

**STATE OF MAINE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

**Final Report  
of the**

**COMMISSION TO STUDY ECONOMICALLY AND  
SOCIALLY JUST POLICIES FOR FOREIGN INVESTMENTS  
AND FOREIGN PURCHASING BY THE STATE**

**January 2001**

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## Executive Summary

The Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State was created pursuant to Resolve 1999, chapter 135 during the Second Regular Session of the 119<sup>th</sup> Legislature.

The study commission was charged with the following duties:

- Examine the issue of economically and socially just policies for foreign investment and foreign purchasing by the State, and evaluate the policies of other states;
- Provide a report proposing standards concerning foreign companies that do business with the State and foreign companies invested in by the State, while taking into consideration such factors as child labor and exploitation of workers under unhealthy conditions;
- Include in the report recommendations as to whether or not the State should do business with and invest in foreign companies that oppress or mistreat their workers; and
- Identify the possible positive and negative impacts of proposed policies on Maine workers, Maine small businesses, and Maine taxpayers.

The commission was convened on October 19<sup>th</sup>, 2000 and held 4 meetings. The resolve required the commission to report its findings and recommendations, along with any recommended legislation to First Regular Session of the 120<sup>th</sup> Legislature by December 31<sup>st</sup>, 2000. The study commission membership consisted of four legislators and eight members of the public, including: 2 members from the Senate appointed by the President of the Senate; 2 members from the House of Representatives appointed by the Speaker of the House; 2 members from groups involved in social investments or human rights issues; two representatives of retail business; a representative of the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases; a representative of the public; a representative of labor unions; and a representative of manufacturing and industry.

The commission reached several conclusions during the course of its study. Within the timeframe available to it, the commission determined it was not possible to develop a comprehensive recommendation concerning standards for foreign investment by the State. For example, one of the largest investors of state funds is the Maine State Retirement System. The Constitution of Maine (Article IX, Section 18) establishes that the System's funds are held in trust for the benefit of system members. In addition, Maine law (18-A MRSA §7-302) sets fiduciary standards for trustees to follow when investing the funds. While it may be possible to develop a foreign investment policy that balances the desire for morally and equitable employment practices by foreign corporations with the fiduciary standards for investing trust funds, the commission felt it needed to focus on other aspects of its charge in order to meet its reporting deadline.

Second, the commission determined it would apply any recommendations regarding state purchasing to all vendors, domestic or foreign, who have or will have contracts with the State that are subject to the bid process. The commission recognized the need for the recommendations to apply to all bidders in order to create a level playing field, consistent with the international trade principles of non-discrimination.

Third, the commission recognized the value in voluntary corporate codes of conduct that discourage ties with companies that utilize factories where “sweatshop” conditions exist. The commission received significant testimony regarding growing public awareness and disdain for the use of “sweatshops” to produce clothing and footwear, and the potentially negative influence this awareness may have on corporate sales. Corporate codes of conduct provide a public statement on a company’s standard for ethical business conduct, and provide consumers with the knowledge that the company takes responsibility for the working conditions under which their products are made. The commission finds this to be an important standard for consumers in their search for reliable goods and services.

Finally, because no state has adopted a purchasing policy requiring vendors to adhere to a code of conduct for fair labor standards, and newly enacted selective purchasing policies at the local level have yet to be fully implemented and analyzed, the commission was unable to gather data on the economic implications of such policies.

Based upon its study and discussion, the Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State makes the following recommendations.

**Recommendation #1:** The Legislature should appoint a commission to study and establish moral foreign investment policies of the state.

**Recommendation #2:** All vendors wishing to contract with the State of Maine should adopt the Code of Conduct for State Purchasing in order to participate in the bid process. In order to be considered in the bid process, vendors would have to sign an affidavit provided by the Director of Purchasing stating that the product they are supplying was made in compliance with the state’s Code of Conduct for State Purchasing. Vendors should make a good faith effort to ensure that all of its suppliers of materials or finished products adhere to the State of Maine’s Code of Conduct for State Purchasing. The Director of Purchasing should provide resources to support vendors in their efforts to comply with the state’s code of conduct. In the interest of demonstrating support for vendors who are committed to reform, the Director should have the discretion to accept bids from vendors whose suppliers have discovered code of conduct violations and are demonstrably committed to reforming them.

**Recommendation #3:** The following Code of Conduct for State Purchasing should be enacted into law:

## **Code of Conduct for State Purchasing**

### ***PREAMBLE***

*Maine is a state that believes employers should fairly compensate hard work, and that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. The State of Maine's objective is to utilize the state's purchasing power to influence those from whom the state procures products and services to:*

- ◆ *Embrace high standards of ethical behavior;*
- ◆ *Assume a leadership role in socially responsible business practices;*
- ◆ *Encourage openness and disclosure with regard to labor practices;*
- ◆ *Utilize tools for self-evaluation, certification, and external monitoring to demonstrate socially responsible business practices;*
- ◆ *Comply with all applicable laws and regulations;*
- ◆ *Treat their employees fairly and with dignity and respect to promote their welfare and improve their quality of life; and*
- ◆ *Be socially responsible citizens in the countries and communities in which they operate.*

### ***CODE OF CONDUCT***

#### ***Ethical Standards***

*The State of Maine believes in doing business with those vendors who embrace high standards of ethical business behavior and who demonstrate commitment to those standards through rigorous practice. Those high standards should include, at a minimum, trustworthiness, integrity, honesty, respect for human dignity and respect for human life.*

#### ***Legal Requirements***

*The State of Maine believes in doing business with those vendors who are committed to full compliance with all laws and regulations in the locations where the vendor operates and conducts business and will not knowingly operate in violation of any such law or regulation.*

#### ***Environment***

*The State of Maine believes in doing business with vendors who maintain their facilities in compliance with all applicable environmental protection laws and treaties. In the absence of applicable laws, the vendor should always act in a manner that is consistent with the preservation and protection of the environment.*

#### ***Employment Practices***

- ◆ ***Working Hours:*** *The State of Maine believes in doing business with vendors who respect the lives of their workers by allowing for sufficient discretionary time*

*away from the workplace. Employers should respect the need for rest, family and personal time. Mandatory working hours should be in compliance with the local laws, including appropriately compensated overtime*

- ◆ **Wages and Benefits:** *The State of Maine believes in doing business with vendors that ensure that wages paid for a standard working week shall meet at least legal or industry standards, whichever is higher, are subject to no illegal deductions and shall always be sufficient to meet the basic needs of personnel*
- ◆ **Child Labor:** *The State of Maine believes in doing business with vendors who will not knowingly use suppliers who employ workers under the legal employment age as designated by local laws or as designated by the United Nations standards, whichever is higher. If workers are found to be underage, vendors should provide means for remediation and education*
- ◆ **Forced Labor:** *The State of Maine believes in doing business with vendors who will not knowingly use suppliers of either raw materials or finished product that have been produced by forced labor or services provided by forced labor. The State of Maine believes that employment should be freely chosen. The State of Maine will not do business with vendors or suppliers who use or support employment that is forced, bonded, indentured or involuntary prison labor*
- ◆ **Freedom of Association:** *The State of Maine believes in doing business with vendors that recognize and respect the legal rights of employees to free association and recognize and associate with the representative of their employees' choice. Where the right to freedom of association and collective bargaining is restricted under law, the State of Maine believes in doing business with vendors that facilitate and do not hinder the development of parallel means for independent and free association and bargaining. Employees shall not be subject to harassment, intimidation or retaliation in their efforts to freely associate*
- ◆ **Discrimination:** *The State of Maine believes that all people are entitled to equal opportunity in employment. The State of Maine supports vendors who are committed to responsible business practices with absolute regard for human rights. Because our business relationships are partnerships, we require our suppliers and vendors at all levels of business to follow this same standard by promoting an atmosphere free from discrimination*
- ◆ **Women's Rights:** *The State of Maine believes in doing business with vendors who do not discriminate against women, particularly with regard to pregnancy, maternity leave, age or marital status.*
- ◆ **Health and Safety:** *The State of Maine believes in doing business with those vendors who have demonstrated concern for and commitment to the health and safety of their employees*

- ◆ ***Education and Awareness:*** *The State of Maine believes in doing business with those vendors who ensure that all relevant personnel are provided appropriate training and guidelines that will enable employees to apply the code of conduct in their work. Workers who are covered by the code of conduct should be made aware of the code and the implementation procedures.*

### ***Commitment to Reform***

*The State of Maine believes in doing business with vendors who, upon discovery of continuing abusive conditions at a particular worksite of their own or a supplier, will use their influence to correct conditions, rather than cease to do business with the site.*

**Recommendation #4:** In the event that the Director of Purchasing is unable to purchase a product necessary for the functions of state government due to vendor non-compliance with the provisions of the Code of Conduct for State Purchases, the Director may waive the requirement that the potential vendor adopt the State Code of Conduct. This exception should be repealed in 2004.

**Recommendation #5:** The Director of Purchasing should adopt rules to implement the legislation recommended in this report. Those rules should include specific guidelines for vendors to follow in order to comply with the state's Code of Conduct and criteria for seeking disclosure of names and addresses of the vendor's suppliers and suppliers. Based on information disclosed or not disclosed by the vendor, the Director of Purchasing should have the discretion to require that the vendor be reviewed by an independent monitoring organization for compliance with the state's Code of Conduct. The Director of Purchasing should notify members of the Commission to Study and Establish Moral Purchasing and Moral Investment Policies by the State when the proposed rules are presented for public hearing.

**Recommendation #6:** The Director of Purchasing should report to the Legislature annually beginning February 1, 2002 on the following: the administrative and fiscal impact of the requirement that vendors comply with the state's Code of Conduct; experience with voluntary submission of vendor information to the Director or, alternatively, auditing of vendors by an independent organization; the number of vendors who agreed to and who also declined to comply with the provisions recommended in this report; and any other information relevant to the state's Code of Conduct requirements recommended in this report.

**Recommendation #7:** This Commission, renamed "The Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State" should reconvene in two years to study the progress of the recommendations proposed in this report.

## I. INTRODUCTION

### A. Study Creation and Charge

The Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State was created pursuant to Resolve 1999, chapter 135 during the Second Regular Session of the 119<sup>th</sup> Legislature. (See **Appendix A.**)

The study commission was charged with the following duties:

1. Examine the issue of economically and socially just policies for foreign investment and foreign purchasing by the State, and evaluate the policies of other states;
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3. Include in the report recommendations as to whether or not the State should do business with and invest in foreign companies that oppress or mistreat their workers; and
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The resolve required the commission to report its findings and recommendations, along with any recommended legislation to First Regular Session of the 120<sup>th</sup> Legislature by December 31<sup>st</sup>, 2000. The study commission membership consisted of four legislators and eight members of the public, including: 2 members from the Senate appointed by the President of the Senate; 2 members from the House of Representatives appointed by the Speaker of the House; 2 members from groups involved in social investments or human rights issues; two representatives of retail business; a representative of the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases; a representative of the public; a representative of labor unions; and a representative of manufacturing and industry. (See **Appendix B.**)

The commission reached several conclusions during the course of its study. Within the timeframe available to it, the commission determined it was not possible to develop a comprehensive recommendation concerning standards for foreign

investment by the State. For example, one of the largest investors of state funds is the Maine State Retirement System. The Constitution of Maine (Article IX, Section 18) establishes that the System's funds are held in trust for the benefit of system members. In addition, Maine law (18-A MRSA §7-302) sets fiduciary standards for trustees to follow when investing the funds. While it may be possible to develop a foreign investment policy that balances the desire for morally and equitable employment practices by foreign corporations with the fiduciary standards for investing trust funds, the commission felt it needed to focus on other aspects of its charge in order to meet its reporting deadline.

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Finally, because no state has adopted a purchasing policy requiring vendors to adhere to a code of conduct for fair labor standards, and newly enacted selective purchasing policies at the local level have yet to be fully implemented and analyzed, the commission was unable to gather data on the economic implications of such policies.

## **II. BACKGROUND**

### **A. Meetings and Presentations**

The commission held four meetings on October 19<sup>th</sup>, November 9<sup>th</sup>, November 30<sup>th</sup>, and December 11<sup>th</sup>. The commission received presentations from: Dale McCormick, State Treasurer; Richard Thompson, Director of Purchasing at the Department of Administrative and Financial Services; Christopher St. John, Maine Center for Economic Policy, and written testimony from Jim McGregor, Maine Merchants Association. The commission also received a presentation from Larry Brown from Verite' Inc., a non-profit organization that provides consulting, research, and independent monitoring services for international companies interested in addressing the issues of child labor, and sweatshop working conditions. Bruce Barnard, Manager of the Colby College Bookstore provided the commission with a presentation as well regarding how the Colby College Bookstore requires all of its vendors to sign a Code of Conduct. In an effort to determine the level of support for selective purchasing policies for the State of Maine, as well as the potential impact of such policies on Maine small businesses and workers, the commission invited public testimony at its December 11<sup>th</sup> meeting.

### **B. Overview of Public Testimony**

The public hearing on December 11<sup>th</sup> allowed the commission to solicit testimony from the public on their views of state purchasing policies generally and on the proposed state code of conduct specifically, as well as on any other comments related to the duties of the Commission. The Commission received testimony from many members of the public, with each person speaking in support of a proposed state purchasing policy that would require vendors to adopt a code of conduct. They expressed their support of the use of the state's purchasing power to influence labor standards and working conditions, and for the State to create an example for the nation to follow. Testimony was also received on the experiences of factory workers in Asia where many workers have endured deplorable workplace conditions that are below poverty level. Other comments related to the damaging impact on human dignity realized by young, female factory workers in Latin America who are forced to take pregnancy tests as a condition of employment or required to prove they are menstruating before they are permitted a restroom visit. The lack of freedom to associate and organize against mistreatment was a common theme among those who testified, as were stories of the repercussions suffered by those who tried to stand up against exploitation. A woman from Maine presented testimony about her many years of employment in the local shoe mills, and the eventual loss of jobs like hers due to corporations reducing their production costs by sending production overseas and south of our borders where employees are paid much less than U.S. workers.

### C. The Global Economy and the Focus on Workers' Rights

The recent growth of the global economy has led to the increasing development of world markets and the expansion of multinational corporations. This transformation has allowed American corporations not only to expand their markets to countries across the world, but to utilize new and often less costly sources of labor in many of those countries as well. While this increase in cheaper sources of labor from countries around the world is only one piece of the globalization issue, it has sparked much debate due to the effect it has had on American workers and their ability to stay competitive. With the expansion of economic ties has also come an increased international awareness of the socio-economic conditions in many of the labor markets in third world countries. While the global economy has created unparalleled economic expansion opportunities for countries around the world, the increased media attention and grass roots movements are bringing the issue of human rights to the forefront of this international issue. In response, many apparel and footwear corporations have shown support for improving poor working conditions or “sweatshops,” by establishing codes of conduct that show their support for their workers’ basic human rights in the work place.<sup>1</sup>

### D. Purchasing and Investment Policies in Other States and Local Governments

Many states and localities have proposed and passed selective procurement and investment measures that express their opposition to doing business with specified countries that have been cited for widespread human rights abuses.<sup>2</sup> These sanctions have prohibited state and local entities from doing business at times with such countries as: South Africa, Nigeria, Burma (Myanmar), Cuba, Indonesia, China, Tibet and Northern Ireland.<sup>3</sup> Measures have also been considered to show support for holocaust survivors and their right to insurance policies and gold allegedly stolen and placed in Swiss Banks during World War II. While most of these measures have been enacted at the local level, a few selective purchasing laws have been enacted by states, including the following:<sup>4</sup>

- Massachusetts, “*An Act Regulating State Contracts with Companies Doing Business with or in Burma*,” (1996, Massachusetts Acts 239, Ch. 130):
  - ✧ Prohibits state entities from buying any goods or services from any entity listed on the “restricted purchase li (maintained by the Secretary of State) as doing business with Burma There is no provision for termination of the ban;

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<sup>1</sup> Claeson, Bjorn Skorpen, *Corporate Codes of Conduct: An Overview*, Peace through Interamerican Community Action, October 2000.

<sup>2</sup> Naftzger, David, *State Sanctions in the Global Marketplace: Legal and Constitutional Issues*, National Conference of State Legislatures, December 1998.

<sup>3</sup> Id.

<sup>4</sup> *State and Municipal Sanctions Report*, The Organization for International Investment website ([www.ofii.org](http://www.ofii.org))

- Vermont passed a non-binding resolution, JRH 157, that voiced support for the National League for Democracy in Burma and condemned the Burmese government for violating human rights;
- Vermont, “*An Act Relating to Doing Business with Burma (Myanmar)*,” (1999 Vermont Acts No. 13, 5/10/99):
  - ✧ Requires the “risks associated with investment of Vermont pension funds in companies that conduct business in countries with oppressive, nondemocratic governments” to be considered; and the state treasurer to vote in favor of shareholder resolutions when “those resolutions raise concerns about doing business in Burma, including requests: to report on company activities in Burma; to report on the full costs of doing business in Burma; to address human rights or drug trafficking conditions in Burma; or to establish human rights guidelines;”
- California: “*An Act to add Section 354.5 to the code of Civil Procedure, relating to Insurance for Holocaust Victims*,” (AB 1334, Chaptered 5/22/98):
  - ✧ Targets insurance companies that have denied insurance policy proceeds to holocaust victims; and
- Washington: “*Holocaust Victims Insurance Relief Act*,” (Chapter 8, Washington Laws, 1999):
  - ✧ Also targets insurance companies that have denied insurance policy proceeds to holocaust victims.

While there have been only a few selective purchasing laws that have passed on the statewide level, many cities and counties have passed their own selective purchasing and investment laws in the past decade (**See Appendix D**).

#### **E. Support for State and Local Selective Purchasing Policies**

The constitutionality of state and local selective purchasing laws has been widely debated, but until recently, they have not been subject to legal challenges. At the center of the legal debate are three issues under the U.S. Constitution: federal preemption of state law under the Supremacy Clause; compatibility of purchasing laws with the Commerce Clause; and consistency of such laws with the foreign affairs power granted to the federal government under the Constitution.

The Supremacy Clause provides that federal law is the “Supreme Law of the Land.”<sup>5</sup> Therefore, a state law is invalid if it “conflicts with the purpose of federal law, or if Congress has enacted such a comprehensive scheme as to *occupy the field* in a particular area.”<sup>6</sup> Proponents of selective purchasing policies contend that these initiatives do not violate the Supremacy Clause of the Constitution because Congress has yet to preempt states and localities from enacting legislation in this area. Supporters argue that state and local selective purchasing measures have not been preempted by Congress because Congress has not specifically “occup[ied] the field” of state and local investment or procurement practices.<sup>7</sup>

The Commerce Clause of the Constitution grants Congress the authority to “regulate commerce with foreign nations and among the several states and with the Indian Tribes.”<sup>8</sup> It prohibits states from enacting laws concerning the “regulation or taxation of commerce if these activities burden interstate or foreign commerce.”<sup>9</sup> There are some areas relating to interstate commerce that Congress has not specifically addressed due to the broad nature of the subject. These issues, therefore, are subject to the dormant commerce clause, which “examines whether a state’s law is permissible in the face of congressional silence.”<sup>10</sup> Proponents state that selective state purchasing laws are not in violation of the dormant commerce clause because they are regulated “evenhandedly;” they are addressing a state or local issue of importance; and the law’s effect on foreign commerce is secondary and minimal.<sup>11</sup> Supporters also rely on the ‘*market participant*’ exception to the Commerce Clause, which allows state action where the state is acting as market participant and not a regulator.<sup>12</sup> As ‘*market participants*’ states and localities decide how and where their finances are spent and invested, and discourage business dealings with companies that have ties in parts of the world where alleged human rights violations are taking place.

Proponents do not believe that selective purchasing laws undermine the federal government’s foreign affairs power that provides that the federal government is the only entity that has the authority to conduct foreign affairs.<sup>13</sup> Proponents point to instances where Congress has in fact “expressly delegated authority to the states to implement national foreign policy obligations in some areas [including the

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<sup>5</sup> U.S.C.A. Const. Art. 6, cl. 2.

<sup>6</sup> Loschin, Lynn and Jennifer Anderson, *Massachusetts Challenges the Burmese Dictators: the Constitutionality of Selective Purchasing Laws*, 39 Santa Clara L. Rev. 373 (1999).

<sup>7</sup> *Id.*

<sup>8</sup> U.S.C. Art. 1, §8, cl. 3

<sup>9</sup> Lash, William H. III, *State and Local Trade Sanctions: A Threat to U.S. Interests*, the Center for the Study of American Business, Contemporary Issues #91, July 1998.

<sup>10</sup> Loschin, Lynn and Jennifer Anderson, *Massachusetts Challenges the Burmese Dictators: the Constitutionality of Selective Purchasing Laws*, 39 Santa Clara L. Rev. 373 (1999). (For further discussion on the dormant commerce clause see Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law*, §9.3, 4<sup>th</sup> Ed. 1991.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See *Hines v. Davidowitz*, 85 L. Ed. 581 (1941) (stating that “the importance of national power in all matters relating to foreign affairs and the inherent danger of state action in this field are clearly developed in Federalist papers, No. 3, 4, 5, 42 and 80.”)

implementation of parts of the Uruguay Round of General Agreements on Tariffs and Trade].”<sup>14</sup>

One of the first countries to be targeted under a selective purchasing initiative was South Africa during the mid-1970’s. Supporters believe that the rapid spread of state and local selective purchasing measures and divestment laws aimed at discouraging corporate relationships with South Africa were successful in bringing about the downfall of the apartheid regime and the subsequent establishment of democracy in that country. State and local selective purchasing initiatives targeting Burma began in the mid-1990’s and have gained similar popularity across the country, with the goal of bringing about an end to the military government’s alleged widespread violations of human rights. These state and local measures now total around 24 nationwide (including the Massachusetts Act), and while many target specific countries, some local initiatives discourage business ties with companies that do not adhere to a general business code of conduct.<sup>15</sup> There has been a recent trend in the private sector reflecting an interest on behalf of some corporations and companies to certify that their goods and services are being produced under a company code of conduct, in conditions that do not violate workers’ human rights (for further discussion of corporate codes of conduct see **Appendix E**).

#### **F. Opposition to State and Local Selective Purchasing Policies**

In contrast, opponents of state and local selective purchasing laws argue that these laws violate these same constitutional principles. Opponents state since the Supremacy Clause provides that federal law is, in fact, the “Supreme law of the Land,” federal law preempts state and local laws, even if Congress has not explicitly stated its desire to do so. In this case, opponents argue that these state and local measures undermine the federal government’s ability to “speak with one voice” to the world.<sup>16</sup> Those who oppose selective state purchasing policies believe that they greatly hinder trade policies, and are in violation of the Commerce Clause that “bars municipalities and states from engaging in regulation or taxation of commerce if these activities burden interstate or foreign commerce.”<sup>17</sup> While states and localities may function as ‘market participants’ in particular instances, critics argue that in this area, states and localities are trying to influence “separate economic relationships...in which these cities and towns are not market participants.”<sup>18</sup> Opponents also cite that the United States is a member of the World Trade Organization, and signatory to the General Agreement on Tariffs and Trade (GATT) Agreement on Government

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<sup>14</sup> Loschin, Lynn and Jennifer Anderson, *Massachusetts Challenges the Burmese Dictators: the Constitutionality of Selective Purchasing Laws*, 39 Santa Clara L. Rev. 373 (1999). (For further discussion on the dormant commerce clause see Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law*, §9.3, 4<sup>th</sup> Ed. 1991.

<sup>15</sup> *State and Municipal Sanctions Report*, The Organization for International Investment website ([www.ofii.org](http://www.ofii.org)).

<sup>16</sup> Lash, William H. III, *State and Local Trade Sanctions: A Threat to U.S. Interests*, the Center for the Study of American Business, Contemporary Issues #91, July 1998.

<sup>17</sup> Id.

<sup>18</sup> Id.

government regulation regarding international procurement regulation.”<sup>19</sup>

Opponents of state and local selective purchasing laws contend that while the sentiment may be admirable, it is not practical or constitutional to have all fifty states enacting their own foreign sanctions against various countries across the world. On top of diminishing the power of the federal government to create and enforce foreign policy, supporters believe that the United States businesses that are utilizing international investments to support jobs and economic growth in this country will suffer, and they will be forced to choose between local and international economic markets.<sup>20</sup>

The Buy American Act provided a preference for American made products in the federal procurement process, and has been referenced in arguments by both supporters and opponents of selective purchasing laws.<sup>21</sup> Some supporters of selective state purchasing laws view the enactment of “Buy American Laws” by 35 states as evidence that states have enacted selective purchasing measures that have discriminated against foreign companies, and that for the most part, they have withstood legal challenges. However, opponents argue that this comparison is not applicable, since these state initiatives were possible only because they were drafted specifically to replicate federal law and therefore were not in conflict or did not cause interference with the federal government’s foreign affairs power.<sup>22</sup>

## **G. Legal Challenges to Selective Purchasing Laws**

The first legal challenge to selective purchasing laws occurred after Massachusetts passed a selective purchasing law against Burma (Myanmar) in June of 1996. The Massachusetts law discouraged state agencies from purchasing goods and services from business that had ties with Burma. Three months after the passage of the Massachusetts Burma law, Congress enacted its own sanctions against Burma, and the National Foreign Trade Council (NFTC) soon challenged the Massachusetts law in federal court. The NFTC argued that the Massachusetts law violated “the federal government’s exclusive authority to regulate foreign affairs” and that the law caused their members to have a disadvantage in the state bidding process. The NFTC also argued that the Massachusetts law was expressly preempted by the newly enacted congressional sanctions against Burma. The U.S. District Court ruled on November 4, 1998 that the law was unconstitutional and that it “violated the federal government’s exclusive power to regulate foreign affairs.”<sup>23</sup>

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<sup>19</sup> Id.

<sup>20</sup> Id.

<sup>21</sup> 41 U.S.C. §10a-d.

<sup>22</sup> Id.

<sup>23</sup> Naftzger, David, *State Sanctions in the Global Marketplace: Legal and Constitutional Issues*, National Conference of State Legislatures, December 1998.

The Supreme Court ruled on June 19, 2000 that the Massachusetts law was unconstitutional because it was preempted by the sanctions passed by Congress. These sanctions gave the President the authority to limit any new foreign investments in Burma until Burma makes “measurable and substantial progress in improving human rights and implementing democratic government.”<sup>24</sup> The Supreme Court ruling, however, did not address the broader issues of whether Congress’s Act had preempted the field or whether the Massachusetts law violated the federal foreign affairs power. The Supreme Court’s ruling expressly “decline[d] to speak to field preemption as a separate issue” and chose not to “pass on the First Circuit’s rulings addressing the foreign affairs power.”<sup>25</sup> As a result, the decision has relatively limited implications for states; states are only precluded from enacting sanctions against countries that the federal government has selected for sanctions.<sup>26</sup>

### **III. PURCHASING POLICIES IN THE STATE OF MAINE**

In studying the issue of economically and socially just procurement and investment policies for Maine, the commission reviewed the policies of the state’s Division of Purchases. While the Division of Purchases does not currently have selective procurement policies in place that require companies to sign a code of conduct, the department is governed by certain state purchasing laws that do provide preferences for companies that use recycled products, and that favor in-state bidders on state contracts.

There have been several grass roots movements in Maine that have resulted in the adoption of selective purchasing initiatives at the local and university level within the state. The City of Bangor has recently adopted a resolution that guides the city’s purchasing policies using ethics-based criteria. Also, the campus of the University of Maine at Farmington has recently adopted a purchasing code of conduct for all of the products bearing the University’s insignia.

#### **A. State Procurement – Division of Purchases**

Currently, laws governing the state procurement process do not require adherence to a selective purchasing policy or provide standards for socially responsible business practices by vendors. The Division of Purchases in the Bureau of General Services, Department of Administrative and Financial Services is primarily governed by laws that require it to adhere to competitive bidding principles wherever practicable in the purchase of all materials, supplies and services necessary to the functions of various state departments and agencies. The role of the Division of Purchases is to: establish procurement rules and procedures; delegate and monitor small purchase authority (under \$2,500 per

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<sup>24</sup> Foreign Operations, Export Financing, and Related Programs Appropriations Act (1997) Pub. Law 104-208.

<sup>25</sup> Naftzger, David, *A Future for State Legislatures in “Foreign Affairs?”* National Conference of State Legislatures, September 2000.

<sup>26</sup> *Id.*

order); competitively purchase products; maintain contracted supply agreements; and monitor the request for proposal process and approve contracts for services. Some laws that govern state purchasing include:

- Purchases that involve expenditures less than \$2,500 are exempt from the bid process;
- The intention that the state will purchase recycled products wherever possible;
- Recycled paper products are awarded a 10% price preference;
- Vehicles purchased for state use must meet specific fuel efficiency standards; and
- Tie bids are awarded to in-state bidders.

The laws governing procurement also provide that the Division of Purchases may limit the number of out of state bidders on service and supply contracts.

## **B. City of Bangor Selective Purchasing**

The Clean Clothes Campaign (CCC) movement began in the Netherlands in 1989 with the goal of bringing international attention to the poor working conditions of garment workers across the world. The CCC consists of over 200 trade unions and NGO's (non-governmental organizations) in 10 European countries that work together to increase the level of accountability on behalf of multinational corporations that produce portions of their products in alleged "sweatshop" conditions. The CCC also encourages these corporations to establish codes of conduct for their factories as a first step towards improving the working conditions. Similar to the CCC movement in Europe, many similar movements have been organized in the United States because of grass roots efforts that have developed at the university level, and within local communities.

An organization known as Peace through Interamerican Community Action (PICA) initiated the Bangor Clean Clothes Campaign in 1996 in Bangor. The campaign resulted in the Bangor community being the first city in the nation to adopt a Clean Clothes Resolution. The Resolution stated that "all clothes for sale in [the Bangor] community, produced in the U.S. or abroad, should be manufactured in accordance with established codes of corporate conduct regarding wages, workplace health and safety, forced labor, child labor, and freedom of association, as embodied in the United Nations and International Labor Organization conventions." It was the goal of the Bangor community to discourage stores within their city from purchasing apparel, footwear and related products produced under "sweatsh

Soon after, on October 25, 1999, the Bangor City Council passed a resolution enacting a selective purchasing policy that established ethics-based criteria to guide the city's purchase of uniforms, t-shirts and soccer balls.<sup>27</sup> (See **Appendix F**). Specifically, the policy states that, wherever possible, the City of Bangor will purchase items of apparel, footwear, textiles and related products from vendors who operate in accordance with established international codes of conduct, like those embodied in the United Nations, and International Labor Organization (ILO) conventions. (See **Appendix E**). Accepted codes of conduct are based on ethical and responsible principles of business practice governing wages, workplace health and safety, forced labor, child labor and freedom of association.

The Bangor purchasing policy includes a series of questions to be submitted by the City's purchasing agent to bidders on contracts for apparel, footwear, textiles and other related products. The intent of the Bangor Clean Clothes Campaign is to increase the level of information that can be collected and disseminated regarding the working conditions within the factories where their bidders are producing their products. These questions provide the opportunity for greater public scrutiny of the quality and origins of the products sold within the community, and an opportunity for those companies who employ socially responsible business practices to potentially receive a competitive advantage in the marketplace.

### **C. University of Maine at Farmington Code of Conduct**

During the time the Commission was conducting its study, the student-led and community-based organization entitled *Farmington Area Citizens to End Sweatshops* (FACES), petitioned the President of the University of Maine at Farmington to officially adopt a code of conduct governing purchases from suppliers of items bearing the University insignia. The code also states that the University reserves the right to cease business relations with suppliers who do not adopt standards consistent with ending the exploitation of workers by employing them under "sweatshop" conditions. In November of 2000, the President of the University signed the code of conduct. (See **Appendix G**). According to organizers for FACES, efforts are now underway to encourage the University of Maine System to adopt this policy for all of its 7 campuses.

## **IV. CORPORATE CODES OF CONDUCT**

According to Peace through Interamerican Community Action (PICA), the increased documentation of and publicity surrounding "sweatshop" working conditions in the free trade zones of Southeast Asia, North Africa, the Caribbean, Mexico, Central America and Eastern Europe, is creating growing interest in voluntary codes of corporate conduct to address extremely poor working conditions in the consumer product industry.

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<sup>27</sup> Information provided by the Peace through Interamerican Community Action Website ([www.bairnet.org/organizations/pica](http://www.bairnet.org/organizations/pica)).

However, overseas free trade zones are not the only places where sweatshop conditions have been discovered. A report on codes of conduct provided to the Commission by Bjorn Claeson, Commission member and PICA staff, noted that in 1997, federal investigators reported that two-thirds of garment shops in New York City violated overtime and minimum wage laws. Codes of conduct are not recognized as a substitute for national and international legislation, yet supporters consider them an important first step to end the exploitation of workers on production lines all over the world. Most codes are based on the United Nations, and International Labor Organization (ILO) conventions (**See Appendix E**) which member countries are required to uphold as a condition of their membership. Generally, accepted corporate codes of conduct include “core labor rights” as provided in the ILO conventions. If there are local labor laws and other relevant legislation where a corporation is located, the corporations typically adheres to both the laws and their code. In case there is a discrepancy, the highest standard of any “core labor right” is understood to prevail.

Business for Social Responsibility (BSR), a membership organization that operates as a global resource to companies that wish to be commercially successful in ways that demonstrate ethical values and socially responsible business practices, published a list of codes of conduct from selected apparel, footwear, toy and retail industries in September, 1999.<sup>28</sup> The standards include: child labor, forced labor, wages and benefits, working hours, health and safety conditions, freedom of association, environmental practices, non-discrimination, disciplinary practices, and community involvement. Some of the companies and organizations that are part of this list include; Abercrombie & Fitch, Eddie Bauer, Gap Incorporated, Kmart Corporation, Levi Strauss & Company, Ethical Trading Initiative and Social Accountability 8000 (accreditation agency for Council on Economic Priorities).

The adoption of a code of conduct by a corporation does not necessarily ensure that the principles of the code are being employed on the factory floor. There is ongoing debate among those involved in the “anti-sweatshop” movement about the level of enforcement necessary to implement corporate codes of conduct. Independent monitoring is offered by private sector “social auditing firms” based mostly in the Northern hemisphere. Yet, supporters of the movement to improve working conditions around the world argue that workers themselves are the best monitors. In light of that argument, supporters stress that in order for implementation of a code of conduct to be successful, workers must be free to testify against a company’s violations, which is considered impossible without the right of workers to freely organize or form labor unions. Thus, the movement stresses the importance of freedom of association as one of the most important rights in a code of conduct and that it should always be included.

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<sup>28</sup> Business for Social Responsibility, Business and Human Rights Program, *Code of Conduct Standards from Selected Apparel, Footwear, Toy and Retail Industries*, September 1999.

## V. COMMISSION RECOMMENDATIONS

Based upon its study and discussion, the Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State makes the following recommendations:

**Recommendation #1:** The Legislature should appoint a commission to study and establish moral foreign investment policies of the state.

**Recommendation #2:** All vendors wishing to contract with the State of Maine should adopt the Code of Conduct for State Purchasing in order to participate in the bid process. In order to be considered in the bid process, vendors would have to sign an affidavit provided by the Director of Purchasing stating that the product they are supplying was made in compliance with the state's Code of Conduct for State Purchasing. Vendors should make a good faith effort to ensure that all of its suppliers of materials or finished products adhere to State of Maine's Code of Conduct for State Purchasing. The Director of Purchasing should provide resources to support vendors in their efforts to comply with the state's code of conduct. In the interest of demonstrating support for vendors who are committed to reform, the Director should have the discretion to accept bids from vendors whose suppliers have discovered code of conduct violations and are demonstrably committed to reforming them.

**Recommendation #3:** The following Code of Conduct for State Purchasing should be enacted into law:

### Code of Conduct for State Purchasing

#### ***PREAMBLE***

*Maine is a state that believes employers should fairly compensate hard work, and that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. The State of Maine's objective is to utilize the state's purchasing power to influence those from whom the state procures products and services to:*

- ◆ *Embrace high standards of ethical behavior;*
- ◆ *Assume a leadership role in socially responsible business practices;*
- ◆ *Encourage openness and disclosure with regard to labor practices*
- ◆ *Utilize tools for self-evaluation, certification, and external monitoring to demonstrate socially responsible business practices*

- ◆ *Comply with all applicable laws and regulations*
- ◆ *Treat their employees fairly and with dignity and respect to promote their welfare and improve their quality of life; and*
- ◆ *Be socially responsible citizens in the countries and communities in which they operate.*

## **CODE OF CONDUCT**

### ***Ethical Standards***

*The State of Maine believes in doing business with those vendors who embrace high standards of ethical business behavior and who demonstrate commitment to those standards through rigorous practice. Those high standards should include, at a minimum, trustworthiness, integrity, honesty, respect for human dignity and respect for human life.*

### ***Legal Requirements***

*The State of Maine believes in doing business with those vendors who are committed to full compliance with all laws and regulations in the locations where the vendor operates and conducts business and will not knowingly operate in violation of any such law or regulation.*

### ***Environment***

*The State of Maine believes in doing business with vendors who maintain their facilities in compliance with all applicable environmental protection laws and treaties. In the absence of applicable laws, the vendor should always act in a manner that is consistent with the preservation and protection of the environment.*

### ***Employment Practices***

- ◆ ***Working Hours:*** *The State of Maine believes in doing business with vendors who respect the lives of their workers by allowing for sufficient discretionary time away from the workplace. Employers should respect the need for rest, family and personal time. Mandatory working hours should be in compliance with the local laws, including appropriately compensated overtime.*
- ◆ ***Wages and Benefits:*** *The State of Maine believes in doing business with vendors that ensure that wages paid for a standard working week shall meet at least legal or industry standards, whichever is higher, are subject to no illegal deductions and shall always be sufficient to meet the basic needs of personnel.*

- ◆ **Child Labor:** *The State of Maine believes in doing business with vendors who will not knowingly use suppliers who employ workers under the legal employment age as designated by local laws or as designated by the United Nations standards, whichever is higher. If workers are found to be underage, vendors should provide means for remediation and education*
- ◆ **Forced Labor:** *The State of Maine believes in doing business with vendors who will not knowingly use suppliers of either raw materials or finished product that have been produced by forced labor or services provided by forced labor. The State of Maine believes that employment should be freely chosen. The State of Maine will not do business with vendors or suppliers who use or support employment that is forced, bonded, indentured or involuntary prison labor.*
- ◆ **Freedom of Association:** *The State of Maine believes in doing business with vendors that recognize and respect the legal rights of employees to free association and recognize and associate with the representative of their employees' choice. Where the right to freedom of association and collective bargaining is restricted under law, the State of Maine believes in doing business with vendors that facilitate and do not hinder the development of parallel means for independent and free association and bargaining. Employees shall not be subject to harassment, intimidation or retaliation in their efforts to freely associate*
- ◆ **Discrimination:** *The State of Maine believes that all people are entitled to equal opportunity in employment. The State of Maine supports vendors who are committed to responsible business practices with absolute regard for human rights. Because our business relationships are partnerships, we require our suppliers and vendors at all levels of business to follow this same standard by promoting an atmosphere free from discrimination.*
- ◆ **Women's Rights:** *The State of Maine believes in doing business with vendors who do not discriminate against women, particularly with regard to pregnancy, maternity leave, age or marital status*
- ◆ **Health and Safety:** *The State of Maine believes in doing business with those vendors who have demonstrated concern for and commitment to the health and safety of their employees*
- ◆ **Education and Awareness:** *The State of Maine believes in doing business with those vendors who ensure that all relevant personnel are provided appropriate training and guidelines that will enable employees to apply the code of conduct in their work. Workers who are covered by the code of conduct should be made aware of the code and the implementation procedures.*

working conditions. Based on information disclosed or not disclosed by the vendor, the Director of Purchasing should have the discretion to require that the vendor be reviewed by an independent monitoring organization for compliance with the state's Code of Conduct. The Director of Purchasing should notify members of the Commission to Study and Establish Moral Purchasing and Moral Investment Policies by the State when the proposed rules are presented for public hearing.

**Recommendation #6:** The Director of Purchasing should report to the Legislature annually beginning February 1, 2002 on the following: the administrative and fiscal impact of the requirement that vendors comply with the state's Code of Conduct; experience with voluntary submission of vendor information to the Director or, alternatively, auditing of vendors by an independent organization; the number of vendors who agreed to and who also declined to comply with the provisions recommended in this report; and any other information relevant to the state's Code of Conduct requirements recommended in this report.

**Recommendation #7:** This Commission, renamed "The Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State" should reconvene in two years to study the progress of the recommendations proposed in this report.

## **VI. ECONOMIC IMPACTS OF THE RECOMMENDED CODE OF CONDUCT GOVERNING STATE PURCHASING**

While the Commission supports selective purchasing policies for the State, it was unable to determine the economic impact of such policies on small businesses, the people of Maine, or the state budget itself. States have yet to implement selective purchasing

codes of conduct, and most local initiatives that have been passed have yet to receive much long-term analysis due to their recent enactment.

One piece of the proposed code of conduct features the support for a living wage. The notion of a livable wage, a wage that provides sufficient income to meet basic needs (food, clothing, healthcare, childcare, housing, transportation), has received considerable attention. According to a report by the Maine Center for Economic Policy, when workers are unable to earn a living wage to support themselves and their dependents, they will either forego basic necessities or seek some type of public assistance.<sup>29</sup> The report finds that both of these choices have a negative impact on the economy. Jobs that pay less than livable wage contribute little or nothing to economic growth and result in higher taxes for Maine's businesses and citizens.<sup>30</sup> The report finds that if workers are not earning enough to meet their essential needs they are not earning enough to play a significant role as consumers in our economy.

Further research will need to be done to determine the long-term economic impacts of all of the standards contained within selective purchasing initiatives at the local level.

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<sup>29</sup> Pohlmann, Lisa, Christopher St. John and Wade Kavanaugh, *Getting by in 1999; Basic Needs and Livable Wages in Maine*, Maine Center for Economic Policy, November 1999.

<sup>30</sup> Id.

## **APPENDIX A**

# RESOLVES

## Second Regular Session of the 119th

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### CHAPTER 135 H.P. 1755 - L.D. 2461

#### **Resolve, to Create a Commission to Study and Establish Moral Policies Regarding Foreign Investments and Foreign Purchasing by the State**

**Preamble. Whereas**, Maine is a state that upholds the dignity of every human being, promotes basic human rights and supports social and economic justice; and

**Whereas**, Maine is a state that believes employers should fairly compensate hard work, that the health and safety of working people should be protected and that all forms of unlawful discrimination and abuse should not be tolerated; and

**Whereas**, there are manufacturers in foreign countries that do not share Maine's support of human rights and justice and those manufacturers' employment practices are characterized by poverty wages, forced overtime, child labor, unsafe and unhealthy workplace conditions and often abusive working conditions; and

**Whereas**, established international standards for ethical manufacturing are routinely violated; and

**Whereas**, sweatshops have been and continue to be a direct cause of job loss and depressed wages for citizens of Maine, whose employers relocate for cheap labor or threaten plant closings to force lower wages and contract concessions; and

**Whereas**, Maine can make a significant contribution to the campaigns against sweatshop manufacturing by supporting the enforcement of established ethical codes of corporate conduct; and

**Whereas**, there exists widespread popular support in Maine for the principle that purchases and investments by the State ought to be made under ethical conditions of production; now, therefore, be it

**Sec. 1. Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State established. Resolved:** That the Commission to Study Economically and Socially Just Policies for Foreign Investments

and Foreign Purchasing by the State, referred to in this resolve as the "commission," is established; and be it further

**Sec. 2. Commission membership; appointments. Resolved:** That the commission consists of 12 members as follows:

1. Two members from the Senate appointed by the President of the Senate, one of whom is a member of a political party that does not hold a majority of seats in that body;

2. Two members from the House of Representatives appointed by the Speaker of the House of Representatives, one of whom is a member of a political party that does not hold a majority of seats in that body;

3. Two members from groups involved in social investments or human rights issues, one appointed by the President and one appointed by the Speaker;

4. Two representatives of retail business, one appointed by the President and one appointed by the Speaker;

5. One representative of the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases appointed by the Governor;

6. One member of the public appointed by the Governor;

7. One representative of labor unions appointed by the Governor; and

8. One representative of manufacturing and industry appointed by the Governor.

All appointments must be completed no later than August 18, 2000; and be it further

**Sec. 3. First meeting; chairs. Resolved:** That the first named Senate member is the Senate chair and the first named House member is the House chair of the commission. When the appointment of all members of the commission is completed, the commission chairs shall call and convene the first meeting of the commission no later than August 31, 2000; and be it further

**Sec. 4. Duties. Resolved:** That the commission shall study the subject of economically and socially just policies for foreign investment and foreign purchasing by the State. In examining the issue of economically and socially just policies for foreign investments and foreign purchasing, the commission shall evaluate the policies of other states. In its report, the commission shall propose standards concerning foreign companies that do business with the State and foreign companies invested in by the State. The commission shall consider such factors as child labor and exploitation of workers under unhealthy conditions. The commission shall make recommendations with regard to whether the State should do business with and invest in foreign companies that oppress or mistreat their workers. The commission shall identify the possible positive and negative

impacts of proposed policies on Maine workers, Maine small businesses and Maine taxpayers; and be it further

**Sec. 5. Staff assistance. Resolved:** That, upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the commission; and be it further

**Sec. 6. Compensation. Resolved:** That the members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings of the commission; and be it further

**Sec. 7. Report. Resolved:** That the commission shall submit its report, together with any necessary implementing legislation, to the First Regular Session of the 120th Legislature no later than November 15, 2000. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension; and be it further

**Sec. 8. Budget. Resolved:** That the chair of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chair and staff with a status report on the commission's budget, expenditures incurred and paid and available funds; and be it further

**Sec. 9. Appropriation. Resolved:** That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

**2000-01**

## **LEGISLATURE**

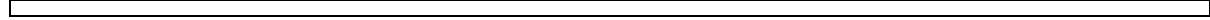
### **Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State**

Personal Services \$1,320  
All Other 3,500

Provides funds for the per diem and expenses of legislative members and expenses for other eligible members of the Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State and to print the required report.

**LEGISLATURE** \_\_\_\_\_  
**TOTAL \$4,820**

Effective August 11, 2000, unless otherwise indicated.



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## **APPENDIX B**

## **APPENDIX C**

<b>PARTY FIRST</b>	<b>PARTY LAST</b>	<b>PARTY</b>	<b>PARTY ADDRESS</b>	
Ms. Patricia	Aho	Maine Petroleum Association	45 Memorial Circle	
Mr. Michael	Cavanaugh	Deputy Director	AFL-CIO	815 16th St NW
Ms. Kay	Evans, Exec. Dtr.	Maine State Retirement System	#46 SHS	
Mr. Ed	Gorham, President	Maine AFL-CIO	65 State Street	
Mr. Chris	Hall, Exec. VP	Maine State Chamber of Commerce	7 University Drive	
Mr. Joe	Mackey	Public Affairs Group	185 State Street	
Mr. Ned	McCann	Secretary-Treasurer	Maine AFL-CIO	65 State St
Ms. Dale	McCormick	State Treasurer	#39 SHS	
Mr. Jim	McGregor	Maine Merchants Assoc.	P.O. Box 5060	
Ms. Barbara	Nicoli-Hiltz	State Director	Maine AFL-CIO	65 State St

## **APPENDIX D**

**Table 1. Municipalities with Selective Purchasing and Investment Laws**

<b>Municipality</b>	<b>Target Country</b>	<b>Description</b>	<b>Date</b>
Alameda County, CA	Burma	Selective purchasing/investment	12/96
	Nigeria	Selective purchasing /investment	9/97
Amherst, MA	Nigeria	Selective purchasing	9/97
Ann Arbor, MI	Burma	Selective purchasing	4/96
Bangor, ME	Any country not adhering to international codes of corporate conduct	Selective purchasing resolution	6/97
Berkeley, CA	Burma	Selective purchasing	3/95
	Nigeria	Selective purchasing	7/97
	Tibet	Selective purchasing	7/97
Boulder, CO	Burma	Selective purchasing	12/96
Brookline, MA	Burma	Selective purchasing	11/97
Cambridge, MA	Nigeria	Selective purchasing	5/97
	Burma	Selective purchasing	6/98
	Indonesia	Selective purchasing	8/98
Carrboro, NC	Burma	Selective purchasing	10/96
Chapel Hill, NC	Burma	Selective purchasing	1/97
Dade County, FL	Cuba	Selective purchasing & investment	7/92
Los Angeles, CA	Burma	Selective purchasing	12/98
Madison, WI	Burma	Selective purchasing	8/96
New York, NY	Burma	Selective purchasing & investment	5/97
Newton, MA	Burma	Selective purchasing	11/97

<b>Municipality</b>	<b>Target Country</b>	<b>Description</b>	<b>Date</b>
North Olmstead, OH	Any country where “sweatshop” labor is employed, defined as (a) child labor; (b) forced labor; (c) unlivable wage rates; (d) long work hours-over 48 hrs.	Selective purchasing	2/98
Oakland, CA	Nigeria	Selective purchasing	5/97
	Burma	Selective purchasing	5/96
Palo Alto, CA	Burma	Selective purchasing & investment	10/97
Philadelphia, PA	Northern Ireland	Selective purchasing	1989, amended 1991,1994,19 95
Portland, OR	Burma	Selective purchasing	7/98
Quincy, MA	Burma	Selective purchasing	11/97
San Francisco, CA	Burma	Selective purchasing	4/95
Santa Cruz, CA	Burma	Selective purchasing & investment	7/97
Santa Monica, CA	Burma	Selective purchasing	11/95
Somerville, MA	Burma	Selective purchasing	2/98
Takoma Park, MD	Burma	Selective purchasing	10/96
West Hollywood, CA	Burma	Selective purchasing	10/97

Prepared by the Office of Policy and Legal Analysis.

Source: Organization for International Investment, *State and Municipal Sanctions Report*

## **APPENDIX E**

# CORPORATE CODES OF CONDUCT: AN OVERVIEW

October 12, 2000

Prepared by Björn Skorpen Claeson, of Peace through Interamerican Community Action (PICA), for the State of Maine Commission to Study Economically and Socially Just Policies for Foreign Investments and Foreign Purchasing by the State.

## EXECUTIVE SUMMARY

Over the past ten years, civil society groups, unions, corporations, civil society/ labor/business coalitions, universities, and U.S. municipal and county governments have developed codes of conduct for transnational shoe and apparel corporations to help eliminate "sweatshop" working conditions and establish minimum labor standards across national borders. Most codes have originated in predominantly "consumer countries" (Europe, North America, Australia); a few codes have originated in "producer countries;" and in some cases, workers themselves have participated in the formulation of codes. A review of codes of conduct reveals some common themes and issues regarding content, implementation, and enforcement of codes.

### Content of Codes of Conduct

All codes of conduct are based on International Labor Organization (ILO) conventions. There is general agreement among unions, non-governmental organizations (NGOs), and many corporations on the "core labor rights" (freedom of association, no forced labor, no child labor, equality) as defined by the ILO.

\*There is general agreement on the need to go beyond core labor rights, to include health and safety, hours of work, and wages and other forms of compensation in codes of conduct.

\*There is general agreement that corporations should adhere to local labor and other appropriate legislation, as well as the code of conduct, and that the higher standard should apply.

\*Some issues are included in some codes and not in others. They include living wage, security of employment, and women's rights.

### Implementation and Enforcement of Codes of Conduct

\*There is general agreement among unions, NGOs, and many corporations that some form of third-party external monitoring or verification of supplier compliance with codes of conduct is necessary for codes to have legitimacy. But there is disagreement about who are appropriate external or independent monitors, and what their relationship should be with the companies whose supplier factories are being monitored.

\*Worker responses to codes of conduct have consistently stressed that workers themselves are the best monitors of working conditions and that the freedom of association is a prerequisite for the effective implementation of codes of conduct.

\*A major question is how much information and to whom companies should be required to disclose information, such as the names and addresses of supplier factories, auditing results, and results of investigations into worker or third-party complaints.

## INTRODUCTION

Over the past ten years, reliable human rights organizations, media, unions, universities, and researchers have documented a pattern of "sweatshop" working conditions in the free trade zones of Southeast Asia, North Africa, the Caribbean, Mexico, Central America, and Eastern Europe. Such conditions prevail in the labor-intensive, export-oriented apparel industry which is controlled by large retailers and brand-name merchandisers. Workers are typically young women, 17-25 years old, often migrants from the country-side. Conditions include:

- Violation of wage laws. Poverty wages that are insufficient to provide for the basic needs of an individual worker, let alone a family. Illegal deductions and fines further lower inadequate wages.
- Violation of overtime laws. Forced overtime, up to 100 hour work weeks, with barely any days off during the month.

- Violation of women's rights. Women forced to take pregnancy tests, forced to take birth control pills, and fired if they are pregnant.
- Harsh and arbitrary discipline. Verbal abuse, physical abuse, sexual harassment. Limited and monitored bathroom visits.
- Health and safety violations. Workers breathing toxic fumes and handling carcinogenic materials with no protective equipment, operating machines with no safety mechanisms. Hot and badly ventilated workplace.
- Barriers to freedom of association and collective bargaining. Workers fired and blacklisted for other employment if they try to organize to improve conditions.
- Hidden working conditions. Factories hidden behind concrete walls topped by coiled barbed wire and patrolled by guards armed with semi-automatic weapons. Garment shops that are no more than a ramshackle building in a downtown garment district.

It is important to note that sweatshop labor practices are not limited to overseas suppliers. In 1997, federal investigators reported that two-thirds of garment shops in New York City violated overtime or minimum wage laws. The U.S. Labor Department estimates that such violations prevail in more than half of 24,000 contract garment shops in the U.S..

On October 6th, 2000, five American universities released a joint report that documented "widespread violations of local laws....in a substantial portion of the university-licensed apparel industry" in every country evaluated, including the U.S. China, Korea, El Salvador, Pakistan, Thailand, and Mexico. According to the report, violations included "limitations on workers' right to collective bargaining and freedom of association, and discrimination against women."

Sweatshop working conditions also negatively affect other U.S. workers and companies. According to the Bureau of Labor Statistics, the U.S. lost 58% of apparel industry jobs and 82% of leather industry (e.g., shoe) jobs between 1970 and 1999. According to the Maine Department of Labor, Maine lost 69% of its shoe industry, 61% of its textile industry, and 36% of its apparel industry over the same period of time. Many jobs have moved overseas where companies pay only a fraction of U.S. wages. According to the U.S. Department of Labor, workers typically receive less than three percent of the retail price of clothing made in a U.S. sweatshop, and as little as one-half of one percent of the retail price of clothing sewn overseas (source: U.S. Department of Labor).

As sweatshop working conditions have been documented and publicized, interest has grown dramatically in voluntary codes of corporate conduct as a tool to address deteriorating working conditions in consumer products industries, such as shoe and apparel, and help establish minimum labor standards across national borders. With trade liberalization, globalization, and the restructuring of production and distribution networks, national governments and international institutions appear decreasingly able to regulate production practices. However, codes of conduct are not substitutes for national or international legislation. Nor are they a substitute for independent trade unions and collective bargaining. They are one approach, among many, to end sweatshop exploitation in the global production line.

All codes listed below are based on International Labor Organization (ILO) conventions. Business, labor, and government are co-authors of ILO conventions. Governments across the world have pledged to uphold the ILO conventions as a condition of their membership. Therefore, ILO conventions are the definitive, internationally recognized labor rights and standards.

## **CODES OF CONDUCT**

### ***Fair Labor Association (FLA), United States***

In November, 1998, major U.S. apparel companies and some NGO participants in the White House-sponsored Apparel Industry Partnership (AIP) announced agreement on a garment industry multi-company code of conduct, monitoring and certification system. The Fair Labor Association will accredit external monitors and certify companies that meet its standards. Companies choose external monitors. Only a small fraction of contractors need to be monitored for companies to earn FLA certification. Labor and religious associations have withdrawn from the FLA, charging that the workplace standards are too low, and that the monitoring is not sufficiently transparent.

### ***Social Accountability 8000, United States/Europe***

An initiative of the Council on Economic Priorities Accreditation Agency (CEPAA), Social Accountability 8000 is an attempt to create an auditable "globally applicable standard, across all industries, seeking to guarantee human rights." The standard is designed for a "reliable third party certification process that is truly independent and provides for NGO input." Only factories, not the companies contracting from the factories, are certified. The CEPAA advisory board includes major international apparel companies and NGOs such as Amnesty International and the International Textile, Garment and Leather Workers' Federation.

### ***Worldwide Responsible Apparel Production (WRAP), United States***

The American Apparel Manufacturers Association launched WRAP in January, 2000. The labor standards are the lowest of any standards listed in this overview, and seldom go beyond compliance with local labor and other legislation, and in some cases are less stringent than ILO standards (e.g., on minimum age, hours of work, freedom of association, and collective bargaining). WRAP only requires that manufacturers respect the freedom of association where it is legally recognized; WRAP does not recognize collective bargaining as a right. The responsibility for seeking and paying for certification lies entirely with local factory owners rather than with North American companies that contract out manufacturing of their products.

### ***Worker Rights Consortium (WRC), United States***

The WRC is an initiative of the student anti-sweatshop movement, United Students Against Sweatshops. The consortium verifies that university-licensed apparel is made in accordance with the WRC Code of Conduct or other university codes. The standards include living wage, women's rights, basic health and safety rights, and provisions for full public disclosure. The WRC has no comprehensive global monitoring program and will not officially certify any companies. Instead, the WRC relies on full public disclosure of manufacturing sites and unannounced independent spot-checks by local human rights organizations as incentive for improvement in company sourcing practices. In May, 2000, workers in Los Angeles for the first time successfully used a university code of conduct as a tool to improve working conditions, winning a federal lawsuit against J.H. Design Group which manufactures jackets for several universities, including University of California, Los Angeles, and University of Southern California. The University of Maine at Farmington is the first Maine institution of higher education to join the WRC.

### ***Ethical Trading Initiative (ETI), United Kingdom***

A coalition of NGOs, companies, and unions, the ETI has developed a multi-sector code of conduct that includes provisions for a living wage, freedom of association, and security of employment. ETI company members are currently participating in four pilot projects, testing different models of code verification.

### ***Canadian Partnership for Ethical Trading, Canada***

A joint industry/civil society working group was formed in May, 1999, to develop a Canadian Base Code of Labor Practice for the apparel, footwear and related consumer products industries. The working group will examine possible mechanisms of compliance with the code and procedures for workers and third parties to register complaints when the code is violated. Currently, negotiations are stalled.

### ***Fair Wear Charter Foundation, Netherlands***

The Clean Clothes Campaign of the Netherlands successfully convened Dutch NGOs, labor centrals, and associations of apparel, retailers, and manufacturers in a five-year process of negotiation for an industry-wide code of conduct. Based on International Labor Organization standards, the code includes strong provisions on freedom of association, living wage, hours of work, independent monitoring, and certification. The Fair Wear Charter Foundation, with representatives from unions, NGOs, retailers, and manufacturers will hire external monitors, evaluate their reports and certify apparel companies and their supplier factories.

### ***Textile, Clothing and Footwear Union of Australia (TCFUA)***

The TCFUA has developed a Homeworkers' Code of Practice together with representatives of NGOs, religious groups, retailers, and manufacturers in the textile, clothing and footwear industries. This is a unique code, addressing the specific problem and needs of homeworkers. It requires retailers and manufacturers to ensure that homeworkers sewing for their labels receive the minimum wages, benefits and working conditions provided for under Australian labor law. Companies are required to disclose to the union detailed information on contractors, sub-contractors, and homeworkers. The union monitors working conditions. Close to 40 major retailers and over 50 manufacturers and fashion houses have signed the Homeworkers' Code of Practice.

### ***Central American Network of Women in Solidarity With Maquila Workers***

Most initiatives for codes of conduct have originated in the North (in "consumer countries"), but some Southern groups have also developed codes to urge manufacturers' associations and ministries of labor to, in turn, bring pressure on foreign investors that manufacture clothing on a contract basis for North American or European retailers. The Central American Network of Women in Solidarity with Maquila Workers has developed a Code of Ethics, emphasizing issues of concern to women maquila workers. These issues include discrimination, social security benefits, physical, psychological and sexual abuses, excessive overtime, and the rights of pregnant workers. The Network has used the code to educate workers and the broader population about workers' rights in the maquila. On February 1, 1998, in front of 500 maquila workers, the Nicaraguan Ministry of Labor signed a proclamation for free trade zone labor standards based on this Code of Ethics. On the next day, the owners of all 23 maquilas in the zone signed an agreement to adhere to the terms of the proclamation.

### ***U.S. Municipalities, Counties, and States***

An estimated 30 U.S. municipalities have passed anti-sweatshop procurement ordinances and resolutions, including Biddeford and Bangor in Maine, Pittsburgh, San Francisco, Albuquerque, Cleveland and other cities in the Cleveland area, and many New Jersey cities and counties. Most ordinances include provisions for living wage and freedom of association. Most also require vendors to publicly disclose names and addresses of subcontractor and manufacturing facilities. The State of New Jersey has considered an act concerning the purchase of apparel by public bodies. Based on International Labor Organization standards, the act contains strong provisions on freedom of association and living wages. It requires bidders to disclose the names and addresses of all subcontractors and the addresses of all production facilities.

## *United Nations Treaties, Conventions and Agreements*

The United Nation's International Labor Organization (ILO) has identified eight ILO conventions as fundamental to the rights of human beings at work, irrespective of levels of development of individual member states. According to the ILO: "These rights are a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work." The full text of these fundamental ILO conventions and human rights and labor rights conventions can be found on the web at [www.hri.ca/uninfo/treaties](http://www.hri.ca/uninfo/treaties).

Fundamental ILO Conventions                      Ratifications (as of February 1,  
2000)

### Freedom of Association

. Freedom of Association and Protection of the Right to Organize

124

Convention, 1948 (No. 87)

. Right to Organize and Collective Bargaining Convention, 1949 (No.98)

141

### The Abolition of Forced Labor

. Forced Labor Convention, 1930 (No. 29)

150

. Abolition of Forced Labor Convention, 1957 (No. 105)

140

### Equality

. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

137

. Equal Remuneration Convention, 1951 (No. 100)

140

### The Elimination of Child Labor

. Minimum Age Convention, 1973 (No. 138)

77

. Worst forms of Child Labor Convention, 1999 (No.

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The following United Nations conventions and protocols also address human rights and labor rights issues relevant to codes of conduct designed to end sweatshop labor abuses.

### The International Bill of Human Rights

. Universal Declaration of Human Rights

### Prevention of Discrimination

. United Nations Declaration on the Elimination of All Forms of Racial  
Discrimination

. International Convention on the Elimination of All Forms of Racial  
Discrimination

. Discrimination (Employment and Occupation) Convention

. Equal Remuneration Convention

## Rights of Women

- . Declaration on the Elimination of Violence Against Women
- . Declaration on the Elimination of Discrimination Against Women
- . Convention on the Elimination of All Forms of Discrimination Against Women

## Rights of the Child

- . Declaration of the Rights of the Child
- . Convention on the Rights of the Child

## Slavery, Servitude, Forced Labor and Similar Institutions and Practices

- . Slavery Convention
- . Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

## Freedom of Association

- . Workers' Representatives Convention

## Employment

- . Convention Concerning the Promotion of Collective Bargaining

## **ISSUES AND THEMES IN CODES OF CONDUCT**

### What should be in a code?

There is general agreement among unions, NGOs, and many corporations on "core labor rights" as defined in the ILO conventions (see above). There is also general agreement on the need to include additional provisions that go beyond core labor rights, such as health and safety (ILO Convention 155 and Recommendation 164), hours of work (U.N. General Assembly Declaration of Universal Human Rights, Article 24), and wages and other forms of compensation (U.N. General Assembly Declaration of Universal Human Rights, Article 23.3). Furthermore, there is general agreement that companies should adhere to local labor and other appropriate legislation, as well as the code of conduct, and that the higher standard should prevail.

There is a debate about other issues. "Living wage" provisions are included in the ICFTU, SA8000, the ETI (UK), the Fair Trade Charter (Netherlands), the Worker Rights Consortium, and municipal codes. The Fair Labor Association Accord calls on the U.S. Department of Labor to do a study of wages and basic needs around the world. There are two broad approaches to quantifying a living wage: one based on applying a standard formula to each supplying country and industry (the Formula Approach), and the other involving local negotiation of the appropriate value of a living wage (the Negotiated Approach). SA8000 uses the formula approach while the ETI favors the negotiated approach, although ETI intends to test both approaches.

The Ethical Trading Initiative of the UK includes a "security of employment" provision in their code. The provision prohibits avoidance of labor and social security obligations through "the use of labor-only contracting, sub-contracting, or home-working agreements, or through apprenticeship schemes, where there is no real intent to impart skills or provide regular employment, nor shall such obligations be avoided through the excessive use of fixed-term contracts of employment."

"Women's rights" provisions are included in the Central American Network of Women in Solidarity with Maquila Workers' Code of Ethics and the Worker Rights Consortium code (e.g., pregnancy tests not a condition of employment; workers not forced to use contraception; workers who take maternity leave will not be dismissed).

How should the code be implemented and enforced?

There is general agreement among unions, NGOs, and many corporations that internal monitoring by company staff of supplier compliance with codes of conduct is not adequate, and that some form of third-party external monitoring or verification is necessary for codes to have legitimacy. But there is disagreement about who are appropriate external or independent monitors, and what their relationship should be with the companies whose supplier factories are being monitored.

Under SA8000, the Fair Labor Association, and WRAP, companies choose and hire the monitors, usually private sector "social auditing firms" based in the Northern hemisphere, from among those that have been accredited under those programs [insert footnote]. Under the Dutch Clean Clothes model, Dutch apparel companies sign a contract with the Fair Wear Charter Foundation (with equal representation of unions, NGOs, retailers, and manufacturers) to have their suppliers' practices audited. The foundation then trains and hires independent auditors.

Worker responses to codes of conduct have consistently stressed that workers themselves are the best monitors of working conditions and that the freedom of association is a prerequisite for the effective implementation of codes of conduct. At a consultation project on codes of conduct organized by Women Working Worldwide (UK), Philippine garment workers stated: "With a union workers feel safe to testify against the company's violations." They added that independent monitoring bodies may be composed of NGOs and genuine trade union leaders, but that they should be "open to criticism to avoid corruption and to build up and maintain their credibility with workers." An independent monitoring pilot program at the Kimi factory in Honduras did in fact end when workers organized an independent union, the monitoring group acknowledging that workers were now in a position to defend their own rights. Similarly, the Hong Kong-based NGO, Labor Rights in China, has proposed that monitoring should primarily be the responsibility of workers themselves, and that the role of human rights organizations is to train workers on their rights and how to register complaints when those rights are violated. The Worker Rights Consortium and the Ethical Trading Initiative codes include provisions on worker awareness-raising and training, and complaints procedures.

Another major question is how much information and to whom companies should be required to disclose information, such as the names and locations of supplier factories, auditing results, and results of investigations into worker or third-party complaints. Under the Fair Labor Association, the public will only have access to Association reports which are based on company and auditor reports on company compliance with Association standards. Names and locations of manufacturing facilities and auditors' reports will not be publicly accessible. Under SA8000, the public will only have access to the names of suppliers that are certified, and only after a period of six months. Those not certified will not be available to the public. Under the Dutch foundation model, the foundation guarantees confidentiality of auditing reports, as long as the company abides by the foundation code of conduct. Beyond this, it is not yet clear how much information will be provided on supply chains and monitoring reports. Under the student-led Worker Rights Consortium, universities require that companies that produce licensed apparel bearing the school's name or logo publicly disclose the names and locations of all manufacturing facilities, and all objective measures of working conditions covered by the university code, such as wage levels, benefits provided, scheduled and average work hours, policies, citations, etc.. Under the TCFUA Homeworkers' Code of Practice, companies must provide the union detailed information on their supplier chain, the use of homework and homeworkers' wages and benefits. Under many U.S. municipal and county codes, bidders are required to disclose the names and addresses of manufacturing facilities.

## Sources

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FOOTNOTE:

1. Dr. Dara O'Rourke, Department of Urban Studies and Planning at the Massachusetts Institute of Technology, recently released the first systematic public analysis of the monitoring practices employed by the world's largest private monitor of labor and environmental practices, Pricewaterhouse Coopers (PwC). His report alleges that PwC missed labor practice issues in their monitoring of factories in China, Korea, and Indonesia, including: hazardous chemical use, barriers to freedom of association and collective bargaining, violation of wage and overtime laws, and falsified time-cards. Dr. O'Rourke faults PwC monitors for gathering information primarily from managers rather than workers.

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Peace through Interamerican Community Action (PICA) sponsors:

- \* the Bangor-El Salvador Sister City Project,
- \* the Bangor Clean Clothes Campaign,
- \* Youth Adelantando, and
- \* the Hope Line.

For information about our programs, please contact us at:

170 Park Street

Bangor, ME 04401

U.S.A.

(207) 947-4203

[pica@mint.net](mailto:pica@mint.net)

[www.bairnet.org/organizations/pica](http://www.bairnet.org/organizations/pica)

## **APPENDIX F**

# Resolution of the City Council of Bangor (Maine)

## **Resolve**, Declaring that Clothes for Sales in our Community Should be Manufactured in Accordance with Established International Codes of Corporate Conduct

**WHEAREAS**, Bangor is a community that upholds the dignity of every human being, promotes basic human rights and supports social and economic justice; and

**WHEREAS**, Bangor is a community that believes jobs should fairly compensate hard work with a living wage, that health and safety of working people should be protected, and that all forms of unlawful discrimination and abuse should not be tolerated; and

**WHEREAS**, many of the garments currently produced for Bangor markets are manufactured in sweatshop conditions characterized by poverty wages, forced overtime, child labor, an unsafe and unhealthy workplace, and often abusive working conditions; and

**WHEREAS**, established international standards for the ethical manufacture of clothes are routinely violated by many apparel makers who supply our community's retail stores; and

**WHEREAS**, sweatshops have been and continue to be a direct cause of job loss and depressed wages for Maine citizens, whose companies relocate for cheap labor, or threaten plant closings to force lower wages and contract concessions; and

**WHEREAS**, citizens who shop in Bangor have a right to expect that items for sale are produced under conditions consistent with our community values; and

**WHEREAS**, the City of Bangor can make a significant contribution to the campaigns against sweatshop manufacturing of clothing by supporting the enforcement of established ethical codes of corporate conduct; and

**WHEREAS**, there exists widespread support in the greater Bangor area for the principle that clothes sold in Bangor ought to be made under ethical conditions of production;

**NOW, THEREFORE, WE THE BANGOR CITY COUNCIL**, declare that all clothes for sale in our community, produced in the U.S. or abroad, should be manufactured in accordance with established international codes of corporate conduct regarding wages, workplace health and safety, forced labor, child labor, and freedom of association, as embodied in United Nations (U.N.) and International Labor Organization (I.L.O.) conventions.

**Statement of Fact:** The supporting standards for this Resolution include: the International Labor Organization's Convention on the Rights of the Child (Article 32.1), I.L.O. Conventions Section 29, Article 2, Section 105, Article 1, Section 87, Article 2, and Section 98, Article 1; the United Nations Draft Declaration on Gender Equity (paragraph 139), the U.N. General Assembly Universal Declaration of Human Rights (Article 4,5, 23.1, 23.3, 23.4, and 24).

## **APPENDIX G**

## **APPENDIX H**

Title: An Act to Implement the Recommendations of the Commission to Study and Establish Moral Purchasing and Moral Investment Policies of the State

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

**Sec. 1. 5 MRSA Chapter 155, subchapter I-B** is enacted to read:

**SUBCHAPTER I-B  
STATE OF MAINE PURCHASING CODE OF CONDUCT**

**§ 1826 Bidders to adopt purchasing code of conduct as part of bid process.** The State Purchasing Agent may not accept a bid as governed by subchapter I-A unless the supplier of the goods or services subject to the bid process has filed with the agent a signed affidavit, provided by the State Purchasing Agent stating that the supplier will adopt the State of Maine Purchasing Code of Conduct. The State Purchasing Agent shall make the State of Maine Purchasing Code of Conduct available to all bidders.

**§ 1826-A. Code of Conduct for State Purchasing.** The State Purchasing Agent shall provide suppliers of goods and services who submit bids as part of the competitive bidding process with an affidavit as required by this subchapter. That affidavit shall include a copy of the State of Maine Purchasing Code of Conduct as follows:

**1. Preamble.** Maine is a state that believes employers should fairly compensate hard work, that the health and safety of working people should be protected and that no form of unlawful discrimination or abuse should be tolerated. The State of Maine's objective is to utilize the state's purchasing power to influence those from whom the state procures products and services to:

- A. Embrace high standards of ethical behavior;
- B. Assume a leadership role in socially responsible business practices;
- C. Encourage openness and disclosure with regard to labor practices;
- D. Utilize tools for self-evaluation, certification, and external monitoring to demonstrate socially responsible business practices;
- E. Comply with all applicable laws and regulations;
- F. Treat their employees fairly and with dignity and respect to promote their welfare and improve their quality of life; and
- G. Be socially responsible citizens in the countries and communities in which they operate.

**2. Code of conduct.** A company contracted by the state to supply goods and services shall adopt and adhere to the following business practices:

**A. Ethical standards.** The State of Maine believes in doing business with those vendors who embrace high standards of ethical business behavior and who demonstrate commitment to those standards through rigorous practice. Those high standards should include, at a minimum, trustworthiness, integrity, honesty, respect for human dignity and respect for human life.

**B. Legal requirements.** The State of Maine believes in doing business with those vendors who are committed to full compliance with all laws and regulations in the

locations where the vendor operates and conducts business and will not knowingly operate in violation of any such law or regulation.

**C. Environment.** The State of Maine believes in doing business with vendors who maintain their facilities in compliance with all applicable environmental protection laws and treaties. In the absence of applicable laws, the vendor should always act in a manner that is consistent with the preservation and protection of the environment.

**D. Employment Practices.** A company contracted by the state to supply goods and services shall adopt and adhere to the following employment practices:

- 1. Working Hours:** The State of Maine believes in doing business with vendors who respect the lives of their workers by allowing for sufficient discretionary time away from the workplace. Employers should respect the need for rest, family and personal time. Mandatory working hours should be in compliance with the local laws, including appropriately compensated overtime.
- 2. Wages and Benefits:** The State of Maine believes in doing business with vendors that ensure that wages paid for a standard working week shall meet at least legal or industry standards, whichever is higher, are subject to no illegal deductions and shall always be sufficient to meet the basic needs of personnel.
- 3. Child Labor:** The State of Maine believes in doing business with vendors who will not knowingly use suppliers who employ workers under the legal employment age as designated by local laws or as designated by the United Nations standards, whichever is higher. If workers are found to be underage, vendors should provide means for remediation and education.
- 4. Forced Labor:** The State of Maine believes in doing business with vendors who will not knowingly use suppliers of either raw materials or finished product that have been produced by forced labor or services provided by forced labor. The State of Maine believes that employment should be freely chosen. The State of Maine will not do business with vendors or suppliers who use or support employment that is forced, bonded, indentured or involuntary prison labor.
- 5. Freedom of Association:** The State of Maine believes in doing business with vendors that recognize and respect the legal rights of employees to free association and recognize and associate with the representative of their employees' choice. Where the right to freedom of association and collective bargaining is restricted under law, the State of Maine believes in doing business with vendors that facilitate and do not hinder the development of parallel means for independent and free association and bargaining. Employees shall not be subject to harassment, intimidation or retaliation in their efforts to freely associate.
- 6. Discrimination:** The State of Maine believes that all people are entitled to equal opportunity in employment. The State of Maine supports vendors who are committed to responsible business practices with absolute regard for human rights. Because our business relationships are partnerships, we require our suppliers and vendors at all levels of business

to follow this same standard by promoting an atmosphere free from discrimination.

**7. Women's Rights:** The State of Maine believes in doing business with vendors who do not discriminate against women, particularly with regard to pregnancy, maternity leave, age or marital status.

**8. Health and Safety:** The State of Maine believes in doing business with those vendors who have demonstrated concern for and commitment to the health and safety of their employees.

**9. Education and Awareness:** The State of Maine believes in doing business with those vendors who ensure that all relevant personnel are provided appropriate training and guidelines that will enable employees to apply the code of conduct in their work. Workers who are covered by the code of conduct should be made aware of the code and the implementation procedures.

**E. Commitment to Reform:** A company contracted by the state to supply goods and services shall adopt and adhere to the following business practice:

The State of Maine believes in doing business with vendors who, upon continued discovery of continuing abusive conditions at a particular worksite of their own or a supplier, will use their influence to correct conditions, rather than cease to do business with the site.

**§ 1826-B. Exception.** The State Purchasing Agent may accept and award a bid to a supplier who has not met the requirement provided in section 1826 if, after reasonable investigation by the State Purchasing Agent, it appears that the required unit or item of supply or brand of that unit or item, is procurable by the State from only that supplier. This section is repealed January 31, 2004.

**§ 1826-C. Support to Suppliers of Goods and Services.** The State Purchasing Agent shall provide to bidders and those who have been awarded contracts, resources to assist with compliance with the State of Maine Purchasing Code of Conduct. These resources shall include a list, easily accessed by the public, of bidders and vendors who have adopted the State of Maine Purchasing Code of Conduct.

**§ 1826-D. Rulemaking.** The State Purchasing Agent shall adopt rules under this subchapter governing the award of bids. Those rules must include specific guidelines for vendors to follow in order to comply with the State of Maine Purchasing Code of Conduct and criteria for seeking disclosure of names and addresses of the vendor's suppliers and suppliers' working conditions.

Rules adopted under this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

**§ 1826-E. Report.** By January 15<sup>th</sup> of each year the State Purchasing Agent shall submit a report to the joint standing committee having jurisdiction over state and local government concerning the administrative and fiscal impact of the requirement that vendors comply with the State of Maine Purchasing Code of Conduct; degree of voluntary compliance with the State of Maine Purchasing Code of Conduct; the number of vendors who agreed to and who also declined to comply with the

provisions of this subchapter; and any other information relevant to the State Purchasing Code of Conduct.

**Sec. 2. Commission to Study Economically and Socially Just Policies for Foreign Investments by the State established**

1. Commission membership; appointments. The commission consists of 10 members as follows:

A. Two members from the Senate, the first appointed by the President of the Senate, and the second appointed by the President Pro-Tem

B. Two members from the House of Representatives appointed by the Speaker of the House of Representatives, one of whom is a member of a political party that does not hold a majority of seats in that body;

C. Two members from groups involved in social investments, one appointed by the President and one appointed by the Speaker;

D. Two members from groups involved in human rights issues, one appointed by the President and one appointed by the Speaker;

E. One representative of the Maine State Retirement System, appointed by the Governor;

F. One member of the public appointed by the Governor;

All appointments must be completed no later than August 1, 2001.

2. First meeting; chairs. The first named Senate member is the Senate chair and the first named House member is the House chair of the commission. When the appointment of all members of the commission is completed, the commission chairs shall call and convene the first meeting of the commission no later than August 31, 2001.

3. Duties. The commission shall study the subject of economically and socially just policies for foreign investment by the State. The commission shall evaluate the foreign investment policies of other states. In its report, the commission shall propose standards for investment in foreign companies by the State, taking into consideration such factors as the use of child labor and the existence of exploitation of workers and unhealthy working conditions. The commission shall make recommendations with regard to whether the State should invest in foreign companies that oppress or mistreat their workers. The commission shall identify the possible positive and negative impacts of proposed standards on Maine workers, Maine small businesses and Maine taxpayers.

4. Staff assistance. Upon approval of the Legislative Council shall provide necessary staffing services to the commission.

5. Compensation. The members of the commission who are Legislators are entitled to the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for necessary expenses incurred for their attendance at authorized meetings of the commission. Other members of the commission who are not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses incurred for their attendance at authorized meetings of the commission.
6. Report. The commission shall submit its report, together with any necessary implementing legislation, to the Second Regular Session of the 120th Legislature no later than December 1, 2001. If the commission requires a limited extension of time to conclude its work, it may apply to the Legislative Council, which may grant the extension.
7. Consultant. The commission, with the approval of the Legislative Council, may contract with a consultant to provide professional services which will assist the commission with its duties.
8. Budget. The chair of the commission, with assistance from the commission staff, shall administer the commission's budget. Within 10 days after its first meeting, the commission shall present a work plan and proposed budget to the Legislative Council for approval. The commission may not incur expenses that would result in the commission exceeding its approved budget. Upon request from the commission, the Executive Director of the Legislative Council shall promptly provide the commission chair and staff with a status report on the commission's budget, expenditures incurred and paid and available funds.
9. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this resolve.

**LEGISLATURE** **2001-02**  
**Commission to Study Economically and Socially Just Policies for Foreign Investments by the State**

Personal Services \$1,505  
All Other \$4,500

Provides funds for the per diem and expenses of legislative members and expenses for other eligible members of the Commission to Study Economically and Socially Just Policies for Foreign Investments by the State, the services of a consultant and to print the required report.

**LEGISLATURE**

**TOTAL \$6,105**

**Sec. 3. Commission renamed; reconvene in 2002.** The Commission to Study and Establish Moral Policies for Foreign Purchasing and Foreign Investments by the State shall be renamed the

Commission to Study and Establish Economically and Socially Just Purchasing Policies by the State and its members shall reconvene in September of 2002 and hold at least 2 meetings.

### **SUMMARY**

This bill requires suppliers of goods and services to the state to comply with a purchasing code of conduct in order to be considered in the competitive bidding process. The bill requires the State Purchasing Agent to provide resources to bidder to assist them with compliance with the code of conduct. The State Purchasing Agent is required to adopt rules governing the award of bids and to report annually to the joint standing committee having jurisdiction over state and local government.

This bill also creates a commission to study and establish moral policies for the state and requires that a the Commission to Study and Establish Moral Policies for Foreign Investment and Foreign Purchasing by the State be renamed the Commission to Study and Establish Policies for Economically and Socially Just Purchasing by the State and reconvene in 2002.

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12. U.S.C. Art. 1, §8, cl. 3
13. U.S.C.A. Const. Art. 6, cl. 2.
14. 41 U.S.C. §10a-d.

