94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SUMMARY: This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

SECTION 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

1. **Act**. "Act" means the Maine Clean Election Act, Title 21-A, chapter 14.

2. **Association**. "Association" means a group of two or more persons, who are not all members of the same immediate family, acting in concert.

3. **Campaign Deficit**. "Campaign deficit" means debts, liabilities, and unmet financial obligations from all previous campaigns as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].

4. **Campaign Surplus**. "Campaign surplus" means money, equipment, property and other items of value remaining after retiring previous campaign deficit as reported to the Commission on campaign termination report forms required by Title 21-A, chapter 13, subchapter II [§1017(9)].

5. **Candidate**. "Candidate" has the same meaning as in Title 21-A, chapter 1, subchapter I [§1(5)], and includes individuals running for office as a write-in candidate.

   INFORMATIONAL NOTE: All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election, pursuant to section 4.2.A(5)(e) of this rule. A candidate who collects funds subsequent to an election for purposes other than retiring campaign debt is required to register with the Commission. Title 21- A, chapter 13, subchapter II [§1013-A].

6. **Certified Candidate**. "Certified candidate" has the same meaning as in the Act [§ 1122(1)].

7. **Commission**. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, §12004-G, subsection 33, and 1 M.R.S.A. §1001 *et seq*.

8. **Contribution**. "Contribution" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(2)].

9. **Election**. "Election" means any primary, general or special election for Governor, State Senator or State Representative. The period of a primary election begins on the day a person becomes a candidate as defined in 21-A M.R.S.A. §1(5) and ends on the date of the primary election. The period of a general election begins on the day following the previous primary election and ends on the date of the general election. The period of a special election begins on the date of proclamation of the special election and ends on the date of the special election.

10. **Expenditure**. "Expenditure" has the same meaning as in Title 21-A, chapter 13, subchapter II [§1012(3)].

11. **Fund**. "Fund" means the Maine Clean Election Fund established by the Act [§1124].

11-A. **Influence.** "Influence" means to promote, support, oppose or defeat.

12. **In-Kind Contribution**. "In-kind contribution" means any gift, subscription, loan, advance or deposit of anything of value other than money made for the purpose of influencing the nomination or election of any person to political office or for the initiation, support or defeat of a ballot question.

13. **Member**. A "member" of a membership organization includes all persons who currently satisfy the requirements for membership in the membership organization, have affirmatively accepted the membership organization's invitation to become a member, and either:

    A. pay membership dues at least annually, of a specific amount predetermined by the membership organization; or

    B. have some other significant financial attachment to the membership organization, such as significant investment or ownership stake in the organization; or

    C. have a significant organizational attachment to the membership organization that includes direct participatory rights in the governance of the organization, such as the right to vote on the organization's board, budget, or policies.

    Members of a local union are considered to be members of any national or international union of which the local union is a part, of any federation with which the local, national, or international union is affiliated, and of any other unions which are members or affiliates of the federation. Other persons who have an enduring financial or organizational attachment to the membership organization are also members, including retired members or persons who pay reduced dues or other fees regularly to the membership organization.

14. **Nonparticipating Candidate**. "Nonparticipating candidate" has the same meaning as in the Act [§1122(5)].

15. **Participating Candidate**. "Participating candidate" has the same meaning as in the Act [§1122(6)].

16. **Qualifying Contribution**. "Qualifying Contribution" has the same meaning as in the Act [§1122(7)].

17. **Qualifying Period**. "Qualifying period" has the same meaning as in the Act, except that for special elections, vacancies, withdrawals, deaths, disqualifications or replacements of candidates, the qualifying period shall be the period designated in section 8 of this chapter [§1122(8)].

18. **Seed Money Contribution**. "Seed money contribution" has the same meaning as in the Act [§1122(9)].

19. **Write-In Candidate**. "Write-in candidate" means a person whose name does not appear on the ballot under the office designation to which a voter may wish to elect the candidate and who has filed a declaration to be a write-in candidate pursuant to 21-A M.R.S.A. §722-A.

SECTION 2. ORGANIZATION

1. **Commission**. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.

2. **Office**

   A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located at 45 Memorial Circle in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

   B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.

   C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. **Regular Meetings**. The Commission shall meet at least once each month in any year in which primary and general elections are held. The Commission Chair, or if a Chair has not yet been selected, the Senior Commissioner in terms of service on the Commission, shall set a date for a meeting in January of the year of required monthly meetings. The dates of monthly meetings for each month of the year shall be selected at that meeting and shall be adhered to unless changed at a properly called meeting. In years not meeting the foregoing requirements, the Chair shall call for an organization meeting to set monthly meeting dates which best appear to meet the needs of the Commission.

2. **Special Meetings**. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting in writing unless written notice is not possible. In such case, notice must be given by the staff by phone, fax, e-mail or other means available. Each Commissioner may notify the staff of his or her preference for notification and the staff shall prepare a log of its actions in notifying Commissioners.

3. **Agenda**. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. The agenda must be mailed to each Commissioner at least 7 days before the meeting unless a different schedule is approved by the Chair who shall provide notice to the Commissioners of the change and the reasons therefore.

4. **Notice**. In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings shall be given to those directly involved in a matter pending before the Commission, as follows:

   A. **Legislative Ethics**. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.

   B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law**. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission’s consideration of issuing subpoenas to conduct an investigation need not be given.

C. **Contents of Notice**

(1) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.

5. **Public Meetings**. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).

6. **Quorum**. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**

A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.

B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 4. INITIATION OF PROCEEDINGS

1. **Legislative Ethics**. The Commission is authorized to investigate and make advisory recommendations to either House of the Maine Legislature concerning legislative conflicts of interest or any breach of the legislative ethics set forth in 1 M.R.S.A. §§ 1001 - 1023. The Commission's opinion may be sought by three methods, or the Commission may act on its own motion.

A. **Legislator's Own Conduct**

(1) A Legislator seeking an advisory opinion with respect to his or her own circumstances or conduct should make a written request for an opinion, setting forth the pertinent facts with respect to the legislative matter at issue and the circumstances of the Legislator giving rise to the inquiry.

(2) The request will be officially filed only when received at the offices of the Commission. The Director will promptly send a copy of the request to the Chair, and the matter will be placed on the agenda for the next Commission meeting, or if necessary, at a special meeting.

(3) An oral request by a Legislator for an opinion with respect to his or her own circumstances will not be considered an official request for an advisory opinion, and a Legislator making such a request will be so notified, by letter, and encouraged to file a written request.

B. **Complaints**. Any written complaint will be included in the agenda of the next Commission meeting.

(1) **Complaint by a Legislator**. Copies of any sworn complaint filed by a Legislator will promptly be sent to the Legislator against whom the complaint has been lodged and to the Commission Chair, in each case identifying the Legislator making the complaint. A complaint invokes the Commission's authority only if made under oath and only if it addresses an alleged conflict of interest relating to circumstances arising during the term of the legislature then in office.

(2) **Other Complaints**

(a) The Director will review each complaint to determine whether the matter relates to the Commission's statutory mandate. When a complaint is filed, the Director, in consultation with Commission Counsel, will review the matter to determine whether the complaint has sufficient merit to warrant recommending the calling of a meeting. When a meeting is called, the Commission will determine in executive session whether to hear the complaint. If the nature of the complaint clearly does not fall within the scope of the Commission's jurisdiction, the Director will so notify the complainant by letter within 14 days of receiving the complaint. In such cases, the respondent need not be notified. The Commission may reverse any administrative decision.

(b) An oral complaint by any person alleging a conflict of interest concerning any legislator does not constitute a complaint under 1 M.R.S.A. §1013(2)(B), and a person registering such a complaint will be so notified, by letter.

C. **Referral by Presiding Officer**. When a Legislator has requested an advisory opinion from the Presiding Officer of the House of which he/she is a member, and the Presiding Officer has referred the inquiry directly to the Commission, the Director will arrange a meeting of the Commission as soon as possible to consider the question.

2. **Election Campaign Reporting and Maine Clean Election Act Violations**

A. **Report Review**. The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.

B. **Late Reports and Registrations**. Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:

(1) Lateness of report or registration,

(2) Reason for lateness,

(3) Kind of report (more stringent application for pre-election reports),

(4) Amount of campaign funds not properly reported,

(5) Previous record of the filer,

(6) Good faith effort of the filer to remedy the matter; and

(7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.

C. Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. The Director may conduct preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda.

D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.

E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. **Lobbyist Disclosure Procedures**

A. **Report Review**. The Commission staff will review lobbyist registrations and monthly reports for compliance with disclosure requirements. The Commission staff will establish a reasonable deadline by which a lobbyist must remedy any apparent omission or error. If the lobbyist fails to respond by the deadline, the Commission staff may extend the deadline by which the lobbyist must comply or may place the matter on the agenda of a Commission meeting. Additionally, the Commission staff may place on the agenda of a Commission meeting any substantial violation of the disclosure requirements, regardless of whether the lobbyist has remedied the violation.

B. **Late Registrations and Reports**. Notice will be given by mail to any lobbyist whose registration or monthly disclosure report is late. The Commission and its staff shall follow the notice and penalty procedures set out in 3 M.R.S.A. § 319(1). For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.

C. **Suspensions**. The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.

D. **Request for Penalty Waiver**. A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.

E. **Request for Waiver of Nonsession Reporting Requirement**. A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is

resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.

F. **Faxing Duly Executed Lobbyist Registration, Reports**. Any registration or report required by 3 M.R.S.A. chapter 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. **Matters Outside the Commission's Jurisdiction**. If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

SECTION 5. FACT FINDING AND INVESTIGATIONS

1. **Before Commission Meeting**. With respect to any inquiry, complaint, or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary fact finding as is deemed prudent and desirable. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.

2. **By the Commission**. Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.

2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.

3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than $50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or committee is unable to obtain the information from the contributor in response to a request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report.

4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.

5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or

committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:

   A. For all contributions received through the day of the primary election by candidates enrolled in a political party, the candidate shall designate on the applicable campaign finance report whether the candidate received the contribution for the primary or the general election. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination in the primary election.

   B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.

   C. All contributions made to a general election candidate from the day after the primary election through the date of the general election are deemed to be made for the general election.

   D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.

   E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.

   F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

8. If a political committee that is required to file reports with the Commission sells an item to raise funds, the entire amount received is a contribution to the committee. If the political committee provides meals or entertainment at a fundraising event, the entire amount paid by the donor is a contribution to the committee. [FOR EXAMPLE: IF A SUPPORTER PAYS A CANDIDATE COMMITTEE $20 FOR A T-SHIRT THAT COST THE CAMPAIGN $5, THE SUPPORTER HAS MADE A $20 CONTRIBUTION. IF A SUPPORTER PAYS $100 FOR A TICKET TO A FUNDRAISING DINNER, THE SUPPORTER HAS MADE A $100 CONTRIBUTION EVEN IF THE COMMITTEE PROVIDES A MEAL WORTH $30.]

9. If an expenditure is made to promote or support the nomination or election of a candidate, or to oppose or defeat the candidate's opponent(s), and the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate, the expenditure is considered to be a contribution from the spender to the

candidate. As used within this subsection, the term "candidate" includes a committee authorized by the candidate to promote or support his or her election, and all agents of the candidate or the authorized committee.

A. In cooperation, consultation or in concert with includes, but is not limited to:

1. Discussion between the candidate and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, and

2. Participation by the candidate in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

B. An expenditure is presumed to be made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, when

1. the expenditure is made in cooperation, consultation or in concert with any person who, during the twelve months preceding the expenditure, has been the candidate's treasurer or an officer of the candidate's authorized committee, has had a paid or unpaid position managing the candidate's campaign, or has received any campaign-related compensation or reimbursement from the candidate;

2. when the candidate has directly shared the candidate's campaign plans, activities, or needs with the spender for the purpose of facilitating a payment by the spender on a communication to voters to promote or support the candidate; or

3. the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate.

The candidate or spender may rebut the presumption by submitting sufficient contrary evidence.

C. If a candidate requests that a party committee, political action committee, or other potential spender not make any expenditure to promote or support the candidate, or oppose or defeat the candidate's opponent(s), the request does not constitute cooperation or coordination.

D. An expenditure will not be presumed to have been made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, solely because:

1. the spender has obtained a photograph, biography, position paper, press release, logo, or similar material about the candidate from a publicly available source;

2. the person making the expenditure has previously provided advice to the candidate on suggested communication strategies, budgets, issues of public policy, or other campaign plans or activities;

3. the person makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion, cooperation or consultation with the candidate prior to the expenditure relating to the details of the expenditure;

4. the spender has also made a contribution to the candidate, or has discussed with the candidate his or her campaign plans or activities as part of the candidate's solicitation for a donation;

5. the expenditure is made by a for-profit or non-profit organization for invitations, announcements, food and beverages and similar costs associated with an event to which the candidate has been invited by the organization to make an appearance before the organization's members, employees, shareholders and the families thereof; or

6. the expenditure is made by an individual who spends $100 or less for costs associated with a sign that is lettered or printed individually by hand and that reproduces or replicates a candidate's campaign-related design or graphic.

10. Funds or services received solely for the purpose of conducting activities to determine whether an individual should become a candidate are not contributions if the individual does not become a candidate. Examples of such activities include, but are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such funds or services received. If the individual becomes a candidate, the funds or services received are contributions and are subject to the reporting requirements of 21-A M.R.S.A. § 1017. The amount and source of such funds or the value of services received must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds or services were received, in accordance with the Commission's procedures for reporting contributions.

    Funds or services used by an individual for activities indicating that he or she has decided to become a candidate for a particular office are contributions. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign**. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person,

agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.

2. **Expenditures by Political Action Committees**. In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. **Timing of Reporting Expenditures**

   A. Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.

   B. Expenditures must be reported at the earliest of the following events:

      (1) The placement of an order for a good or service;

      (2) The signing of a contract for a good or service;

      (3) The delivery of a good or the performance of a service by a vendor;

      (4) A promise or an agreement (including an implied one) that a payment will be made; or

      (5) The making of a payment for a good or service.

   C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

4. **Advance Purchases of Goods and Services for the General Election** *[Repealed]*

5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement. If a Maine Clean Election Act candidate or an individual authorized by the candidate uses personal funds to make an expenditure on behalf of the candidate, the candidate or individual must be reimbursed within the same reporting period.

6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.

7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.

8. Payments made or obligations incurred solely for the purpose of conducting activities to determine whether an individual should become a candidate are not expenditures if the individual does not become a candidate. Examples of such activities include, but are not limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such payments and obligations. If the individual becomes a candidate, the payments made or obligations incurred are expenditures and are subject to the reporting requirements of 21-A M.R.S.A. § 1017. Such expenditures must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds were expended, in accordance with the Commission's procedures for reporting expenditures.

   Payments made for activities indicating that an individual has decided to become a candidate for a particular office are expenditures. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

9. **Exception to Disclaimer Requirements for Certain Handbills, Campaign Signs, and Internet or E-Mail Communications**

   For purposes of applying the exclusions listed in Title 21-A, section 1014, subsection 6, paragraphs A through C, the following terms have the following meanings:

   A. "Cost" includes all payments or obligations incurred, and the value of all goods and services received, for the purpose of creating, designing, preparing or distributing the communications.

   B. "Internet or e-mail communication" means any communication transmitted over the Internet, including but not limited to: sending or forwarding electronic messages; social networking; providing a hyperlink or other direct access to another person's website; creating, maintaining or hosting a website or blog; placing material on another person's website; and any other form of communication distributed over the Internet.

   C. "Acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent [thereof]" means acting without any suggestion, request, direct or indirect authorization or compensation or reimbursement from any such candidate, committee or agent.

10. **Press exemption.** In order for the costs of preparing and disseminating a news story, commentary, or editorial to be exempt from the definitions of expenditure under the press exemption [§§ 1012(3)(B)(1) & 1052(4)(B)(1)], the following criteria must be met:

    A. the names of the persons or entities who own, control and operate the broadcasting station or publication are identified within the publication or otherwise made known to the public; and

    B. the broadcasting station or publication is not owned or controlled by any political party, political action committee or ballot question committee and is not owned or controlled by any candidate for state, county or municipal office whose candidacy, election campaign, or opponent is a subject of the news story, commentary or editorial, or by the authorized campaign committee of such a candidate, or by a member of such a candidate's immediate family.

    In addition to the above criteria, to qualify as a periodical publication, including one in electronic form on the Internet, or a newspaper or magazine, a publication (i) must have been disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for at least the previous twelve months, or (ii) must have a record of disseminating news stories, commentaries or editorials on a variety of topics to the general public or other objective indicators that the publication will continue to be published on a periodic basis beyond the election cycle during which the press exemption is claimed.

    For purposes of this section, broadcasting station includes a cable television system.

SECTION 8. PROHIBITED COMMUNICATIONS

Commission members shall not discuss any specific case under investigation, or any case which may reasonably be expected to be the subject of investigation, as long as the matter is pending before the Commission. Members of the Commission may discuss its final determination regarding the matter with members of the press or other interested persons only after the appeal period has expired and no appeal is filed, or if an appeal is filed, only after the appellant has exhausted all administrative or judicial remedies.

SECTION 9. ACCELERATED REPORTING SCHEDULE *[Repealed]*

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General**. Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of $100 per candidate in an election must file a report with the Commission according to this section.

2. **Definitions**. For purposes of this section, the following phrases are defined as follows:

    A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

    B. "Expressly advocate" means any communication that

(1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

(2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules**. Independent expenditures must be reported to the Commission in accordance with the following provisions:

A. Independent expenditures aggregating in excess of $100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.

(1) **Quarterly Reports.** *[Repealed]*

(1-A) **60-Day Pre-Election Report**. A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

(1-B) **11-Day Pre-Election Report**. A report must be filed by 5:00 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds $100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

B. Independent expenditures aggregating in excess of $250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS $250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE $250 THRESHOLD.

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF $100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF $100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED $250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS $250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF $200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of $100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;

2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;

3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and

4. a statement why the expenditure could not be reported by the eighth day before the election.

D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

4. **Multi-Candidate Expenditures**. When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO 10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

B. If multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

C. If a candidate who has received matching funds because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.

5. **Rebuttable Presumption**. Under Title 21-A M.R.S.A. §1019-B(1)(B), an expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate in a race involving a Maine Clean Election Act candidate and that is disseminated during the 21 days before a primary election and 35 days before a general election will be presumed to be an independent expenditure, unless the person making the

expenditure submits a written statement to the Commission within 48 hours of the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate.

A. The following types of communications may be covered by the presumption if the specific communication satisfies the requirements of Title 21-A M.R.S.A. §1019-B(1)(B):

(1) Printed advertisements in newspapers and other media;

(2) Television and radio advertisements;

(3) Printed literature;

(4) Recorded telephone messages;

(5) Scripted telephone messages by live callers; and

(6) Electronic communications.

This list is not exhaustive, and other types of communications may be covered by the presumption.

B. The following types of communications and activities are not covered by the presumption, and will not be presumed to be independent expenditures under Title 21-A M.R.S.A. §1019-B(1)(B):

(1) news stories and editorials, unless the facilities distributing the communication are owned or controlled by the candidate, the candidate's immediate family, or a political committee;

(2) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not name or depict a clearly identified candidate;

(3) any communication from a membership organization to its members or from a corporation to its stockholders if the organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person for state or county office;

(4) the use of offices, telephones, computers, or similar equipment when that use does not result in additional cost to the provider; and

(5) other communications and activities that are excluded from the legal definition of "expenditure" in the Election Law.

C. If an expenditure is covered by the presumption and is greater, in the aggregate, than $100 per candidate per election, the person making the expenditure must file an independent expenditure report or a signed written statement that the expenditure was not made with the intent to influence the nomination, election or defeat of a candidate. The filing of independent expenditure reports should be made in accordance with the filing schedule in subsections 3(A) and 3(B) of this rule. Independent expenditures aggregating $100 or less per candidate per election do not require the filing of an independent expenditure report or a rebuttal statement.

D. If a committee or association distributes copies of printed literature to its affiliates or members, and the affiliates or members distribute the literature directly to voters, the applicable 21-day or 35-day period applies to the date on which the communication is disseminated directly to voters, rather than the date on which the committee or association distributes the literature to its affiliates or members.

E. For the purposes of determining whether a communication is covered by the presumption, the date of dissemination is the date of the postmark, hand-delivery, or broadcast of the communication.

F. An organization that has been supplied printed communications covered by the presumption and that distributes them to voters must report both its own distribution costs and the value of the materials it has distributed, unless the organization supplying the communications has already reported the costs of the materials to the Commission. If the actual costs of the communications cannot be determined, the organization distributing the communication to voters must report the estimated fair market value.

G. If a person wishes to distribute a specific communication that appears to be covered by the presumption and the person believes that the communication is not intended to influence the nomination, election or defeat of a candidate, the person may submit the rebuttal statement to the Commission in advance of disseminating the communication for an early determination. The request must include the complete communication and be specific as to when and to whom the communication will be disseminated.

SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES

[Repealed]

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. **Seed Money Contributions**. Legislators and other individuals covered by Title 1 M.R.S.A. §1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.

2. **Acceptance of Contributions through Political Committees**. During a legislative session, lobbyists, lobbyist associates, and their employers may not give, offer or promise a contribution to a political action committee, ballot question committee, or party committee of which the Governor, a member of the Legislature, a constitutional officer, or staff or agent of these officials is a treasurer, officer, or primary fund-raiser or decision maker. During the session, these political committees may not solicit or accept a contribution from lobbyists, lobbyist associates, or their employers, but they may accept contributions from other individuals and organizations.

3. **Making a Contribution through a Political Action Committee**. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

SECTION 13. REPORTS OF COMMUNICATIONS BY MEMBERSHIP ORGANIZATIONS OR CORPORATIONS

When a membership organization or corporation is required under 21-A M.R.S.A. § 1019-A to file a report of a communication to members or shareholders, the organization or corporation must file the following reports by 11:59 p.m. on the following deadlines:

1. A report must be filed on the 42nd day before the election is held and be complete as of the 49th day before the election.

2. A report must be filed on the 11th day before the election is held and be complete as of the 14th day before the election.

3. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

STATUTORY AUTHORITY: 1 M.R.S.A. §1003(1); 21-A M.R.S.A. §1126.

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May 9, 2005	effective date of routine technical language adopted (signed by Chair) on January 14, 2004 and signed by an Assistant Attorney General on February 19, 2004, filing 2005-133
May 9, 2005	effective date of routine technical language adopted (signed by Chair) on April 8, 2005 and signed by an Assistant Attorney General on April 28, 2005, filing 2005-134
May 4, 2005	date of filing with the Secretary of State of Provisional Adoption (major substantive) language signed by Chair on April 8, 2005 and by an Assistant Attorney General on April 28, 2005, filing LR-2005-15, submitted by the Commission to the Legislature for review
October 12, 2005	effective date of final adoption of major substantive language signed by Chair on July 13, 2005 and filed with the Secretary of State on September 12, 2005, filing 2005-379
April 25, 2007	effective date of routine technical language adopted (signed by Chair) on April 6, 2007 and signed by an Assistant Attorney General on April 17, 2007, effective April 25, 2007, filing 2007-144
March 15, 2008	filing 2008-116
April 12, 2009	filing 2009-152
November 29, 2009	filing 2009-615
August 27, 2010	filing 2010-387 (EMERGENCY)
November 25, 2010	emergency period having expired, reverted to previous version
July 31, 2011-	effective date of major substantive final adoption (signed by Chair on June 23, 2011 and signed by an Assistant Attorney General on July 20, 2011), filing 2011-254
September 3, 2012	filing 2012-245