



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

To: Commission  
From: Jonathan Wayne, Executive Director  
Date: August 5, 2020  
Re: Proposed Changes to Guidance on Registration and Reporting as a Ballot  
Question Committee

---

The Commission staff proposes some changes to the Commission's current guidance memo on registration and reporting by ballot question committees. The Commission first adopted a memo on this topic 12 years ago to explain recent statutory changes to 21-A M.R.S. § 1056-B enacted by the Legislature. Overall, the staff does not view most of the proposed changes as impactful. Some of the proposed changes are merely stylistic. This cover memo explains two of the changes which may not be self-explanatory. I have attached:

- a clean version of the proposed updated memo (ETH 1-6)
- a version of the updated memo showing insertions and deletions (ETH 7-14)
- the memo that has been in effect in recent years (ETH 15-19)
- 21-A M.R.S. § 1056-B (ETH 20-22).

*Donor exception (p.1 of clean version).* In 2020, the Legislature moved the exception for donors in 21-A M.R.S. § 1056-B from a phrase in the first sentence to a separate sentence at the end of the first paragraph. (Under this exception, donors that give money to a PAC or BQC to influence a ballot question and that do not otherwise spend money to influence the ballot question do not have to register as a BQC.) The block quote on page 1 of the memo is updated to reflect this statutory change.

*Donations given to influence a citizen initiative and other purposes (p.2 of clean version).* The Commission advises that if an organization informs a potential donor that influencing a Maine ballot question is one of several activities their donation would support, the donor's entire contribution may count toward the \$5,000 registration

requirement and reporting requirements. The Commission staff proposes this change to the guidance to avoid circumvention of the reporting requirements by organizations.

In a separate agenda item, the Commission staff also proposes guidance that would relate to paid communications to influence the New England Clean Energy Connect citizen initiative this year. Thank you for your consideration this year.



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## **Registering & Reporting as a Ballot Question Committee (updated August 11, 2020)<sup>1</sup>**

---

### **What is a ballot question committee?**

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission.<sup>2</sup> Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S. § 1056-B to create a reporting requirement for these non-PAC organizations. Effective June 30, 2008, the Election Law designated these organizations as “ballot question committees” (“BQCs”), which are required to register with the Commission. Under these requirements:

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section.

### **Does the registration requirement apply to individuals as well as organizations?**

Yes. Under Maine Election law, the term “person” includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

### **When do ballot question committees have to register with the Commission?**

Within seven days of receiving contributions or making expenditures to initiate or influence a ballot question that exceed \$5,000, an organization or individual must register as a ballot question committee with the Commission.

---

<sup>1</sup> This memo replaces previous guidance on the same topic adopted by the Commission on July 28, 2008.

<sup>2</sup> A ballot question refers to a people’s veto referendum, a direct initiative, an amendment to the Constitution of Maine, a referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote, a ratification of the issue of bonds, and any county or municipal referendum.

**What contributions count toward the BQC registration threshold and have to be reported?**

Contributions received for the purpose of initiating or influencing a ballot question count toward the registration threshold and have to be reported. This includes:

- funds that the contributor specified were given, in whole or in part, in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used, in whole or in part, for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor, in whole or in part, for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

For example, if an organization sends a solicitation or other communication to a potential donor or funder indicating that any funds received will be spent on a Maine ballot question and other activities (e.g., lobbying or advocacy activities in other states), the total amount of funds received from that donor are a contribution to the organization that counts toward the registration threshold. (The Commission staff is available to answer questions regarding the treatment of multi-purpose contributions for registration and reporting purposes.) Funds provided in response to a solicitation that makes no reference to a Maine ballot question and would lead the contributor to believe that the funds would be used to support other activities or an organization’s general activities do not count toward the registration threshold and do not need to be reported by the ballot question committee.

**What expenditures count toward the BQC registration threshold and have to be reported?**

Expenditures made by an organization or individual to initiate or influence a ballot question count toward the registration threshold and have to be reported. The Commission interprets this to include expenditures on communications which expressly advocate for or against a ballot question or which, in context, are susceptible of no reasonable interpretation other than to promote or oppose a clearly identified ballot question. These expenditures also include, but are not limited to:

- compensation and paid expenses to individuals or organizations for the purpose of collecting petition signatures to qualify a ballot question;

- fees paid to employees, attorneys or other consultants for legal analysis and drafting of a proposed ballot question;
- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including digital advertising and advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- paid staff time promoting or opposing a ballot question at public or press events;
- paid staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- paid staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or analysis, including written reports and legal opinions, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question and where the results are used for that purpose; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote for or against a ballot question.

**What does the Commission mean by communications that expressly advocate for or against a ballot question?**

Expressly advocate means phrases which explicitly advocate a vote for or against a ballot question or which, in context, are susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question, for example: “Vote Yes on 1,” “No on 2,” “On March 3<sup>rd</sup>, Protect Maine’s Children,” “Let’s Get Maine Moving Again,” accompanied by reference to a transportation bond, or “Support Same-Sex Marriage” or “Protect Traditional Marriage” when accompanied by a reference to an initiative to legally recognize same-sex marriage.

**What expenditures do not count toward the registration threshold?**

The Commission interprets § 1056-B as excluding expenditures for communications that do not expressly advocate for or against a ballot question or other activities that are not conducted to initiate or influence a ballot question. In addition, expenditures made merely to educate voters or others about a ballot question in a neutral way are not

covered by § 1056-B, even if a ballot question is clearly identified. These would include expenditures for:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- distributing news stories, commentary, or editorials concerning a ballot question through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis concerning a ballot question paid by an entity which is not otherwise participating in the ballot question campaign, provided that the research or analysis does not clearly express support for or opposition to the ballot question or urge others to vote for or against the ballot question.

**Do payments to staff or other expenses incurred in drafting legislation intended as a direct initiative count toward the registration threshold?**

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

**What about expenditures to oppose a ballot question during the signature-gathering phase?**

The Commission interprets “expenditures [made] ... for the purpose of ... influencing” a ballot question to include payments made by opponents of the ballot question during the time period in which proponents are gathering petition signatures.

**If an organization or individual purchases a digital advertisement that links to a webpage of the organization or individual that expressly advocates for or against a ballot question, does the advertising cost count toward the threshold and have to be reported?**

If an organization or individual pays for a digital ad that links to a webpage sponsored by the same organization or individual that expressly advocates for or against a ballot question, the Commission will generally view the cost of the digital ad as an expenditure made for the purpose of influencing the ballot question even if the digital ad itself does not expressly advocate for or against a ballot question.

**What if an organization raises money to give to a PAC or BQC?**

If an organization solicits and receives contributions for the purpose of influencing a ballot question and gives those funds to a PAC or BQC, the contributions received by the organization count towards the registration threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC or BQC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC or BQC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

**What if an organization donates money or the time of its paid employees to a PAC or BQC to initiate or influence a ballot question?**

An organization or individual does not have to register with the Commission as a BQC if their only payments of money for the purpose of initiating or influencing a campaign in Maine are contributions to PACs or BQCs registered with the Commission or a municipality and they have not raised or accepted any contributions for the purpose of initiating or influencing a ballot question. This exception covers the following types of payments to benefit a PAC or BQC:

- money donated directly to the PAC or BQC
- compensation and benefits to the organization’s or individual’s paid staff whose services are donated to the PAC or BQC
- expenditures that are requested or suggested by the PAC or BQC, or are coordinated with the PAC or BQC.

The PAC or BQC receiving these payments or services must report them as in-kind contributions. Expenditures to initiate or influence a ballot question made independently of the PAC or BQC are not considered contributions to the PAC or BQC and would count toward the registration threshold.

**What if an organization contributes or transfers funds to another organization which is not a PAC?**

A contribution or transfer of funds from one organization to another organization for the purpose of initiating or influencing a ballot question counts towards the registration threshold as an expenditure made by the first organization.

**Guidance to PACs and Contributors on the Reporting of In-Kind Contributions**

If a PAC or BQC involved in a ballot question reports receiving in-kind contributions from other organizations, but provides little detail regarding the goods and services they received, the Commission will request that PAC or BQC provide more detail about the in-kind contributions. For example, if a PAC or BQC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC’s or BQC’s

reporting of coordinated spending made by a contributor should include a description and the cost of the goods and services purchased. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

**How does an organization register as a ballot question committee?**

The organization should visit [www.mainecampaignfinance.com](http://www.mainecampaignfinance.com) and click on the Register button in the upper-right corner of the screen.

**Other Guidance**

If you have any questions, please telephone the Commission's Political Committee Registrar at 287-4179.

Adopted by the Commission on August 11, 2020





COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station, Augusta, Maine 04333  
 Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
 Phone: 207-287-4179  
 Fax: 207-287-6775

## Guidance Memo – on Registering & Reporting as a Ballot Question Committee (effective June 30, 2008 updated August 11, 2020)<sup>1</sup>

### What is a ballot question committee?

Most organizations that raise or spend money to influence a statewide ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission.<sup>2</sup> Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. Effective June 30, 2008, the Election Law designates sd these organizations as “ballot question committees.” (“BQCs”), and they will be which are required to register with the Commission. Under these se new requirements: s;

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section.

[a]ny person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the Commission.

The complete language of 21-A M.R.S.A. § 1056-B is attached to this memo.

### Does the registration requirement apply only to individuals as well as organizations?

<sup>1</sup> This memo replaces previous guidance on the same topic adopted by the Commission on July 28, 2008.

<sup>2</sup> A ballot question refers to a people’s veto referendum, a direct initiative, an amendment to the Constitution of Maine, a referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote, a ratification of the issue of bonds, and any county or municipal referendum.

---

~~No.~~Yes. Under Maine Election law, the term “person” includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

**When do ballot question committees have to register with the Commission?**

Within seven days of receiving contributions or making expenditures to initiate or influence ~~an election~~ a ballot question that exceed \$5,000, an organization or individual must register as a ballot question committee ~~must register~~ with the Commission.

## How do ballot question committees register with the Commission and file financial reports?

The committee must register and file the initial campaign finance report either electronically or on using paper forms (available on the Commission's website). All other campaign finance reports are filed electronically.

## What contributions must be reported by ballot question committees count toward the BQC registration threshold and have to be reported?

Section 1056-B covers “Contributions [received] for the purpose of initiating or, promoting, defeating or influencing in any way a ballot question....” count toward the registration threshold and have to be reported. This includes:

- funds that the contributor specified were given, in whole or in part, in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically, in whole or in part, for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;
- funds that can reasonably be determined to have been provided by the contributor, in whole or in part, for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

For example, if an organization sends a solicitation or other communication to a potential donor or funder indicating that any funds received will be spent on a Maine ballot question and other activities (e.g., lobbying or advocacy activities in other states), these the total amount of funds received from that donor are represent a reportable a contribution to the organization that counts toward the registration threshold. (If the organization has additional The Commission staff is available to answer questions concerning how to allocate these regarding the treatment of multi-purpose contributions for registration and reporting purposes.) in campaign finance reports, please contact the Commission staff. Funds provided in response to a solicitation that makes no reference to a Maine ballot question and would lead the contributor to believe that the funds would be used to support other activities or an organization's general activities, rather than activities relating to a ballot question, do not count toward the registration threshold and do not need to be reported by the ballot question committee.

~~A ballot question committee must report but is not required to itemize contributions from a single source that aggregate \$50100 or less in any election.~~

**What expenditures must be reported by a ballot question committee count toward the BQC registration threshold and have to be reported?**

~~Expenditures made by an organization or individual to initiate or influence a ballot question count toward the registration threshold and have to be reported. Section 1056-B covers expenditures for communications and activities made “for the purpose of initiating, promoting, defeating or influencing in any way a ballot question.” The Commission interprets this to include expenditures on communications and activities which expressly advocate for or against a ballot question or which, in context, clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the a clearly identified ballot question. These Expenditures expenditures to be reported also include, but are not limited to:~~

- compensation and paid expenses to individuals or organizations for the purpose of collecting petition signatures to qualify a ballot question;
- fees paid to employees, attorneys or other consultants for legal analysis and drafting of a proposed ballot question;
- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including digital advertising and advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;
- paid staff time promoting or opposing ~~the a~~ ballot question at public or press events;
- paid staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- paid staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or analysis, including written reports and legal opinions, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question and where the results are used for that purpose; and

- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, or for or against the a ballot question.

~~This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.~~

### What does the Commission mean by communications that expressly advocate for or against a ballot question?

Expressly advocate means phrases which explicitly advocate a vote for or against a ballot question or which, in context, are susceptible of no reasonable interpretation other than as an appeal to vote for or against a ballot question, for example: “Vote Yes on 1,” “No on 2,” “On March 3<sup>rd</sup>, Protect Maine’s Children,” “Let’s Get Maine Moving Again,” accompanied by reference to a transportation bond, or “Support Same-Sex Marriage” or “Protect Traditional Marriage” when accompanied by a reference to an initiative to legally recognize same-sex marriage.

### What expenditures are ~~not~~ covered by § 1056-B do not count toward the registration threshold?

The Commission interprets § 1056-B as excluding expenditures for communications that do not expressly advocate for or against a ballot question or other activities that are not conducted to initiate or influence a ballot question ~~do not clearly identify a ballot question by apparent and unambiguous reference.~~ In addition, expenditures made merely to educate voters or others about a ballot question in a neutral way are not covered by § 1056-B, even if a ballot question is clearly identified. These would include expenditures for:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- distributing news stories, commentary, or editorials concerning a ballot question through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis concerning a ballot question paid by an entity which is not otherwise participating in the ballot question campaign, provided that the research or analysis does not clearly express support for or opposition to the ballot question or urge others to vote for or against the ballot question.

~~Ballot question committees must report but are not required to itemize expenditures to a single payee that total \$100 or less in an election.~~

**Do “~~expenditures [made] ... for the purpose of initiating ... a ballot question~~” ~~include~~ payments to staff or other expenses incurred in drafting legislation intended as a direct initiative count toward the registration threshold?**

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

**What about expenditures to ~~oppose circulate ballot question petitions to collect signatures, and other expenses of advocates for and against~~ a ballot question during the signature-gathering phase?**

~~In 2006, the Legislature amended the term “expenditure” to clarify that payments of money to collect signatures for a ballot question must be reported.~~ The Commission interprets ~~the~~ “expenditures [made] ... for the purpose of ... ~~defeating or influencing in any way~~” a ballot question to includes payments made by opponents of the ballot question during the time period in which proponents ~~may are~~ gathering ing petition signatures.

**If an organization or individual purchases a digital advertisement that links to a webpage of the organization or individual that expressly advocates for or against a ballot question, is does the advertising cost count toward the threshold and have to be reported a reportable expenditure?**

If an organization or individual pays for a digital ad that links to a webpage sponsored by the same organization or individual that expressly advocates for or against a ballot question, the Commission will generally view the cost of the digital ad as an expenditure made for the purpose of influencing the ballot question even if the digital ad itself does not expressly advocate for or against a ballot question.

**What if an organization raises money to give to a PAC or BQC?**

If an organization solicits and receives contributions for the purpose of influencing a ballot question and gives those funds to a PAC or BQC, the contributions received by the organization count towards the ~~\$5,000~~ registration threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC or BQC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC or BQC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

### **What if an organization contributes or transfers funds to another organization which is not a PAC?**

~~A contribution or transfer of funds from one organization to another organization for the purpose of influencing a ballot question counts towards the \$5,000 registration threshold as an expenditure made by the first organization.~~

### **What if an organization donates money or the time of its paid employees to a PAC or BQC to initiate or influence a ballot question ~~or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC or BQC?~~**

~~The BQC reporting statute contains an exception for a person whose~~ An organization or individual does not have to register with the Commission as a BQC if their only payments of money for the purpose of initiating or influencing a campaign in Maine are contributions to PACs or BQCs registered with the Commission or a municipality and ~~who~~ they have not raised or accepted any contributions for the purpose of initiating or influencing ~~thea campaign~~ ballot question. This exception covers the following types of payments to benefit a PAC or BQC:

- money donated directly to the PAC or BQC
- compensation and benefits to the organization's or individual's paid staff whose services are donated to the PAC or BQC
- expenditures that are requested or suggested by the PAC or BQC, or are coordinated with the PAC or BQC.

~~The PAC or BQC receiving these payments or services must report them as in-kind contributions. Donating paid staff to a PAC, or coordinating expenditures with a PAC are in-kind contributions to the PAC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a § 1056-B report by the donor; however, the PAC must report them as in-kind contributions. An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC only if they are coordinated with the PAC or are accepted by a PAC. Expenditures to initiate or influence a ballot question made independently of the PAC or BQC should are not be considered contributions to the PAC or BQC and would count toward the \$5,000 registration threshold.~~

### **What if an organization contributes or transfers funds to another organization which is not a PAC?**

A contribution or transfer of funds from one organization to another organization for the purpose of initiating or influencing a ballot question counts towards the registration threshold as an expenditure made by the first organization.

## **Guidance to PACs and Contributors on the Reporting of In-Kind Contributions**

~~In 2006, some~~ If a PACs or BQC involved in a ballot question ~~campaigns~~ reported receiving ~~significant~~ in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. ~~In future elections,~~ The Commission will request that PAC or BQC provide more detail about ~~large~~ the in-kind contributions ~~they have received~~. For example, if a PAC or BQC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's or BQC's reporting of coordinated spending made by a contributor should include a brief description and the cost of the goods and services ~~that were~~ purchased ~~and their~~ value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

#### How does an organization register as a ballot question committee?

The organization should visit [www.mainecampaignfinance.com](http://www.mainecampaignfinance.com) and click on the Register button in the upper-right corner of the screen.

#### **Other Guidance**

If you have any questions, please telephone the Commission's [PAC/Party/Lobbyist Political Committee](#) Registrar at 287-4179.

Adopted by the Commission on [August 11, 2020](#)





## **Guidance on Reporting as a Ballot Question Committee (effective June 30, 2008)**

---

### **What is a ballot question committee?**

Most organizations that raise or spend money to influence a ballot question in Maine form a political action committee (PAC) for that purpose, and file regular PAC reports with the Commission. Some advocacy, charitable, or other organizations do not qualify as PACs under the Election Law, but they are interested in raising and spending money to influence a ballot question. In 2000, the Maine Legislature enacted 21-A M.R.S.A. § 1056-B to create a reporting requirement for these non-PAC organizations. The Election Law designates these organizations as “ballot question committees” (BQCs) and they are required to register with the Commission. Under these requirements,

[a]ny person not defined as a political action committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee or ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign ... shall register as a ballot question committee and file reports with the commission in accordance with this section.

The complete language of 21-A M.R.S.A. § 1056-B and the definition of “campaign” attached to this memo.

### **Does the requirement apply only to individuals?**

No. Under Maine Election law, the term “person” includes individuals, committees, firms, partnerships, corporations, associations, or organizations.

### **When does a ballot question committee have to register with the Commission?**

Within seven days of receiving contributions or making expenditures to initiate or influence a campaign that exceed \$5,000, a ballot question committee must register with the Commission.

## **How does a ballot question committee register with the Commission and file financial reports?**

The committee must register and file the initial campaign finance report using the Commission's e-filing website. The committee may also use the Commission's paper forms available for download on the Commission's website. After registering, the committee must file all other campaign finance reports electronically.

## **What contributions must be reported by a ballot question committee?**

Section 1056-B covers "contributions [received] for the purpose of initiating or influencing a [ballot question] ...." This includes:

- funds that the contributor specified were given in connection with a ballot question;
- funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a ballot question;
- funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and
- funds or transfers from the general treasury of an organization filing a ballot question report.

Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used to support an organization's general activities, rather than activities relating to a ballot question, do not need to be reported.

A ballot question committee must report but is not required to itemize contributions from a single source that aggregate \$50 or less.

## **What expenditures must be reported by a ballot question committee?**

Section 1056-B covers expenditures for communications and activities made "for the purpose of initiating or influencing a [ballot question]." The Commission interprets this to include communications and activities which expressly advocate for or against a ballot question or which clearly identify a ballot question by apparent and unambiguous reference and are susceptible of no reasonable interpretation other than to promote or oppose the ballot question. Expenditures to be reported include:

- expenditures for communications to voters for the purpose of promoting or opposing a ballot question, including advertising on television, radio, and print media; literature that is mailed or distributed by hand to voters; automated

telephone calls and scripted calls from live callers; signs, bumper stickers, and other forms of outdoor advertising;

- staff time promoting or opposing the ballot question at public or press events;
- staff time canvassing (conducting door-to-door visits to) voters;
- travel expenses paid to employees or volunteers who are conducting activities to promote or oppose a ballot question;
- staff time preparing presentations, testimony, letters to the editor, opinion pieces, articles for publication, or press releases to promote or oppose a ballot question;
- research or analysis, including written reports and legal opinions, where the organization knows or reasonably should know that the results will be used to promote or oppose a ballot question and where the results are used for that purpose; and
- expenditures to distribute research or technical analysis regarding a ballot question for the purpose of encouraging voters to vote yes, or no, on the question.

This list is not intended to be exhaustive and is similar to the types of expenditures reported by political action committees to promote or defeat a ballot question.

### **What expenditures are not covered by § 1056-B?**

The Commission interprets § 1056-B as excluding expenditures for communications or activities that do not clearly identify a ballot question by apparent and unambiguous reference. In addition, expenditures made merely to educate voters or others about a ballot question in a neutral way are not covered by § 1056-B, even if a ballot question is clearly identified. These would include expenditures for:

- hosting a meeting at which advocates or members of the public are invited to present their views on the ballot question, provided that the sponsors of the event make reasonable efforts to ensure that the forum is balanced;
- distributing news stories, commentary, or editorials concerning a ballot question through the facilities of a broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by persons otherwise engaged in other advocacy activities to promote or oppose the ballot question; and
- research or analysis concerning a ballot question paid by an entity which is not otherwise participating in the ballot question campaign, provided that the

research or analysis does not clearly express support for or opposition to the ballot question or urge others to vote for or against the ballot question.

**Do “expenditures [made] ... for the purpose of initiating ... a [ballot question]” include payments to staff or other expenses incurred in drafting legislation intended as a direct initiative?**

Yes. If an organization pays its employees (or incurs other expenses) to draft legislation that the organization intends will be submitted to the Secretary of State as a direct initiative (even if submitted by a different organization or individuals), those expenses should be counted as expenditures made to initiate a ballot question.

**What about expenditures to circulate ballot question petitions to collect signatures, and other expenses of advocates for and against a ballot question during the signature-gathering phase?**

In 2006, the Legislature amended the term “expenditure” to clarify that payments of money to collect signatures for a ballot question must be reported. The Commission interprets the “expenditures [made] ... for the purpose of ... influencing” includes payments made by opponents of the ballot question during the time period in which proponents may gather petition signatures.

**Are donors required to register and file reports as a BQC?**

If an individual or organization makes contributions to a PAC or BQC, those contributions do not count toward the threshold of making expenditures that total more than \$5,000 to initiate or influence a campaign. Consequently, if an individual’s or organization’s only financial activity to initiate or influence a ballot question is to make a contribution to a PAC or BQC, that individual or organization would not need to register and file campaign finance reports as a BQC. That is to say, if an individual or organization uses their own funds to make the contribution, the contribution is not counted towards the \$5,000 threshold.

**What if an individual or organization raises money to give to a PAC or BQC?**

If an individual or organization receives funds for the purpose of influencing a ballot question, and gives those funds to a PAC or BQC, the funds received by the individual or organization count towards the \$5,000 threshold. For example, if a trade association solicits funds from its members in order to make a contribution to a PAC or BQC involved in a ballot question, the trade association may have to register as a ballot question committee if it raised more than \$5,000. It is not the contribution to the PAC or BQC that triggers the registration requirement; it is the fund-raising activity by the trade association that triggers it.

### **What if an organization contributes or transfers funds to another organization which is not a PAC or BQC?**

A contribution or transfer of funds from one organization to another organization for the purpose of influencing a ballot question counts towards the \$5,000 threshold as an expenditure made by the first organization. The other organization may also have to register as a BQC.

### **What if an organization donates the time of its paid employees to a PAC or BQC to influence a ballot question or makes payments to vendors for goods or services to influence a ballot question in coordination with a PAC or BQC?**

Donating paid staff to a PAC or BQC, and coordinating expenditures with a PAC or BQC are in-kind contributions to the PAC or BQC. They do not count toward the \$5,000 expenditure threshold that would trigger filing of a § 1056-B report by the donor; however, the PAC or BQC must report them as in-kind contributions.

An organization's expenditures to influence a ballot question may be considered an in-kind contribution to a PAC or BQC only if they are coordinated with the PAC or BQC or are accepted by a PAC or BQC. Expenditures to influence a ballot question made independently of the PAC or BQC should not be considered contributions to the PAC or BQC and would count toward the \$5,000 threshold.

### **Guidance to PACs and Contributors on the Reporting of In-Kind Contributions**

Some PACs and BQCs involved in ballot question campaigns have reported receiving significant in-kind contributions from other organizations, but provided little detail regarding the goods and services they received. PACs or BQCs must provide more detail about large in-kind contributions they have received. For example, if a PAC or BQC reports that it received significant paid staff time from another organization, it should include a description of those staff activities and the number of hours of staff time that were contributed. A PAC's or BQC's reporting of coordinated spending made by a contributor should include a brief description of the goods and services that were purchased and their value. Contributed staff and coordinated expenditures should not be lumped together as a single contribution for the reporting period, but should be itemized as separate contributions.

### **Other Guidance**

If you have any questions, please contact the Commission's Political Committee and Lobbyist Registrar at 287-4179 or [ethics@maine.gov](mailto:ethics@maine.gov).

Adopted by the Commission on July 27, 2008; updated the Commission staff on May 22, 2017 to reflect statutory changes in 2011 and 2016.

**21-A M.R.S. § 1056-B. Ballot question committees**

A person not defined as a political action committee that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign shall register as a ballot question committee and file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. A person whose only payments of money for the purpose of influencing a campaign in this State are contributions to political action committees or ballot question committees registered with the commission or a municipality and who has not raised and accepted any contributions for the purpose of influencing a campaign in this State is not required to register and file campaign finance reports under this section. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. [PL 2019, c. 323, §23 (AMD).]

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5. [PL 2009, c. 190, Pt. A, §20 (AMD).]

**1-A. Ballot question committee registration.** A person subject to this section who receives contributions or makes expenditures that exceed \$5,000 shall register with the commission as a ballot question committee within 7 days of receiving those contributions or making those expenditures. A ballot question committee shall have a treasurer and a principal officer. The same individual may not serve in both positions unless the person establishing the ballot question committee is an individual. The ballot question committee when registering shall identify all other individuals who are the primary decision makers and fund-raisers, the person establishing the ballot question committee and the campaign the ballot question committee intends to initiate or influence. The ballot question committee shall amend the registration within 10 days of a change in the information required in this subsection. The commission shall prescribe forms for the registration, which must include the information required by this subsection and any additional information reasonably required for the commission to monitor the activities of the ballot question committee. [PL 2015, c. 408, §3 (NEW).]

**2. Content.** A report required by this section must contain an itemized account with the date, amount and purpose of each expenditure made for the purpose of initiating or influencing a campaign; an itemized account of contributions received from a single source aggregating in excess of \$50 in any election; the date of each

contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$50 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

[PL 2015, c. 408, §3 (AMD).]

**2-A. Contributions.** For the purposes of this section, "contribution" includes, but is not limited to:

A. Funds that the contributor specified were given in connection with a campaign; [PL 2009, c. 524, §10 (AMD).]

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign; [PL 2011, c. 389, §40 (AMD).]

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient's activities regarding a campaign; and [PL 2011, c. 389, §41 (AMD).]

D. Funds or transfers from the general treasury of an organization filing a ballot question report. [PL 2007, c. 477, §4 (NEW).]

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

[PL 1999, c. 729, §8 (NEW).]

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes. [PL 2011, c. 389, §42 (AMD).]

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50. [PL 2007, c. 477, §4 (NEW).]

**5. Liability for penalties.** The commission may hold the treasurer and principal officer of a ballot question committee and any for-profit, nonprofit or other organization

that established the ballot question committee jointly and severally liable with the ballot question committee for any fines assessed against the ballot question committee for a violation of this chapter.

[PL 2015, c. 408, §3 (NEW).]