohibit former state employees from doing personal business with the State. This section shall not limit the application of any provisions of Title 17-A, chapter 25.

~~5-9.~~ Penalty. A violation of this section is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

Sec. 2. 5 MRSA §19, as enacted by PL 1979, c. 734, §2 is amended to read:

§19. Financial disclosure by executive employees.

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Appointed executive employee" means a compensated member of the classified or unclassified service employed by the Executive Branch, who is appointed by the Governor and confirmed by the Legislature, serves in a major policy-influencing position as defined in chapter 7, advises or recommends policy or decisions to an executive employee, or is a member of a board or commission as defined in §12004, except professional and occupational licensing boards and advisory boards.

B. "Constitutional officers" means the Governor, Attorney General, Secretary of State and Treasurer of State.

C. "Elected executive employee" means the constitutional officers and the State Auditor.

D. "Executive employee" means an appointed executive employee or an elected executive employee.

E. "Income" means economic gain from any source including compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from property transactions, rents or royalties; income from investments, including interest, capital gains and dividends; alimony or separate maintenance payments; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and prizes, awards, grants or gifts.

2. Statement of sources of income. Each executive employee shall annually file with the Secretary of State a sworn and notarized statement of finances for the preceding calendar year. The statement shall indicate:

~~A. The category or type of entity or economic activity that is the source of income to him, his spouse or dependent children that exceeds \$300 during the year, and~~

~~B. If he is an attorney, the major areas of practice, and if associated with a law firm, the major areas of the firm's practice.~~

A. the name and address of, the nature of association with, the share of equity in, if applicable, and the amount of income if greater than one thousand dollars derived from each business with which he is associated;

B. the identity of all securities and other investments with a fair market value of greater than one thousand dollars which were beneficially owned, not otherwise reportable hereunder; and the amount of income if over one thousand dollars from any such security which is issued by the State or any political subdivision thereof or any public agency or authority created by the Legislature;

C. the name and address of the donor, and the fair market value, if determinable of any gifts aggregating more than one hundred dollars in the calendar year, if the recipient is a executive employee and the source of such gift(s) was a person now having a direct interest in a matter before the governmental body by which the recipient is employed;

D. the name and address of any business from which the reporting person is taking a leave of absence;

E. the identity of any equity in a business with which the reporting person is associated which has been transferred to a member of the reporting person's immediate family; provided, however, that a member of the reporting person's family need not report any such transfer.

Nothing in this section shall be construed to require the disclosure of information which is privileged by law.

No executive employee shall be required to file a statement of financial interest for the year in which he ceased to be a public employee if he served less than thirty days in such year.

3. Time for filing.

A. An elected executive employee shall file an initial report within 30 days of his election. An appointed executive employee shall file an initial report prior to confirmation by the Legislature.

B. Each executive employee shall file the annual report prior to the close of the 2nd week in April, unless he has filed an initial or updating report during the preceding 30 days.

C. Each executive employee whose income substantially changes file a report of that change within 30 days of it.

4. Penalties. Failing to file the statement, within 15 days of having been notified by the Secretary of State of failing to meet the requirements of subsection 2, is a civil violation for which a forfeiture of not more than \$100 may be adjudged.

5. Rules. The Secretary of State may adopt or amend rules to specify the reportable categories or types and the procedures and forms for reporting and to administer this section.

6. Public record. Statements filed under this section are public records.

Sec. 3. 30 MRSA §2251 is repealed.

Sec. 4. 30 MRSA §2251-A is enacted to read:

§2251-A. Conflicts of interest

1. Definitions. As used in this section unless the context indicates otherwise, the following terms have the following meanings.

A. County official. "County official" means any elected or appointed member of a county government and any director of any department or office of county government;

B. Municipal official. "Municipal official" means any elected or appointed member of a municipal government including directors of departments and offices of municipal government.

C. Official. "Official" means any county or municipal official.

D. "Participate in his official capacity" means to take part in reaching a decision or recommendation in a proceeding that is within the authority of the position he holds.

E. "Proceeding" means a proceeding, application, request, ruling, determination, award, contract, claim, controversy, charge, accusation, arrest or other matter relating to governmental action or inaction.

2. Restrictions and violations. An official commits a civil violation if he personally and substantially participates in his official capacity in any proceeding in which, to his knowledge, any of the following have a direct and substantial financial interest:

A. Himself, his spouse, his children, or his parents;

B. His partners;

C. A person or organization with whom he is negotiating or has agreed to an arrangement concerning prospective employment;

D. An organization in which he has a direct and substantial financial interest; or

E. Any person with whom he has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22, during the preceding year.

3. Former official. A former official commits a civil violation if he, within one year after his employment has ceased, either knowingly acts as an agent or attorney for, or appears personally before, the municipal or county agency or board with which he was previously employed or of which he was a member; except that nothing shall prohibit a former official from appearing before any municipal or county agency or any board on behalf of or at the request of the county or municipality.

4. Avoidance of an appearance of a conflict of interest. Every official shall avoid the appearance of a conflict of interest. To achieve this purpose, an official shall:

A. in any proceeding, place the public interest before the official's private interest;

B. not accept outside business or other obligations regulated by the agency or organization with which the official serves;

C. not engage in unprofessional conduct or improprieties or give the appearance of improprieties, by which the objective judgment of the official in a proceeding may be impaired or the confidence or trust of the general public in the proceeding would be jeopardized;

D. reject gifts or favors from persons whose influence or interests are likely to be the subject of the official's or employee's action; and

E. disclose at the beginning of any proceeding any of the following that apply

(1) any direct or substantial financial interest in the proceeding of any person, firm, or organization defined in subsection 2;

(2) any relationships, of the official with any person, firm, or organization defined in subsection 2 which is appearing in a proceeding before the board or agency;

(3) any gifts or loans of more than \$100 provided to the official within the previous 2 years by any person, firm or organization appearing in a proceeding before the board; and

(4) any close personal friendships of the official with any person, firm or organization appearing before the agency or board.

5. Abstention. In the event that an official, by participating in any proceeding, shall be in violation of this section, including subsection 4, the official shall abstain from the proceeding and from participating in or contributing to any decision considered in the proceeding.

A. For the purpose of this section, abstention shall require the official to remove himself or herself from the room in which the proceeding is being held and from those people involved in the proceeding.

B. Nothing in this section shall prevent an official from abstaining in any proceeding which the official believes would constitute a conflict of interest or give the appearance of a conflict of interest or would adversely effect the public trust or confidence in the proceeding.

6. Application of common law. The Court shall apply common law shall apply to any issue or aspect of conflict of interest that is not governed or addressed by any provision of the Maine Revised Statutes Annotated.

7. Application of more stringent statutory provisions. In the event that other statutory conflict of interest provisions, ordinances, or charter provisions pertaining to any county or municipal agency or board are more stringent than the provisions in this section, the more stringent provisions shall apply.

8. Construction of section. This section may not be construed to prohibit former officials from doing personal business with the the municipality or county. This section shall not limit the application of any provisions of Title 17-A, chapter 25.

9. Penalty. A violation of this section is a civil violation for which a forfeiture of not more than \$1,000 may be adjudged.

Sec. 5. 30 MRSA §2252-B is enacted to read:

§2251-B. Financial disclosure by municipal and county officials

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings:

A. "Official" means a county or municipal official as defined in §2251-A.

B. "Income" means economic gain from any source including compensation for services, including fees, commissions and payments in kind; income derived from business; gains derived from property transactions, rents or royalties; income from investments, including interest, capital gains and dividends; alimony or separate maintenance payments; annuities; income from life insurance or endowment contracts; pensions; discharges of indebtedness; distributive share of partnership income; income from an interest in an estate or trust; and prizes, awards, grants or gifts.

2. Statement of sources of income. Each municipal official shall annually file with the municipal clerk and each

county official shall file with the county clerk or county administrator a sworn and notarized statement of finances for the preceding calendar year. The statement shall indicate:

A. the name and address of, the nature of association with, the share of equity in, if applicable, and the amount of income if greater than one thousand dollars derived from each business with which he is associated;

B. the identity of all securities and other investments with a fair market value of greater than one thousand dollars which were beneficially owned, not otherwise reportable hereunder; and the amount of income if over one thousand dollars from any such security which is issued by the State or any political subdivision thereof or any public agency or authority created by the Legislature, county, or municipality;

C. the name and address of the donor, and the fair market value, if determinable of any gifts aggregating more than one hundred dollars in the calendar year, if the recipient is an official and the source of such gift(s) is a person having a direct interest in a matter before the governmental body by which the recipient is employed;

D. the name and address of any business from which the reporting person is taking a leave of absence;

E. the identity of any equity in a business with which the reporting person is associated which has been transferred to a member of the reporting person's immediate family; provided, however, that a member of the reporting person's family need not report any such transfer.

Nothing in this section shall be construed to require the disclosure of information which is privileged by law.

No official shall be required to file a statement of financial interest for the year in which he ceased to be a public employee if he served less than thirty days in such year.

3. Time for filing.

A. An elected official shall file an initial report within 30 days of his election. An appointed official shall file an initial report official prior to assuming his official responsibilities.

B. Each official shall file the annual report prior to the close of the 2nd week in April, unless he has filed an initial or updating report during the preceding 30 days.

C. Each official whose income substantially changes file a report of that change within 30 days of it.

4. Penalties. Failing to file the statement, within 15 days of having been notified by the municipal clerk of failing to meet the requirements of subsection 2, is a civil violation for which a forfeiture of not more than \$100 may be adjudged.

#### STATEMENT OF FACT

This bill is the product of a study conducted by the Joint Standing Committee on State Government with respect to conflict of interests involving governmental officials and employees, excluding state legislators. The committee, through public hearings, questionnaire results and analysis of state laws governing conflict of interest, found that there is a significant potential for a conflict of interest problem that can easily be addressed by several changes in the statutes governing conflict of interest.

This bill proposes

1. That members of state boards and commissions be subject to the same statutory conflict of interest provisions governing state employees.
2. That municipal and county officials along with municipal and county department directors be subject to similar statutory conflict of interest provisions governing state employees.
3. That state employees, members of boards and commissions, and municipal and county officials
  - a. be required to abstain in any proceeding in which he or she or the children or parents of these employees, board members, or officials are involved
  - b. avoid all appearances of a conflict of interest
  - c. remove themselves from the room or site of the proceedings in which in a decision is being made from which they are required or wish to abstain
  - d. disclose at the beginning of any proceeding any:
    - 1) direct or substantial financial interest they may have in the proceeding.
    - 2) any close personal friendships or blood relations with any person appearing in a proceeding.
    - 3) any gifts or loans of more than \$100 provided by persons involved in the proceedings.



e. file a disclosure statement annually with the Secretary of State or the Town Clerk (for municipal officials) in which the following information is provided:

1) equity investments on which more than \$1,000 of income is derived from any business in which the employee, official, or board member is associated.

2) all securities and investments issued by the State or state agency or political sub-division in which the official, board member, or state employee derived more than \$1,000 of income.

3) all gifts of more than \$100 if the gift is derived from a person having a direct interest in a matter before the governmental body in which the recipient is appointed or employed.

4) equity investment in a business with which the reporting person is associated and which has been transferred to the reporting person's immediate family.

4. That former state employees, board members, and municipal and county officials be required for 1 year not to personally appear in a proceeding for a client, unless requested by the state or political subdivision, before any board or agency with which he was previously employed.

5. That common law provisions apply to any conflict of interest issue or provision not governed or addressed by statute,

6. That more stringent conflict of interest provisions governing individual boards, commissions, agencies compared to the proposed legislation would prevail, and

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