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VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 624, L.D. 1806, Bill, "An Act To Promote Transparency in Government"

Amend the bill by striking out all of sections 2 to 6 and inserting the following:

Sec. 2. 1 MRSA §1012, sub-§7, as corrected by RR 2001, c. 1, §6, is amended to read:

7. Income. "Income" means economic gain to a person from any source, including, but not limited to, compensation for services, including fees, commissions and payments in kind; gross income derived from business; gains gross income derived from dealings in property, rents and royalties; gross income from investments including interest, capital gains and dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of distributions from a partnership income or limited liability company; gross income from an interest in an estate or trust; prizes; and grants, but does not include gifts or honoraria. Income received in kind includes, but is not limited to, the transfer of property and options to buy or lease, and stock certificates. "Income" does not include: alimony and separate maintenance payments, child support payments or campaign contributions accepted for state or federal office or funds or other property held in trust for another, including but not limited to money to be spent on behalf of a client for payment of a licensing or filing fee.

- A.—Alimony and separate maintenance payments; or
B.—Campaign contributions recorded and reported as required by Title 21-A, chapter 43.

Sec. 3. 1 MRSA §1012, sub-§7-A is enacted to read:

7-A. Managerial employee. "Managerial employee" means an employee of an organization whose position requires substantial control over the organization's decision making, business operations, financial management or contracting and procurement activities. For the purposes of this subsection, financial management does not include tasks that are considered clerical in nature.

COMMITTEE AMENDMENT

1 **Sec. 4. 1 MRSA §1012, sub-§8**, as amended by PL 2009, c. 208, §4, is further
2 amended to read:

3 **8. Relative.** "Relative" means an individual who is related to the Legislator or the
4 Legislator's spouse or the Legislator's domestic partner as father, mother, son, daughter,
5 brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband,
6 wife, domestic partner, grandfather, grandmother, grandson, granddaughter,
7 father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
8 stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother or half
9 sister, and includes the fiance or fiancée of the Legislator.

10 **Sec. 5. 1 MRSA §1012, sub-§8-A** is enacted to read:

11 **8-A. Reportable liability.** "Reportable liability" means any unsecured loan of
12 \$3,000 or more received from a person who is not a relative. "Reportable liability" does
13 not include:

14 A. A credit card liability;

15 B. An educational loan made or guaranteed by a governmental entity, educational
16 institution or nonprofit organization; or

17 C. A loan made from a state or federally regulated financial institution for business
18 purposes.

19 **Sec. 6. 1 MRSA §1016-A**, as amended by PL 2007, c. 704, §1, is repealed.

20 **Sec. 7. 1 MRSA §1016-B**, as amended by PL 1991, c. 331, §1, is repealed.

21 **Sec. 8. 1 MRSA §1016-C**, as amended by PL 2011, c. 471, §4, is further amended
22 to read:

23 **§1016-C. Reports by legislative candidates**

24 A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature who
25 is not required to file a report under section ~~1016-A, 1016-B or 1016-E~~ 1016-G shall file
26 a report containing the same information required of Legislators under ~~sections 1016-A,~~
27 ~~1016-B and 1016-E~~ section 1016-G no later than 5 p.m. on the first Monday in August
28 preceding the general election unless the candidate withdraws from the election in
29 accordance with Title 21-A, section 374-A by that date.

30 **Sec. 9. 1 MRSA §1016-E**, as enacted by PL 2007, c. 704, §2, is repealed.

31 **Sec. 10. 1 MRSA §1016-F**, as enacted by PL 2007, c. 704, §3, is repealed.

32 **Sec. 11. 1 MRSA §1016-G** is enacted to read:

33 **§1016-G. Disclosure of specific sources of income, interests and reportable liabilities**

34 Each Legislator shall annually file with the commission a statement identifying the
35 sources of income received, positions held and reportable liabilities incurred during the
36 preceding calendar year by the Legislator or members of the Legislator's immediate
37 family. A Legislator who has completed service in the Legislature shall file the statement
38 within 45 days of the Legislator's last day of service to disclose the sources of income in
39 the Legislator's final calendar year of service.

1 **1. Content of statement.** The name and, where applicable, the job title of the
2 individual earning or receiving the income must be disclosed, unless otherwise noted.
3 Each source of income must be identified by name, address and principal type of
4 economic or business activity. If disclosure of this type is prohibited by statute, rule or an
5 established code of professional ethics, it is sufficient for the Legislator to specify the
6 principal type of economic or business activity from which the income is derived.

7 The statement must identify:

8 A. If the Legislator is an employee of another person, firm, corporation, association
9 or organization that has provided the Legislator with compensation of \$2,000 or
10 more, the name and address of the employer. The Legislator shall identify the title
11 and position held by the Legislator;

12 B. If the Legislator is self-employed, the name and address of the Legislator's
13 business and each source of income derived from self-employment that represents
14 more than 10% of the Legislator's gross income from self-employment or \$2,000,
15 whichever is greater;

16 C. Each source of income of \$2,000 or more the Legislator derived from providing
17 services as an attorney, the major areas of law practiced by the Legislator and, if
18 associated with a law firm, the major areas of practice of the firm;

19 D. Each source of income of \$2,000 or more received by the Legislator;

20 E. The specific source of each gift received by the Legislator;

21 F. Each source of income of \$2,000 or more received by any member of the
22 immediate family of the Legislator, except that the Legislator is not required to
23 identify the names of dependent children. If the member of the Legislator's
24 immediate family received income of \$2,000 or more in compensation, the Legislator
25 shall identify the source of the compensation, the type of the economic activity and
26 the title of the position held by the immediate family member;

27 G. Each source of honoraria of \$2,000 or more that the Legislator accepted;

28 H. Each executive branch agency before which the Legislator or any immediate
29 family member has represented or assisted others for compensation;

30 I. Each state governmental agency, board or commission to which the Legislator, a
31 member of the Legislator's immediate family or an associated organization has sold,
32 rented or leased goods or services with a value of \$10,000 or more during the
33 preceding calendar year and a description of the goods or services sold, rented or
34 leased;

35 J. Any offices, trusteeships, directorships or positions of any nature, whether
36 compensated or uncompensated, held by the Legislator or a member of the
37 Legislator's immediate family with any for-profit or nonprofit firm, corporation,
38 association, limited liability company, partnership or business; and

39 K. All reportable liabilities incurred by the Legislator or a member of the Legislator's
40 immediate family during the reporting period.

41 **2. Time for filing.** The following provisions govern the time for filing statements.

1 A. Each Legislator shall file with the commission by 5:00 p.m. on February 15th of
2 each year on the form provided by the commission a statement of the sources of
3 income, interests and reportable liabilities for the preceding calendar year required by
4 subsection 1. Prior to the end of the first week in January of each year, the
5 commission shall deliver a form to each Senator and member of the House of
6 Representatives.

7 B. A Legislator shall file an updated statement concerning the current calendar year
8 if the income, reportable liabilities or positions of the Legislator substantially change
9 from those disclosed in the Legislator's most recent statement. Substantial changes
10 include, but are not limited to, a new employer that has paid the Legislator \$2,000 or
11 more during the current year, another source that has provided the Legislator with
12 income that totals \$2,000 or more during the current year or the acceptance of a new
13 position with a for-profit or nonprofit firm that is reportable under subsection 1,
14 paragraph J. The Legislator shall file the updated statement within 30 days of the
15 substantial change in income, reportable liabilities or positions.

16 **3. Penalties.** Penalties for violations of this section are as follows.

17 A. Failing to file a statement within 15 days of having been notified by the
18 commission is a civil violation for which a fine of not more than \$100 may be
19 adjudged. A statement is not considered filed unless it substantially conforms to the
20 requirements of this subchapter and is properly signed. The commission shall
21 determine whether a statement substantially conforms to the requirements of this
22 subchapter.

23 B. The intentional filing of a false statement is a Class E crime. If the commission
24 concludes that it appears that a Legislator has willfully filed a false statement, it shall
25 refer its findings of fact to the Attorney General. If the commission determines that a
26 Legislator has willfully failed to file a statement required by this subchapter or has
27 willfully filed a false statement, the Legislator is presumed to have a conflict of
28 interest on every question and must be precluded or subject to penalty as provided in
29 section 1015.

30 **4. Rules, procedures and forms.** The commission may adopt or amend rules to
31 specify the reportable categories or types and the procedures and forms for reporting and
32 to administer this section. Rules adopted pursuant to this subsection are routine technical
33 rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **5. Public record.** Statements filed under this section are public records. The
35 commission shall publish on a publicly accessible website the completed forms of
36 Legislators filed under this section.

37 **Sec. 12. 1 MRSA §1017-A,** as amended by PL 2007, c. 704, §4, is repealed.

38 **Sec. 13. 1 MRSA §1018,** as amended by PL 2001, c. 75, §2, is repealed.

39 **Sec. 14. 1 MRSA §1019,** as amended by PL 2011, c. 471, §5, is repealed.'

40 Amend the bill by striking out all of sections 9 to 11 and inserting the following:

41 **'Sec. 9. 5 MRSA §19, sub-§1, ¶H,** as enacted by PL 1989, c. 561, §14, is
42 amended to read:

1 H. "Income" means economic gain to a person from any source, including, but not
2 limited to, compensation for services, including fees, commissions and payments
3 in-kind; gross income derived from business; gains gross income derived from
4 dealings in property, rents and royalties; gross income from investments including
5 interest, capital gains and dividends; annuities; income from life insurance and
6 endowment contracts; pensions; income from discharge of indebtedness; ~~distributive~~
7 ~~share of distributions from a partnership income or limited liability company;~~ gross
8 income from an interest in an estate or trust; prizes; and grants, but does not include
9 gifts or honoraria. Income received in-kind includes, but is not limited to, the transfer
10 of property and options to buy or lease and stock certificates. "Income" does not
11 include alimony and separate maintenance payments, child support payments or
12 campaign contributions accepted for state or federal office or funds or other property
13 held in trust for another, including but not limited to fees paid in advance or money to
14 be spent on behalf of a client for payment of a licensing or filing fee.

15 **Sec. 10. 5 MRSA §19, sub-§1, ¶H-1** is enacted to read:

16 H-1. "Managerial employee" means an employee of an organization whose position
17 requires substantial control over the organization's decision making, business
18 operations, financial management or contracting and procurement activities. For the
19 purposes of this subsection, financial management does not include tasks that are
20 considered clerical in nature.

21 **Sec. 11. 5 MRSA §19, sub-§2**, as amended by PL 2009, c. 524, §2, is repealed
22 and the following enacted in its place:

23 **2. Content of statement.** Each executive employee shall annually file with the
24 Commission on Governmental Ethics and Election Practices a statement identifying the
25 sources of income received, positions held and reportable liabilities incurred during the
26 preceding calendar year by the executive employee or members of the executive
27 employee's immediate family. The name and, where applicable, the job title of the
28 individual earning or receiving the income must be disclosed, unless otherwise noted.
29 Each source of income must be identified by name, address and principal type of
30 economic or business activity. If disclosure of this type is prohibited by statute, rule or an
31 established code of professional ethics, it is sufficient for the executive employee to
32 specify the principal type of economic or business activity from which the income is
33 derived.

34 The statement must identify:

35 A. If the executive employee is an employee of another person, firm, corporation,
36 association or organization that has provided the executive employee with
37 compensation of \$2,000 or more, the name and address of the employer;

38 B. If the executive employee is self-employed, the name and address of the executive
39 employee's business and each source of income derived from self-employment that
40 represents more than 10% of the employee's gross income from self-employment or
41 \$2,000, whichever is greater;

42 H. Each source of income of \$2,000 or more the executive employee derived from
43 providing services as an attorney, the major areas of law practiced by the executive
44 employee and, if associated with a law firm, the major areas of practice of the firm;

1 I. Each additional source of income of \$2,000 or more received by the executive
2 employee;

3 J. The specific source of each gift received by the executive employee;

4 K. Each source of income of \$2,000 or more received by any member of the
5 immediate family of the executive employee, except that the employee is not required
6 to identify the names of dependent children. If the member of the executive
7 employee's immediate family received income of \$2,000 or more in compensation,
8 the executive employee shall identify the source of the compensation, the type of the
9 economic activity and the title of the position held by the immediate family member;

10 L. Each source of honoraria of \$2,000 or more that the executive employee accepted;

11 M. Each executive branch agency before which the executive employee or a member
12 of the employee's immediate family has represented or assisted others for
13 compensation;

14 N. Each state governmental agency, board or commission to which the executive
15 employee, a member of the employee's immediate family or an associated
16 organization has sold, rented or leased goods or services with a value of \$10,000 or
17 more during the preceding calendar year and a description of the goods or services
18 sold, rented or leased;

19 O. Any offices, trusteeships, directorships or positions of any nature, whether
20 compensated or uncompensated, held by the executive employee or a member of the
21 employee's immediate family with any for-profit or nonprofit firm, corporation,
22 association, limited liability company, partnership or business. For the purposes of
23 this paragraph, service as a clerk of a corporation or as a registered agent authorized
24 to receive service of any process, notice or other demand for a business entity is not
25 considered a position with the corporation or business entity; and

26 P. All reportable liabilities incurred by the executive employee or members of the
27 employee's immediate family during the reporting period.

28 **Sec. 12. 5 MRSA §19, sub-§3, ¶B**, as amended by PL 2001, c. 75, §3, is further
29 amended to read:

30 B. Each executive employee shall file the annual report ~~prior to the close of the 2nd~~
31 ~~week in April~~ by 5:00 p.m. on April 15th of each year, unless that employee has filed
32 an initial or updating report during the preceding 30 days; ~~except that, if an elected or~~
33 ~~appointed executive employee or~~ has already filed a report for the preceding calendar
34 year pursuant to paragraph A, ~~a report does not need to be filed.~~

35 **Sec. 13. 5 MRSA §19, sub-§3, ¶C**, as enacted by PL 1979, c. 734, §2, is repealed
36 and the following enacted in its place:

37 C. An executive employee shall file an updated statement concerning the current
38 calendar year if the income, reportable liabilities or positions of the executive
39 employee substantially change from those disclosed in the employee's most recent
40 statement. Substantial changes include, but are not limited to, a new employer that
41 has paid the executive employee \$2,000 or more during the current year, another
42 source that has provided the employee with income that totals \$2,000 or more during

1 the current year or the acceptance of a new position with a for-profit or nonprofit firm
2 that is reportable under subsection 2, paragraph O. The executive employee shall file
3 the updated statement within 30 days of the substantial change in income, reportable
4 liabilities or positions.'

5 Amend the bill by adding after section 12 the following:

6 **'Sec. 13. 5 MRSA §19, sub-§4,** as amended by PL 2007, c. 704, §7, is repealed
7 and the following enacted in its place:

8 **4. Penalties.** Penalties for violation of this section are as follows.

9 A. Failing to file a statement within 15 days of having been notified by the
10 Commission on Governmental Ethics and Election Practices is a civil violation for
11 which a fine of not more than \$100 may be adjudged. A statement is not considered
12 filed unless it substantially conforms to the requirements of Title 1, chapter 25,
13 subchapter 2 and is properly signed. The commission shall determine whether a
14 statement substantially conforms to such requirements.

15 B. The intentional filing of a false statement is a Class E crime. If the Commission
16 on Governmental Ethics and Election Practices concludes that it appears that an
17 executive employee has willfully filed a false statement, it shall refer its findings of
18 fact to the Attorney General.

19 **Sec. 14. 5 MRSA §19, sub-§7,** as amended by PL 2011, c. 389, §1, is repealed.'

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

22 SUMMARY

23 This amendment is the minority report of the committee and amends the laws
24 governing disclosure reports required of Legislators and certain executive branch
25 employees. It amends the bill by clarifying the definition of "income" as it applies to
26 reporting and disclosures by Legislators and executive employees. The amendment
27 changes the definition of "managerial employee," which is used in the bill's definition of
28 "associated organization." The amendment reorganizes the provisions in current law that
29 require disclosure reports by Legislators and executive employees so that the provisions
30 are consistent. Current law requires a Legislator or executive employee to disclose when
31 the Legislator or executive employee or the Legislator's or executive employee's
32 immediate family sold goods or services to an executive branch agency valued at \$1,000
33 or more. The amendment clarifies that this disclosure applies to any state agency, board
34 or commission and requires disclosure if a Legislator or an executive employee, a
35 member of a Legislator's or executive employee's immediate family or an associated
36 organization sold, rented or leased goods or services valued at \$10,000 or more. This
37 amendment also provides further information on what is meant by a substantial change as
38 it applies to the requirement that a Legislator or executive employee file a report within
39 30 days if there is a substantial change in income, position or reportable liabilities since
40 the last disclosure form.