



## MEMORANDUM

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: September 18, 2019  
Subject: Proposed Legislation

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The Commission staff proposes three bills for your consideration. If you approve, the Commission staff would submit the bills to the office of the Revisor of Statutes by the deadline of September 27, 2019 for consideration by the Maine Legislature in 2020.

### Clarifying financial reporting requirements

Chapter 13, subchapter IV (21-A M.R.S. §§ 1051-1063) sets out the registration and financial reporting requirements for political action committees (PACs) and ballot question committees (BQCs). BQCs are similar to PACs, except that they are typically organizations with a major purpose *other than* influencing Maine elections that have spent more than \$5,000 to influence a Maine ballot question. For example, the Christian Civic League and the Maine People's Alliance have registered as BQCs.

The Commission staff would like to clarify which sections in subchapter IV relate to PACs only, and which relate to both PACs and BQCs. We propose:

- The current definition of “committee” would be modified to cover both PACs and BQCs. That term would be used in sections which we believe should apply to both PACs and BQCs.
- For those sections which should cover PACs only, we propose using the phrase “political action committee” rather than “committee.”

## Broadening the Grassroots Lobbying Requirement

Sometimes organizations seeking to influence legislation will pay for ads or other communications to encourage members of the general public to contact officials urging them to support or oppose legislation. A common term for these communications is “grassroots lobbying.” In 2009, the Legislature required lobbyists to include in their monthly reports expenditures by their clients exceeding \$15,000 per month for these communications. For this purpose, the Legislature defined a new term, “indirect lobbying.”

After seeing an increased use of these communications in the past decade and reviewing similar grassroots lobbying requirements in 25 other states, the Commission staff proposes:

- renaming “indirect lobbying” as “grassroots lobbying,” which is a more common term in other states’ laws
- expanding the types of communications covered to include digital ads, websites, and automated phone calls
- reducing the spending threshold from \$15,000/month to \$2,000/month (for reasons outlined on the next page)
- requiring a one-time report for organizations that have *not* hired a lobbyist and that spend more than \$2,000 in a month on grass-roots lobbying (*e.g.*, coalition partners in Maine or nationally that have paid for grassroots lobbying ads, even though they were not directly lobbying on legislation). We believe this is advisable in light of more than \$800,000 spent earlier this year on TV advertising by an organization opposing the New England Clean Energy Corridor (NECEC) that did not hire a lobbyist.<sup>1</sup>

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<sup>1</sup> This example is cited by the Commission staff only to illustrate a recent, sizeable grassroots advertising campaign on a significant public policy issue that would be outside the scope of existing disclosure requirements. In spite of scrutiny by the press, little information was disclosed publicly concerning organization’s funders/members or interests. ([BDN article 7/3/2019](#))

Our reasons for proposing a reduction in the \$15,000/month threshold to \$2,000 include:

- Maine lobbyists rarely disclose grassroots lobbying expenses by their clients. In the last three years, only three grassroots lobbying efforts were disclosed by lobbyists, even though digital ads to influence legislation are seen with some regularity on websites. This suggests that the current threshold of \$15,000 may be too high.
- Compared to other states, the \$15,000 threshold is quite large. Several states require disclosure of traditional lobbying of officials or grassroots lobbying if the client's expenditures are in the hundreds of dollars (*e.g.*, \$250, \$400, or \$500) or low thousands (*e.g.*, \$1,000, \$2,500 or \$3,000).
- In our experience administering campaign finance reporting laws, payments for digital, radio and telephone advertisements often cost in the hundreds or low thousands of dollars. Consequently, the threshold of \$15,000 per month may fail to capture grassroots lobbying campaigns that cost in the range of \$2,000-\$15,000.

#### Other Lobbyist Disclosure Legislation

We propose other changes to the lobbyist disclosure law, including:

- a clarification of the existing requirement for lobbyists to report expenditures made on behalf of officials
- an amendment to the deadline for when lobbyists must register (the current deadline is within 15 business days of the commencement of lobbying, but in some cases that deadline maybe in conflict with the 8-hour/month threshold in the lobbyist definition)
- simplifying the disclosure requirements for state government employees who lobby on behalf of their agencies.

Thank you for your consideration of the proposed bills.

## **An Act to Clarify the Financial Reporting Responsibilities of Political Action Committees and Ballot Question Committees**

### **21-A § 1052. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**2. Committee.** “Committee” means any political action committee, or any ballot question committee, as described in section 1056-B, as defined in this subchapter, and includes any agent of a political action committee or ballot question committee.

*Some sections within this subchapter relate to both PACs and ballot question committees, and some relate only to PACs. In order to clarify the applicability of each section, the Commission staff proposes to define the term “committee” to cover both PACs and ballot question committees. If a statutory section within this subchapter is intended to refer only to PACs, we propose below referring to the “political action committee.”*

### **21-A § 1052-A. Registration**

A political action committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

**1. Deadlines to file and amend registrations.** A political action committee shall register and file amendments with the commission according to the following schedule.

B. A political action committee shall amend the registration within 10 days of a change in the information that political action committees are required to disclose under this section.

C. A political action committee shall file an updated registration form between January 1st and March 1st of each year in which a general election is held. The commission may waive the updated registration requirement for a newly registered political action committee or other registered political action committee if the commission determines that the requirement would cause an administrative burden disproportionate to the public benefit of the updated information.

**2. Disclosure of treasurer and officers.** A political action committee must have a treasurer and a principal officer. The same individual may not serve in both positions. The political action committee's registration must contain the names and addresses of the following individuals:

- A. The treasurer of the political action committee;
- B. A principal officer of the political action committee;
- C. Any other individuals who are primarily responsible for making decisions for the political action committee;
- D. The individuals who are primarily responsible for raising contributions for the political action committee; and
- E. The names of any other candidates or Legislators who have a significant role in fundraising or decision-making for the political action committee.

**3. Other disclosure requirements.** A political action committee's registration must also include the following information.

- A. A statement indicating the specific candidates, categories of candidates or campaigns that the political action committee expects to support or oppose;
- B. If the political action committee is formed to influence the election of a single candidate, the name of that candidate;
- C. The form or structure of the organization, such as a voluntary association, membership organization, corporation or any other structure by which the political action committee functions, and the date of origin or incorporation of the organization;
- D. If the political action committee has been formed by one or more for-profit or nonprofit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;
- E. The name of the account that the political action committee will use to deposit contributions and make expenditures pursuant to section 1054, and the name and address of the financial institution at which the account is established; and
- F. Any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter.

**4. Acknowledgment of responsibilities.** The treasurer, principal officer and any other individuals who are primarily responsible for making decisions for the political action committee shall submit a signed statement acknowledging their responsibilities on a form prescribed by the commission within 10 days of registering the political action committee. The signed acknowledgment statement serves as notification of the responsibilities of the political action committee to comply with the financial reporting, record-keeping and other requirements of this chapter and the potential personal liability of the treasurer and principal officer for civil penalties assessed against the political action committee. The commission shall notify the political action committee of any individual who has failed to submit the acknowledgment statement. Failure to return the

acknowledgment statement is a violation of this subchapter for which a fine of \$100 may be assessed against the political action committee. This section also applies to individuals named in an updated or amended registration required by this subsection who have not previously submitted an acknowledgment statement for the political action committee with the commission.

**5. Resignation and removal.** An individual who resigns as the treasurer, principal officer or primary decision-maker of a political action committee shall submit a written resignation statement to the commission. An individual's resignation is not effective until the commission receives the written resignation statement from the individual. If an individual is involuntarily removed from the position of treasurer, principal officer or primary decision-maker by the political action committee, the political action committee shall notify the commission in writing that the individual has been removed from the position. The commission may prescribe forms for these purposes.

*Commission staff recommends adding “political action” in front of the word “committee” to clarify that this section only applies to political action committees and not ballot question committees. This change is necessary because of the § 1052(2) proposed amendment.*

## **21-A § 1053-A. Municipal elections**

~~Organizations~~ An organization that qualify-qualifies as a political action committees under section 1052, subsection 5 or a ballot question committee under section 1056-B and that receives contributions or makes expenditures to influence a municipal campaign in towns or cities with a population of 15,000 or more shall register and file reports with the municipal clerk as required by Title 30-A, section 2502. The reports must be filed in accordance with the reporting schedule in section 1059 and must contain the information listed in section 1060. A ~~political action~~ committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns; ~~except that the commission shall enforce late filing penalties under section 1020 A, subsection 3 upon the request of a municipal clerk.~~ If a municipal clerk becomes aware of a potential violation of this subchapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. The commission has the discretion to conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the

commission determines that a violation of this subchapter has occurred, the commission may assess penalties provided in this subchapter.

*Commission staff proposes this amendment because it clarifies that ballot question committees are also included under this section. The penalty reference to § 1020-A is removed because it cites to an incorrect part of the statute that only applies to candidates. The additional language clarifies the procedures for investigation, enforcement, and penalties by the Commission.*

### **21-A § 1053-B. Out-of-state ~~political action~~ committees**

An organization that is registered as a political action committee, ballot question committee, or political committee with the Federal Election Commission or a jurisdiction outside of this State shall register and file reports with the commission in accordance with this subchapter upon receiving contributions or making expenditures to initiate or influence a campaign in the State in excess of the amounts that would require registration under section 1052-A. The committee is not required to register and file reports if the committee's only financial activity within the State is to make contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and the committee has not raised and accepted any contributions during the calendar year to influence a campaign in this State.

*The Commission staff recommends this amendment to clarify that this section applies to all committees under this subchapter and not just political action committees.*

### **21-A § 1054. Appointment of treasurer; depository**

Any political action committee required to register under section 1052-A must appoint a treasurer before registering with the commission. A registered political action committee shall deposit all funds contributed to or received by the political action committee for the purpose of influencing a campaign in a single account in a financial institution and shall finance all of the political action committee's expenditures to influence the election through the account. If the political action committee was formed by another organization, that other organization may pay its employees for their campaign-related activities on behalf of the political action committee through its own treasury, rather than through the single account established by the political action committee and used for campaign expenditures.

*The Commission staff recommends this amendment to clarify that this section applies only to political action committees.*

## **21-A § 1054-A. Duties and liabilities of the treasurer, principal officer and primary decision maker**

**1. Duties of the treasurer.** The treasurer of the political action committee shall ensure that the political action committee files and amends the political action committee's registration, files complete and accurate financial reports with the commission and maintains the political action committee's records as required by this chapter and the commission's rules. The treasurer is responsible for the political action committee's performance of these duties regardless of whether the treasurer has delegated administrative tasks related to these duties to another individual.

**2. Joint responsibilities of the treasurer and principal officer.** The treasurer and the principal officer are jointly responsible for the political action committee's compliance with the requirements of this chapter and the commission's rules. The treasurer and principal officer are responsible for accepting and responding to notices and correspondence from the commission on behalf of the political action committee.

**3. Participation in spending decisions.** An individual who is the treasurer, principal officer or primary decision maker of the political action committee and who has signed the acknowledgment statement required by section 1052-A, subsection 4 is deemed to have participated in the spending decisions of the political action committee until the commission receives the individual's resignation statement or a notice of the individual's involuntary removal from the political action committee.

**4. Financial liability.** The commission may hold the treasurer and principal officer jointly and severally liable with the political action committee for any fines assessed against the political action committee for violations of this chapter and chapter 14. In addition, the commission may assess all or part of a fine against any other agent of the political action committee who is directly responsible for a violation, including individuals who have resigned or have been removed involuntarily from the political action committee. In deciding whether to assess a penalty against a treasurer, principal officer or any other individual, the commission may consider, among other things, whether the individual had actual knowledge of the action that constituted the violation or had authorized that action and whether the violation was intentional or caused by an error by a vendor or someone outside the control of the political action committee.

*The Commission staff recommends this amendment to clarify that this section applies only to political action committees.*

## **21-A § 1054-B. Payments to Legislators by political action committees**

If a Legislator is a principal officer or treasurer of a political action committee or is one of the individuals primarily responsible for raising contributions or making decisions for the political action committee, the political action committee may not compensate the Legislator for services



provided to the political action committee. The political action committee may not make payments to or compensate a business owned or operated by the Legislator. The political action committee may reimburse the Legislator for expenses incurred in the proper performance of the duties of the Legislator, for purchases made on behalf of the political action committee and for travel expenses associated with volunteering for the political action committee. Allowable reimbursement for expenses does not include payments from the political action committee that are determined by the commission to be for the purpose of personal financial enrichment of the Legislator.

*The Commission staff proposes this amendment to clarify that this section applies only to political action committees.*

#### **~~21-A § 1056-A. Expenditures by political action committees~~**

~~A political action committee shall report all expenditures in cash or in kind made by the committee.~~

*The Commission staff proposes this amendment because it is duplicative with 21-A M.R.S. sec. 1060.*

#### **21-A § 1056-B. Ballot question committees**

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the ballot question committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The ballot question committee

shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

*The Commission staff proposes this amendment to clarify that this section only applies to ballot question committees.*

## **21-A § 1057. Records**

Any political action committee that is required to register under section 1052-A or 1053-B shall keep records as provided in this section for 4 years following the election to which the records pertain.

**1. Details of records.** The treasurer of a political action committee shall record a detailed account of:

A. All expenditures made to or in behalf of a candidate, campaign or political action committee;

B. The identity of each candidate, campaign or political action committee;

C. The office sought by a candidate and the district he seeks to represent, for candidates which a political action committee has made an expenditure to or in behalf of; and

D. The date of each expenditure.

**2. Receipts.** The treasurer of a political action committee shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50 to initiate or influence a campaign.

**3. Record of contributions.** The treasurer of a political action committee shall keep a record of all contributions to the political action committee, by name and mailing address, of each donor and the amount and date of the contribution. This provision does not apply to aggregate contributions from a single donor of \$50 or less for an election or referendum campaign. When any donor's contributions to a political action committee exceed \$50, the record must include the aggregate amount of all contributions from that donor.

**4. Account statements.** The treasurer of a political action committee shall keep account statements relating to the deposit of funds of the political action committee required by section 1054.

*The Commission staff proposes this amendment to clarify that this section only applies to political action committees.*

## **21-A § 1058. Reports; qualifications for filing**

~~A political action committee that is required to register under section 1052-A or 1053-B shall file reports with the commission on forms prescribed by the commission according to the schedule in section 1059.~~

*Commission staff proposes this amendment because this language is repeated in the introductory section of § 1059 and is unnecessary.*

## **21-A § 1061. Dissolution of committees**

Whenever any ~~political action~~ committee determines that it will no longer accept any contributions or make any expenditures, the committee shall file a termination report that includes all financial activity from the end date of the previous reporting period through the date of termination with the commission. The committee shall dispose of any surplus prior to termination. In the termination report, the committee shall report any outstanding loan, debt or obligation in the manner prescribed by the commission.

*Commission staff proposes this amendment to clarify that this section applies to both ballot question and political action committees.*

## **21-A § 1062-A. Failure to file on time**

**5. Request for a commission determination.** If the commission staff finds that a ~~political action~~ committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the ~~political action~~ committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a ~~political action~~ committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the ~~political action~~ committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

**6. Final notice of penalty.** After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the ~~political action~~ committee. If a

determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the ~~political action~~ committee. A detailed summary of all notices must be provided to the commission.

**7. List of late-filing committees.** The commission shall prepare a list of the names of ~~political action~~ committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

*The Commission staff propose amending this section to clarify that the section applies to both political action committees and ballot question committees.*

## An Act to Improve the Disclosure of Grassroots Lobbying

**3 MRS § 312-A. Definitions.** As used in this chapter, unless the context otherwise indicates, the following words have the following meanings.

...

**7-B. ~~Indirect~~Grassroots lobbying.** “~~Indirect~~Grassroots lobbying” means to communicate with members of the general public to solicit them to communicate directly with any covered official for the purpose of influencing legislative action, other than legislation that is before the Legislature as a result of a direct initiative in accordance with the Constitution of Maine, Article IV, Part Third, Section 18, when that solicitation is made by:

- A. A broadcast, cable or satellite transmission;
- B. A communication delivered by print media; or
- C. A letter or other written communication delivered by mail or by comparable delivery service.

~~E-mail is not considered a letter for the purposes of this paragraph.~~

D. A communication delivered by e-mail, a website or any other digital format;

E. Telephone; or

F. A method of communication similar to those listed in paragraphs A to E.

“Grassroots lobbying” does not include a person communicating with the person’s stockholders employees, board members, officers or dues-paying members.

...

*For reasons discussed in the attached cover memo, the Commission staff proposes expanding the media which are covered by the grassroots lobbying requirement to include digital and email communications, and telephone calls (e.g., robocalls).*

**11-A. Original source.** “Original source” means any person who contributes or pays \$1,000 or more in any lobbying year directly or indirectly to any employer of a lobbyist for purposes of lobbying or ~~indirect~~grassroots lobbying or to any other person for purposes of grassroots lobbying, except that contributions of membership dues to nonprofit corporations formed under Title 13-B, under any equivalent state law or by legislative enactment are not considered contributions by an original source.

*Under current law, an original source is any person (individual or organization) that makes a payment of \$1,000 or more to a lobbyist's employer (client) for the purpose of lobbying or grassroots lobbying. The lobbyist is required to report that original source so that the public is aware of the ultimate funder of the lobbying or grassroots lobbying effort.*

*The Commission staff is proposing expanding the grassroots lobbying disclosure requirement to organizations that have paid for communications to the public but have not hired a lobbyist to communicate directly with officials. If those organizations have received funding from other sources for purposes of grassroots lobbying, we propose that those other funders be disclosed as an original source.*

### **3 § 317. Reports**

Reports required by this section must be on forms prescribed or approved by the commission. The forms must provide for a sworn statement that the persons signing the report acknowledge the truth and completeness of all the information contained therein.

**1. Monthly session reports.** During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

Every lobbyist shall report that lobbyist's lobbying activities for each month that the Legislature is in session, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. In the case of a lobbyist representing multiple employers, if no lobbying or services in support of lobbying were performed, one report listing each employer on whose behalf no lobbying was conducted may be submitted. The monthly report must contain the following information:

...

**E-1.** When expenditures for the purposes of indirect lobbying exceed ~~\$15,000~~ \$2,000 during the month that is the subject of the report, the specific dollar amount of expenditures for ~~indirect~~ grassroots lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, and the legislative actions that are the subject of the ~~indirect grassroots~~ lobbying ~~and a general description of the intended recipients;~~

*Since 2009, lobbyists have been required to report their clients' expenditures for grassroots lobbying if they exceeded \$15,000 per month. For reasons expressed in the cover memo, the Commission staff proposes reducing the spending threshold from \$15,000/month to \$2,000/month. Also, we believe it is unnecessary for lobbyists to describe the intended recipients when the audience most often will be the general public.*

### **3 MRSA § 317-A Grassroots lobbying report**

Any person that makes expenditures in excess of \$2,000 during a calendar month for purposes of grassroots lobbying shall file a report no later than 11:59 p.m. on the 15<sup>th</sup> day of the calendar month following the date on which that amount was exceeded. For purposes of this section, expenditures includes payments of money made to independent contractors and other vendors to purchase goods and services such as advertising, graphic or website design, video or audio production services, telecommunication services, printing and postage. Reportable expenditures do not include salaries paid to the person's employees.

**1. Report.** A grassroots lobbying report filed by a person pursuant to this section must include:

- A. The name of the person required to file the report;
- B. The name of an individual serving as the contact for the person;
- C. The business address and other contact information for the person
- D. A description of the business activity or mission of the person;
- E. The specific amount of expenditures for grassroots lobbying made or incurred during the month that is the subject of the report, with separate totals for expenditure categories as determined by the commission,
- F. the legislative actions that are the subject of the grassroots lobbying; and
- G. A list of all of the person's original sources and a statement of the amounts contributed or paid by the original source. If the original source is a corporation formed under Title 13 or former Title 13-A, nonprofit corporation formed under Title 13-B or limited partnerships under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source.

*For reasons outlined in the cover memo, the Commission staff proposes a one-time report for any organization that spends more than \$2,000 in a calendar month on grass-roots lobbying but has not hired a lobbyist.*

Effective date will be December 1, 2020 [to provide Ethics Commission staff with time to develop online forms and public access capabilities]

## MAINE REVISED STATUTES

### TITLE 3, CHAPTER 7: LEGISLATIVE COUNCIL

#### 3 § 170-B. Required training regarding harassment

All Legislators, legislative staff, ~~and~~ lobbyists and lobbyist associates shall attend and complete a course of in-person education and training regarding harassment, including, but not limited to, sexual harassment and racial harassment, at the beginning of each regular session of the Legislature. The Legislative Council shall develop and implement this course of education and training. For the purpose of this section, "lobbyist" and "lobbyist associate" ~~has~~ have the same meanings as in section 312-A, subsections 10 and 10-A.

*When a lobbyist registers with the Commission on behalf of an employer (client), the disclosure law allows the lobbyist to identify colleagues or subordinates in their office as "lobbyist associates." These individuals will also lobby Maine state officials to influence legislation on behalf of the employer. The monthly reports filed by that lobbyist relate to the entire team (e.g., the lobbyist will report the total compensation earned that month by the lobbyist and all the associates).*

*In 2018, the Maine Legislature required Legislators, staff and lobbyists to undertake annual harassment training. The Commission's only role is to ensure that lobbyists have taken the training through the lobbyist registration process. In 2019, our office was asked a few times whether individuals who serve only as lobbyist associates are required to take the training. Our proposal is that they should be required to take the training, since some of them are in the State House engaged in lobbying. Under current law, an exemption would be available if they have very limited presence in the State House. We estimate that this would expand the training by about 10-20 individuals each year.*

### TITLE 3, CHAPTER 15: LOBBYIST DISCLOSURE PROCEDURES

#### 3 § 311. Declaration of purpose

The Constitution of Maine guarantees the right of the people to petition their government for the redress of grievances and to freely express their opinions on legislation and issues. The Legislature reaffirms its obligation to hear the requests and opinions of all of the people, and to preserve and maintain the integrity and accessibility of the legislative process.

The Legislature recognizes that groups of citizens may choose one among them to present their views to Legislators, and, because of the amount and complexity of proposed legislation, may employ persons knowledgeable in the legislative process to present their views. Such activities are proper methods of expressing the opinion of a group of citizens.

The Legislature also recognizes that such activities must be carried out openly so that other citizens are aware of the opinions and requests made in this manner. Legislative decisions can fully reflect the will of all the people only if the opinions expressed by any citizen are known to all and debated by all, and if the representatives of groups of citizens are identified and their expenditures and activities are regularly disclosed.



Therefore, the Legislature declares that, in order to insure the full participation of all the people of the State in the legislative process, full disclosure of the identity, expenditures and activities of any persons who engage in professional lobbying is required. Such disclosure will insure the openness and integrity of the legislative process and encourage the expression of the will of all the people of the State.

### **3 § 312. Definitions (REPEALED)**

#### **3 § 312-A. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings.

**1. Campaign fund raising activity.** “Campaign fund raising activity” means any event or solicitation by letter or any other means that is held for the purpose of receiving contributions for a political party, political committee, political action committee, candidate for political office in any primary or election, any elected official or a referendum committee.

**1-A. Campaign contribution.** “Campaign contribution” is a contribution, as defined in Title 21-A, section 1012, subsection 2.

**2. Committee.** “Committee” means any committee, subcommittee, joint or select committee of the Legislature or any special committee or commission, by whatever name, established by the Legislature to make recommendations for legislative action or to develop legislation.

**2-A. Commission.** “Commission” means the Commission on Governmental Ethics and Election Practices as defined in Title 1, Chapter 25.

**3. Communicate.** “Communicate” means the act of expressing, imparting or conveying information or impressions from one person to another, by either oral or written means.

**4. Compensation.** “Compensation” means anything of value that is received or to be received in return for, or in connection with, services rendered or to be rendered.

**4-A. Covered official.** “Covered official” means an official in the executive branch, an official in the legislative branch, a constitutional officer, the Governor and the Governor’s cabinet and staff.

**4-B. Domestic partner.** “Domestic partner” means the partner of an individual who:

- A. Is a mentally competent adult, as is the individual;
- B. Has been legally domiciled with the individual for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the individual and expects to remain so; and
- E. Is jointly responsible with the individual for each other’s common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

**5. Employer.** “Employer” means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services. Employer includes any political

action committee as defined in this section which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

**6. Employment.** “Employment” means an agreement to provide services in exchange for compensation or reimbursement of expenditures.

**7. Expenditure.** “Expenditure” means anything of value or any contract, promise or agreement to transfer anything of value, whether or not legally enforceable.

A. **(REPEALED)**

B. **(REPEALED)**

C. **(REPEALED)**

**7-A. Immediate family.** “Immediate family” means a person's spouse or domestic partner and dependent children.

**7-B. Indirect lobbying.** “Indirect lobbying” means to communicate with members of the general public to solicit them to communicate directly with any covered official for the purpose of influencing legislative action, other than legislation that is before the Legislature as a result of a direct initiative in accordance with the Constitution of Maine, Article IV, Part Third, Section 18, when that solicitation is made by:

A. A broadcast, cable or satellite transmission;

B. A communication delivered by print media; or

C. A letter or other written communication delivered by mail or by comparable delivery service. E-mail is not considered a letter for the purposes of this paragraph.

**8. Legislative action.** “Legislative action” means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature, by either the House of Representatives or the Senate, any committee or an official in the Legislative Branch acting in his or her official capacity, or action of the Governor in approving or vetoing any legislative document presented to the Governor for ~~his~~ the Governor's approval.

*The Commission staff proposes these changes to make the references to the Governor and officials in the Legislative Branch gender-neutral.*

**8-A. Legislative designee.** “Legislative designee” means any employee of a state department or agency who is ~~directed~~ designated by the head of the department or agency as the primary employee to lobby or monitor legislation on behalf of the department or agency, or who is reasonably expected to lobby for more than 10 hours during a legislative session. “Legislative designee” ~~includes an employee who is reasonably expected to lobby or monitor legislation on behalf of the department or agency for more than 20 hours during the session. For the purposes of this subsection, “monitoring legislation” means attending legislative hearings and sessions regarding a legislative action.~~

*Under current law, certain employees of Maine state government who are directed by their agency to lobby or monitor legislation are defined as “legislative designees” and must annually register with the Commission. They do not file monthly reports. In 2008, the coverage and*

*content of this disclosure requirement was expanded, along with other changes to the disclosure made by lobbyists for private employers (P.L. 2007, Chapter 630).*

*The Commission currently administers this disclosure requirement by emailing a fillable PDF to agency heads. The agency heads distribute the form to the relevant employees, who complete the form, sign it, and return it to our office through inter-office or U.S. mail. Every year, the Commission receives more than 300 of these paper registration forms. For the larger agencies, we receive annual registrations from dozens of the agency's employees, which often include duplicate descriptions of the agency and its legislative areas of interest.*

*Over the past ten years, the Commission staff has detected very little interest in these filings. In fact, we cannot recall a single request for one of these paper forms. Each year, we compile a two-inch file of these forms which are available upon request but which no one looks at.*

*The Commission staff proposes simplifying the requirement and cutting back on its coverage. Our goal is to free up scarce staff time during an election year to assist and monitor candidates, PACs, etc. Our proposal is that each agency head would file a single list of the agency's legislative designees, including their job titles and contact information. We would no longer receive forms signed by the individual employees. In this definitions section, we propose to eliminate coverage for public employees who merely monitor legislation and focus on employees who are expected to lobby (directly communicate with officials to influence legislation) for more than 10 hours during a legislative session. Changes are proposed to this definitions section and to sections 313-A and 316-A, below.*

**9. Lobbying.** “Lobbying” means to communicate directly with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor’s cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. “Lobbying” includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. “Lobbying” does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment or at the request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission.

**9-A. Lobbying Firm.** “Lobbying firm” means a partnership, corporation, limited liability company or unincorporated association that employs or contracts with more than one lobbyist or lobbyist associate and that receives or is entitled to receive compensation for engaging in lobbying either directly or through its employees.

*The Commission staff proposes this definition in connection with a proposal to clarify how lobbyists and lobbyist associates report any expenditures on behalf of a public official (see § 317(1-A), below).*

**10. Lobbyist.** “Lobbyist” means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. “Lobbyist” does not include a lobbyist

associate. “Lobbyist” does not include an individual who receives no compensation for lobbying other than reimbursement for lobbying-related travel within the State and reimbursement for other out-of-pocket expenditures made by the individual for printing, postage and food and lodging connected with lobbying activities paid for by the individual. For the purposes of this subsection, “reimbursement for other out-of-pocket expenditures” does not include reimbursement for the individual's time spent lobbying that would have been otherwise compensated by an employer or in the course of the individual's employment.

**10-A. Lobbyist associate.** “Lobbyist associate” means an individual who:

- A. Is a partner, associate or employee of a lobbyist or is a coemployee of a regular employee of another person if that regular employee is registered as a lobbyist;
- B. Lobbies on behalf of the employer named on the lobbyist registration; and
- C. Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

**10-B. Media outlet.** “Media outlet” means a radio or television station, a cable television system, newspapers, magazines and other published written materials.

**10-C. Official in the executive branch.** “Official in the executive branch” means an individual in a major policy-influencing position in a department or agency listed in section 959 or in Title 5, Chapter 71 and the Governor’s cabinet and staff. As used in this chapter, “major policy-influencing position” means those positions listed in Title 5, chapter 71 and officers or employees of departments and agencies listed in section 959 and in Title 5, Chapter 71 who have policy development as a major function of their positions.

**11. Official in the Legislative Branch.** “Official in the Legislative Branch” means a member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature.

**11-A. Original source.** “Original source” means any person who ~~contributes or~~ pays \$1,000 or more in any lobbying year directly or indirectly to any employer of a lobbyist for purposes of lobbying or indirect lobbying, except that ~~contributions~~ payments of membership dues to nonprofit corporations formed under Title 13-B, under any equivalent state law or by legislative enactment are not considered ~~contributions~~ payments by an original source.

*The Commission staff proposes the phrase “payments of membership dues,” which is a more common usage than “contributions of membership dues.”*

**12. Person.** “Person” means an individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert, but does not include this State or any other agency of this State.

**13. Political Action Committee.** “Political Action Committee” includes:

- A. Any separate or segregated fund established by any corporation, membership organization, cooperative or labor organization whose purpose is to influence the outcome of an election, including a candidate or question; and

B. Any person, as defined in subsection 12 which serves as a funding and transfer mechanism and by which moneys are expended to advance, promote, defeat, influence in any way, or initiate a candidate, campaign, political party, referendum or initiated petition in this State.

**14. Reimbursement.** “Reimbursement” means anything of value received or to be received as repayment for expenditures.

**14-A. Solicit.** “Solicit” means to entreat, implore, urge or ask.

**15. Year.** “Year” means a twelve-month period starting December 1st and ending the following November 30th.

**16. Anything of value.** “Anything of value” means, but is not limited to:

A. Negotiable items:

- (1) Money;
- (2) A bank bill or note;
- (3) A stock, bond, note or other investment interest in an entity;
- (4) A promissory note, bill of exchange, order, draft, warrant, check or bond given for the payment of money;
- (5) An honorarium or compensation for services;
- (6) The granting of a discount or rebate:
  - (a) Not extended to the public generally; or
  - (b) By a media outlet not extended equally to all candidates for the same office; and
- (7) The sale or trade of something for reasonable compensation that is not available ordinarily to a member of the public.

B. Obligations:

- (1) A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, pledge or transfer of money;
- (2) A receipt given for the payment of money or other property;
- (3) A right in action;
- (4) A promise or offer of employment; and
- (5) An interest in tangible goods or chattel;

C. Property. The retail or fair market value, whichever is greater, of:

- (1) A work of art, an antique or a collectible;
- (2) An automobile or other means of personal transportation;
- (3) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future interest contingent or vested in realty, a leasehold interest or other beneficial interest in realty; and

(4) Other tangible goods; and

D. Other goods or services. The retail or fair market value, whichever is greater, of:

(1) The purchase of tickets for an event such as a reception, rally or fund-raising event;

(2) A meal or lodging; and

(3) Any service not extended free of charge to other members of the public.

**17. State employee or state agency employee.** “State employee or state agency employee” means employees of the executive branch, the judicial branch, the Department of the Attorney General, the Department of Secretary of State, the Department of the Treasurer and any employee who directly or indirectly represents an entity listed in Title 5, Chapter 379.

### § 312-B. Required training regarding harassment

A lobbyist or lobbyist associate shall complete the training required under section 170-B, retain proof of completion of the training for 2 years following completion and certify completion of that training to the commission at the time of registration under section 313. If completion of the required training prior to registration is not possible due to circumstances that are beyond a lobbyist's control, the commission may provide a limited extension to that lobbyist or lobbyist associate for completion of the training. If a lobbyist or lobbyist associate has a very limited physical presence in the State House and the Burton M. Cross Building, the commission may exempt the lobbyist or lobbyist associate from the requirements of this section.

*This changes are suggested as part of the proposal that lobbyist associates be required to take the annual training in harassment issues.*

### 3 § 313. Registration of lobbyists and employers

~~A lobbyist must submit a joint registration for the lobbyist and employer with the commission. Every employer of a lobbyist and every lobbyist and lobbyist associate who lobbies on behalf of that employer shall register jointly at the office of the commission no later than 15 business days after commencement of lobbying more than 8 hours in a month and pay a registration fee of \$200. For the registration of each lobbyist and \$100 for the registration of For each lobbyist associate included in the registration, the lobbyist shall pay an additional \$100 fee. or such other amounts as the commission determines approximate the cost to the commission of administering and enforcing the provisions of this chapter.~~

*The Commission staff proposes an amendment to reflect that, under the Commission’s current procedures, it is the lobbyist who files the registration form (usually online), rather than the employer.*

*Under current law, an individual qualifies as a lobbyist if the individual engages in more than eight hours of paid lobbying for an employer during a calendar month. Before reaching that 8-hour threshold, the individual is not technically a lobbyist, as that term is defined.*

*The volume and timing of work performed by lobbyists for their employers varies greatly. Some individuals will exceed the 8-hour threshold several weeks after they have begun lobbying. In this context, the current statutory deadline for when an individual must register as a lobbyist does not make sense in some cases. Current law requires individuals hired to lobby to register as a lobbyist 15 business days after “commencement of lobbying.” The problem is that the*

person may not have met the statutory definition of lobbyist during that 15 day period. For example:

*Week 1 (January 1-7): individual begins lobbying on Jan. 1 and lobbies for two hours*

*Week 2 (January 8-14): individual lobbies for one hour*

*Week 3 (January 15-21): individual lobbies for two hours.*

*The individual seems to be required to register as a lobbyist by the end of Week 3, which is 15 days from commencement of lobbying, and yet the lobbyist has lobbied only five hours in January by that point and may not reach 8 hours within the month.*

*The Commission staff proposes that the deadline for registration be 15 business days after the individual qualifies as a lobbyist by exceeding the 8-hour threshold. We intend to review the entire topic of the 8-hour-per-month threshold for the 2021 legislative session by examining the lobbyist reporting triggers in other states. We may make a legislative proposal for your consideration next year, although any changes to the 8-hour threshold could face political challenges because the entire lobby is accustomed to the status quo.*

### **3 § 313-A. Registration of state employees or state agency employees**

Within 15 business days of the convening of a regular legislative session, a department or agency shall ~~register with~~ submit to the commission a list of the state employees or state agency employees as described in section 316-A ~~those officers or employees~~ who will serve as the department's or agency's legislative designees for the session. The list must include the name and position of the employee, the name of the department or agency and the name of the bureau or division within the department for which the employee works, and the mailing address, email address and phone number of the employee. The department or agency shall ~~file an updated registration form later in the session containing~~ notify the commission in writing of any changes of its designees within 15 business days of the change.

*Under current law, certain employees of Maine state government who lobby are required to register with the Commission within 15 business days of the beginning of a regular legislative session. For reasons discussed above, the Commission staff proposes changes to section 313-A and eliminating section 316-A to reduce the administrative workload for the Commission and agencies. Instead of submitting registration forms completed and signed by each employee who is expected to monitor or lobby legislation for more than 20 hours in a legislative session, the agency would submit a list of employees, including any primary legislative designee and all employees expected to lobby for more than 10 hours during the session. The list would include the job title and contact information for the employees.*

#### **1. Legislative designee. (REPEALED)**

#### **2. Lobbying requirements. (REPEALED)**

An employee who is required to be registered under this section is exempt from all other requirements under the law regarding lobbyists.

### **3 § 314. Duration of registration**

Each joint registration filed pursuant to this chapter automatically expires on the last day of the year during which the person was registered to lobby, unless as otherwise provided.

A joint registration expires if the lobbyist or employer notifies the commission in writing that the lobbyist is no longer engaged by the employer to lobby. If termination occurs prior to November 30th, the notification must be given within 30 days of the termination.

If termination is effected prior to November 30th, no further reports are required.

Any new registration must be filed pursuant to section 313 before any lobbying is commenced after the lobbyist's employment has been terminated.

### **3 § 315. Registration docket (REPEALED)**

#### **3 § 315-A. Registration docket; disclosure website**

**1. Registration.** The commission shall prepare and maintain a docket for the registration of lobbyist and employers of lobbyists required to register pursuant to this chapter. The registration docket and all supplementary files of information and materials filed pursuant to this chapter must be open to public inspection during the office hours of the commission. The docket must contain the name of the lobbyist and the person employing the lobbyist, the business address of each, the nature of the business of the person employing the lobbyist and a statement as to the compensation that the lobbyist will receive for lobbying services, or if an exact amount is not ascertainable, the basis upon which the lobbyist will charge for services. This docket must be updated on a monthly basis and arranged and indexed as follows:

- A. An alphabetical listing of those persons who have employed a lobbyist, which listing must indicate the names of all lobbyists employed by the employer; and
- B. An alphabetical listing of those persons employed as lobbyists, which listing must indicate the names of all persons by whom each lobbyist is employed.

The docket must be reestablished annually by the commission and the docket for any year must be maintained and be available for public inspection in the office of the commission for four (4) years from the expiration of the docket.

**2. Disclosure website.** The commission shall develop and maintain a publicly accessible website that displays:

- A. A list of all persons who have employed a lobbyist during the current year;
- B. A list of all lobbyists and lobbyist associates registered for the year;
- C. A profile of each registered lobbyist and lobbyist associate, including contact information, the name of the lobbyist's employer or employers, and if provided by the lobbyist or lobbyist associate, a photograph of the lobbyist or lobbyist associate;
- D. A profile of each person employing a lobbyist, including contact information for the employer, and a list of lobbyists and lobbyist associates engaged by the employer;
- E. For each employer, a list of all legislative actions that have been the subject of lobbying for the year, including hyperlinks to the summary page of the Legislature's publicly accessible website for each legislative document listed;



F. A list of officials in the executive branch as defined in section 312-A, subsection 10-C; and

G. The monthly reports filed under section 317 and an annual summary of those monthly reports.

### 3 § 316. Registration forms

The commission shall prepare and make available registration forms for the registration of lobbyists and employers required to register pursuant to section 313. These forms must include the following information:

**1. Names.** The name of the lobbyist, a list of the lobbyist associates, the name of the person authorized by the lobbyist to sign the registration and reports for the lobbyist and the name of the person employing the lobbyist;

**2. Business addresses.** The business address and other contact information for the lobbyist, the lobbyist associates and the person employing the lobbyist;

**3. Date.** The date upon which lobbying commenced and the date on which the lobbyist exceeded 8 hours of lobbying in a month, or was expected to commence a statement that the lobbyist is registering without having reached the 8-hour threshold for registering;

*Some lobbyists choose to register on behalf of their employer around the beginning of the session because they are confident that they will reach the 8-hour threshold, but it is difficult to predict the date, week (or possibly) month when he or she will exceed the threshold. Rather than ask lobbyists to make such a prediction when registering, the Commission staff proposes allowing the lobbyist to check a box indicating the lobbyist is registering but has not yet reached the 8-hour threshold.*

**4. Nature of business.** A description of the nature of the employer's business activity or mission or a description of the industry, trade or profession that the employer represents;

**4-A. Legislative interests.** The general areas of legislation that the employer is attempting to influence;

**4-B. Legislative committees.** The joint standing committees of the Legislature that the lobbyist expects to lobby during the year;

**4-C. Website of employer.** The address for the employer's publicly accessible website;

**4-D. Date of completion of required harassment training.** The date that the lobbyist completed the training required under section 170-B or a request for an extension or exemption pursuant to section 312-B; and

**5. Compensation.** The amount of compensation that the lobbyist will receive for that lobbyist's services or, if an exact amount is unascertainable, the basis upon which the lobbyist will charge for those services.

The lobbyist must certify that the information on that form is true, correct and complete and that the employer has approved the information in the registration.

### ~~3 § 316-A. Registration forms for state employees or state agency employees~~

~~The commission shall prepare and make available registration forms for the registration of state employees or state agency employees required to register pursuant to section 313-A. These forms must include the following information:~~

~~1. **Names.** The name, business address and contact information of the employee and the department or agency the employee is representing and the address for the publicly accessible website of the department or agency the employee is representing;~~

~~2. **Position description.** A position description;~~

~~3. **Description of agency.** A description of the department or agency the employee is representing, its jurisdiction and its activities; and~~

~~4. **Legislative interests.** The general subject areas of legislation that the department or agency is attempting to influence.~~

~~The employee must certify that the information entered on the form is true, correct and complete.~~

*Please see explanation for section 313-A.*

### 3 § 317. Reports

~~Reports required by this section must be on forms prescribed or approved by the commission. The forms must provide for a sworn statement that the persons signing the report acknowledge the truth and completeness of all the information contained therein.~~

A registered lobbyist shall file a report for each month that the Legislature is in session on forms prescribed or approved by the commission, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month.

**1. Monthly session reports.** During the period in which the Legislature is in session, every a registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15th calendar day of each month, a report with the information required by this subsection for each employer of the lobbyist for the previous month.

~~Every lobbyist shall report that lobbyist's lobbying activities for each month that the Legislature is in session, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. In the case of a lobbyist representing multiple employers, if no lobbying or services in support of lobbying were performed, one report listing each employer on whose behalf no lobbying was conducted may be submitted. The monthly report must contain the following information:~~

~~A. The month to which the report pertains;~~

~~B. The name and address of the lobbyist and employer;~~

~~C. The names of the individuals who lobbied during the month;~~

~~D. The specific dollar the total amount of compensation the lobbyist and lobbyist associates received or expect to receive for lobbying activities, as defined in section 312-A, subsection 9, during the month. The amount of compensation ~~received~~ for lobbying officials in the~~

legislative branch, officials in the executive branch and constitutional officers must be reported separately.

In the case of a lobbyist or lobbyist associate who is a regular employee of the employer, the ~~specific dollar~~ amount of compensation must be computed by multiplying the number of hours devoted to the preparation of documents and research for the primary purpose of influencing legislative action and to lobbying by the employee's regular rate of pay based on a 40-hour week;

*The Commission staff proposes a clarification that lobbyists must report compensation paid or earned by both to the lobbyist and all lobbyist associates (i.e., the entire team). The monthly report must include the amount actually received during the month or the amount expects to receive for that month.*

E. The ~~specific dollar~~ total amount of expenditures made or incurred by the lobbyist and lobbyist associates during the month that is the subject of the report for purposes of lobbying as defined in section 312-A, subject 9 for which the lobbyist has ~~they have~~ been or expects to be reimbursed. The amount of expenditures for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately;

*The Commission staff proposes a similar clarification for expenditures made the lobbyist and all lobbyist associates (i.e., the entire team) which have been or will be reimbursed by the employer.*

E-1. When expenditures for the purposes of indirect lobbying exceed \$15,000 during the month that is the subject of the report, the specific dollar amount of expenditures for indirect lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, the legislative actions that are the subject of the indirect lobbying and a general description of the intended recipients;

F. The total amount of expenditures by the lobbyist and lobbyist associates on behalf of the employer for which they been or expect to be reimbursed ~~or~~ and by the employer directly to or on behalf of one or more covered officials, including members of the official's immediate family;

G. For any each expenditure of \$25 or more reported under paragraph F of this subsection ~~of money or anything of value made by the lobbyist or employer on behalf of a covered official or a member of the official's immediate family with a total retail value of \$25 or more, the name of the official or family member, the person making the expenditure and the date, amount and purpose of the expenditure, and the name of the official or official's immediate family member on whose behalf the expenditure was made;~~

G-1. ~~If the total cost for covered officials and the officials' immediate family members to attend an event paid for by the employer or by the lobbyist on the employer's behalf is \$250 or more, The the date, and a description of an event, a list of all officials in the legislative branch or executive branch or members of an official's~~ the names of covered officials and the officials' immediate family in attendance, and the total cost for the covered officials and the officials' immediate family members to attend the event ~~amount of expenditures for the event, if the total amount of the expenditures for officials and family members is \$250 or more;~~

*Paragraphs F and G require lobbyists to report expenditures made “on behalf of” covered officials or a member of their immediate family. The Commission staff understands this phrase to indicate costs of meals, goods, services, or other things of value received by the official. Paragraph G-1 requires the reporting of an event if officials or family members are in attendance.*

*In recent years, the Commission staff has been asked for advice concerning payments made by lobbyists on behalf of an official that were not authorized by the lobbyists’ clients. These involved meals paid for by a lobbyist in the course of an ongoing personal relationship or a meal jointly sponsored by a group of lobbyists at a legislative conference that did not involve lobbying for a particular client. In these cases, the lobbyists expressed concern that the public would incorrectly attribute these expenses to specific clients even though the costs had nothing to do with those clients.*

*The Commission staff proposes that the reporting in paragraphs F, G and G-1 be restricted to expenditures made by a lobbyist or lobbyist associate that are made for the client or will be reimbursed by the client. If a lobbyist makes payments on behalf of a public official or events not in connection with a specific client, those would be disclosed in a separate, one-time report, set out below in subsection 317(1-A) below.*

H. A list of each legislative action by Legislative Document number, specific issue, nomination or other matter in connection with which the lobbyist is engaged in lobbying;

I. A list specifically identifying each legislative action for which the lobbyist and lobbyist associates ~~was~~ were compensated or expects to be compensated, or expended in excess of \$1,000 for lobbying ~~activities~~ related to those actions and a statement of the amounts compensated or expended for each; and

J. A list of all of the employer’s original sources and a statement of the dollar amounts contributed or paid by the original sources to the employer. If the original source is a corporation formed under Titles 13 or 13-A, nonprofit corporation formed under Title 13-B or limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source.

**1-A. Lobbyist Expenditure Reports.** A lobbyist or lobbyist associate who makes an expenditure directly to or on behalf of a covered official or a member of the official’s immediate family that is not reportable under paragraphs F, G or G-1 of subsection 1 shall file a report pursuant to this subsection. If the expenditure is made by a lobbyist’s lobbying firm, a lobbyist or lobbyist associate from that lobbying firm shall report the expenditure.

A. A report under this subsection is required if

- (1) The total amount of expenditures directly to or on behalf of covered officials and their immediate family members is \$300 or more in a calendar month, and
- (2) The lobbyist or lobbyist associate has not been and does not expect to be reimbursed by any employer.

B. The report shall include:

- (1) The date of the expenditure;
- (2) The name and address of the lobbyist or lobbyist associate and lobbying firm;

(3) The amount of the expenditure made or incurred by the lobbyist, lobbyist associate or lobbying firm either directly to or on behalf of a covered official or the covered official's immediate family;

(4) A description of the goods or services purchased by the lobbyist, lobbyist associate or lobbying firm;

(5) The date and a description and location of an event paid for by the lobbyist, lobbyist associate or lobbying firm at which covered officials and the covered official's immediate family were in attendance; and

(6) The names of all covered officials and their immediate family members to whom the expenditures were directly made or on whose behalf the expenditures were made, or who attended an event paid for by the lobbyist or lobbyist associate.

C. A report under this subsection is due no later than 11:59 p.m. on the 15th calendar day of the month following the month in which the expenditure was made or incurred.

D. The filing of a report under this subsection does not create a recurring filing obligation.

*Please see explanation for subsections 317(1)(F), (G) and (G-1) above.*

## **2. Annual report. (REPEALED)**

**2-A. Electronic filing.** Beginning January 1, 2006, a lobbyist shall file monthly session reports under subsection 1 through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The commission shall grant all reasonable requests for exceptions.

**3. Facsimile copies.** The commission may, by rules adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, establish procedures and fees by which facsimile copies of duly executed reports required by this section may be received and filed with the commission.

**4. Monthly non-session reports.** When the Legislature is not in regular session, every registered lobbyist must either file:

A. With the lobbyist's last monthly report for that regular session a statement that the lobbyist will not engage in lobbying **activities** when the Legislature is not in session. The lobbyist is required to file a monthly report for lobbying **activity** conducted during a special session; or

B. If the lobbyist is engaged in lobbying **or if the lobbyist or employer conducts grassroots lobbying or if the employer makes any expenditures directly to or on behalf of a covered official or the official's immediate family** in any of those months, a monthly report in the manner prescribed in subsection 1 even if compensation or reimbursement for expenses has not been received for the month.

If the lobbyist did not expect to be engaged in lobbying when the Legislature was not in session, the commission may waive the requirement for the months between the end of the session and the renewal of lobbying.

### 3 § 318. Restricted activities

**1. Contingent compensation.** No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.

**2. Instigation of legislative action.** No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action.

### 3 § 318-A. Prohibition

Beginning January 1, 2015, a person may not engage in activities that require registration as a lobbyist or lobbyist associate as defined by section 312-A, subsections 10 and 10-A if that person has within the previous 12 months been employed in a position for which the salary is subject to adjustment by the Governor under Title 2, section 6 or that is described as a major policy-influencing position under Title 5, chapter 71. A person who violates this section may be assessed a fine of \$100 for every day the person engages in lobbying.

### 3 § 319. Penalty

**1. Failure to file registration or report.** Any person who fails to file a registration or report as required by this chapter may be assessed a fine of \$100 for every month the person fails to register or is delinquent in filing a report pursuant to section 317. If a registration or report is filed late, the commission shall send a notice of the finding of violation and preliminary penalty. The notice must provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The commission may waive the fine or penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. For purposes of this subsection, "mitigating circumstances" means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the fine or penalty in whole or in part;
- B. An error by the commission; or
- C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service.

**1-A. Notice of suspension.** Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

### 2. (REPEALED)

**3. Exemption.** Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

### **3 § 319.A Testimony before Legislature; lobbyist**

**1. Disclosure of compensation.** A lobbyist or lobbyist associate who testifies before a joint select or joint standing committee of the Legislature shall disclose to the committee as part of the testimony, the name of the person or organization that the lobbyist or lobbyist associate is representing. A lobbyist or lobbyist associate shall disclose to the committee orally or in written form, the name of any person who is being compensated by the lobbyist or lobbyist associate or by the person or organization that the lobbyist or lobbyist associate is representing to testify before that committee.

**2. Report of violation.** A member of the Legislature may file a complaint with the commission alleging a violation of this section in accordance with the Joint Rules of the Legislature. The commission shall notify all interested parties and shall investigate any apparent violations of this section.

**3. Penalty.** If a lobbyist or lobbyist associate fails to disclose information required in subsection 1, the commission may:

- A. Suspend the lobbyist or lobbyist associate from further lobbying by written notice of the commission; and
- B. Assess a penalty of up to \$5,000 against the lobbyist or lobbyist associate.

### **3 § 320. Disposition of fees**

Fees collected pursuant to this chapter must be deposited into a special revenue account of the commission to be used for the purposes of administering and enforcing the provisions of this chapter, including the costs of obtaining, maintaining and upgrading technology to facilitate disclosure of lobbying and campaign finance information to the public.

The commission shall, no later than November 15th of the year prior to any proposed change, establish the amount of the registration fee required to be paid pursuant to section 313 for the subsequent year.

### **3 § 321. Powers and duties of the Commission**

In order to carry out the purposes of this chapter, the commission shall have the following powers and duties.

**1. Furnishing of forms.** The commission shall furnish forms to persons required to register or file reports.

**2. Availability of copying facilities.** The commission shall make copying facilities available to the public during regular office hours and, notwithstanding any other provisions of law fixing the cost of such services, shall charge the actual cost of such services.

**3. Filing of voluntary information.** The commission may accept and file any information voluntarily supplied that exceeds the requirements of this chapter.

**4. Preservation of registrations and reports.** The commission shall preserve all registrations and reports filed pursuant to this chapter for 4 years from date of receipt and may dispose of same.

**5. Acceptance or rejection of forms.** The commission may prescribe forms for all documents required or permitted to be filed with the commission and may refuse to accept documents not filed on those forms.

**6. Refusal of filing.** The commission may refuse to accept any document that is not legible or that can not be clearly reproduced photographically.

**7. Review reports for completeness.** The commission may reject reports that are incomplete.

**8. Investigations.** The commission may undertake investigations into the failure to file a registration or to determine the accuracy and completeness of the registration and reporting of lobbyists and their employers if the members of the commission have found cause to believe that a violation may have occurred based on a properly filed complaint or other information received by the commission.

**9. Reject registrations.** The commission shall reject registrations that do not include certification of completion of training required under section 170-B or a request for an extension or exemption that meets the standards of section 312-B.

*Under section 312-B, when registering with the Commission a lobbyist may seek an extension to take the harassment training or request an exemption if the lobbyist will have very limited physical presence in the State House during a legislative session.*

*Consistent with the extension and exemption provisions, this proposed change allows the Commission to accept a lobbyist registration, if the lobbyist has provided made a justifiable rationale for the extension or the exemption.*

### **3 § 322. Enforcement**

**1. Filing of a complaint.** Any person may file a complaint with the commission specifying any alleged violation of this chapter. The commission staff may notify the party against whom the complaint has been filed and then may undertake the investigation of the alleged violation if directed by members of the commission.

**2. Attorney General.** The Attorney General may enforce the provisions of this chapter upon request by the commission.

**3. Use of subpoena.** In the conduct of an investigation under section 321, subsection 8, the commission may subpoena witnesses and take evidence under oath. The commission may also subpoena records when a lobbyist, employer or other person refuses to provide relevant records required by the commission in the course of investigating a violation of the registration, reporting or other requirements in this chapter. All subpoenas must be approved by the members of the commission and signed by the chair or the chair's designee. Any record or information obtained by the commission in the course of an investigation that is covered by a privilege against discovery or use as evidence is not a public record unless the privilege is waived.

### **3 § 323. Penalties (REPEALED)**

### **3 § 324. Enforcement (REPEALED)**

### **3 § 325. Powers and duties of the Secretary of State (REPEALED)**

### **3 § 326. Construction**



Nothing in this chapter shall be construed to authorize the giving or receiving of a pecuniary benefit where otherwise prohibited by law.

**3 § 327. Name tag requirement**

A person who is required to register as a lobbyist or a lobbyist associate in accordance with this chapter shall wear a clearly visible name tag whenever the lobbyist or lobbyist associate is engaged in the act of lobbying. The name tag must clearly display the lobbyist's name and must include either the name of the firm the lobbyist works for, the name of the lobbyist's employer, the organization the lobbyist represents or the term "lobbyist."