



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Interested Parties
From: Jonathan Wayne, Executive Director
Date: February 5, 2024
Re: Invitation to Comment on Proposed Rule Amendments – Political Spending in
Maine by Foreign Governments

The Maine Ethics Commission invites comments on proposed amendments to the Commission's rules to implement 21-A M.R.S. § 1064, which prohibits foreign governments from making contributions and expenditures to influence elections in Maine. The proposed amendments and a copy of 21-A M.R.S. § 1064 are posted in the notices section of the Commission's [home page](#). The Commission's current rules may be found under the Laws & Rules tab on the Commission's website.

The proposed amendments provide guidance concerning which entities owned or controlled by a foreign government are covered by 21-A M.R.S. § 1064 and the activities that are prohibited under the new law. The amendments are intended to assist media providers in establishing policies, procedures, and controls that will comply with § 1064.

To comment, please participate in a public hearing later this month or submit written comments. The hearing will be part of the Commission's February 28, 2024 meeting, which will begin at 9:00 a.m. at the Commission's office at 45 Memorial Circle in Augusta. To participate in the hearing by Zoom, please email Julie.Aube@maine.gov by 12:00 p.m. on the day before the hearing. To comment in writing, please send comments to Julie.Aube@maine.gov no later than March 11, 2024. Thank you.

Chapter 1: PROCEDURES

SUMMARY: The Maine Ethics Commission proposes a new section 15 to implement 21-A M.R.S. § 1064, which prohibits foreign governments from making contributions or expenditures to influence elections in Maine.

SECTION 15. FOREIGN GOVERNMENT-INFLUENCED ENTITIES

1. **Definitions.** For purposes of this section, the Commission incorporates the definitions in 21-A M.R.S. § 1064(1). In addition, the following terms have the following meanings when used in § 1064 or in this section:
 - A. **Campaign Advertisement.** “Campaign advertisement” means a paid public communication to influence the nomination or election of a candidate or to influence the initiation or approval of a referendum.
 - B. **Contribution.** “Contribution” has the meaning set forth in 21-A M.R.S. § 1012(2) if the contribution is directed to a candidate or a candidate’s political committee. “Contribution” has the meaning set forth in 21-A M.R.S. § 1052(3) if the contribution is directed to any other person or entity.
 - C. **Direct participation in a decision-making process.** To “directly participate in the decision-making process” means to communicate a direction or preference concerning the outcome of the decision-making process through a person who is an employee or official of a foreign government or an employee, director, or member of a foreign government-owned entity.
 - D. **Donation.** “Donation” means any gift, subscription, loan, advance or deposit of money or anything of value, regardless of whether it satisfies the definition of a contribution.
 - E. **Disbursement of funds.** “Disbursement of funds” means any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, regardless of whether it satisfies the definition of an expenditure.
 - F. **Expenditure.** “Expenditure” has the meaning set forth in 21-A M.R.S. § 1012(3) if made by a candidate for office or the candidate’s political committee. “Expenditure” has the meaning set forth in 21-A M.R.S. § 1052(4) if made by any other person or entity.
 - G. **Indirect beneficial ownership.** “Indirect beneficial ownership” means having an ownership interest in an entity as a result of owning an interest in an intermediate entity that either directly owns part or all of the entity or indirectly owns part or all of the entity through other intermediate entities. For example, if a foreign government wholly owns a firm that has a 10% interest in a Maine corporation, the foreign government indirectly owns 10% of that corporation.

- H. **Indirect participation in a decision-making process.** To “indirectly participate in the decision-making process” means to knowingly communicate a direction or preference concerning the outcome of the decision-making process using an intermediary, whether or not the intermediary has any formal affiliation with the foreign government or foreign government-owned entity.
 - I. **Internet platform.** “Internet platform” means an entity that controls any public-facing website, internet application, or mobile application that sells advertising space and:
 - (1) is also a print news outlet, television or radio broadcasting station, or provider of cable or satellite television; or
 - (2) publishes content primarily intended for audiences within Maine.
 - J. **Media provider.** “Media provider” means a television or radio broadcasting station, provider of cable or satellite television, print news outlet or Internet platform, as defined in this section.
 - K. **Print news outlet.** “Print news outlet” means an entity that publishes physically printed news or news commentary on a periodical basis in which advertisers may purchase advertising space and which distributes at least 25 percent of its copy for one or more publications within the State of Maine.
 - L. **Provider of cable or satellite television.** “Provider of cable or satellite television” means an entity that is engaged in the provision of cable or satellite television service in Maine to a public audience and sells advertising space for transmission through its service.
 - M. **Structure.** “Structure” means to arrange for financial activity to be made by or through a person for the purpose of evading the prohibitions and requirements of 21-A M.R.S. § 1064. Structuring includes, but is not limited to, creating a business entity whose ownership is difficult to ascertain for the purpose of concealing ownership or control by a foreign government.
 - N. **Television or radio broadcasting station.** “Television or radio broadcasting station” means an entity that broadcasts television or radio signals from within the state of Maine to a public audience and sells advertising space for broadcast through those signals.
2. **Ownership or control by a foreign government.** An entity does not qualify as a foreign government-influenced entity pursuant to 21-A M.R.S. § 1064(1)(E)(2)(a) solely because multiple foreign governments or foreign government-owned entities have ownership interests in the entity that, if combined, would exceed 5% of the entity’s total equity or other ownership interests.
 3. **Campaign spending by foreign governments prohibited.** A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

4. **Solicitation or acceptance of contributions from foreign governments prohibited.** A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 3.
5. **Substantial assistance prohibited.** A person may not knowingly or recklessly provide substantial assistance, with or without compensation:
 - A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 3; or
 - B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 3.
6. **Circumvention through structuring financial activity**
 - A. **Prohibition.** A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in 21-A M.R.S. § 1064.
 - B. **Enforcement.** The Commission shall assess a penalty against a person for illegally structuring a transaction only upon finding that the person intended to evade the prohibitions and requirements in 21-A M.R.S. § 1064.
7. **Disclaimer in paid communications**
 - A. **Disclaimer required.** A disclaimer is required whenever a foreign government-influenced entity makes a disbursement of funds to finance a public communication not otherwise prohibited by 21-A M.R.S. § 1064 or this section if it meets either of the following criteria:
 - (1) A reasonable observer would understand the content of the public communication to be seeking to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy; or,
 - (2) The public communication promotes the political or public interest of or government relations with a foreign country or a foreign political party.
 - B. **Disclaimer content.** A public communication subject to the disclaimer requirement of this subsection must clearly and conspicuously contain the words “Sponsored by” immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a “foreign government” or a “foreign government-influenced entity.” The disclaimer may include additional truthful and accurate language describing the entity, including language to indicate that “foreign government” and “foreign government-influenced entity” are defined terms under state law, for example, “sponsored by [entity], a foreign government-influenced entity as defined in Maine law.”

- B. **Applicability.** This subsection applies only to public communications purchased from media providers or otherwise intended to be viewed primarily by Maine residents.

8. **Requirements for media providers**

- A. **Policies, procedures and controls.** Each media provider must establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by a foreign government-influenced entity.

- B. **Safe harbor.** A media provider will be deemed to satisfy the requirements of subsection 8(A) if it adopts a policy containing the following features:

- (1) The policy prohibits publication of any campaign advertisement that the media provider knows to originate from a foreign government-influenced entity, except that the policy may allow reproduction of a campaign advertisement in a news story to which the campaign advertisement is relevant.
- (2) The policy requires a purchaser of a campaign advertisement to certify in writing that it is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity. The policy may allow certification via electronic means and may allow the advertiser to certify by checking a box or other similar mechanism, as long as the box or other mechanism is clearly labeled as a certification that the advertiser is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity.
- (3) The policy requires that such certifications be preserved by the media provider for a period of not less than 2 years.
- (4) The policy requires the media provider to decline to publish a campaign advertisement if:
 - a. the purchaser fails to provide the certification required by subsection (8)(B)(2);
 - b. the purchaser is listed by the Commission on its website as a foreign government-influenced entity in accordance with subsection (8)(E) below; or,
 - c. the media provider has actual knowledge of facts indicating that, notwithstanding the purchaser's written confirmation to the contrary, the purchaser is a foreign government-influenced entity or is acting on behalf of a foreign government-influenced entity.
- (5) If the media provider is an Internet platform, its policy provides that, upon discovery that the Internet platform has distributed a campaign advertisement purchased by or on behalf of a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.

- C. **Other policies permitted.** Nothing in this section prevents a media provider from adopting a due diligence policy containing provisions other than those described in subsection (8)(B) above, so long as the policy is reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by or on behalf of a foreign government-influenced entity.
- D. **Investigations not required.** A due diligence policy need not require the media provider to investigate their advertisers or to monitor comment sections or other similar fora that the media provider makes available to subscribers, users, or the general public to post commentary.
- E. **Public list.** The Commission will maintain a list on its website of all entities that it has determined in enforcement proceedings to meet the definition of a foreign government-influenced entity. An entity may request to be removed from the list by presenting satisfactory evidence to Commission staff that it no longer meets the definition of a foreign government-influenced entity. If Commission staff reject the request, the entity may request a determination by the Commission.
- F. **Takedown requirement.** If an Internet platform discovers that it has distributed a campaign advertisement purchased by a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.

21-A M.R.S. § 1064. Foreign government campaign spending prohibited

(1) Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- (A)** "Contribution" has the meanings given in section 1012, subsection 2 and section 1052, subsection 3.
- (B)** "Electioneering communication" means a communication described in section 1014, subsection 1, 2 or 2-A.
- (C)** "Expenditure" has the meanings given in section 1012, subsection 3 and section 1052, subsection 4.
- (D)** "Foreign government" includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country other than the United States or over any part of such country and includes any subdivision of any such group and any group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. "Foreign government" includes any faction or body of insurgents within a country assuming to exercise governmental authority, whether or not such faction or body of insurgents has been recognized by the United States.
- (E)** "Foreign government-influenced entity" means:
 - (1)** A foreign government; or
 - (2)** A firm, partnership, corporation, association, organization or other entity with respect to which a foreign government or foreign government-owned entity:
 - (a)** Holds, owns, controls or otherwise has direct or indirect beneficial ownership of 5% or more of the total equity, outstanding voting shares, membership units or other applicable ownership interests; or
 - (b)** Directs, dictates, controls or directly or indirectly participates in the decision-making process with regard to the activities of the firm, partnership, corporation, association, organization or other entity to influence the nomination or election of a candidate or the initiation or approval of a referendum, such as decisions concerning the making of contributions, expenditures, independent expenditures, electioneering communications or disbursements.
- (F)** "Foreign government-owned entity" means any entity in which a foreign government owns or controls more than 50% of its equity or voting shares.
- (G)** "Independent expenditure" has the meaning given in section 1019-B, subsection 1.

(H) "Public communication" means a communication to the public through broadcasting stations, cable television systems, satellite, newspapers, magazines, campaign signs or other outdoor advertising facilities, Internet or digital methods, direct mail or other types of general public political advertising, regardless of medium.

(I) "Referendum" means any of the following:

- (1)** A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- (2)** A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- (3)** A popular vote on an amendment to the Constitution of Maine under the Constitution of Maine, Article X, Section 4;
- (4)** A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- (5)** The ratification of the issue of bonds by the State or any state agency; and
- (6)** Any county or municipal referendum.

(2) Campaign spending by foreign governments prohibited. A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

(3) Solicitation or acceptance of contributions from foreign governments prohibited. A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 2.

(4) Substantial assistance prohibited. A person may not knowingly or recklessly provide substantial assistance, with or without compensation:

- (A)** In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 2; or
- (B)** In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 2.

(5) Structuring prohibited. A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in this section.

(6) Communications by foreign governments to influence policy; required disclosure.

Whenever a foreign government-influenced entity disburses funds to finance a public communication not otherwise prohibited by this section to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy or regarding the political or public interest of or government relations with a foreign country or a foreign political party, the public communication must clearly and conspicuously contain the words "Sponsored by" immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a "foreign government" or a "foreign government-influenced entity."

(7) Due diligence required. Each television or radio broadcasting station, provider of cable or satellite television, print news outlet and Internet platform shall establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section. If an Internet platform discovers that it has distributed a public communication for which a foreign government-influenced entity has made an expenditure, independent expenditure, electioneering communication or disbursement in violation of this section, the Internet platform shall immediately remove the communication and notify the commission.

(8) Penalties. The commission may assess a penalty of not more than \$5,000 or double the amount of the contribution, expenditure, independent expenditure, electioneering communication, donation or disbursement involved in the violation, whichever is greater, for a violation of this section. In assessing a penalty under this section, the commission shall consider, among other things, whether the violation was intentional and whether the person that committed the violation attempted to conceal or misrepresent the identity of the relevant foreign government-influenced entity.

(9) Violations. Notwithstanding section 1004, a person that knowingly violates subsections 2 through 5 commits a Class C crime.

(10) Rules. The commission shall adopt rules to administer the provisions of this section. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

(11) Applicability. Notwithstanding section 1051, this section applies to all persons, including candidates, their treasurers and authorized committees under section 1013-A, subsection 1; party committees under section 1013-A, subsection 3; and committees under section 1052, subsection 2.