

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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 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.

Amend the bill in section 9 in §1013 in subsection 2 by striking out all of paragraphs G and H (page 5, lines 19 to 40 in L.D.) and inserting the following:

'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 complaintcomplainant 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 histhat Legislator's costs of investigation and defense, including any reasonable attorney's fees. TheThis order is considered a final agency action, and the complainant may appeal such anthe order to the House of which he is a memberpursuant 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.'

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

**'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. 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.'

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

**'Sec. 10. 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 following includes:

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~~a 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 immediate family has a direct financial interest or an interest through a close economic ~~association~~associate in a contract for goods or services with the State, a state agency or 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.'

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

**'Sec. 12. 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.

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

‘**Sec. 16. 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. 17. 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.’

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

## SUMMARY

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

1. Removes sections that addressed qualifications and removal of members of the Commission on Governmental Ethics and Election Practices that were addressed in another bill;
2. Changes the definition of "gift" within the laws governing legislative ethics to exclude legal services provided in a matter of legislative ethics;
3. Clarifies that written advisory opinions issued and considered at a public meeting by the Commission on Governmental Ethics and Election Practices are submitted to the Clerk of the House and the Secretary of the Senate and are entered into the legislative record;

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

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

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

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

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

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

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

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

12. Adds a reporting requirement directing the Commission on Governmental Ethics and Election Practices to report in 2010 the impact of the changes made by the amended version of the bill.

**FISCAL NOTE REQUIRED**

**(See attached)**