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Public Law
123rd Legislature
Second Regular Session

Chapter 642
H.P. 1585 - L.D. 2219

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

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

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

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

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

§ 1005. Open meetings

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

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

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

Sec. 4. 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.

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

10. Violation of legislative ethics. "Violation of legislative ethics" means a violation of the prohibitions in section 1014 or 1015.

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

§ 1013. Authority; procedures

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

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

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

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

2. Procedure. The following procedures shall apply:

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

B. ~~A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The~~

commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine.

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

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

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

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

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

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

D. The commission ~~shall have the~~has authority, through its ~~chairman~~chair or any member designated by ~~him~~the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records ~~which the committee deems~~commission determines relevant. ~~The commission shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed.~~ The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents ~~which the commission designates as being necessary for the exercise of its functions and duties.~~ In the case of refusal of any person to obey an order or

subpoena of the commission, the Superior Court, upon application of the commission, shall have ~~has~~ jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

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

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

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

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

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing.

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

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

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

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

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

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

K. When a Legislator has a question or problem of an emergency nature about a possible ~~conflict of interest~~violation of legislative ethics or an issue involving ~~himself~~that Legislator that arises during the course of legislative action, ~~he~~the Legislator may request an advisory opinion from the presiding officer of the legislative body of which ~~he~~the Legislator is a member. The presiding officer may, at his discretion, issue an advisory opinion, ~~which shall~~. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, which shall be in writing; and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

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

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

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to

determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.

4. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

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

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

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

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

5. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

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

§ 1014. Violations of legislative ethics

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 8. 1 MRSA §1015, as amended by PL 2007, c. 279, §§1 and 2, is further amended to read:

§ 1015. Prohibited campaign contributions and solicitations

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

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

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

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A. As used in this subsection, "contribution" has the same meaning as in Title 21-A, section 1012 and includes seed money contributions as defined in Title 21-A, section 1122, subsection 9.

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

C. This subsection does not apply to:

- (1) Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- (2) Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election; and
- (4) Solicitations or contributions accepted by a member of the Legislature supporting that member's campaign for federal office.

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

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

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

Sec. 9. 21-A MRSA §1013-A, sub-§1, ¶A, as corrected by RR 1995, c. 2, §35, is amended to read:

A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 2, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, except that a candidate

certified in accordance with section 1125 may not serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

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

Sec. 10. 21-A MRSA §1017, sub-§3-A, ¶D-1 is enacted to read:

D-1. Reports must be filed no later than 5 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date.

Sec. 11. 21-A MRSA §1125, sub-§5-B is enacted to read:

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

Sec. 12. Report. The Commission on Governmental Ethics and Election Practices shall report no later than January 15, 2010 to the joint standing committee of the Legislature having jurisdiction over legal and veterans affairs on the effects of the legislative ethics and elections changes to the Maine Revised Statutes, Title 1, subchapter 2 and Title 21-A made by this Act. The joint standing committee of the Legislature having jurisdiction over legal and veterans affairs may submit legislation concerning legislative ethics and elections to the Second Regular Session of the 124th Legislature.

Sec. 13. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 1013, subsection 2, paragraph B as amended by this Act, a complaint filed under Title 1, chapter 25, subchapter 2 prior to the effective date of this Act and subjected to a vote of the Commission on Governmental Ethics and Election Practices may not be refiled, and the conduct at issue in that complaint may not be challenged in any other complaint.

Sec. 14. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 21-A, section 1013-A, subsection 1, paragraph A takes effect November 5, 2008.

See title for effective date, unless otherwise indicated.