



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

Commission Meeting 12/18/2020
Agenda Item #5

To: Commission
From: Commission Staff
Date: December 8, 2020
Re: Statutory Proposals by Commission Staff

The Ethics Commission is authorized in Title 1, section 1009 to submit legislation to improve campaign finance law and the other areas within the Commission's jurisdiction. I have attached some statutory changes that are proposed by the Commission staff based on our experience in the last few years. We would like to forward these to the Maine Legislature, but only if you are comfortable with them. If you approve of the amendments, the staff would submit them to the office of the Revisor of Statutes to be drafted as an agency bill. Title 1, section 1009 provides the Commission with time to review its laws after the general election and submit a bill by early February. The bill would be heard by the Joint Standing Committee on Veterans and Legal Affairs which has jurisdiction over election administration.

The proposed insertions and deletions are set out in the attached document, with an explanation in a boxed section after each proposed change. One of our objectives (further explained in this memo) is to simplify the definitions of political action committee (PAC) and ballot question committee (BQC). The proposed changes do not increase the financial reporting responsibilities of PACs and BQCs, but they would require an organization or person that has registered a PAC or BQC to open a *separate* bank account for election-related activities (unless the PAC or BQC were to request a waiver of the separate-account requirement for reasons of administrative burden).

Eliminating overlap between PACs and BQCs

Under the proposed changes, the PAC definition would cover organizations or associations that are raising or spending money to influence *candidate* elections. The term BQC would relate to ballot question elections. Eliminating the overlap between PACs and BQCs will reduce confusion about a committee's reporting status at the time it registers. It will also assist members of the public in locating a specific committee among the lists of committees on the Commission's public access website or conducting searches of transactions. We do not see any downsides to this change in terminology.

Uniform legal requirements for PACs and BQCs

History of BQC reporting status. In 2000, the Maine Legislature enacted a law proposed by the Commission that amended the PAC definition and created a second reporting status, under 21-A M.R.S. § 1056-B, for an individual or an organization that raised or spent money to influence a ballot question but did not qualify as a PAC. P.L. 1999, Ch. 729 (attached for your reference). The law was a reaction to a litigation loss in the previous year (1999). The U.S. District Court in Maine had found that two parts of the PAC definition were unconstitutional as applied to Paul Volle, a Maine activist on cultural issues, and his unincorporated business. *Volle v. Webster*, 69 F. Supp. 2d 171, 176 (D. Me. 1999).

In the last 20 years, the § 1056-B requirement has undergone significant development. In 2008, the Legislature enacted a law proposed by the Commission that designated § 1056-B filers as "ballot question committees" and required ballot question committees to register with the Commission (before filing campaign finance reports) and to keep certain records. Since 2008, the Legislature has amended the responsibilities of BQCs four times through legislation proposed by the Commission. A one-page overview of these laws is attached for your reference.

At present, the legal requirements for BQCs are very similar to those for PACs. These requirements for BQCs are contained in § 1056-B and they include:

- registering with the Commission (§ 1056-B(1-A)),
- filing campaign finance reports (§ 1056-B(1)), and
- keeping required documents (§ 1056-B(4)).

Proposal by Commission staff. The Commission staff does not see a continuing justification for maintaining a separate set of requirements for BQCs in 21-A M.R.S. § 1056-B that so closely resemble the requirements for PACs. Having two sets of requirements is confusing, even to the staff of the Commission. In the attached amendments, we propose:

- moving the definition of BQC to the definitions section in the relevant subchapter (§ 1052(2-A)),
- eliminating § 1056-B,
- amending § 1052-A (registration), § 1054 (bank account), § 1057 (record-keeping) so that these requirements apply to both PACs and BQCs, and
- obtaining statutory authorization to adopt simplified procedures for individuals (*e.g.*, Paul Volle) or organizations spending lesser amounts to influence Maine elections to avoid a one-size-fits-all set of requirements that could be viewed as unduly burdensome in future litigation.

Simplifying the PAC definition by eliminating the major purpose element

The Commission staff also recommends eliminating the part of the PAC definition for organizations with a “major purpose” of initiating or influencing an election campaign. Our recommendation is that an organization’s status as a PAC or BQC should be tied to raising or spending more than a specific financial threshold of money to initiate or influence a campaign – regardless of the organization’s major purpose. We propose a

threshold of \$2,500 for candidate elections (for PACs) and a threshold of \$5,000 for ballot question elections (for BQCs).¹

From the staff's point of view, the major purpose sub-category adds an unnecessary layer of complexity and ambiguity when providing email or telephone advice, drafting written guidance, or judging whether an organization is in compliance in an enforcement context. We encourage keeping the legal standard as simple as possible to understand and to apply.

When an organization or association registers as a PAC or BQC, the "major purpose" of the committee is not disclosed. The Commission staff usually does not know an organization's or committee's major purpose. Even when the Commission makes some sort of inquiry (when providing advice or in an enforcement matter), the committee's self-description of its major purpose may not be 100% clear and reliable.

Given these uncertainties, maintaining a category in the PAC definition based on an organization's major purpose complicates:

- ascertaining whether an organization spending money to influence a ballot question should register as a PAC or BQC (the primary difference is the organization's major purpose);
- ascertaining whether the \$1,500 or \$5,000 monetary threshold applies (the lower threshold of \$1,500 applies to major purpose PACs, whereas the \$5,000 threshold applies to non-major purpose PACs and to BQCs); and
- ascertaining what transactions the organization is required to disclose in campaign finance reports (PACs with a major purpose of influencing an election disclose all expenditures; PACs formed for another major purpose are required to disclose only those expenditures made for purposes of influencing the election).

We recommend simplifying the PAC definition by eliminating the part of the PAC definition for organizations with a major purpose of influencing a campaign. Under our

¹ The \$2,500 threshold was selected as a midway point between the current \$1,500 and \$5,000 thresholds that apply in candidate elections.

proposal, all PACs – regardless of major purpose – would have the same monetary threshold of \$2,500. Organizations spending more than \$5,000 to influence a ballot question election would qualify as a BQC – regardless of major purpose.

Under our proposed § 1060, all PACs and BQCs would essentially report the same categories of information – regardless of the committee’s major purpose. On the revenue side, the PAC or BQC would disclose:

- gifts of money received for the purpose of influencing an election, and
- any other funds deposited or transferred into the campaign account to be used to influence the election.

On the spending side, the PAC or BQC would disclose:

- expenditures made for the purpose of influencing an election, and
- any other expenditures made from the campaign account, which could include any operating or overhead expenditures such as rent, fees or taxes, or non-political professional services.

In the attached materials, I have included some background comments by the Commission staff concerning why the major purpose was inserted into the PAC definition twenty years ago. (These developments predated the employment of the current employees of the Commission, and you may want to check with your counsel to make sure I have characterized this history correctly.) The Commission staff is having difficulty seeing a continuing benefit to the public or to the State of Maine in maintaining a sub-category of PAC for “major purpose” organizations.

Separate bank account. Current law requires PACs to make expenditures to influence an election from “a single account” in a financial institution and to deposit all contributions received to influence the campaign in that account. The Commission staff proposes that all PACs and BQCs maintain a bank account that is separate from the nonprofit, business, or personal activities of the individual/organization that established the PAC/BQC.

In our experience, most PACs and BQCs are amenable to setting up a separate bank account. We believe a separate fund would facilitate complete financial reporting because the PAC or BQC then needs to report only those transactions going into or out of the account. At the time of filing a report, the PAC or BQC can verify the accuracy of the report by comparing the actual cash balance in the account with the calculated balance on the cover page of the report PDF. A separate bank account will also facilitate any self-audit by the committee in the case of a discrepancy or an investigation of the committee's campaign finance reporting by the Commission.

Thank you for your consideration of these proposed changes.

Title 1 Maine Revised Statutes

§ 1016-C. Reports by legislative candidates

A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature who is not required to file a report under section 1016-G shall file a report containing the same information required of Legislators under section 1016-G no later than 5 p.m. on ~~the first Monday in~~ August 15th preceding the general election unless the candidate withdraws from the election in accordance with Title 21-A, section 374-A by that date.

Title 1, § 1016-C requires candidates for the Maine Legislature who are not incumbents to file the same statement of the sources of their personal income as filed annually by State Representatives and Senators. The statement covers the year before the election year.

To administer this disclosure requirement, in 2020 the Commission moved from paper forms to an electronic filing system. The Commission staff proposes changing the date from the first Monday in August to August 15th, which would assist the Commission in maintaining the deadline in its electronic filing system.

Title 3 Maine Revised Statutes

§ 313. Registration of lobbyists, lobbyist associates and employers

A lobbyist shall submit a joint registration for the lobbyist and any lobbyist associates and the employer of that lobbyist with the commission no later than 15 business days after lobbying more than 8 hours in a calendar month and pay a registration fee of ~~\$200~~ \$250. For each lobbyist associate included in the registration, the lobbyist shall pay an additional ~~\$100~~ \$125 fee.

Lobbyists register and file monthly reports with the Commission to provide policy-makers and the public with information concerning who is spending money to influence legislation. To fund this disclosure program, the Commission relies on revenue from the registration fees paid by the clients of lobbyists. The amounts of the fees have not changed since 1999, and the current fees do not fully cover the personnel and IT costs of the lobbyist disclosure program.

The Commission is considering a significant enhancement to its lobbyist disclosure e-filing and public access system, which has been in use since 2013. The software could be significantly more user-friendly and efficient for lobbyists, and much more effective in delivering lobbyist information to Legislators and the public. To cover ongoing costs of the program and a one-time IT enhancement, the Commission proposes an increase in the registration fees paid by the clients of lobbyists.

Title 5 Maine Revised Statutes

§ 19. Financial disclosure by executive employees

~~2-A. **Statement of Interests.** Beginning in 2010, each executive employee shall annually file with the Commission on Governmental Ethics and Election Practices a statement of those positions set forth in this subsection for the preceding calendar year. The statement must include:~~

~~A. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the executive employee with any for profit or nonprofit firm, corporation, association, partnership or business; and~~

~~B. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by a member of the immediate family of the executive employee with any for profit or nonprofit firm, corporation, association, partnership or business and the name of that member of the executive employee's immediate family.~~

Title 5, section 19 requires executive branch managers and constitutional officers to file an annual sources of income statement. In 2012, the Legislature reorganized this section of statute. P.L. 2011, ch. 634. The language in § 19(2-A) is now duplicative with § 19(2)(Q). We suggest deleting § 19(2-A), which we believe was intended to be repealed in a committee amendment, but was inadvertently omitted.

Title 21-A Maine Revised Statutes

§ 1013-A. Registration

...

3. Party committees. The district, county and municipal committees of parties shall submit to their state party committees the names, mailing addresses and e-mail addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 10 days after the appointment, election or hiring of these persons. Municipal committees shall file copies of the same information with the municipal clerk. No later than June 15th of each year, ~~in which a general election is scheduled,~~ the state party committee shall submit to the commission a consolidated report of the names, mailing addresses and e-mail addresses of the chair and treasurer of the district, county and municipal committees of that party or of another officer if a chair or treasurer has not been appointed.

...

Local party committees (*e.g.*, the Yarmouth Republican Town Committee, or the Knox County Democratic Committee) do not register with the Commission, but they are required to file two or three campaign finance reports in a year if they receive or spend more than \$1,500 during the year. These committees elect a treasurer and/or other officers every two years at party caucuses, but turnover in these officer positions is frequent. The Commission actively tries to send large postcard reminders of filing deadlines to treasurers and other officers before each deadline, but we rely on contact information we receive every two years from the state party committees. This information is frequently out of date. The Commission staff believes we would educate local party committees more effectively if we received the treasurer/officer names and contact information *every* year from the state party committees, rather than every two years. If the Commission approves submitting this provision, the Commission staff will reach out to personnel at the Maine's three political parties to notify them of this legislation and open a dialogue about the bill.

§ 1014. Publication or distribution of political communications

...

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

“The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders).”

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required

only for communications made through broadcast or cable television, broadcast radio, Internet audio and video programming, direct mail or newspaper or other periodical publications.

A cable television, ~~or~~ broadcast television, or internet video communication must include both an audible and a written statement. For a cable television, ~~or~~ broadcast television, or internet video communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

...

A 2015 citizen initiative required paid communications to voters that are disseminated by PACs, party committees and others independently of candidates to identify in the communication the top three funders of the PAC, party committee or other entity that paid for the communication. The disclosure requirement applies to communications made through specified media, including broadcast and cable television, and audio programming on the internet. The Commission staff proposes expanding the disclosure requirement to cover paid video communications posted on the internet by independent groups. The Commission's executive director has communicated with the advocates for the 2015 citizen initiative and they do not oppose this change.

§ 1019-B. Reports of independent expenditures

...

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within ~~48 hours~~ seven days of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

...

Paid communications to voters that refer to a candidate and are disseminated after Labor Day are presumed to be independent expenditures, provided that no candidates in the race have authorized the communications. The PAC, party committee or other organization that paid for the communication may rebut the presumption by submitting a statement that the committee/organization did not incur the costs of the communication with the intention to influence the candidate's nomination or election.

The Commission staff proposes extending the opportunity to rebut the presumption to seven days after the dissemination of the communication.

§ 1052. Definitions

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

1. Campaign. “Campaign” means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A. A people’s veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C. An amendment to the Constitution of Maine under Article X, Section 4;
- D. 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;
- E. The ratification of the issue of bonds by the State or any agency thereof; and
- F. Any county or municipal referendum.

2. Committee. “Committee” means any political action committee; or ballot question committee as defined in this section, this subchapter, or any ballot question committee required to be registered under section 1056-B and includes any agent of a political action committee or ballot question committee.

2-A. Ballot question committee. “Ballot Question Committee” means a person that receives contributions or makes expenditures aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign, other than a campaign for the nomination or election of a candidate. The term “ballot question committee” does not include a political action committee as defined in subsection 5 or an exempt donor as defined in subsection 3-A.

Chapter 13, subchapter IV of the Election Law (21-A M.R.S. §§ 1051-1063) establishes a system of registration and financial reporting by PACs and BQCs, so that the public has access to information about organizations other than candidates and party committees that are raising and spending money to influence candidate and ballot question elections. Prior to 2000, if organizations were raising or spending money to influence an election they needed to register and file campaign finance reports as a political action committee (PAC).

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In 2000, the Maine Legislature enacted a law that added a major purpose element to the PAC definition and created a second reporting status, under 21-A M.R.S. § 1056-B, for an individual or an organization that was raising or spending money to influence a ballot question but did not qualify as a PAC. P.L. 1999, Ch. 729. This proposal by the Commission was the result of litigation by a Maine activist on cultural issues (Paul Volle) who successfully argued in federal court that, for constitutional reasons, state election law should not categorize him as a PAC if he spent as little as \$51 to influence a citizen initiative.

In 2006, the Commission received complaints regarding several organizations that were financially active in influencing citizen initiatives, which caused the Commission to re-examine the § 1056-B filing status. In 2008, the Legislature enacted a law proposed by the Commission that designated § 1056-B filers as “ballot question committees” and required ballot question committees to register with the Commission (in addition to filing campaign finance reports) and to keep certain records. Since 2008, the Legislature has amended § 1056-B four times through legislation proposed by the Commission. At present, the registration, reporting and record-keeping requirements for BQCs are very similar to those for PACs.

Most often, BQCs are formed by existing organizations that serve multiple purposes, not just influencing a Maine election. Currently, nine organizations are registered as BQCs: Friends of Maine Sportsmen, Hydro-Quebec Maine Partnership, Liberty Initiative Fund (a fund based in Washington, D.C. that is financed by an individual to promote citizen initiatives), Maine People’s Alliance, Maine’s People Resource Center, Maine Republican Party – BQC (formed to influence ranked choice voting ballot questions), Maine Wildlife Council BQC, MaineHealthCareAction, and Mainers for Fair Bear Hunting (formed by the Humane Society of the U.S.).

The Commission staff proposes moving the definition of BQC from § 1056-B to the definition section of subchapter IV (§ 1052) to be consistent with the organization of the subchapter and to make the BQC filing status more noticeable to attorneys and consultants who are researching our laws.

Also, the Commission staff does not see a continuing justification for maintaining a separate set of registration, reporting, and record-keeping requirements for BQCs in 21-A M.R.S. § 1056-B that so closely resemble the requirements for PACs. Having two sets of requirements is confusing, even to the staff of the Commission. We propose:

- eliminating § 1056-B altogether in order to require the same registration, financial reporting, and record-keeping procedures for both PACs and BQCs
- obtaining (through amendments proposed below) statutory authorization to adopt simplified procedures for individuals (*e.g.*, Paul Volle) or organizations spending lesser amounts to influence an election to avoid a one-size-fits-all set of requirements that could be viewed as unduly burdensome.

3. Contribution. “Contribution” includes:

- A.** A gift, subscription, loan, advance or deposit of money or anything of value made to or received by a political action committee, ~~except that a loan of money by a financial institution made in accordance with applicable banking laws and~~

regulations and in the ordinary course of business is not included; for the purpose of initiating or influencing a campaign, including but not limited to:

(1) Funds that the contributor specified were given, in whole or in part, in connection with a campaign;

(2) 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 or influencing a campaign;

(3) 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 committee's activities regarding a campaign; and

A-1. Any other funds deposited or transferred into the campaign account described in section 1054;

B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a ~~political action~~ committee;

C. Any funds received by a ~~political action~~ committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a ~~political action~~ committee that is used by the ~~political action~~ committee to initiate or influence a campaign.

Contribution does not include a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business. [Commission staff is relying on the Revisor's Office to reformat or renumber this exclusion for bank loans]

Under existing law, a PAC or BQC must deposit all contributions received for the purpose of influencing an election in a single account in a financial institution and make all expenditures to influence the election from that account. In addition, committees may deposit other funds (not given for purposes of influencing an election) into that campaign account, for example:

- funding received by an organization to support a policy agenda generally (e.g., conservation, second amendment rights, reproductive rights), or
- money transferred into the PAC/BQC bank account that is derived from non-political revenue, such as dues/contributions from members or revenue shared by a national affiliate.

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In the Commission’s online forms, when a PAC or BQC established by an organization is spending money from the organization’s general treasury (*i.e.*, revenue to the organization that was not received specifically to influence a Maine election), the PAC or BQC discloses the use of that money as a “general treasury transfer.” General treasury transfer is recorded as the source of the funds. The general treasury transfers are searchable to the public as a form of contribution.

To reflect current practice and to be clearer in statute about what should be reported, the Commission staff proposes a clarification to the definition of “contribution.” Contribution would include:

- money or any thing of value received for the purpose of initiating or influencing a campaign (this condition would be added to § 3(A) of the definition), or
- any other funds that are transferred or deposited into the campaign account (§ 3(A-1)).

Below, we propose corresponding changes to § 1060, which that governs what PACs must disclose in campaign finance reports.

Below, the Commission proposes in § 1054 that a PAC or BQC must set up a *separate* bank account for expenditures to influence an election (unless they seek a waiver for reasons of administrative burden). In providing advice to new PACs and BQCs when registering, the Commission staff finds many committees are amenable to a separate bank account for their election-related activities.

The proposed subparagraphs (3)(A)(1)-(3) are examples of types of contributions that should be viewed as made for the purpose of influencing an election. This language currently is in the BQC statute, § 1056(B). The Commission staff proposes to make these subcategories applicable to both PACs and BQCs.

3-A. Exempt donor. “Exempt donor” means a person that has not received contributions for the purpose of influencing a campaign in the prior 2 years and whose only payments of money to influence a campaign in the prior 2 years are:

A. contributions of money to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality, or

B. payments for goods or services with an aggregate value of no more than \$100,000 contributed to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality.

In existing law, the PAC and BQC definitions contain an exception for donors. Under this exception, individuals and organizations that are not receiving funds to influence an election are exempt from registering and filing financial reports as a PAC or BQC as long as their only payments of money to influence an election are contributing to candidates, party committees, PACs or BQCs registered with the Commission. The rationale for the exception is that donors to PACs and BQCs are disclosed to the public as contributors in Schedule A of the PAC's or BQC's campaign finance reports, so it is unnecessary to burden these contributors with the responsibility to register and file financial reports just because they are making a contribution.

For the past ten years at least, the Commission has interpreted the current donor exception to apply to contributors of cash *or services* to a PAC or BQC. This would include when an organization pays its own employees or vendors for services to promote or oppose a ballot question and "donates" those services to a PAC or BQC. The organization compensating its employees does not need to register as a PAC or BQC and file itemized reports, even if those services have a very high value. For several years, the Commission staff has believed that it is a mistake for the donor exception for services to be unlimited. Under current law, organizations can pay staff or others for services with a value in the hundreds of thousands of dollars and not register as PAC or BQC with the Commission. We believe this has the potential to obscure election-related spending for the public. If an organization is spending that level of money to influence an election, we believe the organization should be a registered as a PAC or BQC and file campaign finance reports.

The Commission staff proposes amending the exception so that an organization could donate up to \$100,000 in services to a PAC or BQC and not register, provided that they collected no contributions to influence the election. After spending more than \$100,000 for services, the organization would need to register and file reports.

4. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;

(1-A) Any other purchase, payment, distribution, loan, advance, deposit or gift of money made from the campaign account described in section 1054;

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; ~~and~~

(3) The transfer of funds by a political action committee to another candidate or political committee; ~~and~~

In current law, PACs are required to make all expenditures to influence an election from a bank account. Below, the Commission staff proposes that the bank account be separate from the other activities of the individual or organization that established the account. We recommend that the definition of “expenditure” include payments made to influence (promote, support, oppose or defeat) a candidate or ballot question and any other expense from the “campaign account,” even if the expense is not directly for the purpose of influencing an election. For example, if the PAC or BQC paid for an overhead expense (*e.g.*, rent) or the costs of travel to a conference (in the case of a leadership PAC), those payments would be expenditures that must be reported.

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or the spouse or domestic partner of a candidate;
- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; ~~and~~
- (6) Any communication by ~~any political action committee member~~ that is not made for the purpose of influencing the nomination or election of any person to state or county office; and
- (7) Any payments to initiate a people’s veto referendum or the direct initiative of legislation made prior to the submission of an application to the Department of the Secretary of State as provided in section 901.

PACs and BQCs are required to report expenditures to initiate or influence a candidate or ballot question election. The term "initiate" is defined in § 1052(4-B) to mean “the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.”

Based on providing advice and a recent enforcement matter relating to Say No to NECEC, the Commission staff believes that the reporting responsibilities for proponents of a ballot question would be more clear and certain if Maine campaign finance law designated a particular action or step of the initiative or referendum process as the beginning of “initiating” a citizen initiative or people’s veto referendum. Expenses incurred after that step to qualify the initiative for the ballot, including the collection of petition signatures, would be reportable.

The process for qualifying an initiative or referendum for the ballot is set out in Chapter 11 of the Election Law (§§ 901-907). Section 901 states that “To initiate proceedings for a people's veto referendum or the direct initiative of legislation . . . , a voter shall submit a written application to the Department of the Secretary of State on a form designed by the Secretary of State.” The application contains the contact information for five voters who are designated to receive notices, and (in the case of a citizen initiative) the full text and summary of the proposed law. If the Secretary of State approves the application, it approves a form for the petition.

The Commission staff proposes that the expenditures to initiate a ballot question begin with submitting the application to the Secretary of State. We accept that, if the Legislature were to enact this exception, this would provide discretion, in a few cases, to a BQC to omit preliminary research or legal drafting from campaign finance reports. We believe the advantages of clarity and certainty for the advocates and the Commission in enforcement situations would outweigh the loss of information to the public. The public would still learn of campaign finance activity at an early stage of the initiative or referendum.

4-A. Influence. “Influence” means to promote, support, oppose or defeat.

4-B. Initiate. “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

5. Political action committee. The term “political action committee:”

A. Includes:

~~(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;~~

~~(4) Any person, including any corporation or association, other than an individual, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and~~

~~(5) Any person, including any corporation or association, other than an individual, that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating~~

more than ~~\$5,000~~ \$2,500 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office; and

The Commission staff proposes two simplifications of the PAC definition to avoid some of the complexity and ambiguity in current law. Under current law, an association of individuals or an organization spending money to support or oppose a ballot question may qualify as a PAC *or* as a BQC – depending on the major purpose of the organization. The Commission staff has found this causes confusion – even for attorneys who are experienced with the political process. We propose that PACs be limited to candidate elections, and BQCs be limited to ballot question elections. Eliminating overlap will reduce confusion about an organization’s reporting status at the time a committee registers. It will also assist members of the public in finding a specific committee among the lists of committees that are posted on our public access website or conducting searches of transactions. We do not see any downside to this change in terminology, and we expect the simplification would provide greater clarity.

The Commission staff proposes eliminating the part of the PAC definition for organizations with a major purpose of influencing a campaign. From the staff’s point of view, the major purpose sub-category adds an unnecessary layer of complexity and ambiguity when providing email or telephone advice, drafting written guidance, or judging whether an organization is in compliance in an enforcement context.

When an organization or association registers as a PAC or BQC, the “major purpose” of the committee is not disclosed. The Commission staff usually does not know an organization’s or committee’s major purpose. Given these uncertainties, maintaining a sub-category in the PAC definition based on an organization’s major purpose complicates:

- ascertaining whether an organization spending money to influence a ballot question should register as a PAC or BQC (the primary difference is the organization’s major purpose);
- ascertaining whether the \$1,500 or \$5,000 monetary threshold applies (the lower threshold of \$1,500 applies to major purpose PACs, whereas the \$5,000 threshold applies to non-major purpose PACs and to BQCs); and
- ascertaining what transactions the organization is required to disclose in campaign finance reports. (For example, PACs with a major purpose of influencing an election disclose all expenditures; PACs formed for another major purpose are required to disclose only those expenditures made for purposes of influencing the election.)

The Commission staff proposes eliminating the part of the definition for a separate or segregated fund established by a corporation or other organization to influence a campaign. This provision, copied from the federal definition of political committee, almost never comes up in advice or enforcement settings. In our estimation, it is a vestige of older lawmaking that does not have a continuing value. We recommend that PAC status be based on raising or spending above a certain threshold to influence a candidate election.

B. Does not include:

- (1) A candidate or a candidate’s treasurer under section 1013-A, subsection 1;

- (2) A candidate’s authorized political committee under section 1013-A, subsection 1, paragraph B;
- (3) A party committee under section 1013-A, subsection 3; or
- (4) ~~An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State. An exempt donor as defined in subsection 3-A.~~

We propose referring to the term “exempt donor,” which would be defined in subsection 3-A above (page 9 of this document).

§ 1052-A. Registration

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

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

A. A political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph ~~(1) or (4)~~ (5) shall register with the commission within 7 days of ~~that receives~~ receiving contributions or ~~making~~ making expenditures in the aggregate in excess of ~~\$1,500~~ \$2,500 and ~~a political action committee as defined under section 1052, subsection 5, paragraph A, subparagraph (5)(2) or (3) that receives contributions or makes expenditures in the aggregate in excess of \$5,000~~ \$1,500 for the purpose of influencing the nomination or election of any candidate to political office shall register with the commission within 7 days of exceeding the applicable amount.

A-1. A ballot question committee as defined under section 1052, subsection 2-A shall register with the commission within 7 days of receiving contributions or making expenditures in the aggregate of \$5,000.

Under current law, this section governs when a PAC must register with the Commission and the contents of the registration form. The Commission staff proposes amendments to paragraphs 1(A) and 1(A-1) to be consistent with the proposed changes to the PAC and BQC definitions. In the next two pages below, we propose amending this section so that the same registration procedures apply to PACs and to BQCs.

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

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

2. Disclosure of treasurer and officers. A ~~political action~~ committee must have a treasurer and a principal officer. The same individual may not serve in both positions, unless the committee is an individual registering as a ballot question committee. The ~~political action~~ committee's registration must contain the names and addresses of the following individuals:

A. The treasurer of the ~~political action~~ committee;

B. A principal officer of the ~~political action~~ committee;

C. Any other individuals who are primarily responsible for making decisions for the ~~political action~~ committee;

D. The individuals who are primarily responsible for raising contributions for the ~~political action~~ committee; and

E. The names of any other candidates or Legislators who have a significant role in fund-raising or decision-making for the ~~political action~~ committee.

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

A. A statement indicating the specific candidates, categories of candidates or campaigns or ballot questions that the ~~political action~~ committee expects to support or oppose;

B. If the ~~political action~~ committee is formed to influence the election of a single candidate, the name of that candidate;

C. The form or structure of the organization, such as a voluntary association, membership organization, corporation or any other structure by which the ~~political action~~ committee functions, and the date of origin or incorporation of the organization;

D. If the ~~political action~~ committee has been formed by one or more for-profit or nonprofit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;

E. The name of the account that the ~~political action~~ committee will use to deposit contributions and make expenditures pursuant to section 1054, and the name and address of the financial institution at which the account is established; and

F. Any additional information reasonably required by the commission to monitor the activities of ~~political action~~ committees in this State under this subchapter.

4. Acknowledgment of responsibilities. The treasurer, principal officer and any other individuals who are primarily responsible for making decisions for the ~~political action~~ committee shall submit a signed statement acknowledging their responsibilities on a form prescribed by the commission within 10 days of registering the ~~political action~~ committee. The signed acknowledgment statement serves as notification of the responsibilities of the ~~political action~~ committee to comply with the financial reporting, record-keeping and other requirements of this chapter and the potential personal liability of the treasurer and principal officer for civil penalties assessed against the ~~political action~~ committee. The commission shall notify the ~~political action~~ committee of any individual who has failed to submit the acknowledgment statement. Failure to return the acknowledgment statement is a violation of this subchapter for which a fine of \$100 may be assessed against the ~~political action~~ committee. This section also applies to individuals named in an updated or amended registration required by this subsection who have not previously submitted an acknowledgment statement for the ~~political action~~ committee with the commission.

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

6. Modified registration. The commission may adopt by rule simplified registration procedures and forms for an individual registering as a ballot question committee because they have spent their own funds to initiate or influence a ballot question.

§ 1053-A. Municipal elections

If an organization qualifies as a ~~political action~~ committee under section 1052, subsection 5 2 or is a ballot question committee required to register under section 1056-B and that organization receives contributions or makes expenditures to influence a municipal campaign in towns or cities with a population of 15,000 or more, that organization must register and file reports with the municipal clerk as required by Title 30-A, section 2502. The reports must be filed in accordance with the reporting schedule in section 1059 and

must contain the information listed in section 1060. A committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns. If a municipal clerk becomes aware of a potential violation of this subchapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. The commission may conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the commission determines that a violation of this subchapter has occurred, the commission may assess penalties provided in this subchapter.

This proposed change is to create a uniform system of registration, reporting, and record-keeping for BQCs and PACs.

§ 1053-D. Leadership political action committees

As used in this this chapter and chapter 14, “leadership political action committee” means a political action committee that is directly or indirectly established, maintained, or controlled by a member of the Maine Legislature but is not a caucus political action committee, as defined under section 1053-C. When the political action committee registers, the committee shall identify the Legislator’s position in the committee as required by section 1052-A, subsection 2. Once the Legislator’s term of service is complete or the Legislator leaves office for any reason, the Commission shall update its records to remove any designation of the committee as a leadership political action committee.

The Joint Standing Committee on Veterans and Legal Affairs requested by letter that the Commission submit a proposed definition of “leadership PAC.” The Commission staff proposes a definition that relies on the definition of leadership PAC in federal campaign finance law, 52 U.S.C. § 30104(i)(8).

§ 1054. Appointment of treasurer; ~~depository~~ segregated campaign account

1. Appointment of treasurer. Any ~~political action~~ committee required to register under section 1052-A must appoint a treasurer before registering with the commission.

2. Segregated campaign account. A registered ~~political action~~ committee shall establish a separate account in a bank or other financial institution, referred to in this section as a “campaign account.” The committee shall deposit all funds contributed to or received by the ~~political action~~ committee for the purpose of influencing a campaign in ~~a single-the campaign~~ account ~~in a financial institution~~ and shall finance all of the ~~political action~~ committee’s expenditures to

influence the election through the campaign account. If a business or corporate entity has established the committee, the campaign account shall be segregated from the general treasury funds of the organization. If the committee is established by one or more individuals, the campaign account shall be segregated from and not commingled with the personal funds of those individuals.

3. Exceptions. The commission may adopt procedures by rule for waiving the requirement to maintain a segregated campaign account upon a showing by a committee that a separate account would be administratively burdensome, including but not limited to committees organized outside this State or an individual who registers as a ballot question committee. If the ~~political action~~ committee was formed by another organization, that other organization may pay its employees for their campaign-related activities on behalf of the ~~political action~~ committee through its own treasury, rather than the campaign account through the single account established by the political action committee and used for campaign expenditures.

Current law requires PACs to make expenditures to influence an election from “a single account” in a financial institution and to deposit all contributions received to influence the campaign in that account. The Commission staff proposes that all PACs and BQCs maintain a bank account that is *separate* from the nonprofit, business, or personal activities of the individual/organization that established the PAC/BQC.

In our experience, most PACs and BQCs are amenable to setting up a separate bank account. We believe a separate fund would facilitate complete financial reporting because the PAC or BQC then needs to report only those transactions going into or out of the account. At the time of filing a report, the PAC or BQC can verify the accuracy of the report by comparing the actual cash balance in the bank account with the calculated balance on the cover page of the report PDF. A separate bank account will also facilitate any self-audit by the committee in the case of a discrepancy or an investigation of the committee’s campaign finance reporting by the Commission.

§ 1054-A. Duties and liabilities of the treasurer, principal officer and primary decision maker of ~~political action~~ committees

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

2. Joint responsibilities of the treasurer and principal officer. The treasurer and the principal officer are jointly responsible for the ~~political action~~ committee’s compliance with the requirements of this chapter and the commission’s rules. The treasurer and

principal officer are responsible for accepting and responding to notices and correspondence from the commission on behalf of the ~~political-action~~ committee.

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

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

This proposed change is to create a uniform system of registration, reporting, and record-keeping for BQCs and PACs.
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§ 1056-B. Ballot question committees

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

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

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

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.

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.

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;

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;

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

~~D. Funds or transfers from the general treasury of an organization filing a ballot question report.~~

~~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.

~~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.~~

~~B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.~~

~~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.

The Commission staff proposes deleting the separate statute for ballot question committees, § 1056-B. The term “ballot question committee” would be defined in proposed § 1052(2-A). Both PACs and BQCs would have the same duties to register under § 1052-A, file campaign finance reports under §§ 1059-1060, and keep records under § 1057.

§ 1057. Required records for ~~political action~~ committees

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

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

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

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

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

D. The date of each expenditure.

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

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

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

5. Simplified record-keeping requirements. The commission may adopt by rule simplified record-keeping requirements for an individual registering as a ballot question committee because they have spent their own funds to initiate or influence a ballot question.

This proposed change is to create a uniform system of registration, reporting, and record-keeping for BQCs and PACs.

§ 1059. Report; filing requirements

A committee required to register under section 1052-A, or 1053-B or 1056-B shall file an initial campaign finance report within 7 days of registration or within 14 days of having been required to register, whichever comes first, and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline.

...

The purpose of this change is to reflect the reorganization of BQCs. It also clarifies that a late registration also results in a late initial campaign finance report.

§ 1060. Content of reports

The reports must contain the following information and any additional information required by the commission to monitor the activities of ~~political action~~ committees:

1. Identification of candidates. The names of and offices sought by all candidates whom the ~~political action~~ committee supports, intends to support or seeks to defeat;

2. Identification of committees; parties. The names of all political committees or party committees supported in any way by the ~~political action~~ committee;

3. Identification of referendum or initiated petition. The referenda or initiated petitions that the ~~political action~~ committee supports or opposes;

4. Itemized expenditures. An itemization of each expenditure made to initiate or influence any campaign, including the date, payee and purpose of the expenditure; the name of each candidate, ~~campaign, political committee, political action committee or party committee supported or opposed;~~ and each referendum or initiated petition supported or opposed by the expenditure. If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the ~~candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition;~~ including, but not limited to, expenditures made during the signature gathering phase; the reason for the expenditure; and the date of the expenditure. The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of ~~political action~~ committees;

5. Aggregate expenditures. ~~An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition;~~

6. Identification of contributions. An itemization of each contribution of more than \$50 made to or received by the committee for the purpose of initiating or influencing a campaign. Names, including the name, occupations, places of business and mailing addresses of each contributors who have given more than \$50 to the political action committee in the reporting period and the amount and date of each the contribution; except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of influencing a ballot question or the nomination or election of a candidate to political office and all transfers to or funds used to support the political action committee from the general treasury of the organization; and

6-A. Other funds deposited into campaign account. Any funds deposited into or transferred into the campaign account described in section 1054, including but not limited to funds from the general treasury of an organization that is required to establish a committee; and

7. Other expenditures. Operational expenses and other expenditures made from the campaign account described in section 1054 that are not made on behalf of a candidate, committee or campaign, except that an organization qualifying as a

~~political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those expenditures made for the purpose of influencing a campaign~~

Under current law, § 1060 sets out the contents of campaign finance reports filed by PACs. The changes to this section are intended to meet multiple objectives. First, we propose amending the references from “political action committee” to “committee,” so that this section would relate to both PACs and BQCs.

Second, we propose amending subsections 6, 6-A and 7 to eliminate differences in reporting between major purpose PACs and non-major purpose PACs. Our proposal is that all PACs and BQCs should essentially report the same categories of transactions regardless of their major purpose. On the revenue side, they would disclose:

- contributions received for the purpose of influencing an election (§ 1060(6))
- any other funds deposited or transferred into the campaign account to be used to influence the election (§ 1060(6-A)).

On the spending side, they would disclose:

- expenditures made for the purpose of influencing an election (§ 1060(4))
- any operating or other expenditures made from the campaign account. (§ 1060(7))

We propose deleting subsection 5, because PACs have never been responsible under the Commission’s reporting forms (either paper or online) for disclosing a *total* of all expenditures made to support or oppose a candidate or ballot question. The PACs have always disclosed individual expenditures, but not a total.

The amendments to subsection 4 are not intended to change the reporting duties of a PAC. Rather, they are merely intended to conform the language in the law to how PACs currently use our e-filing system. If a candidate makes an expenditure to support or oppose a candidate or ballot question, they identify the candidate or ballot question from a drop-down list of candidates and ballot questions. Other than that, they do not report supporting or opposing a campaign, political committee, political action committee or party committee.

The second to last sentence in subsection 4 applies when a PAC has paid a contractor. If the contractor has spent money on behalf of the PAC, the PAC is required to report those expenditures. We believe this section was inserted by the Legislature to require detailed reporting by PACs and to avoid the concealment of expenditures behind a fee paid to a contractor. We propose amending this section so that it applies to a PAC or BQC. We also propose deleting the references to expenditures on behalf of a candidate, campaign, party committee, referendum or initiated petition. Our understanding is that the contractor is making the expenditures on behalf of the PAC or BQC, not those other entities.

Overview of Changes to 21-A M.R.S § 1056-B

P.L. 1999, Ch. 729 (2000) <i>(attached)</i>	Enacted § 1056-B to require a one-time campaign finance report for a person other than a PAC that received or spent more than \$1,500 to influence a ballot question. (Also added the major purpose element to two parts of the PAC definition, and increased the threshold to register as a PAC from \$50 to \$1,500.)
P.L. 2007, Ch. 477 (2008)	Amended heading of § 1056-B to "Ballot Question Committees." Added requirement for BQC to register with the commission. Increased monetary threshold to qualify as a BQC from \$1,500 to \$5,000. Added requirement for BQCs to keep records of contributions, expenditures, and vendor invoices for one year. Specified contents of campaign finance reports.
P.L. 2009, Ch. 190 (2009)	Required BQCs to file campaign finance reports according to the same schedule as PACs using the Commission's e-filing system. Required BQCs to disclose the employer and occupation for contributors giving over \$100. Lengthened record-keeping requirement from one year to four years.
P.L. 2009, Ch. 524 (2010)	Change in terminology: replaced "ballot question" with "campaign."
P.L. 2015, Ch. 408 (2016)	Specified requirements for BQC registration statement, including identification of treasurer and principal officer. Reduced threshold for itemizing contributions from \$100 to \$50. Added financial liability for treasurer and principal officer for penalties against the BQC.
P.L. 2019, Ch. 323 (2019)	Moved donor exception from phrase in first sentence to separate sentence, in order to reduce risk of ambiguity.

CHAPTER 729

S.P. 1070 - L.D. 2663

An Act Relating to Reporting Requirements for Political Action Committees on the Flexibility of the Commission on Governmental Ethics and Election Practices to Assess Penalties

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1013-A, sub-§1, ¶C, as enacted by PL 1995, c. 384, §1, is amended to read:

C. No later than 10 days after becoming a candidate, as defined in section 1, subsection 5, a candidate for the office of State House of Representatives or Senate shall file in writing a statement declaring ~~either~~ that the candidate agrees to accept voluntary limits on political expenditures or that the candidate does not agree to accept voluntary limits on political expenditures, as specified in section 1015, subsections 7 to 9, or that the candidate has filed a declaration of intent to become certified as a candidate under the Maine Clean Election Act.

The statement filed by a candidate who voluntarily agrees to limit spending must state that the candidate knows the voluntary expenditure limitations as set out in section 1015, subsection 8 and that the candidate is voluntarily agreeing to limit the candidate's political expenditures and those made on behalf of the candidate by the candidate's political committee or committees, the candidate's party and the candidate's immediate family to the amount set by law. The statement must further state that the candidate does not condone and will not solicit any independent expenditures made on behalf of the candidate.

The statement filed by a candidate who does not agree to voluntarily limit political expenditures must state that the candidate does not accept the voluntary expenditure limits as set out in section 1015, subsection 8.

The statement filed by a candidate who has filed a declaration of intent under the Maine Clean Election Act must state that the candidate will be bound by the expenditure limitations imposed by that Act.

Sec. 2. 21-A MRSA §1015, sub-§§1 and 2, as amended by IB 1995, c. 1, §11, are further amended to read:

1. Individuals. ~~An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$1,000 in any election. Beginning January 1, 1999, an~~ An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse.

2. Committees; corporations; associations. ~~A political committee, other committee, corporation or association may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$5,000 in any election. Beginning January 1, 1999, a~~ A political committee, other committee, corporation or association may not make contributions to a candidate, in support of the candidacy of one person aggregating more than \$500 in any election for a gubernatorial candidate or more than \$250 in any election for any other candidate.

Sec. 3. 21-A MRSA §1015, sub-§8, as enacted by PL 1995, c. 384, §2, is amended to read:

8. Political expenditure limitation amounts. Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

A. For State Senator, \$25,000; ~~and~~

B. For State Representative, \$5,000; ~~and~~

C. For State Senator or State Representative as a candidate certified under the Maine Clean Election Act, to the extent authorized by that Act.

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

Sec. 4. 21-A MRSA §1017, sub-§6, as amended by PL 1999, c. 157, §1, is further amended to read:

6. Forms. Reports required by this section must be on forms prescribed, prepared and sent by the commission to the treasurer of each registered candidate at least 7 days before the filing date for the report. Establishment of or amendments to the campaign report filing forms required by this section must be by rule. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports, failure to receive forms by mail does not excuse treasurers, committees and other persons who must file reports from otherwise obtaining the forms.

Rules of the commission establishing campaign report filing forms for candidates are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 5. 21-A MRSA §1020-A, sub-§2, as corrected by RR 1995, c. 1, §10, is amended to read:

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. ~~A valid personal emergency such as a personal illness or death in the immediate family~~ emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;

B. An error by the commission staff; ~~or~~

C. Failure to receive notice of the filing deadline; or

D. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

Sec. 6. 21-A MRSA §1052, sub-§5, ¶A, as amended by PL 1991, c. 839, §27 and affected by §33, is further amended to read:

A. Includes:

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

(2) Any person who serves as a funding and transfer mechanism and spends money to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State;

(3) Any ~~person who~~ organization, including any corporation or association, that has as its major purpose advocating the passage or defeat of a ballot question and that makes expenditures other than by contribution to a political action committee, for the purpose of the initiation, promotion or defeat of any question; and

(4) Any ~~person~~ organization, including any corporation or association, who that has as its major purpose advocating the passage or defeat of a ballot question and that solicits funds from members or nonmembers and spends more than \$1,500 in a calendar year to initiate, advance, promote, defeat or influence in any way a candidate, campaign, political party, referendum or initiated petition in this State; and

Sec. 7. 21-A MRSA §1053, first ¶, as amended by PL 1989, c. 833, §14, is further amended to read:

Every political action committee that accepts contributions, incurs obligations or makes expenditures in the aggregate in excess of ~~\$50~~ \$1,500 in any single calendar year to initiate, support, defeat or influence in any way a campaign, referendum, initiated petition, candidate, political committee or another political

action committee must register with the commission, within 7 days of accepting those contributions, incurring those obligations or making those expenditures, on forms prescribed by the commission. These forms must include the following information and any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter:

Sec. 8. 21-A MRSA §1056-B is enacted to read:

§1056-B. Reports of contributions and expenditures by persons

Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission. In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.

1. Filing requirements. A report required by this section must be filed with the commission according to a reporting schedule that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements in section 1059.

2. Content. A report must contain an itemized account of each contribution received and expenditure made aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; and the name of each contributor, payee or creditor. Total contributions or expenditures of less than \$500 in any election need not be itemized. The report must state whether the purpose for receiving contributions and making expenditures is in support of or in opposition to the ballot question.

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.

Sec. 9. 21-A MRSA §1062-A, sub-§2, as enacted by PL 1995, c. 483, §21, is amended to read:

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission before 5 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. ~~A valid personal emergency of the committee treasurer, such as a personal illness or death in the immediate family~~ emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; or
- B. An error by the commission staff; ~~or~~
- C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service.

See title page for effective date.

Background Comments by Commission Staff on Introduction of Major Purpose Element in PAC Definition in 2000

The major purpose element entered the Maine PAC definition (21-A M.R.S. § 1052(5)) in 2000. The Commission proposed inserting the major purpose element to two parts of the PAC definition that the U.S. District Court found were unconstitutional as applied to Paul Volle and his unincorporated business. *Volle v. Webster*, 69 F. Supp. 2d 171, 176 (D. Me. 1999). In a suit brought in federal court in 1999, Mr. Volle asserted that he and his business wished to spend money to influence a municipal and statewide ballot question. At that time, an individual or association qualified as a PAC if a person made *any* expenditures to initiate, promote or defeat a ballot question election. (There was no monetary threshold for ballot question spending in the PAC definition.) If an individual or organization were to spend more than \$50 to influence a ballot question (a very low threshold), they were required to register with the Commission as a PAC.

At that time, the PAC registration requirements contained some intrusive elements such as providing bank account numbers to the Commission and an itemization of all assets available to influence the election, including cash, investments, real property, personal property, *etc.* The U.S. District Court disagreed with Mr. Volle's legal argument that Maine campaign finance law could not regulate non-major purpose entities such as himself and his business. Nevertheless, the court held that "the panoply of registration requirements Maine has implemented for noncandidate ballot measures is simply too broad for speakers like Paul Volle and [his business]." *Volle v. Webster*, 69 F. Supp. 2d at 176. Accordingly the court held that two parts of the PAC definition were unconstitutional as they applied to Mr. Volle and his business. *Id.*

In response, the Commission proposed legislation that was enacted as Chapter 729 of the Public Laws of 1999 (attached, for your reference). This law incorporated the major purpose element in two parts of the PAC definition. This was a reasonable reaction in 2000 to the *Volle* litigation, but the PAC and BQC disclosure laws have developed significantly since 2000 and are in a stronger position against a constitutional challenge. The current spending thresholds to register as a PAC or BQC are now much higher (currently \$1,500 or \$5,000). The State of Maine has

eliminated the bank account number and asset itemization elements from the registration requirement that the district court found troubling in *Volle v. Webster*. The PAC and BQC disclosure laws were extensively challenged in the federal litigation brought in 2009 by the National Organization of Marriage against the Commission, and almost entirely affirmed in a number of decisions by the U.S. District Court in Maine and the U.S. Circuit Court of Appeals for the First Circuit. See, e.g., *Nat'l Org. v. McKee*, 649 F.3d 34 (1st Cir. 2011) (upholding PAC laws) and *Nat'l Org. v. McKee*, 669 F.3d 34 (1st Cir. 2012) (upholding BQC statute).

Given this history, the Commission staff recommends evaluating the major purpose element in the PAC definition not on the basis of whether it is needed to protect the constitutionality of the PAC definition, but rather whether it helps the Commission administer the PAC statutes. For reasons expressed in the accompanying memo, we recommend eliminating it.