



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

To: Commission
From: Commission Staff
Date: November 22, 2022
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 hope you will have time to review them before November 30 and let us know if you are comfortable with submitting them to the Legislature, along with any changes or deletions you would like. The proposed amendments are marked with a star in the left margin, and explanations are shown in a box following each section.

If this process can be completed at the November 30 meeting, we will be able to submit the legislation to meet the general deadline that applies to all administrative agencies. There is an opportunity to submit the bill at a later time under different authority, if necessary, but we were hoping to avoid that.

The Revisor's Office will review the legislation and make any grammatical or style fixes that are necessary. 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 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. The candidate shall use the filing procedures required for Legislators in section 1016-G, subsection 5. If a candidate fails to file a statement by the August 15th deadline, the commission may assess penalties using the procedures set out in section 1016-G, subsection 3.

Legislators and legislative candidates (not currently serving) are required by 1 M.R.S. §§ 1016-C & 1016-G to file a statement of the sources of their income (SOSOI). The Commission staff proposes changing the enforcement procedures when a Legislator or candidate does not file a statement on time. Please see the explanation for 1 M.R.S. § 1016-G below.

§ 1016-G. Disclosure of specific sources of income, interests and reportable liabilities

Each Legislator shall annually file with the commission a statement identifying the sources of income received, positions held and reportable liabilities incurred during the preceding calendar year by the Legislator or members of the Legislator's immediate family. A Legislator who has completed service in the Legislature shall file the statement within 45 days of the Legislator's last day of service to disclose the sources of income in the Legislator's final calendar year of service.

1. Content of statement. The name and, where applicable, the job title of the individual earning or receiving the income must be disclosed, unless otherwise noted. Each source of income must be identified by name, address and principal type of economic or business activity. If disclosure of this type is prohibited by statute, rule or an established code of professional ethics, it is sufficient for the Legislator to specify the principal type of economic or business activity from which the income is derived.

The statement must identify:

A. If the Legislator is an employee of another person, firm, corporation, association or organization that has provided the Legislator with compensation of \$2,000 or more, the name and address of the employer. The Legislator shall identify the title and position held by the Legislator;

- B.** If the Legislator is self-employed, the name and address of the Legislator's business and each source of income derived from self-employment that represents more than 10% of the Legislator's gross income from self-employment or \$2,000, whichever is greater;
- C.** The name, address and principal economic or business activity of any corporation, partnership, limited liability company or other business in which the Legislator or members of the Legislator's immediate family own or control, directly or indirectly, more than 5% of the outstanding equity, whether individually or in the aggregate, that has received revenue of \$2,000 or more;
- D.** Each source of income of \$2,000 or more the Legislator derived from providing services as an attorney, the major areas of law practiced by the Legislator and, if associated with a law firm, the major areas of practice of the firm;
- E.** Each source of income of \$2,000 or more received by the Legislator and a description of the nature of the income, such as rental income, dividend income and capital gains;
- F.** The specific source of each gift received by the Legislator;
- G.** Each source of income of \$2,000 or more received by any member of the immediate family of the Legislator, except that the Legislator is not required to identify the names of dependent children. If the member of the Legislator's immediate family received income of \$2,000 or more in compensation, the Legislator shall identify the source of the compensation, the type of the economic activity and the title of the position held by the immediate family member;
- H.** Each source of honoraria of \$2,000 or more that the Legislator accepted;
- I.** Each executive branch agency before which the Legislator or any immediate family member has represented or assisted others for compensation;
- J.** Each state governmental agency, board or commission to which the Legislator, a member of the Legislator's immediate family or an associated organization has sold, rented or leased goods or services with a value of \$10,000 or more during the preceding calendar year and a description of the goods or services sold, rented or leased;
- K.** Each party as defined in Title 21-A, section 1, subsection 28, including a party committee, and each organization that is required under Title 21-A, chapter 13 to register with the commission as a political action committee or ballot question committee for which the Legislator or a member of the Legislator's immediate family is a treasurer, principal officer or principal fund-raiser or decision maker;
- L.** Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the Legislator or a member of the Legislator's immediate family with any for-profit or nonprofit firm, corporation, association, limited liability company, partnership or business. For the purposes of this paragraph, service as a clerk of a corporation or as a registered agent authorized to receive service of any process, notice or other demand for a business entity is not considered a position with the corporation or business entity; and

M. All reportable liabilities incurred by the Legislator or a member of the Legislator's immediate family during the reporting period.

2. Time for filing. The following provisions govern the time for filing statements.

A. Each Legislator shall file with the commission by 5:00 p.m. on February 15th of each year on the form provided by the commission a statement of the sources of income, interests and reportable liabilities for the preceding calendar year required by subsection 1. Prior to the end of the first week in January of each year, the commission shall deliver a form to each Senator and member of the House of Representatives.

B. A Legislator shall file an updated statement concerning the current calendar year if the income, reportable liabilities or positions of the Legislator or an immediate family member, except for dependent children, substantially change from those disclosed in the Legislator's most recent statement. Substantial changes include, but are not limited to, a new employer that has paid the Legislator or a member of the Legislator's immediate family \$2,000 or more during the current year, another source that has provided the Legislator or a member of the Legislator's immediate family, excluding dependent children, with income that totals \$2,000 or more during the current year or the acceptance of a new position with a for-profit or nonprofit firm that is reportable under subsection 1, paragraph L. The Legislator shall file the updated statement within 30 days of the substantial change in income, reportable liabilities or positions.

3. Penalties. Penalties for violations of this section are as follows.

A. Failing to file a statement within 15 days of having been notified by the commission is a civil violation for which a ~~fine~~ penalty of not more than \$100 ~~\$500~~ may be ~~adjudged~~ assessed by the commission. The commission may assess a penalty of not more than \$250 if the statement is filed within six weeks of the deadline. A statement is not considered filed unless it substantially conforms to the requirements of this subchapter and is properly signed. The commission shall determine whether a statement substantially conforms to the requirements of this subchapter.

B. The intentional filing of a false statement is a Class E crime. If the commission concludes that it appears that a Legislator has willfully filed a false statement, it shall refer its findings of fact to the Attorney General. If the commission determines that a Legislator has willfully failed to file a statement required by this subchapter or has willfully filed a false statement, the Legislator is presumed to have a conflict of interest on every question.

Within 3 business days of a filing deadline, the commission shall mail a notice to any Legislator or candidate that has failed to file a statement required under this subchapter. If a Legislator or candidate does not file the statement within fifteen days of the notice, the commission shall mail a notice of a preliminary penalty of \$500 for not filing the statement. The Legislator or candidate may request a waiver of the penalty within fifteen days of the penalty notice. If no request is made, the preliminary \$500 penalty is final. If the Legislator or candidate requests a waiver, the commission will consider the request at its next meeting for a determination of the final penalty.

if any. The commission staff shall confirm a final penalty in a written determination to the Legislator or candidate who did not file the statement on time. The commission's determination may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Penalties assessed pursuant to this subsection may be enforced in accordance with Title 21-A, section 1004-B.

...

The Commission staff proposes changing the enforcement procedures when a Legislator or a legislative candidate does not file a statement of the sources of their income (SOSOI) on time, as required by 1 M.R.S. §§ 1016-C and 1016-G. The Commission staff proposes a preliminary penalty of up to \$500, which seems more appropriate to the violation than the current \$100 fine.

Under almost all of the Commission statutes (*e.g.*, campaign finance, Maine Clean Election Act, and lobbyist disclosure), if the Commission determines that a statute has been violated, the Commission is authorized to assess a monetary penalty. For reasons that are not clear, the current SOSOI statute (§ 1016-C(3)(A)) states that a fine “may be adjudged,” which requires a court action to assess the fine.

The Commission staff proposes a procedure similar to the department's penalty process when a campaign finance or lobbyist report is not filed on time. The Commission staff would notify the non-filer of a preliminary \$500 penalty, and the respondent would have the option of paying the penalty or requesting a waiver. Presumably, a request for a waiver would involve filing the report late. The waiver request would be scheduled for a public meeting of the Commission. If the respondent takes no action, the preliminary penalty would become final. If the respondent does not voluntarily pay the assessed penalty, the Commission would refer the unpaid penalty to the Attorney General for a potential collection action. 21-A M.R.S. § 1004-B.

The proposal is intended to be more consistent with the Commission's other statutes, and to have a streamlined process that does not require action by the Commission at a public meeting in the case of someone who consistently ignores the Commission's correspondence.

Title 3, Maine Revised Statutes

§ 319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter may be assessed a ~~fine~~ penalty of \$100 for every month the person fails to register or is delinquent in filing a report pursuant to section 317. If a registration or report is filed late, the commission shall send a notice of the finding of violation and preliminary penalty. The notice must provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The preliminary penalty is increased by \$50 for each successive violation during a lobbying year. The commission may waive the fine or penalty in whole or in part if the commission determines the failure to register or report was due to mitigating circumstances or the fine or penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late registration or report. For purposes of this subsection, “mitigating circumstances” means:

- A. A valid emergency determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the fine or penalty in whole or in part;
- B. An error by the commission; or
- C. Circumstances determined by the commission to warrant the waiver of the fine or penalty in whole or in part, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with this chapter, including, but not limited to, unexplained delays in Internet service.

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the commission until such failure is corrected.

2. [Repealed]

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the commission pursuant to section 317 if no lobbying has been performed during that special session.

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The Commission staff proposes increased fines for lobbyists who have repeated incidents of late filed reports during a lobbying year. In the last five years, the staff has identified 20 cases in which a lobbyist has filed at least five reports late during a lobbying year. These frequent late filings by some lobbyists indicate to staff that the current fines of \$50 and \$100 for late filing are insufficient to ensure compliance with the law.

§ 320. Disposition of fees

Fees collected pursuant to this chapter must be deposited into a special revenue account of the commission to be used for the purposes of administering and enforcing the provisions of this chapter, including the costs of obtaining, maintaining and upgrading technology to facilitate disclosure of lobbying and campaign finance information to the public. Notwithstanding any other section of law, the Commission may deposit late filing penalties assessed against political action committees and ballot question committees under Title 21-A, section 1062-A into the account to be spent exclusively on technology costs consistent with this section.

The commission shall, no later than November 15th of the year prior to any proposed change, establish the amount of the registration fee required to be paid pursuant to section 313 for the subsequent year.

As part of Maine's lobbyist disclosure system, each year lobbyists register and file monthly reports with the Commission. The registration fees of \$250 or \$125 are deposited into a special revenue account established by Title 3, § 320. Historically, the account has been used to pay for staffing and IT costs associated with the lobbyist registration and reporting.

In 2015, the Legislature amended 3 M.R.S. § 320 so that the Commission could also use this revenue to pay for its IT costs related to the Commission's campaign finance disclosure system. (P.L. 2015, ch. 267, part F-3) Both disclosure websites (lobbyist and campaign finance) periodically need to be enhanced or replaced, which is expensive. For example, the Commission's two IT contractors charge \$133 or \$161 per hour. Because of the complexity of the software applications, many more hours of labor are required for an improvement than one would expect.

The Commission's general fund appropriation does not provide enough money to pay for eFiling improvements or replacements. The Commission staff would like to increase revenue, so that the department has sufficient funds to enhance or replace the campaign finance disclosure system without burdening the General Fund. One of the few outside revenue streams to the department is the payment of fines and penalties for non-compliance with campaign finance law. We proposed that late-filing penalties paid by PACs and ballot question committees would be deposited in this special revenue account. Currently, those penalties are received into the General Fund. In the last five years, the Commission has collected approximately \$190,000 in penalties from PACs, party committees, and BQCs in fines.


The only downside that we can see in the proposal (apart from the cost to the General Fund) is that it could bring into question potential bias by the Commission when assessing penalties. This concern has not been raised previously, however, even though late filing penalties against candidates, party committees, and independent spenders are deposited into the Maine Clean Election Fund. 21-A M.R.S. § 1124(2)(H).

Title 21-A, Maine Revised Statutes

Chapter 13 (Campaign Finance Disclosure)

§ 1002. Meetings of commission


1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held. In the 28 days preceding an election, the commission shall meet in Augusta within 2 business days of the filing of any complaint with the commission, unless the complainant and respondent agree otherwise. Regardless of whether the complainant or respondent agree, the commission may defer until after the election considering complaints determined by the chair to involve allegations of minor violations of this chapter or chapter 14, such as disclaimer statements omitted from campaign signs or transactions of less than \$100 omitted from campaign finance reports.

 ~~**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:~~

~~**A.** During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or~~

~~**B.** To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.~~

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

 ~~**4. Office hours before election.** The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election.~~

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Departments of Maine state government are authorized to meet remotely by a general statute, 1 M.R.S. § 403-B. Pursuant to that statute, the Commission has adopted its own policy on meeting remotely. The Commission staff proposes deleting 21-A M.R.S. § 1002(2) which provides for telephone meetings, in order to avoid any confusion or conflict in the laws allowing for remote participation and because telephone communication is no longer the preferred technology for remote participation.

The Commission staff also proposes a repeal of 21-A M.R.S. § 1002(4), which requires the Commission office to be open during the weekend before an election with adequate staff to respond to inquiries and receive complaints. This applies to primary elections, general elections, off-year ballot question elections, and special elections. In the past several election cycles, the Commission staff has received barely any contacts from candidates, PACs, political activists or the public during these final weekends. From the perspective of the Commission staff, this section has begun to seem like a well-intentioned but inefficient use of state resources that requires Commission employees to work and be paid on a day when almost no actual assistance is required by the participants in the election process or the public.

§ 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine whether a person has violated this chapter, chapter 14 or the rules of the commission. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or entity that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission. The Attorney General may apply on behalf of the commission to the Superior Court or to a court of another state to enforce compliance with a subpoena issued to a nonresident person. Service of any subpoena issued by the commission may be accomplished by:

- A.** Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;
- B.** Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or
- C.** Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

2. Investigations requested. A person may apply in writing to the commission requesting an investigation as described in subsection 1. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

2-A. [Repealed]

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

3-A. Confidential records. Investigative working papers of the commission are confidential, except that the commission may disclose them to the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an audit, investigation or other enforcement matter:

- A. Financial information not normally available to the public;
- B. Information that, if disclosed, would reveal sensitive political or campaign information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's political committee, or other person who is the subject of an audit, investigation or other enforcement matter, even if the information is in the possession of a vendor or 3rd party;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation, including any record of an interview, meeting or examination.

The commission may disclose investigative working papers or discuss them at a public meeting, except for the information or records subject to a privilege against discovery or use as evidence, if the information or record is ~~materially~~ relevant to a memorandum or interim or final report by the commission staff or a decision by the commission concerning an audit, investigation or other enforcement matter. A memorandum or report on the audit or investigation prepared by staff for the commission may be disclosed at the time it is submitted to the commission, as long as the subject of the audit or investigation has an opportunity to review it first to identify material that the subject of the audit or investigation considers privileged or confidential under some other provision of law.

4. Attorney General. Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.



Subsection 3-A of the Commission's investigations statute requires the Commission to keep certain financial or sensitive campaign information confidential, with an exception. The Commission may disclose the information when the staff is providing a report to the Commission or the Commission is making a decision. This exception is important so that the public understands the evidence the Commission is relying upon when making an enforcement decision. If the state's Ethics Commission is viewed as making decisions in a secretive manner, it undermines the public's confidence in the process. The public's understanding of the Commission's operations is heavily influenced by the press, which reflexively criticizes any department of state government that is relying on "secret evidence" that is shielded from public view.

In this context, the Commission staff proposes a change in the scope of financial or sensitive campaign information that may be disclosed in a staff report or Commission decision. We propose that the Commission be given the discretion to disclose information that is "relevant," rather than "materially relevant." The term 'material' often refers to a fact that is so significant that it potentially affects the outcome of a decision. A staff report or Commission decision that provides a complete picture of a factual situation will often include information that is relevant but does not rise to the level of materiality. Facts that are relevant but not quite material should be disclosable to the public if they have sufficient relevance to be included in a staff report or Commission decision.

§ 1004-B. Enforcement of penalties assessed by the commission

The commission staff shall collect the full amount of any penalty and the return of Maine Clean Election Act funds required by the commission to be returned for a violation of the statutes or rules administered by the commission and has all necessary powers to carry out these duties. Failure to pay the full amount of any penalty assessed by the commission or return of Maine Clean Election Act funds is a civil violation by the candidate, treasurer, party committee, political action committee or other person. Thirty days after issuing the notice of penalty or order for the return of funds, the commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty or to return Maine Clean Election Act funds unless the commission has provided an extended deadline for payment. The Attorney General shall enforce the violation in a civil action to collect up to three times the outstanding amount of the penalty or unreturned Maine Clean Election Act funds. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.



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When PACs, candidates, etc. do not pay penalties voluntarily, the Office of the Attorney General (OAG) brings an action in state court to collect the penalties. Some of these penalties are small (\$0-\$500). The Commission staff proposes amending this section to allow the OAG to seek additional fines. Amending the statute will assist the state in recovering the staff or administrative costs of enforcement and collection, and may promote a resolution of the collection action more quickly.

§ 1014. Publication or distribution of political communications

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated.

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

...



5-A. Text messages. Text messages sent with the assistance of mass distribution technology at a cost of more than \$100 must clearly and conspicuously state the name of the person who made or financed the expenditure if:

- A. The text message expressly advocates the election or defeat of a candidate; or
- B. The text message contains a link to a website that expressly advocates the election or defeat of a candidate.

...

The Commission staff suggest inserting a subsection 5-A to address text messages intended to influence candidate elections. The message would be required to identify the person who paid for the messages, but (due to character constraints in text messages) would not need to contain the person’s address or a statement whether a candidate authorized the expenditure.

§ 1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an “independent expenditure” means any expenditure made by a person, party committee or political action committee that is not made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized political committee or an agent of either and that:

A. Is made to design, produce or disseminate any communication that expressly advocates the election or defeat of a clearly identified candidate; or

B. Unless the person, party committee or political action committee making the expenditure demonstrates under subsection 2 that the expenditure was not ~~intended to influence~~ for the purpose of influencing the nomination, election or defeat of the candidate, is made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day.

2. Commission determination. A person, party committee or political action committee may request a determination that an expenditure that otherwise meets the definition of an independent expenditure under subsection 1, paragraph B is not an independent expenditure by filing a signed written statement with the commission within 7 days of disseminating the communication stating that the cost was not incurred ~~with the intent to influence~~ for the purpose of influencing the nomination, election or defeat of a candidate, supported by any additional evidence the person, party committee or political action committee chooses to submit. The commission may gather any additional evidence it determines relevant and material and shall ~~and~~



~~shall.~~ The Commission shall determine by a preponderance of the evidence whether the cost was incurred ~~with intent to influence~~ for the purpose of influencing the nomination, election or defeat of a candidate. In order to make this determination, the Commission shall consider whether the language and other elements of the communication would lead a reasonable person to conclude that the communication was for the purpose of influencing an election. The Commission may consider other factors, including but not limited to, the timing of the communication or the recipients of the communication.

3. Report required; content; rules. [Repealed]

4. Report required; content; rules. A person, party committee or political action committee that makes any independent expenditure in excess of \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure in excess of \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of unsworn falsification ~~perjury~~, as provided in Title 17-A, section ~~451453~~, a statement ~~under oath or affirmation~~ whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection 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. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission ~~receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission~~ adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. ~~The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.~~

5. Exclusions. An independent expenditure does not include:

A. [Repealed]

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

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Under 21-A M.R.S. §§ 1019(1)(B) & (2), a person distributing a communication close to an election referring to someone who is running for office may ask the Commission for a determination that the cost of the communication is not an independent expenditure. The Commission staff proposes language changes that would focus the Commission's decision on the objective elements of the communication, rather than trying to determine the subjective intent of the person that funded the communication.

The Commission staff proposes eliminating the requirement that independent expenditure reports include a sworn affidavit stating that the expenditure was made independently of the candidates in the race. Based on current law, the independent spender must submit a paper affidavit to the Commission shortly after entering the transactional information in the Commission's eFiling website. We suggest replacing the affidavit with an online affirmation that would be made at the time the filer enters the transactional information. We seek to reduce the administrative burden on the PACs and party committees that make independent expenditures and Commission employees who must track down the affidavits, which, if not filed in a timely manner, result in late filings.

The Commission included this change in 2014 legislation, but it was not adopted by the Legislature. Due to general movement in different business settings toward online filings and more electronic processes since the COVID pandemic, the Commission staff proposes trying again for an online affirmation in independent expenditure reports.

§ 1020-A. Failure to file on time

1. Registration. A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 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 a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or the harm suffered by the public from the late disclosure. 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 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;
- 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 or interruptions in Internet service.

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the commission of any late reports subject to a penalty.

4. [Repealed]

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 2%;
- B. For the 2nd violation, 4%; and
- C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$10 \$25 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

~~A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the~~

~~applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.~~

...

Please see note for section 1062-A, below.

§ 1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1052-A, 1053-A or 1053-B or a ballot question committee required to register under section 1053-A or 1056-B that fails to do so or that fails to provide the information required by the commission for registration may be assessed a fine of no more than \$2,500. In assessing a fine, the commission shall consider, among other things, whether the violation was intentional, the amount of campaign and financial activity that occurred before the committee registered, whether the committee intended to conceal its campaign or financial activity and the level of experience of the committee's volunteers and staff.

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 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 a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. 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 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;

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 or interruptions in Internet service.

3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 2%;

B. For the 2nd violation, 4%; and

C. For the 3rd and subsequent violations, 6%.

Any penalty of less than \$~~10~~25 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

~~A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.~~

...

Under current law, §§ 1020-A(4-A) & 1062-A(3), late-filing penalties for campaign finance reports are automatically waived if they are under \$10. The Commission staff proposes increasing this amount to \$25 because a penalty in the range of \$10-\$25 is not worth the staff and Commissioner time of notifying late filers of these small penalties and potentially administering a waiver process.

The Commission staff also proposes repealing the language allowing for the provisional filing of campaign finance reports by fax, which is outdated. Virtually, all campaign finance reports submitted by candidates, PACs, and ballot question committees are filed with the Commission's eFiling website.

Title 21-A, Maine Revised Statutes
Chapter 14 (Maine Clean Election Act)

§ 1125. Terms of participation

...

3. Qualifying contributions. The collection of qualifying contributions is governed by this subsection.

A. [Repealed]

B. [Repealed]

C. [Repealed]

D. To be eligible to receive funding from the fund, participating candidates must obtain qualifying contributions during the qualifying period as follows:

(1) For a gubernatorial candidate, at least 3,200 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;

(2) For a candidate for the State Senate, at least 175 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or

(3) For a candidate for the State House of Representatives, at least 60 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

E. A contributor making a qualifying contribution by check or money order shall sign the check or money order. If the contributor has made a check or money order payable to a participating candidate in error, the candidate may remedy the error by endorsing the check or money order to the fund.

F. A contributor may make a qualifying contribution to a participating candidate in the form of cash, as long as the contributor signs a form prepared by the commission affirming that the contributor made the contribution with personal funds. A candidate receiving qualifying contributions in cash shall submit the contributions to the commission in the aggregate in the form of a cashier's check or money order payable to the fund. The candidate may not deposit qualifying contributions received in cash into the candidate's campaign account.

G. As an alternative to making a qualifying contribution under paragraph F, a contributor may make a qualifying contribution to a participating candidate in the form of cash, as long as the candidate submits a money order in the same amount to the commission. The

money order must be signed by the contributor to be a valid qualifying contribution. The cash received from the contributor must be used to reimburse the person who provided the money order.

H. Any fees for a cashier's check or a money order paid with seed money must be reported as an expenditure in campaign finance reports submitted to the commission. If a participating candidate uses personal funds to pay fees for the purchase of a cashier's check or money order, those fees are not a contribution to the candidate and are not required to be disclosed in campaign finance reports. The candidate shall report any cashier's check or money order fees paid by anyone other than the candidate as an in-kind contribution subject to seed money limitations.

I. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

J. A payment, gift or anything of value may not be given in exchange for a qualifying contribution. It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgment or submit any fraudulent contributions to the commission, as defined by the rules of the commission.



To qualify for Maine Clean Election Act funds, candidates must collect a minimum number of \$5 qualifying contributions to demonstrate support. Candidates submit the QCs to the Commission, along with forms signed by the contributors verifying that the transactions were conducted properly. Most MCEA candidates are conscientious. To diminish the risk of fraud or error, the Commission's current rules define the term "fraudulent qualifying contributions" to cover a four situations in which the candidate or a supporter has taken an improper action such as falsely claiming the receipt of \$5 or signing a contributor's name to the forms. 94-270, Ch. 3, §2(4)(I). The Commission staff proposes language in the statute that explicitly forbids the submission of fraudulent qualifying contributions to confirm that the Commission has the authority to punish dishonest activity to qualify candidates for public funding through a civil penalty under 21-A M.R.S. § 1127(1).

...

12-A. Required records. The candidate or treasurer shall obtain and keep:

A. Bank or other account statements for the campaign account covering the duration of the campaign;

B. A vendor invoice stating the particular goods or services purchased for every expenditure in excess of \$50;

C. A record proving that a vendor received payment for every expenditure in excess of \$50 in the form of a cancelled check, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and

D. [Repealed]

E. A contemporaneous document such as an invoice, contract or timesheet that §in detail the services provided by a vendor who was paid in excess of \$500 for the election cycle for providing campaign staff or consulting services to a candidate.

F. If a candidate for the Legislature pays at least \$1,000 to an individual for services rendered, the individual must keep records for the number of hours and type of work performed each day and submit the records to the campaign at least once per month.

The candidate or treasurer shall preserve the records for 3 years following the candidate’s final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.



Title 21-A, § 1125(12-A) sets out the records that must be kept by MCEA candidates. These records are requested by the Commission if a candidate is randomly selected for an audit or a specific compliance concern arises in our compliance reviews of campaign finance reports.

In the past two election cycles, the Commission staff has seen a handful of candidates paying larger amounts to a single individual for campaign services. For example, a few MCEA candidates for State Senate have paid \$3,000, \$7,000, \$17,000, and \$21,500 to a single individual for staff services, sometimes over the course of several months. These total amounts are outliers. Most candidates pay far less for staff services.

Our current financial reporting and record-keeping requirements do not provide the staff or auditors with sufficient records to understand in detail the services being rendered or to verify that sufficient services have been provided to justify such large payments. We suggest that if an individual is being paid more than \$1,000 in MCEA funds, the person compensated would keep a daily time record that would be transmitted to the candidate at least once per month which the candidate would make available to the Commission upon request.

If the Commission has any interest in proposing a statutory limit on the total amount in MCEA funds that could be paid to an individual, our proposal would be \$3,000 for House candidates and \$10,000 for Senate candidates.