

Proposed Statute Changes

21-A M.R.S. § 1060-A. Campaign for direct initiative or people's veto; reporting by major contributors

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

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B. "Major contributor" means a person, other than an individual or a committee, that makes one or more contributions aggregating in excess of \$100,000 to a ballot question committee or political action committee for the purpose of initiating or influencing any one people's veto referendum campaign or any one direct initiative campaign.

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The Commission staff proposes changes to the major contributor reporting requirement. This is a one-time disclosure statement that provides a profile of an organization that contributes more than \$100,000 to a PAC or ballot question committee (BQC) to influence a ballot question. This requirement was enacted in 2018 from a bill sponsored by the Senate Chair of the VLA Committee (Hon. Louis Luchini), based on a proposal originally made by the Commission. In the statement, the organization must disclose a responsible officer, its form of organization and purpose, a statement whether the organization is tax-exempt and is registered in other campaign finance jurisdictions, a statement whether the organization received money for purposes of influencing the election, and the names of the five largest sources of funds received by the major contributor during the six-month period prior to making the first contribution to the PAC or BQC.

The Commission staff believes that a major contributor report is not as necessary when the contributor giving \$100,000 is, itself, already registered with the Commission as a PAC or BQC. The registration and campaign finance reports filed by a PAC or BQC provide much of the same information as the major contributor report. Therefore, we propose that a registered PAC or BQC be excluded from the definition of a major contributor. This exclusion was part of the Commission's original concept, but it apparently was lost sometime in the legislative drafting.

4. Content. In the reports required under subsection 3, a major contributor shall provide:

- A.** The name of and relevant contact information for the major contributor and the name of a responsible officer of the major contributor;
- B.** The form of organization and purpose of the major contributor;
- C.** The amount and date of each contribution from the major contributor to the recipient committee;
- D.** A certification that the major contributor has not received contributions, in whole or in part, for the purpose of initiating or influencing a people's veto referendum or direct initiative campaign in this State or, if the major contributor has received such contributions, the dates, sources and amounts of any such contributions;
- E.** The names of the 5 largest sources of funds received by the major contributor during the period beginning 6 months prior to the first contribution made to the recipient committee and ending on the date of the filing of the report. This paragraph does not apply to funds received by the major contributor that are restricted to purposes that are unrelated to a people's veto referendum or direct initiative campaign in the State; A major contributor may request a modification to this disclosure requirement if its compliance would present an undue burden. In considering whether an undue burden is present, the Commission shall consider, among other things, the financial and staffing resources of the major contributor, the financial cost and amount of time it would reasonably take to gather the information, and public interest in having access to the information. The commission may accept a financial disclosure report required under any other law as a modification to this provision; and

In administering the major contributor reporting requirement in the past two years, the Commission has received concerns from some major contributors about complying with the requirement to disclose the five largest sources of funds received during the six months prior to the first contribution to the PAC or BQC. Some of these concerns were raised by large businesses with multiple divisions, each with their own accounting groups. They expressed concern over the time and staff resources it would take to calculate their income from customers, investors, etc. The Commission staff proposes allowing a major contributor to ask the Commission for a modification of this requirement due to undue administrative burden, including an opportunity for the contributor to submit a SEC or other corporate filing that describes the contributor's financial activity and operations in a more general way. The Commission may wish to consider whether any submitted information should be kept confidential.

- F.** A statement indicating whether the major contributor is exempt from taxation under the United States Internal Revenue Code of 1986 and a list of any governmental jurisdictions within the United States in which the major contributor has filed campaign finance reports during the previous 12 months.

The commission may require by rule additional information to be reported consistent with this subsection to facilitate disclosure to citizens of this State of financial activity conducted for the purpose of influencing elections in this State.

5. Noncompliance. ~~The commission may assess a civil penalty against a major contributor that does not file a timely report required under this section. The preliminary penalty is 10% of the total contributions required to be reported, up to a maximum of \$50,000. Within 14 calendar days of receiving notice of the preliminary penalty from the commission, the major contributor may request that the penalty be waived in full or in part. In considering a request for a waiver, the commission shall consider, among other things, any lack of notice to the major contributor of the reporting requirement, the number of days that the report was filed late and the amount of the contributions required to be reported. A major contributor requesting a determination may either appear in person or designate a representative to appear on the major contributor's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subsection must be sent to the major contributor. If a determination is not requested, the preliminary penalty calculated by the commission is final. The commission shall mail final notice of the penalty to the major contributor. 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. The commission may assess a civil penalty in the same amount against a recipient committee that has not provided written notice of the reporting requirements to the major contributor as required by subsection 2, using the same procedures as set out in this subsection for penalties against the major contributor.~~

The staff proposes to reformat the noncompliance provision of § 1060-A (see next page) to clarify the potential violations that may occur under this section and the factors the Commission should consider for each potential violation. Under the current section 5, it is difficult to understand the penalties, even for experienced consultants and attorneys. This proposal breaks out the violations in a clearer way and provides better guidance for the Commission on what to consider for late notices to major contributors. The penalty procedures otherwise remain unchanged.

5-A. Noncompliance. The commission may assess a civil penalty against a person who does not comply with the requirements of this section. The preliminary penalty is 10% of the total contributions required to be reported, up to a maximum of \$50,000 for the following violations:

- A. Failure to provide notice. A recipient committee who fails to provide timely notice to a major contributor.
- B. Failure to submit a copy of the notice to the Commission. A committee that fails to provide a copy of the notice to the commission under section 2. If the commission assesses a penalty under subsection A, then the commission may not also assess a penalty under this subsection.
- C. Failure to file a major contributor report. A major contributor who does not file a timely report required under this section. A report that does not substantially conform to the disclosure requirements of this section is considered to be unfiled.

5-B. Waiver Request. Within 14 calendar days of receiving notice of the preliminary penalty from the commission, the major contributor may request that the penalty be waived in full or in part. In considering a request for a waiver, the commission shall consider, among other things:

- A. For violations under subsection 5-A(A) & (B)
 - 1. whether, as a result of the late notice, the due date for the report is later than if a timely notice had been received,
 - 2. If the recipient committee made a bona fide effort to provide notice to the major contributions,
 - 3. The amount of the contributions required to be reported.
- B. For violations under subsection 5-A(C)
 - 1. any lack of notice to the major contributor of the reporting requirement,
 - 2. the number of days late, and
 - 3. the amount of the contributions required to be reported.

A major contributor requesting a determination may either appear in person or designate a representative to appear on the major contributor's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subsection must be sent to the major contributor. If a determination is not requested, the preliminary penalty calculated by the commission is final. The commission shall mail final notice of the penalty to the major contributor. 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.