

PUBLIC Law, Chapter 20, HP 973, LD 1319, 121st Maine State Legislature
An Act Making Unified Appropriations and Allocations for the Expenditures of State
Government, General Fund and Other Funds, and Changing Certain Provisions of the Law
Necessary to the Proper Operations of State Government for the
Fiscal Years Ending June 30, 2004 and June 30, 2005

**An Act Making Unified Appropriations and Allocations for the Expenditures of State
Government, General Fund and Other Funds, and Changing Certain Provisions of the
Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending
June 30, 2004 and June 30, 2005**

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

Sec. OO-4. 5 MRSA §18, as enacted by PL 1987, c. 784, §2, and most recently amended by PL 2003, c. 20, §OO-4, 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 the state boards and commissions as defined in chapter 379 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 community colleges;
- (4) Employees who are employees solely by their appointment to an advisory body;
- (5) Members of boards listed in chapter 379, who are required by law to represent a specific interest, except as otherwise provided by law; and

(6) members of advisory boards as listed in chapter 379.

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.

E. “Participates in the legislative process” means to provide any information concerning pending legislation to a legislative committee, subcommittee or study or working group, whether orally or in writing.

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;
- 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 the executive employee has been associated as a partner or a fellow shareholder in a professional service corporation pursuant to Title 13, chapter 22-A, during the preceding year.

2-A. Participation in legislative process. An executive employee commits a civil violation if the employee participates in the legislative process in the employee’s official capacity concerning any legislation in which any person described in subsection 2, paragraphs A to E has any direct and substantial financial interest unless the employee discloses that interest at the time of the employee’s participation.

3. Former executive employee. Former executive employees shall be subject to the provisions in this subsection with respect to proceedings in which the State is a party or has a direct and substantial interest.

- A. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State for a one-year period following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the employee during a period terminating at least 12 months prior to the termination of that employee's employment.
- B. No former executive employee may knowingly act as an agent or attorney for, or appear personally before, a state or quasi-state agency for anyone other than the State at any time following termination of the employee's employment with the agency or quasi-state agency in connection with a proceeding in which the specific issue was pending before the executive employee's agency and was directly within the responsibilities of the executive employee during the 12-month period immediately preceding the termination of the employee's employment.

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

6. Application of more stringent statutory provisions. If 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.

7. Avoidance of appearance of conflict of interest. Every executive employee shall endeavor to avoid the appearance of a conflict of interest by disclosure or by abstention. For the purposes of this subsection and subsection 8, "conflict of interest" includes receiving remuneration, other than reimbursement for reasonable travel expenses, for performing functions that a reasonable person would expect to perform as part of that person's official responsibility as an executive employee.

8. Disclosure of conflict of interest. An executive employee shall disclose immediately to that employee's direct supervisor any conflict of interest within the meaning of this section.