



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

## Agenda

**December 19, 2018, at 9:00 a.m.**  
Commission Office, 45 Memorial Circle, 2<sup>nd</sup> Floor, Augusta, Maine

### **1. Ratification of Minutes of November 28, 2018 Meeting**

### **2. Request for Waiver of Late-Filing Penalty – Jan Collins (Irving Faunce, Treasurer)**

On October 29, 2018, Jan Collins's campaign for State Senate made two expenditures of \$1,000 or more that should have been disclosed one day later in a 24-Hour Report. The report was filed on November 21, 2018 (22 days late). The campaign treasurer, Irving Faunce, acknowledges that this was his mistake and asks for a waiver of the \$2,565 preliminary penalty. *Staff recommendation: the Commission staff recommends reducing the penalty to \$218. This would be in addition to a \$82 penalty for a different 24-Hour Report that was filed one day late. The total recommended penalty for the two late reports would be \$300.*

### **3. Proposed Changes to Commission Statutes**

The Commission will review statutory amendments proposed by staff for possible inclusion in an agency bill to be submitted to the 129<sup>th</sup> Legislature.

### **4. Proposed Rule-Making**

The Commission will consider whether to initiate a rule-making to amend Chapter 1 of the Commission's Rules.

### **5. Insertion to Candidate Guidebook – Disclosure Statements in Candidate Literature**

The Commission will consider a proposed insertion to the Commission's candidate guidebooks. The proposed guidance is that if a candidate is distributing multiple paid campaign communications together (e.g., by mail or through a volunteer or party committee), each communication should state that it was paid for and authorized by the candidate, in case the communications become separated.

### **6. Potential Maine Clean Election Act Violation – Cynthia Soma-Hernandez**

In 2018, Cynthia Soma-Hernandez participated in the Maine Clean Election Act program as a candidate for the Maine House of Representatives. She used \$366.75 in personal funds to partially pay for campaign brochures, intending for the campaign to reimburse her. Due to a misunderstanding concerning a deadline, the campaign was unable to pay her back. *Staff recommendation: the Commission staff recommends finding that the expenditure of personal funds violated 21-A M.R.S.A. § 1125(6) and assess a penalty in the range of \$50 - \$150.*

## **Other Business**

## **ADJOURNMENT**



Minutes of the November 28, 2018 Meeting of the  
Commission on Governmental Ethics and Election Practices  
45 Memorial Circle, Augusta, Maine

Present: William A. Lee III, Esq., Chair; Hon. Richard A. Nass; Meri N. Lowry, Esq.; Bradford A. Pattershall, Esq.

Staff: Jonathan Wayne, Executive Director; Phyllis Gardiner, Counsel

Mr. Lee convened the meeting at 9:02 a.m.

**1. Ratification of Minutes of August 16, August 29 and September 26, 2018 Meetings**

Mr. Nass moved to adopt the minutes as drafted. Mr. Pattershall seconded. The motion passed (4-0).

**2. Request for Waiver of Late-Filing Penalty – Hon. Dana Dow**

Mr. Wayne said that neither Senator Dow nor Bruce Metrick, his treasurer, were present at the meeting. Mr. Wayne explained that Senator Dow made a payment of \$5,796.45 on October 27<sup>th</sup> to Spectrum Marketing for mailhouse services. He was required to file a 24-Hour Report by 11:59 p.m. on October 28<sup>th</sup>. The report was not filed until the next day, October 29<sup>th</sup>. Senator Dow requested a waiver of the penalty and Mr. Metrick submitted an email explaining the circumstances of the late-filing. In his response, Mr. Metrick stated he was not aware of the requirement to file a 24-Hour Report. In the three election cycles in which he has served as a candidate's treasurer, he never had to file one. Mr. Wayne said the preliminary penalty is \$115.93. Sen. Dow requested a waiver due to the inexperience of his treasurer in filing 24-Hour Reports. Because the preliminary penalty is less than the standard penalty for a late-filed 24-Hour Report, Mr. Wayne said the staff did not recommend a waiver or reduction.

Mr. Nass asked whether the staff has enhanced the notifications sent to candidates about the 24-hour reporting period. Mr. Wayne said the staff has increased its efforts to provide notice and sends email notifications and reminders by U.S. Mail to candidates. In addition, there is a notice about the 24-hour reporting period prominently displayed on the candidate's home page in the e-filing system.

Mr. Lee made a motion to adopt the penalty recommendation of the staff which is the statutorily calculated penalty of \$115.93. Ms. Lowry seconded. The motion passed (4-0).

### **3. Complaint Alleging Disclaimer Violation – Hon. Patricia Hymanson**

Mr. Wayne said that former Representative Bradley Moulton brought this complaint against Representative Patricia Hymanson. Mr. Moulton and Representative Hymanson were opponents in the November general election for House District 4. The complaint alleged that one of the pieces of campaign literature Rep. Hymanson was passing out as she campaigned door-to-door did not have the disclosure statement stating who paid for and authorized the campaign literature. Mr. Wayne said Mr. Moulton and Rep. Hymanson were present at the meeting.

Mr. Lee asked what the staff advice would be if the two pieces of paper were stapled together. Mr. Wayne said the staff does not have formal advice for that particular situation, but would likely advise the candidate that as long as the disclosure statement was on one piece, the requirement would be met.

Mr. Lee said one question before the Commission is whether there is one communication or two separate communications. Mr. Nass noted that if the two communications get separated – which is a common occurrence – then one communication may be distributed without the disclosure statement. Candidates would be well advised to put the disclosure statement on every page.

Bradley S. Moulton appeared before the Commission. He stated that his usual practice is to place a disclosure statement on each page of any communication he disseminates. He said he does so in order to prevent the kind of problem the Commission is dealing with in this matter. If someone were to photocopy only one page of his handbill, there would be no doubt that he was responsible for the content of the communication.

Mr. Pattershall asked whether he was aware of the page without the disclosure statement being distributed separately from the other communication. Mr. Moulton said he was not aware of any such occurrences.

In response to a question from Mr. Pattershall, Mr. Wayne said that Representative Hymanson reported the expenditures for each page of the communication separately. Mr. Pattershall noted that the wording in the statute – 21-A M.R.S.A. § 1014 – refers to an expenditure for a communication as the trigger for requiring a disclosure statement. In this instance, there are two expenditures.

Representative Patricia Hymanson appeared before the Commission. She said she was the only person who distributed the communication while she was going door-to-door. The page with her voting record was folded and placed inside the color handbill which had the disclosure statement printed on it. She considered the combination to be a single communication and the page with her voting record was never given out separately.

In response to a question from Mr. Nass, Rep. Hymanson said only the color handbill was given to the York County Democratic Committee to be available at the committee's headquarters, not the page with her voting record.

Responding to a question from Mr. Lee regarding the interpretation of the statute, Ms. Gardiner said there could be multiple expenditures for different components of a single communication. For example, there could be an expenditure for lumber and an expenditure for signs to put up with the lumber, but there would be one communication. The fact that Rep. Hymanson made two separate expenditures to two vendors does not require the Commission to conclude that, under the statute, there were two separate communications.

Mr. Wayne said the staff can add a section in the candidate guidebook to advise candidates to include the disclosure statement on each piece of a printed communication if it is distributed in such a way that the pieces could be separated.

Ms. Gardiner said a concern may be raised that the Commission is requiring information to be included in a communication that takes up space on the printed page and may be an additional cost to the candidate. The Commission needed to balance the governmental interest being served by regulating the candidate's communications and the potential impact or burden on the candidate.

Mr. Lee asked the Commission staff to develop proposed guidance based on the discussion at the meeting and present that guidance at an upcoming meeting.

Mr. Lee moved to find no violation because under the circumstances presented this was a single communication. Ms. Lowry seconded.

Mr. Pattershall said he agreed with Ms. Gardiner's interpretation that there can be multiple expenditures for a single communication. He said if he had received Rep. Hymanson's flyer in his door, he would have considered it a single communication.

The motion passed (3-1, Mr. Nass opposed).

### **3. Complaint of Anonymous Flyers – Catherine Weeks, Waterville City Council**

Mr. Lee recused himself from consideration of this matter. He said he had no conflict of interest regarding this matter. However, he serves as the city solicitor for the City of Waterville and, if he were to participate in this matter, it is conceivable his participation may result in a conflict or the appearance of a conflict for him as city solicitor at some point in the future. To avoid that remote possibility, he said he would recuse himself and leave the Commission table.

Mr. Lee took a seat in the public area of the meeting room. Mr. Nass assumed the role of Chair for this matter.

Mr. Wayne said Ms. Weeks ran for Waterville City Council in Ward 1 and lost by two votes. Two days before the November election, a flyer was distributed by hand in her neighborhood. The flyer does not have a disclosure statement stating who paid for it. Mr. Wayne cautioned the Commission not to consider the content of the communication which is protected political speech under the First Amendment.

Catherine Weeks appeared before the Commission. She said the flyers were distributed at night throughout her entire neighborhood. She said she believed Colby College students distributed the flyers but was not able to obtain confirmation from Colby College. Ms. Weeks said she believed the flyer was the reason why she lost the election.

Julian Payne, a resident of Waterville, said the flyer probably cost more than \$200. He said the disclosure statement was omitted deliberately. He said he did not believe Michael Morris, Ms. Weeks' opponent, was behind the flyer, although it was distributed by someone who supported his candidacy.

Mark Andre, a resident of Waterville and candidate for House District 110 in the November 2018 general election, appeared before the Commission. Mr. Andre expressed his concerns that the students in the new Colby College dormitory in downtown Waterville were providing in-kind contributions to political candidates by canvassing for them and conducting other activities.

Mr. Nass acknowledged Mr. Andre's concern but said that it was only barely related to the matter before the Commission.

Mr. Pattershall suggested that Mr. Andre come back to the Commission, possibly in the next election cycle, with an actual incident that supports his allegations of in-kind contributions to candidates. He said the standard is there must be sufficient grounds to believe a violation may

have occurred and the person bringing the complaint must provide enough factual information to the Commission for that standard to be met.

Mr. Nass moved to accept the staff recommendation and find there is no reason for an investigation in this matter. Ms. Lowry seconded. The motion passed (3-0, Mr. Lee had recused himself from consideration of this matter).

Mr. Lee rejoined the other Commissioners and resumed conducting the meeting as Chair.

#### **4. Request to Investigate Receipt of Sign Materials – Hon. Seth A. Berry**

Mr. Wayne said Alex Titcomb requested an investigation into whether Representative Seth Berry received in-kind contributions in the form of materials for campaign signs. Mr. Titcomb was not able to attend the meeting because of his work schedule. In his response, Representative Berry said he made an expenditure with Maine Clean Election Act funds for lumber and had signs from previous elections that he was able to re-use to repair and replace the signs that had been destroyed or removed. From the staff's perspective, Mr. Wayne said Mr. Titcomb has not presented sufficient information to believe that a violation may have occurred and the staff recommended no investigation.

In response to a question from Mr. Nass, Mr. Wayne said the staff has advised candidates to pay a reasonable fee for the use of wire wickets in order to avoid accepting an in-kind contribution.

Representative Seth Berry appeared before the Commission. He said he has run for office five times before and has plenty of leftover signs. In the early morning hours on Columbus Day, a number of his signs in Bowdoinham and Bowdoin were taken down or destroyed. Because he was a Maine Clean Election Act candidate and had limited funds remaining at that point in the election, he did not have a lot of campaign funds left to purchase new signs. Using a minimal amount of newly purchased lumber, he was able to repair many of the wooden signs. He did not accept a truckload of old campaign signs from another candidate as Mr. Titcomb alleged.

Instead, he suggested that the Bowdoinham Democratic Town Committee take the old signs, which it did. Rep. Berry rented about 50 wire wickets from the committee at 25 cents per wicket. He did not accept any in-kind contributions as the complaint alleged.

Mr. Nass moved to accept the staff recommendation and find there are insufficient grounds to support a request to investigate for a possible violation. Mr. Pattershall seconded. The motion passed (4-0).

Mr. Nass moved to adjourn. Mr. Pattershall seconded. The motion passed (4-0).

The meeting adjourned at 11:33 a.m.

Respectfully submitted,  
/s/ Jonathan Wayne  
Jonathan Wayne, Executive Director



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

To: Commissioners  
From: Tim Goodhue, Candidate Registrar  
Date: December 10, 2018  
Re: Request for Waiver of Late-Filing Penalty by Jan Collins

---

Jan Collins was a Maine Clean Election Act candidate in the November 6, 2018 general election for the Maine State Senate, District 17. During the 13 days prior to an election, legislative candidates who receive a contribution or make an expenditure of \$1,000 or more are required to file a supplemental campaign finance report within twenty-four hours of receiving the contribution or making the expenditure.

On October 29, 2018, Ms. Collins made a \$1,915.20 expenditure for television advertising and a \$1,000 expenditure to a technology consultant. Her treasurer, Irving Faunce, acknowledges that he should have filed a 24-Hour report of these expenditures on October 30. Instead, he filed the report on November 21, 2018 (22 days late), when preparing the final report for the campaign. The preliminary penalty is \$2,565.38. The treasurer requests a waiver of the preliminary penalty.

#### **LEGAL REQUIREMENTS**

Candidates are required to file 24-Hour Reports with the Commission during the 13 days prior to an election if they receive a contribution or make an expenditure of \$1,000 or more. (21-A M.R.S.A. § 1017(3-A)(C)) If the candidate is late in filing a 24-Hour Report, the amount of the penalty is set by a formula which takes into consideration a percentage of the total contributions or expenditures, whichever is greater, the number of prior violations within a two-year period, and the number of days the report is late. (21-A M.R.S.A. § 1020-A(4-A))

## **DISCUSSION**

The 24-Hour reporting period for candidates to report expenditures of \$1,000 or more began on Wednesday, October 24. The campaign finance reports for Jan Collins' 2018 campaign were filed by her treasurer, Irving Faunce, who is also the candidate's husband.

Although they are not the subject of this waiver request, Ms. Collins made two expenditures of \$1,000 or more on October 24. Mr. Faunce filed the 24-Hour Report for those expenditures one day late on October 26, 2018. The preliminary penalty is \$82.00, but the Collins campaign is *not* seeking a waiver for the \$82.00 penalty.

On October 29, 2018, Ms. Collins made a \$1,915.20 expenditure for television advertising and a \$1,000 expenditure to a technology consultant. Mr. Faunce should have filed a 24-Hour Report of these expenses on October 30. When preparing the post-election campaign finance report on November 21, 2018, Mr. Faunce recognized his error and filed a 24-Hour Report (22 days late).

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty is \$2,565.38.

<b>Report</b>	<b>Due Date</b>	<b>Financial Activity</b>	<b>Penalty Rate</b>	<b>Days Late</b>	<b>Preliminary Penalty</b>
24-Hour Report	10/30/2018	\$2,915.20	4%	22	\$2,565.38

Please be aware that the attached penalty correspondence also includes the \$82 penalty for the other 24-Hour Report, for which the Collins campaign is not requesting a waiver.

In his email request for a waiver, Mr. Faunce cites his inexperience as a first reason the reporting deadline went unnoticed. He adds that the campaign had no intention of misleading the Commission or the public and took diligent efforts to file the reports as soon as he was made aware by our efilng system. Mr. Faunce also draws attention to his other circumstances which distracted him from his duties as a campaign treasurer.

## **STAFF COMMENTS**

24-Hour Reports play a valuable role in informing the electorate about how money is being spent to influence voters in the critical days just before an election. A penalty is appropriate to reinforce that filing pre-election reports is a legal requirement. The 24-Hour reporting requirement was the subject of a May 30, 2018 email (attached) that Mr. Goodhue sent to the candidates (and their treasurers) assigned to him and is discussed in the candidate filing schedules (attached).

Following the 2015 citizen initiative and your guidance at the Commission's April 2018 meeting, the Commission staff intends to recommend penalties in the range of \$300 - \$400 for the late filing of 24-Hour Reports for legislative and county candidates. In this case, we recommend a penalty of \$218, which together with the \$82 penalty, would total \$300. This is Mr. Faunce's first campaign as a treasurer for office in Maine. (He was a House candidate eight years ago, but did not need to file any 24-Hour Reports.) He has demonstrated diligence in reporting the candidate's finances, but an oversight occurred. Mr. Faunce, throughout the campaign has worked closely with Candidate Registrar Tim Goodhue and has always been receptive to instruction and ideas, while being engaged with the campaign finance process. In addition, there are various personal circumstances that would cause an undue hardship on a candidate that was not successful and a treasurer with little to no income. The Commission staff recommends a penalty of \$218.

Thank you for your consideration of this memo.

From: Irving Faunce <ifaunce@icloud.com>  
Date: December 5, 2018 at 2:47:29 PM EST  
To: Timothy.A.Goodhue@maine.gov, Jonathan.Wayne@maine.gov  
Cc: Jan Collins <janmariecollins57@gmail.com>  
Subject: Waiver Request Letter

P. O. Box 360  
East Wilton, ME 04234

December 5, 2018

Dear Ethics Commission Members,

This a request for a waiver of a penalty which I incurred as the Treasurer of the Jan Collins for Senate Campaign for the Maine State Senate (District 17). As you have seen in a letter to the campaign from Timothy Goodhue, Candidate Registrar, the penalty is for \$2,565.38 for filing a 24 hour report 22 days past the deadline. There is also a separate penalty for a 24 hour report that was one day late. I am not asking for a waiver of that second penalty.

First, I want to make it clear that I alone accept full and total responsibility for this late filing. The candidate was in no way involved nor did I inform her of the error. I am sorry for that and have told her so.

In support of my waiver request, I point out that this was my first experience as Campaign Treasurer and the late reports did not cause damage to the public or to the opponent's campaign (he won). I had a demanding full-time job during the campaign and was active as a volunteer in it, thereby distracting myself from my responsibilities as Treasurer. Finally, on November 7, 2018, I lost my job.

As I am currently unemployed, the payment of \$2,565.38 would cause a severe economic hardship on me and my family.

I respectfully request a waiver and I appreciate your consideration.

Sincerely,

Irving Faunce

Sent from my iPad



Commission on Governmental Ethics and Election Practices  
Mail: 135 State House Station, Augusta, Maine 04333  
Office: 45 Memorial Circle, Augusta, Maine  
Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
Phone: 207-287-4179  
Fax: 207-287-6775

## 24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

### 2018 CAMPAIGN YEAR

COMMITTEE	TREASURER	
Jan M Collins 83 McLaughlin Rd Wilton, ME, 04294 PHONE:(207) 578-2609 EMAIL: janmariecollins57@gmail.com	Irving Faunce 83 McLaughlin Rd Wilton, ME, 04294 PHONE:(207) 578-2609 EMAIL: ifaunce@me.com	
REPORT	DUE DATE	REPORTING PERIOD
24 Hour Report of Contributions and Expenditures	10/30/2018	10/29/2018-10/29/2018

### FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$0.00
2. TOTAL EXPENDITURES	\$2,915.20
3. TOTAL DEBTS	\$0.00

I, Irving Faunce, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

REPORT FILED BY: Irving Faunce  
REPORT FILED ON: 11/21/2018 11:40:37 AM  
LAST MODIFIED:  
COMMITTEE ID: 5916

## 24-HOUR EXPENDITURE AND PAYEE INFORMATION

<b>EXPENDITURE TYPES</b>					
DATE OF EXPENDITURE		PAYEE	REMARK	TYPE	AMOUNT
10/29/2018	Erikson Communication Group 157 Park Row Suite 102 Brunswick, ME, 04011		Television Ad Buy		\$1,915.20
10/29/2018	PHIL POIRIER 475 TITCOMB HILL ROAD FARMINGTON, ME, 04938		Technology Consultant		\$1,000.00
<b>TOTAL EXPENDITURES FOR CANDIDATE:</b>					<b>\$2,915.20</b>



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

December 3, 2018

Jan Collins  
83 McLaughlin Rd.  
Wilton, Maine 04294

**Re: Notice of Violation and Penalty for 4 Late-Filed 24-Hour Reports**

Dear Ms. Collins:

You were required to file 24-Hour Reports; 1 on October 25, 2018<sup>A</sup>, and one on October 30, 2018<sup>B</sup>, each by 11:59 p.m., but the reports were not filed until October 26, 2018<sup>A</sup> and November 21, 2018<sup>B</sup>. Under the Commission's statutes (21-A M.R.S.A. § 1020-A(4-A)), the late filing of a report triggers an enforcement process. The Commission staff has made preliminary findings of violation and determined that the preliminary penalties for filing the reports late are \$82<sup>A</sup> and \$2,565.38<sup>B</sup>. Please see the next page for the penalty calculations.

You may request that the Commission waive the penalties in whole or in part or find that there were no violations. The request must be made within 14 calendar days of your receipt of this notice. The request must be in writing and contain a full explanation of the reasons the reports were filed late. Upon receiving your request, the Commission staff will schedule your request to be heard at an upcoming Commission meeting. You or your designee will have an opportunity to be heard at the meeting or you may submit a sworn statement to the Commission explaining the mitigating circumstances for its consideration.

The Commission may waive or reduce the penalties or find that there were no violations if it determines that the reports were late due to mitigating circumstances, which are defined as (1) a valid emergency; (2) an error made by the Commission staff; or (3) relevant evidence that a bona fide effort was made to file the reports on time. The Commission may also consider whether the penalties are disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff, or the harm to the public caused by the late disclosures.

The staff requests that you pay the preliminary penalties within 14 days of the date of your receipt of this notice if you do not intend to request a waiver. Please use the payment statement on the next page when paying by mail. You may also make a payment online at [www.maine.gov/ethics](http://www.maine.gov/ethics) by clicking the "Penalty Payment" link. Please contact me at (207) 287-4709 or [timothy.a.goodhue@maine.gov](mailto:timothy.a.goodhue@maine.gov) if you have any questions.

Sincerely,

Timothy Goodhue  
Candidate Registrar

cc: Irving Faunce

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

## Penalty Calculation

The penalty for filing a campaign finance report late is based on a percentage of the total contributions or expenditures for the reporting period, whichever is greater, multiplied by the number of days late. The percentage is based on your history of past violations: 2% for the first violation, 4% for the second violation, and 6% for the third and each subsequent violation. Violations for late-filed reports accumulate in the two-year period beginning on January 1<sup>st</sup> of each even-numbered year. A penalty accrues daily beginning on the day following the filing due date. Any penalty of less than \$10 is automatically waived.

### How Your Penalty Was Calculated

<b>Filer:</b> Jan Collins			
<b>Late-Filed Report:</b> 24-Hour Report			
<b>Contributions</b>	\$0	<b>Penalty Base Amount</b>	\$4,099.89 <sup>A</sup>
<b>Expenditures</b>	\$4,099.89 <sup>A</sup>		\$2,915.20 <sup>B</sup>
<b>Due Date</b>	\$2,915.20 <sup>B</sup>	<b>Percentage</b>	2% <sup>A</sup> and 4% <sup>B</sup>
	October 25, 2018 <sup>A</sup>	<b>Daily Accrual Rate</b>	\$82 <sup>A</sup>
<b>Date Filed</b>	October 30, 2018 <sup>B</sup>		\$116.61 <sup>B</sup>
	October 26, 2018 <sup>A</sup>	<b>Days Late</b>	1 <sup>A</sup> and 22 <sup>B</sup>
<b>Previous Violations</b>		<b>Your Total Penalty</b>	\$2,647.38

---

### Payment Statement and Payment Options

**From:** Jan Collins

**Penalty Amount:** \$2,647.38

**Amount Enclosed:** \_\_\_\_\_

**Check/M.O. #:** \_\_\_\_\_

**BY MAIL:** Enclose this payment statement with your payment.

**Please make check or money order payable to:** Treasurer, State of Maine

**Mail to:** Maine Ethics Commission  
135 State House Station  
Augusta, Maine 04333-0135

**ONLINE:** Go to [www.maine.gov/online/ethics/penalties](http://www.maine.gov/online/ethics/penalties).

## Wayne, Jonathan

---

**From:** Goodhue, Timothy A  
**Sent:** Wednesday, May 30, 2018 1:34 PM  
**Subject:** 24-Hour Reporting Period Begins TODAY

Dear 2018 Primary Election Candidates and Treasurers:

This is a friendly reminder that the 24-hour reporting period starts today, May 30<sup>th</sup>, and ends June 11<sup>th</sup>, the day before the election. All candidates are subject to the 24-hour reporting period. A 24-Hour Report must be filed within twenty-four hours of the triggering transaction, regardless of holidays or weekends. Qualifying transactions that take place on June 11<sup>th</sup> must be filed on Primary Election Day (or same day).

- 24-Hour Reports must be filed when:
  - A single contribution of \$1,000 or more is received (including loans)
  - A single expenditure of \$1,000 or more is made (including debts)
    - A debt occurs when an order for goods or services is placed, not when the campaign pays the vendor or receives an invoice or receipt.
- 24-Hour Reports may be filed by:
  - Entering the transaction into E-Filing, and then filing the newly created 24-Hour Report
    - Make sure you complete the filing process, and see a screen that confirms you filed a report
  - Faxing the Commission a paper 24-Hour Report – (207) 287-6775
  - Emailing the Commission a scan of a paper 24-Hour Report
- Not sure about how to file, or if you need to file a 24-Hour Report? Please do not hesitate to contact me:
  - (207) 287-4709
  - [Timothy.a.Goodhue@maine.gov](mailto:Timothy.a.Goodhue@maine.gov)

Tim Goodhue   
Candidate Registrar  
 207-287-4709  
 207-287-6775





## 2018 FILING SCHEDULE

### For Maine Clean Election Act Legislative Candidates

**PRIMARY ELECTION: JUNE 12, 2018**

**GENERAL ELECTION: NOVEMBER 6, 2018**

TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
Seed Money Report*	April 20, 2018	Date of first seed money contribution – date of certification request <u>For candidates who filed a Semiannual Report*:</u> January 1, 2018 – date of certification request
11-Day Pre-Primary	June 1, 2018	End of Seed Money Report — May 29, 2018
42-Day Post-Primary	July 24, 2018	May 30 — July 17, 2018
42-Day Pre-General	September 25, 2018	July 18 — September 18, 2018
11-Day Pre-General	October 26, 2018	September 19 — October 23, 2018
42-Day Post-General	December 18, 2018	October 24 — December 11, 2018

\*PLEASE NOTE: Candidates collecting more than \$500 in seed money contributions in 2017 must file a 2018 January Semiannual campaign finance report by 11:59 p.m. on January 16, 2018 showing all seed money contributions and expenditures through December 31, 2017.

#### 24-HOUR REPORTS

24-HOUR REPORTING PERIODS (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE
Primary: May 30 – June 11, 2018  General: October 24 – November 5, 2018	Any single expenditure of \$1,000 or more. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made.	Within 24 hours, including weekends and holidays, of making the expenditure, incurring the obligation, or placing the order.

#### HOW TO FILE REPORTS

**Using the Commission's Website.** Candidates who receive or expect to receive at least \$1,500 for their campaigns must file reports electronically on the Commission's website. Candidates or treasurers must enter the required information and the treasurer must click "File Report" by 11:59 p.m. on the filing deadline. Candidates who lack access to the technology or the technological ability to file reports on the internet may request a waiver by April 17, 2018. The Commission will grant all reasonable requests.

**Using Paper Forms.** For candidates who are not required to file electronically, each original campaign finance report signed by the candidate and treasurer must be properly filed with the Commission by the filing deadline, except in two circumstances. A properly signed report may be faxed to the Commission office at (207) 287-6775 by 11:59 p.m. on the deadline, provided that the Commission receives the original report within 5 calendar days. A report mailed to the Commission by certified or registered mail and postmarked at least 2 days before the filing deadline will not be considered late, even if it is received after the deadline.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to candidates and campaign staff.

**3. 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 influencing the nomination or election of any person to state, county or municipal office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

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 the facilities are owned or controlled by any political party, political committee, candidate, or spouse or domestic partner of a candidate;
- (1-A) Any communication distributed through a public access television channel on a cable television system if the communication complies with the laws and rules governing the channel and all candidates in the race have an equal opportunity to promote their candidacies through the channel;
- (2) Activity or communication 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 an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$250 with respect to any election;
- (5) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by that individual, if the cumulative amount of these expenses does not exceed \$350 with respect to any election;
- (5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state, county or municipal office;

year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

→ D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

### **3-B. Accelerated reporting schedule. (REPEALED)**

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate

- 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. Basis for penalties. (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 is waived.

Violations accumulate on reports with filing deadlines in a two-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.

**5. Maximum penalties. (REPEALED)**

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 100% of the amount reported late;



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: December 10, 2018  
Re: Proposed Changes to Commission Statutes

---

The Commission staff proposes the attached amendments to the statutes administered by the Commission. If you approve of submitting the proposed changes to the Maine Legislature, we would give them to the Revisor of Statutes as a proposed agency bill to be considered in the First Regular Session of the 129<sup>th</sup> Legislature. We would like to submit the bill this month, in order to reduce the risk that it would be printed late in the session.

We have inserted a star in the left margin next to the amendments that we believe are more substantive. Some of the minor changes were approved by the Commission two years ago for submission to the Legislature. They were included in a bill (L.D. 1122) that the Legislature considered in 2017. The Joint Standing Committee on Veterans and Legal Affairs approved a committee amendment stripping some provisions from the bill (we are *not* proposing those provisions this year). Both chambers enacted L.D. 1122, but Governor LePage vetoed the bill. The veto was sustained by the Legislature.<sup>1</sup>

Please be aware that, prior to your Dec. 19 meeting, we may contact you concerning a couple of amendments:

- The Commission staff is proposing (in 21-A M.R.S.A. § 1125(3-C)) a procedure by which concerned members of the public could complain that a Maine Clean Election Act candidate for the Legislature does not meet the district-residency

---

<sup>1</sup> <http://legislature.maine.gov/LawMakerWeb/dockets.asp?ID=280064194>

requirements in the State Constitution. We are still in consultation with the Commission Counsel concerning the proposal.

- The Commission staff may email you a proposed change to the Commission's appointment statute (1 M.R.S.A. § 1002(1-A)).

For your reference, I have also attached the current statute defining residency for purposes of voting (21-A M.R.S.A. § 112).

Thank you for your consideration of this memo.

**MAINE REVISED STATUTES**  
**TITLE 21-A, CHAPTER 13: CAMPAIGN REPORTS AND FINANCES**

**SUBCHAPTER I**  
**GENERAL PROVISIONS**

**21-A § 1001. Definitions**

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

- 1. Commission.** “Commission” means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.
- 2. Election.** “Election” means any primary, general or special election for state, county or municipal offices as defined in municipalities subject to Title 30-A, section 2502, subsection 1 and any referendum, including a municipal referendum in municipalities subject to Title 30-A, section 2502, subsection 2.
- 3. Person.** “Person” means an individual, committee, firm, partnership, corporation, association or organization.

*This section defines “election” for Chapter 13 of the Maine Election Law, which sets out the registration and reporting responsibilities for candidates, political action committees, ballot question committees and party committees. Because this chapter relates to both candidate and ballot question elections (such as bonds, citizen initiatives and peoples veto referenda), the Commission staff proposes amending the definition of “election” to include ballot questions.*

*FYI - the proposed definition relies on the term “referendum,” which is defined in Title 21-A, § 1(36) to mean “an election for the determination of a question.” Under Title 30-A, § 2052, municipal elections in towns and cities with a population of 15,000 or more are governed by Chapter 13 (the candidates and PACs file registration and campaign finance reports with the municipal clerk, rather than the Commission.) (LD 1122)*

**21-A § 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. Confidentiality. (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 third 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 ~~finding of fact, violation or other 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 investigation prepared by staff for the commission may be disclosed at the time it is submitted to the commission, provided the subject of the investigation has an opportunity to review it first to identify material that it considers privileged or confidential under some other provision of law.~~

*Since its enactment in 2008, this confidentiality provision in the Commission's investigation statute (§1003(3-A)) has allowed the Commission to keep confidential certain information and communications when conducting investigations in enforcement matters. The statute, which was proposed by the Commission, was intended to facilitate the professional and non-partisan gathering of financial and sensitive campaign information needed by the Commission to*



determine whether violations occurred. The statute protects not just documents and information belonging to those outside the Commission, but also intra-agency memoranda and emails of the Commission.

*It is important for the public to understand the conduct and outcome of an investigation by the Commission, and the factual and legal basis for a recommendation by the staff or a determination by the Commission. It is difficult to accomplish this without disclosing documents or information that is confidential under § 1003(3-A). In these circumstances, the Commission needs to weigh the importance of operating transparently and the privacy interests of the parties involved.*

*The Commission staff proposes a change in the confidentiality provision (§1003(3-A)) to clarify that the Commission and its staff have the discretion to release a memorandum or report containing or accompanied by confidential information or documents prior to a finding of fact or conclusion of law by the Commission, provided that the subject of the investigation whose information would be made public has an opportunity to see the memorandum before its release and to assert any claims of privilege or confidentiality. Those could be dealt with by redactions. This discretionary authority was always presumed by the Commission, but was challenged in 2017 by the respondents in the York County casino matter.*

**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.

#### **21-A § 1013-A. Registration**

...

**3. Party committees.** The state, district, and county and municipal committees of parties shall submit to ~~the commission~~ their state party committees the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 10 days after the appointment, election or hiring of these persons. Municipal committees must file copies of the same information with ~~the commission and~~ the municipal clerk. District, county and municipal committees that provide ~~their state party committees with~~ the information required by this subsection to be submitted to the commission have met that requirement. No later than ~~the 2nd Monday in April~~ June 15th of each year in which a general election is scheduled, the state party committee of a party shall submit to ~~the commission~~ a consolidated report, ~~including the information required under this subsection, of the names, mailing addresses and electronic mail addresses of the chair and treasurer of~~ for the district, county and municipal committees of that party, or of another officer if a chair or treasurer has not been appointed. . . .

*The Commission staff proposes that the local party committees provide their officer information to the state party committee (rather than the Commission), and the state party committee would provide a consolidated report to the Commission by June 15th (after the state conventions). We propose to receive the chair and treasurer for each committee (or other officer if there is no*

*chair or treasurer). Our proposal retains the current requirement in law that municipal committees file their officer information with the local clerk. (LD 1122)*

## **21-A § 1014. Publication or distribution of political statements**

**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 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 ~~21 days before a primary election or 35 days before a general election~~ ~~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~~ 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.

*Section 1014 requires certain communications to voters to include a statement of who made the expenditure for the communication and whether a candidate authorized the communication. Subsections 1 and 2 relate to communications that expressly advocate for the election or defeat of a candidate. Subsection 2-A requires the "paid for and authorized by" statement during limited time periods before a primary, special or general election for communications that merely name or depict a clearly identified candidate.*

*The 2015 citizen initiative expanded similar time periods in the independent expenditure reporting statute (§ 1019-B(1)(B)) that control when non-express advocacy communications to voters are presumed to be independent expenditures and require a financial report to the Commission. To be consistent, the Commission staff proposes that the time periods in § 1014(2-A) be expanded to be consistent with (§ 1019-(1)(B)).*

**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 programming, direct mail or newspaper or other periodical publications.

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

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

- (1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and
- (2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day.

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders.

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day.

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required.

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts.

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only.

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication.

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication.

**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station or cable television system within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ballot question. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

**3-B. Newspapers.** A newspaper may not publish a communication described in subsections 1 to 2-A, without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the commission regarding whether or not the communication requires the disclosure.

**4. Enforcement.** A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication

was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty.

**5. Telephone calls.** Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the ~~21 days before a primary election or the 35 days before a general election~~ ~~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~~ must clearly state the name of the person who made or financed the expenditure for the communication ~~and whether the communication was authorized by a candidate~~, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. ~~Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of changing the voting position of call recipients are not required to include the disclosure.~~

*Please see explanation for subsection 2-A above.*

...

## **21-A § 1017. Reports by candidates**

### **1. Federal candidates. (REPEALED)**

**2. Gubernatorial candidates.** A treasurer of a candidate for the office of Governor shall file reports with the commission as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year, other than a gubernatorial election year, in which the candidate or the candidate's political committee has received contributions in excess of \$1,000 or made or authorized expenditures in excess of \$1,000, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the candidate's treasurer as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 49th day before the election.

C. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date.

D. Any If the candidate has an opponent who is on the ballot or who is a declared write-in candidate, any single contribution of \$1,000 or more received or any single expenditure of

\$1,000 or more made after the 14th day before the election and more than 24 hours before 11:59 p.m. on the day of the election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

*Under this proposal, a candidate for Governor who does not have an opponent in a primary, general or special election would not be required to file 24-Hour Reports in the last 13 days before the election. (The candidate would disclose his or her contributions and expenditures in the regular report due 42 days after the election.) A similar proposal is made for section 3-A (immediately below), covering legislative, county and municipal candidates. (L.D. 1122)*

...

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

- A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.
- B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.
- C. Any If the candidate has an opponent who is on the ballot or who is a declared write-in candidate, any single contribution of \$1,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of that contribution or expenditure. The candidate or treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

...

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name and address of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

*In campaign finance reports filed with the Commission, PACs, BQCs and state and local party committees are required to disclose both the name and the address of each payee. Candidates have not been required to report the address – only the name. The address can sometimes be necessary to identifying the specific vendor which sold the goods or services to the candidate. Some candidates purchase goods and services from vendors located outside Maine or from individuals or businesses under assumed names that are hard to identify. Within Maine, there are dozens of post offices and retail stores with the same name but different locations. Around half of the candidates for the Legislature participate in the Maine Clean Election Act program and it is important to understand how they have spent their public campaign funds. (This statute covers gubernatorial, legislative, and county candidates, as well as municipal candidates in about a dozen towns or cities with a population of 15,000 or more.)*

*Due to a change in the Commission's electronic filing system in 2014, the online forms used by candidates to enter expenditures called for them to enter an address for their payees. Almost all candidates entered an address in 2014, 2016 and 2018 without questioning it. (We can recall receiving only one complaint in 2014.) The Commission staff proposes requiring candidates to disclose the address of each payee. (L.D. 1122)*

...

**8. Disposition of surplus.** A candidate or treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 must dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

*§ 1017(8) requires candidates to dispose of unspent campaign funds within four years of the election for which they were raised. This statute applies only to traditionally financed candidates who have raised campaign contributions – not to Maine Clean Election Act candidates. The Commission staff proposes acknowledging that the candidate (rather than the*

*(campaign treasurer) will more often be the person making the post-election decision how to dispose of surplus funds.*

- A. Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;
- B. A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;
- C. An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;
- D. Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;
- D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;
- E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;
- F. Repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;
- G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and
- H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift; and
- I. Spending the funds to pay expenses related to a recount of ballots of the candidate's election.

The choice must be made by the candidate for whose benefit the contributions were made.

*In response to questions by candidates, the Commission staff proposes permitting candidates to spend surplus funds for a recount. This proposal may rarely be needed, because candidates do not necessarily need to incur any expenses for a recount. Legal representation is usually provided for free by the political parties. Current law (§ 1018-B) forbids Maine Clean Election Act funds to be spent for a recount.*

...

## **21-A § 1017-A. Reports of contributions and expenditures by party committees**

**1. Contributions.** A party committee shall report all contributions in cash or in kind from a single contributor that in the aggregate total more than \$200. The party committee shall report the name, mailing address, occupation and place of business of each contributor. Contributions of \$200 or less must be reported, and these contributions may be reported as a lump sum.

**2. Expenditures to influence a campaign.** A party committee shall report all expenditures made to influence a campaign, as defined in section 1052, subsection 1. The party committee shall report:

- A. The name of each candidate, ~~political committee~~, political action committee, ballot question committee, or party committee;
- B. The office sought by a candidate and the district that the candidate seeks to represent; and
- C. The date, amount and purpose of each expenditure.

**3. Other expenditures.** Operational expenses and other expenditures that are not made to influence a campaign, as defined in section 1052, subsection 1 must be reported separately. The party committee shall report:

- A. The name and address of each payee;
- B. The purpose for the expenditure; and
- C. The date and amount of each expenditure.

**4. Filing schedule. (REPEALED)**

**4-A. Filing schedule.** A state party committee shall file its reports according to the following schedule. All reports required under paragraphs A, B and C must be filed by 11:59 p.m. on the day of the filing deadline.

- A. Quarterly reports must be filed by 11:59 p.m.: A state party committee shall file quarterly reports:
  - (1) On January 15th and must be complete up to December 31st;
  - (2) On April 10th and must be complete up to March 31st;
  - (3) On July 15th and must be complete up to June 30th; and
  - (4) On October 5th and must be complete up to September 30th.

*In §§ 1017-A(4-A) and 1059(2), the Commission staff proposes statutory changes to clarify the filing schedule for state party committees and political action committees (PACs). These changes would also affect ballot question committees, which by statute are under the same filing deadlines as PACs. We are not seeking to change the current filing schedules. Rather, we are attempting to clarify the statutory language to reflect current practice.*

- B. General and primary election reports must be filed by 11:59 p.m.: During any year in which primary and general elections are held, a state party committee shall file primary and general election reports in addition to the reports required under paragraph A:

- (1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and
  - (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

- C. Pre election and post election reports for special elections, referenda, initiatives, bond issues or constitutional amendments must be filed by 11:59 p.m.: In an election year other than a year described in paragraph B, if a state party committee has received contributions or made expenditures for the purpose of influencing a ballot question election, a special

election, or a municipal candidate or referendum election subject to Title 30-A, section 2502, the committee shall file pre-election and post-election reports:

- (1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

*Paragraphs B and C set out when state party committees must file reports 11 days before and 42 days after an election. Under this proposal, during a candidate election year (even-numbered year), the reports would be due before and after the primary and general elections. During odd-numbered years, the reports would be due only if the state party were spending money to influence a ballot question election, special election, or municipal election in a town or city with a population of 15,000 or more. (L.D. 1122)*

D. A state party committee that files an election report under paragraph B or C is not required to file a quarterly report under paragraph A when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

E. AIf a state party committee is required to file a report 11 days before an election pursuant to paragraphs B or C, the state party committee shall report any single contribution of \$5,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

*Paragraph E requires state party committees to file a 24-Hour Report of large contributions and expenditures that occur during the last 13 days before an election. The purpose of this requirement is to give voters access to last-minute financial activity to influence them at the ballot box. The proposal clarifies that state party committees would need to file 24-Hour Reports before each primary and general election. Please note that the reports would be required before a primary or general election even if the contribution or expenditure was not for the purpose of influencing the election. During odd-numbered years, the 24-Hour Reports would be required during the 13 days before an election only if the state party committee were spending money to influence that election. (LD 1122)*

**4-B. Filing schedule for municipal, district and county party committees.** Municipal, district and county party committees shall file reports according to the following schedule.

A. Reports filed during an election year must be filed with the commission by 11:59 p.m. on:

- (1) July 15th and be complete as of June 30th;

- (2) The 11th day before the date on which the general election is held and must be complete up to the 14th day before that date; and
- (3) January 15th and be complete as of December 31st.

B. Reports filed during a nonelection year must be filed by 11:59 p.m. on:

- (1) July 15th and be complete as of June 30th; and
- (2) January 15th and be complete as of December 31st.

C. A committee shall report any single contribution of \$5,000 or more received or any expenditure of \$1,000 or more made after the 14th day before any a general election and more than 24 hours before 11:59 p.m. on the day of the election within 24 hours of that contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

*Party committees formed at the municipal or county level (e.g., the Cumberland County Democratic Committee, or the Bangor Republican Committee) are required to file campaign finance reports if they raise or spend \$1,500 or more during a calendar year. Depending when that threshold is met during an election year, the committee may be required to file reports on July 15<sup>th</sup>, eleven days before a general election, and the January 15<sup>th</sup> after the general election. The proposed change clarifies that a 24-Hour Report is required only for large contributions or expenditures made before a general election. (L.D. 1122)*

**4-C. Electronic filing.** State party committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a party committee submits a written request that states that the party committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by March 1st of the election year. The commission shall grant all reasonable requests for exceptions.

**5. Penalties.** A party committee is subject to the penalties in section 1020-A, subsection 4.

**6. Notice; forms.** A state party committee shall notify all county, district and municipal party committees of the same political party of the party committee reporting requirements. The party committees shall obtain the necessary forms from the commission to complete the filing requirements.

**7. Exemption.** Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements of this section for that year.

**8. Municipal elections.** When a party committee makes contributions or expenditures on behalf of a candidate for municipal office subject to this subchapter, it shall file a copy of the reports required by this section with the clerk in that candidate's municipality.

## 21-A § 1019-A. Reports of membership communications

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of \$50 \$100 in any one candidate's election race, notwithstanding the fact that such communications are not expenditures under section 1012, subsection 3, paragraph A. Reports required by this section must be filed with the commission on forms prescribed and prepared by the commission and according to a reporting schedule that the commission shall establish by rule.

*Some membership organizations (business associations, labor unions, and trade associations) communicate with their members concerning political candidates. Communications from a membership organization to its members are exempt from the definition of "expenditure" in the Election Law (21-A M.R.S.A. §§ 1012(3)(B)(3) & 1052(4)(B)(3)). That means that the organizations do not need to form PACs or file independent expenditure reports based on their advocacy communications to their own members.*

*In 2001, the Legislature adopted a requirement that if a membership organization spends more than \$50 to expressly advocate for or against a candidate, the organization needs to file a one-time report. (The Commission receives relatively few membership communication reports -- six were filed in 2018).*

*The threshold of spending \$50 to influence a candidate's election (adopted in 2001) is one of the lower thresholds for filing a campaign finance report, and significantly lower than the \$250 threshold for filing an independent expenditure report. The Commission staff recommends an incremental change to \$100 per candidate. (Goods or services with a value of \$50 in September 2001 were worth \$71 in October 2018.)*

## 21-A §1019-B. Reports of independent expenditures

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

- A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and
- B. Is presumed to be any expenditure 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. 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 of making the expenditure 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 must determine by a



preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

*This subsection governs how persons sending communications naming or depicting political candidates in the weeks leading up to an election may rebut the presumption of an independent expenditure by submitting a written explanation and evidence to show that they did not intend to influence the candidate's election. Persons wishing to rebut the presumption deserve a reasonable opportunity to do so. The Commission staff proposes changing the deadline for submitting the rebuttal statement to within 48 days of disseminating the communication – rather than 48 hours of incurring an obligation or expenditure for the communication (which can occur days or weeks before the distribution.) Independent expenditure reports no longer impact the payment of Maine Clean Election Act funds, which required a short deadline. Also, a single communication may involve multiple financial obligations or payments to different vendors. So, making dissemination of the communication the trigger for submitting a rebuttal statement may facilitate compliance.*

**3. Report required; content; rules. (REPEALED)**

**4. Report required; content; rules.** A person, party committee, political 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 perjury, as provided in Title 17 A, section 451, 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. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;
- 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.

## **21-A § 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 ~~\$10~~ \$100. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

*Some candidates for legislative and county office do not register with the Commission even after multiple attempted contacts by the Commission staff. In the late spring of the election year, the Commission sometimes needs to initiate an enforcement process in order to persuade some individuals to register. The Commission staff proposes increasing the penalty for failing to register from \$10 to \$100. The current penalty of \$10 is so small that it has little punitive value. Whether the office is municipal, county, or legislative, the public deserves to have each candidate for public office file a simple form providing contact information and identifying a treasurer and other officers. (L.D. 1122)*

**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. Basis for penalties. (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 is waived.

Violations accumulate on reports with filing deadlines in a two-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.

**5. Maximum penalties. (REPEALED)**

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4, except that if the dollar amount of the financial activity reported late that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the that amount reported late;

A-1. Five thousand dollars for reports required under section 1019 B, subsection 4, except that if the dollar amount of the financial activity reported late that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the that amount reported late;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the dollar amount of the financial activity reported late that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the that amount reported late;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B.

**E. (REPEALED)**

*Under this proposal, the Commission staff seeks to clarify that if contributions or expenditures exceeding \$50,000 are disclosed in a campaign finance report but the details of the transactions are incomplete or inaccurate, the maximum penalty is 100% of the amount that was reported incompletely or inaccurately. This clarification is intended to address a legal interpretation of current law proposed by respondents in the York County casino matter. They argued that, under current law, if the amount of contributions was correctly disclosed in a campaign finance report, the higher penalties would not apply even though the reports did not correctly name the actual contributor.*

**6. Request for a commission determination.** If the commission staff finds that a candidate or political committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the candidate or political committee within 3 business days following the filing deadline informing the candidate or political committee that a report was not received. If a candidate or a political committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the candidate or political committee whose registration or campaign finance report was not received by 11:59 p.m. on the deadline date, informing the candidate or political committee of the staff finding of violation and preliminary penalty calculated under subsection 4-A and providing the candidate or political committee with an opportunity to request a determination by the commission. Any request for a determination must be made within 14 calendar days of receipt of the commission's notice. A candidate or political committee requesting a determination may either appear in person or designate a representative to appear on the candidate's or political committee's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

**7. Final notice of penalty.** If a determination has been requested by the candidate or political committee and made by the commission, notice of the commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the political committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

**8. Failure to file report.** The commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by

this subchapter after the commission has sent the notices required by this subsection is guilty of a Class E crime.

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

**9. List of late-filing candidates.** The commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

**10. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

...

## SUBCHAPTER IV

### REPORTS BY POLITICAL ACTION COMMITTEES

#### **21-A § 1051. Application**

This subchapter applies to the activities of political action committees and ballot question committees organized in and outside this State that accept contributions, incur obligations or make expenditures ~~for to influence the nomination or election of a candidate to state, county or municipal officers, or for the support or defeat of any to initiate or influence a campaign, as defined in this subchapter.~~

*This subchapter sets out the registration and campaign finance reporting for both political action committees and ballot question committees. The Commission staff proposes amendments to Section 1051 and 1052 to clarify that certain provisions in this subchapter relate to both political action committees and ballot question committees. (LD 1122)*

#### **21-A § 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, as defined in this subchapter, or any ballot question committee, as described in section 1056-B, and includes any agent of a political action committee or ballot question committee.

...

#### **21-A § 1055-A. Political communications to influence a ballot question**

**1. Communications to influence ballot question elections.** Whenever a person makes an expenditure exceeding \$500 expressly advocating through broadcasting stations, cable television systems, prerecorded automated telephone calls or scripted live telephone calls, 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, for or against an

initiative or referendum that is on the ballot, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication, except that telephone calls must only clearly and conspicuously state the name of the person who made or financed the expenditure for the communication Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of changing the voting position of call recipients are not required to include the disclosure.

*Section 1055-A requires a “paid for” disclosure statement in any communication to voters costing more than \$500 that expressly advocates for or against a ballot question. Enacted in 2013 at the suggestion of the Commission, this requirement is analogous to the “paid for” requirement in candidate election communications in Section 1014.*

*The Commission staff proposes broadening the requirement to cover telephone calls, which would be analogous to subsection 1014(5). (The Commission staff is unsure why telephone calls were omitted from the statute, when originally enacted in 2013.) If members of the public are receiving a paid automated or scripted telephone call expressly urging them to vote for or against a ballot question, it could assist them in evaluating the message if the speaker disclosed which organization sponsored the communication. Because of time limitations in automated calls, we suggest omitting the address requirement (also analogous to Section 1014(5)).*

**2. Exceptions.** The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraisers and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. “Small promotional items” includes but is not limited to ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

**3. Enforcement.** A violation of this section may result in a penalty of no more than \$5,000. In assessing a penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it.

*The Commission’s original 2013 proposal did not include a penalty provision. Although the Commission staff is aware of very few violations of this disclosure requirement, someday a violation could occur that is viewed as significant and the Election Law could appear ineffective if there is no penalty. This proposed penalty provision is based on Section 1014(4).*

## 21-A § 1056-B. Ballot question committees [TWO OPTIONS]

 [OPTION A] A person not defined as a political action committee that receives contributions aggregating in excess of \$5,000, or makes expenditures aggregating in excess of \$5,000, other than by in the form of a contribution to a political action committee or ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1 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" as defined in section 1052, subsection 1 does not include activities to influence the nomination or election of a candidate. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign.

[OPTION B] A person not defined as a political action committee that receives contributions or makes expenditures, other than by contribution to a political action committee or a ballot question committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1 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" as defined in section 1052, subsection 1 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 that 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.

*Under this statute, individuals or organizations receiving or spending more than \$5,000 are required to register with the Commission as ballot question committees (BQCs) and file campaign finance reports according to the same schedule as PACs. The "other than by" clause in first sentence of the statute contains an exception for contributions made to PACs or BQCs. The Commission staff proposes amending the exception for donors to clarify that if a person receives contributions greater than \$5,000 for the purpose of influencing a campaign, that person is required to register as BQC and file reports with the Commission – even if the person subsequently contributes those funds to PAC or to another BQC.*

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

**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.

## **21-A § 1059. Report; filing requirements**

~~Committees~~ A committee required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report ~~at the time within 7 days~~ of registration 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.

*In §§ 1017-A(4-A) and 1059(2), the Commission staff proposes statutory changes to clarify the filing schedule for state party committees and political action committees (PACs). These changes would also affect ballot question committees, which by statute are under the same filing deadlines as PACs. We are not seeking to change the current filing schedules. Rather, we are attempting to clarify the statutory language to reflect current practice. The proposals also implement the instruction in the Revisor's Drafting Manual (page 80) that drafters should use the singular form of a noun, rather than the plural. (L.D. 1122)*

### **1. Contents; quarterly reports and election year reports. (REPEALED)**

**2. Reporting schedule.** ~~Committees~~ A committee shall file reports according to the following schedule.

A. ~~All committees~~ A committee shall file quarterly reports:

- (1) On January 15th and must be complete as of December 31st;
- (2) On April 10th and must be complete as of March 31st;
- (3) On July 15th and must be complete as of June 30th; and
- (4) On October 5th and must be complete as of September 30th.

B. ~~General and primary election reports must be filed During any year in which primary and general elections are held, a committee shall file primary and general election reports in addition to the reports required under paragraph A:~~

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

A committee shall file primary and general election reports even if a committee did not engage in financial activity to influence the primary or general election.

C. ~~Pre-election and post-election reports for special elections or ballot measure campaigns must be filed~~In any election year other than a year described in paragraph B, if a committee has received contributions or made expenditures for the purpose of influencing a ballot question election, a special election, or a municipal candidate or referendum election subject to Title 30-A, section 2502, the committee shall file preelection and post-election reports:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and

(2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

*Paragraphs B and C set out when PACs must file reports 11 days before and 42 days after an election. Under this proposal, during a candidate election year (even-numbered year), the reports would be due before and after the primary and general elections. During odd-numbered years, the reports would be due only if the PAC were spending money to influence a ballot question election, special election, or municipal election in a town or city with a population of 15,000 or more. (L.D. 1122)*

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C.

E. If a committee is required to file a report 11 days before an election pursuant to paragraphs B or C, the committee shall report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election within 24 hours of that contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses.

*Paragraph D requires PACs to file a 24-Hour Report of large contributions and expenditures that occur during the last 13 days before an election. The purpose of this requirement is to give voters access to last-minute financial activity to influence them at the ballot box. The proposal clarifies that PACs would need to file 24-Hour Reports before each primary and general election. Please note that the reports would be required before a primary or general election even if the contribution or expenditure was not for the purpose of influencing the election. During odd-numbered years, the 24-Hour Reports would be required in the 13 days before a ballot question, special election, or municipal election only if the PAC were spending money to influence that election. (L.D. 1122)*

**3. Report of expenditures made after the 11th day and more than 48 hours before any election. (REPEALED)**

**4. Special election reports. (REPEALED)**

**5. Electronic filing.** ~~Committees~~ A committee shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a committee submits a written request that states that the committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted within 30 days of the registration of the committee. The commission shall grant all reasonable requests for exceptions.

## **21-A § 1062-A. Failure to file on time**

**1. Registration.** A political action committee required to register under section 1052-A or 1053-B or a ballot question committee required to register under section 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 is waived.

Violations accumulate on reports with filing deadlines in a two-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.

 **4. Maximum penalties.** The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, except that if the dollar amount of the financial activity reported late that was not timely filed or did not substantially conform to the reporting requirements of this subchapter exceeds \$50,000, the maximum penalty is 100% of the that amount reported late. For purposes of this subsection, contributions and expenditures are considered reported late if the transactions are reported after the applicable deadline or the campaign finance reports do not contain all of the information required for the transactions, such as date, amount, contributor or payee, or description of purpose.

*Under this proposal, the Commission staff seeks to clarify that if contributions or expenditures exceeding \$50,000 are disclosed in a campaign finance report but the details of the transactions are incomplete or inaccurate, the maximum penalty is 100% of the amount that was reported incompletely or inaccurately. This clarification is intended to address a legal interpretation of current law proposed by respondents in the York County casino matter. They argued that, under current law, if the amount of contributions was correctly disclosed in a campaign finance report, the higher penalties would not apply even though the reports did not correctly name the actual contributor.*

**5. Request for a commission determination. (REPEALED)**

**5. Request for a commission determination.** If the commission staff finds that a political action committee has failed to file a report required under this subchapter, the commission staff shall mail a notice to the treasurer of the political action committee within 3 business days following the filing deadline informing the treasurer that a report was not received. If a political action committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing the treasurer of the commission staff finding of violation and preliminary penalty calculated under subsection 3 and providing the treasurer with an opportunity to request a determination by the commission. A request for determination must be made within 14 calendar days of receipt of the commission's notice. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for consideration by the commission. A final determination by the commission may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

**6. Final notice of penalty.** After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

**7. List of late-filing committees.** The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

**8. Failure to file.** A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

**8-A. Penalties for failure to file report.** The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059 is \$10,000 or the amount of financial activity not reported, whichever is greater.

**9. Enforcement.** A penalty assessed pursuant to this section that has not been paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

## MAINE REVISED STATUTES

### TITLE 21-A, CHAPTER 14: THE MAINE CLEAN ELECTION ACT

#### 21-A § 1122. Definitions

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

...

##### **7. Qualifying contribution.** “Qualifying contribution” means a donation:

- A. Of \$5 or more in the form of a check or a money order payable to the fund ~~and signed by the contributor~~ in support of a candidate or made over the Internet in support of a candidate according to the procedure established by the commission;
- B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified according to procedures established by the commission;
- C. Made during the designated qualifying period; and
- D. That the contributor acknowledges was made with the contributor’s personal funds and in support of the candidate and was not given in exchange for anything of value and that the candidate acknowledges was obtained with the candidate’s knowledge and approval and that nothing of value was given in exchange for the contribution, on forms provided by the commission.

*The signature requirement for qualifying contributions made by check and money order is moved to § 1125(3)(B) below, as part of a proposed re-organization of § 1125(3) and a proposal to allow candidates to combine multiple QCs received in cash into a single money order submitted to the Commission. A detailed explanation is on pages 4-5.*

#### 21-A § 1125. Terms of participation

**1. Declaration of intent.** A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. Qualifying contributions collected more than 5 business days before the declaration of intent has been filed will not be counted toward the eligibility requirements in subsection 3 or 3-A.

**2. Contribution limits for participating candidates.** Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate’s total seed money contributions to the following amounts:

- A. Two hundred thousand dollars for a gubernatorial candidate;
- B. Three thousand dollars for a candidate for the State Senate; or

C. One thousand dollars for a candidate for the State House of Representatives.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

**2-A. Seed money restrictions.** To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating certified candidate to use fund revenues received after certification to pay for goods and services received prior to certification.

*In the last sentence of paragraph 2-A(A), the term “certified candidate” (someone who has qualified for MCEA funding) would be more appropriate than “participating candidate” (someone who is attempting to qualify). This sentence covers a situation in which a certified candidate pays MCEA funds to a vendor for goods or services received before they qualified.*

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8-F.

**2-B. Seed money required for gubernatorial candidates; documentation.**

**(REPEALED)**

**3. Qualifying contributions.** Participating candidates must obtain qualifying contributions during the qualifying period as follows: The collection of qualifying contributions is governed by this subsection.

*Please see pages 4-5 for a detailed explanation of proposed changes to section 1125(3).*

A. To be eligible to receive Maine Clean Election Act funding, participating candidates must obtain qualifying contributions during the qualifying period as follows:

A. (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;

B. (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

C. (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.

~~A payment, gift or anything of value may not be given in exchange for a qualifying contribution.~~ [moved below to paragraph G]

B. A contributor making a qualifying contribution by check or money order must 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 Maine Clean Election Fund.

C. 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 orders payable to the Maine Clean Election Fund. The candidate may not deposit qualifying contributions received in cash into the candidate's campaign account.

D. In the alternative, 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. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order.

E. Any fees for a cashier's check or a money order fees paid by a participating candidate must be paid for with seed money and paid with seed money must be reported in accordance with commission rules 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 orders, those fees are not a contribution to the candidate and are not required to be disclosed in campaign finance reports. The candidate must 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 for the purpose of promoting the candidate's nomination or election. A money order must be signed by the contributor to be a valid qualifying contribution.

F. 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.

G. 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.

*Subsection 1125(3) relates to qualifying contributions (QCs) collected by a candidate before they qualify for MCEA funding (certification). The Commission staff proposes breaking it down into paragraphs to make the subsection easier to digest, and we wish to propose one significant change in our procedures (in paragraph C). All of these changes were included in LD 1122, except for paragraph C.*

*Paragraph B clarifies that the Commission may allow candidates to endorse contribution checks to the Maine Clean Election Fund, if the contributor erroneously made the check payable to the candidate. This would reflect a current practice of the Commission.*

*Paragraph C relates to QCs made by cash. Under current law, the Commission's past practice has been to allow a candidate to receive QCs in the form of \$5 in cash, provided that the candidate uses that cash to reimburse himself or others for the purchase of a money order that is subsequently signed by the contributor. This has required candidates to purchase dozens of money orders (all at a fee), and to have the money orders available for the contributor to sign at the time of receiving a cash contribution (which can be unpredictable) or obtain a signature from the contributors after the contribution which requires a second meeting.*

*In paragraph C, the Commission staff recommends making an alternative procedure available to candidates which we hope would be more efficient. This method was proposed in 2017 by Sen. David Miramant in LD 585 (128<sup>th</sup> Legislature). Although the bill did not pass, the Commission staff believes that the proposal is worth discussing with the VLA Committee in 2019 if it meets with your approval. Under this procedure, the contributor would need to sign a special form affirming that they gave \$5 in cash. The Commission staff used a version of this form in 2018 when a candidate submitted a money order that was not signed by the contributor. The form is designed for one contribution only, so the affirmation is difficult for the contributor to miss or misunderstand.*

*After receiving \$5 in cash from multiple contributions, the candidate would use that cash to purchase a single money order that would be submitted to the Commission. The advantages of this proposal are that candidates would not need to visit a vendor such as the U.S. Post Office or Wal-Mart to purchase dozens of money order and have the money orders on hand when they might receive cash contributions, or purchase the money orders after the contributions and return to the contributors to obtain their signatures. The candidates would merely need to have the blank cash contribution forms with them anytime they are in public when someone might give them \$5 in cash. Another benefit is that the candidates would not need to pay for multiple fees for money orders, or account for those fees in campaign finance reports.*

*The staff's proposal is that the candidate could use either procedure: (1) Sen. Mirmant's idea of combining the cash contributions into a single money order, or (2) the traditional method of submitting separate money orders signed by the contributors. The traditional method is described in Paragraph D.*

*Paragraph E specifies how the candidate should report the fees paid to the post office, bank, or other vendor when money orders are purchased for this purpose. (Usually the money orders are purchased by the candidate, but not always.) The Commission staff proposes one accommodation to simplify the process for candidates: if a candidate purchased money orders*

*with personal funds, the candidate would not need to account for the fees as an in-kind contribution in the candidate's seed money report. In many cases, these fees are small (adding up to a total between \$5 and \$25) and accurate reporting of them can prolong the qualification process. Fees paid by other people would be a contribution to the candidate.*

*Paragraphs F and G retain certain current language in statute authorizing the Commission to establish a website for members of the public to make QCs electronically and forbidding the submission of fraudulent QCs.*

**3-A. Additional qualifying contributions.** Participating or certified candidates may collect and submit to the commission additional qualifying contributions at the times specified in subsection 8-E. The commission shall credit a candidate with either one qualifying contribution or one additional qualifying contribution, but not both, from any one contributor during the same election cycle. If any candidate collects and submits to the commission qualifying contributions or additional qualifying contributions that cannot be credited pursuant to this subsection, those qualifying contributions or additional qualifying contributions may be refunded to the contributor or deposited into the Maine Clean Election Fund at the discretion of the candidate. The procedures and restrictions set out in subsection 3, paragraphs B to G apply to additional qualifying contributions.

*This subsection relates to the additional qualifying contributions that candidates may collect to qualify for supplemental payments. The last sentence is inserted to clarify that the same procedures and restrictions set out in subsection 3 for qualifying contributions also apply to additional qualifying contributions.*

*The Commission staff proposes inserting “or certified” to the first sentence because most additional qualifying contributions are collected by candidates after the Commission has certified that the candidate has met the qualifications to receive the basic level of public campaign funding. We propose keeping the phrase “participating candidates” (defined § 1122(6) to mean candidates seeking certification), because participating candidates are allowed to collect additional qualifying contributions – even before they have been certified by the Commission. A similar change is proposed for subsection 8-E below.*

**3-B. Receipt and acknowledgment forms.** The commission shall prepare forms for persons making qualifying contributions to acknowledge the contribution as required in section 1122, subsection 7, paragraph D. A qualifying contribution is not valid if anyone other than the contributor signed the contributor's name to the form, except that a qualifying contribution is valid if it is signed by the contributor's immediate family member, domestic partner or live-in caregiver when the contributor is unable to sign due to a physical impairment or disability.

*Part of the definition of qualifying contribution in § 1122(7)(D) is that registered voters must acknowledge that the contribution was made from their personal funds and was not given in exchange for receiving anything of value. Since 2000, the Commission has used a “receipt and acknowledgement form” for this purpose. The proposed subsection 3-B directs the Commission to develop such a form and invalidates a QC if anyone other than the contributor signs the contributor's name to the form (with some exceptions for a contributor who is physically unable to sign). This reflects current practice. (If the spouse or domestic partner of a contributor signs*

*(the receipt and acknowledgement form, the Commission does not count the QC as valid and we ask the candidate to obtain the contributor's signature on the form.)*

**3-C. Residency and age requirements.** To be eligible to receive and spend revenues from the fund, a candidate must meet the qualifications for candidacy and for holding office, including residency requirements, provided in the Constitution of Maine, Article IV, Part First, Section 4, Article IV, Part Second, Section 6 and Article V, Part First, Section 4. The commission may consider a request to investigate a candidate's qualifications at any point prior to or within six months after the election for which the candidate received funding. If a request is filed, the commission shall consider whether to conduct an investigation according to the procedures in section 1003, subsection 2.

*Every election year, the Commission staff hears a few concerns that certain candidates are running for the Legislature without meeting the pre-election requirements in the State Constitution to reside in the district, which are that the individual must have (1) resided in the legislative district for three months prior to the candidate's election, and (2) been a resident of the district at the time of their nomination for placement on a primary, general or special election ballot. The Commission staff believes it is not appropriate for a candidate to receive Maine Clean Election Act funding if they do not meet both requirements prior to their election – regardless of whether they win the election.*

*There is no forum currently for a concerned voter in the legislative district (or a political opponent) to complain that a candidate who is receiving public campaign funds under the Maine Clean Election Act does not meet the residency requirements to serve or to be a candidate. A registered voter from the district has only a five-business-day period to challenge a candidate's nominating petition, and that period occurs in March (for party candidates) or June (for non-party candidates) of the election year. Relevant information about residency may not come to light until after those challenge periods have expired. Under the State Constitution, the Maine House of Representatives and the Senate judge the qualifications of their own members. This does not apply to candidates who have lost the general election, however, and the decision whether to raise the issue even then is necessarily political.*

*We acknowledge that some of the concerns we hear from the public are based on incomplete knowledge of the candidate's circumstances and/or a misunderstanding of how residency is defined for voting purposes in 21-A M.R.S. § 112. We might receive only one or two complaints per election cycle relating to MCEA candidates that are worthy of investigation. Nevertheless, we make this proposal so that members of the public may have a forum in which to air their concerns effectively.*

**5-A. Revocation of certification.** The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

- A. Did not submit the required number of valid qualifying contributions;
- B. Failed to qualify as a candidate by petition or other means;
- C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor;

- D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form;
- E. Failed to fully comply with the seed money restrictions;
- F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission;
- G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or chapter 13;

**G-1. Did not meet the qualifications for candidacy or holding office in the Constitution of Maine;**

- H. Otherwise substantially violated the provisions of this chapter or chapter 13; or
- I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section.

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

**6-C. Expenditures to the candidate or family or household members.** Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection.

- A. The candidate may not use fund revenues to pay or compensate the candidate ~~or a sole proprietorship of the candidate, the candidate's spouse or domestic partner, a sole proprietorship of the candidate or candidate's spouse or domestic partner, a business entity in which the candidate or the candidate's spouse or domestic partner holds a significant proprietary or financial interest, or a nonprofit entity in which the candidate or the candidate's spouse or domestic partner is a director, officer, executive director or chief financial officer for campaign-related goods or services.~~
- B. A candidate may ~~not~~ make expenditures using fund revenues to pay a member of the candidate's immediate family or household ~~other than the candidate's spouse or domestic partner;~~ a business entity in which ~~the candidate or~~ a member of the candidate's immediate family or household ~~other than the candidate's spouse or domestic partner,~~ holds a significant proprietary or financial interest; or a nonprofit entity in which ~~the candidate or~~ a member of the candidate's immediate family or household, ~~other than the candidate's spouse or domestic partner,~~ is a director, officer, executive director or chief financial officer, ~~unless provided that~~ the expenditure is made:
  - (1) For a legitimate campaign-related purpose;

- (2) To an individual or business that provides the goods or services being purchased in the normal course of the individual's occupation or the business; and
- (3) In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

For the purpose of this paragraph, "business entity" means a corporation, limited liability company, limited partnership, limited liability partnership and general partnership.

If a candidate uses fund revenues for an expenditure covered by this paragraph, the candidate shall submit evidence demonstrating that the expenditure complies with the requirements of this paragraph if requested by the commission.

This subsection does not prohibit reimbursement to the candidate or a member of a candidate's household or immediate family when made in accordance with this chapter and rules adopted by the commission.

*Under current section 1125(6-C)(A), a Maine Clean Election Act candidate is strictly prohibited from paying public campaign funds to compensate the candidate or a sole proprietorship of the candidate for campaign services. Under paragraph 6-C(B), the candidate may compensate a members of the candidate's immediate family or household, but only if three conditions listed in the paragraph are met. The same conditions are required if the candidate wishes to compensate a business entity owned by the candidate, an immediate family member or household member.*

*The Commission staff proposes language that would extend the strict prohibition in 6-C(A) to the candidate's spouse or partner, or a business entity owned by the candidate, or spouse or partner, to avoid any appearance that Maine Clean Election Act funds could be paid for self-serving reasons. As context, please be aware that the term "immediate family" is defined in 21-A M.R.S. A. §1(20) a little more broadly than one might expect, and includes grandchildren and in-laws.*

**8-E. Collection and submission of additional qualifying contributions.** Participating or certified candidates may collect and submit additional qualifying contributions in accordance with subsection 3-A to the commission as follows:

- A. For gubernatorial candidates, no earlier than October 15th of the year before the year of the election and no later than 3 weeks before election day; and
- B. For legislative candidates, no earlier than January 1st of the election year and no later than 3 weeks before election day.

Additional qualifying contributions may be submitted to the commission at any time in any amounts in accordance with the schedules in this subsection. The commission shall make supplemental distributions to candidates in the amounts and in accordance with the increments specified in subsections 8-B to 8-D. If a candidate submits additional qualifying contributions prior to a primary election in excess of the number of qualifying contributions for which a candidate may receive a distribution, the excess qualifying contributions must be counted as general election additional qualifying contributions if the candidate has a contested general election, but supplemental distributions based on these excess qualifying contributions may not be distributed until after the primary election.

*We propose inserting "or certified" to this subsection, because most additional qualifying contributions are collected by certified candidates.*

**Maine Revised Statutes**  
**Title 21-A: ELECTIONS**  
**Chapter 3: VOTER REGISTRATION**

**§112. RESIDENCE FOR VOTING PURPOSES**

Voting residence is governed by the following provisions. [1985, c. 161, §6 (NEW).]

**1. Residence.** The residence of a person is that place where the person has established a fixed and principal home to which the person, whenever temporarily absent, intends to return.

A. The following factors may be offered by an applicant and considered by a registrar in determining a person's residence under this section. The registrar need not find all of these factors to be present in order to conclude that an applicant qualifies to register to vote in the municipality:

- (1) A direct statement of intention by the person pursuant to section 121, subsection 1;
- (2) The location of any dwelling currently occupied by the person;
- (6) The place where any motor vehicle owned by the person is registered;
- (8) The residence address, not a post office box, shown on a current income tax return;
- (9) The residence address, not a post office box, at which the person's mail is received;
- (10) The residence address, not a post office box, shown on any current resident hunting or fishing licenses held by the person;
- (12) The residence address, not a post office box, shown on any motor vehicle operator's license held by the person;
- (14) The receipt of any public benefit conditioned upon residency, defined substantially as provided in this subsection; or
- (16) Any other objective facts tending to indicate a person's place of residence. [2009, c. 253, §10 (AMD).]

B. [1993, c. 695, §2 (RP).]

[ 2009, c. 253, §10 (AMD) .]

**2. Change.** A change of residence is made only by the act of removal, joined with the intent to remain in another place. A person can have only one residence at any given time.

[ 1985, c. 161, §6 (NEW) .]

**3. Residence retained.** A person does not lose the person's residence if the person temporarily leaves home and goes to another country, state or place in this State with the intent of returning.

[ 1993, c. 695, §3 (AMD) .]

**4. Separate residence.** The place where a person's family resides is presumed to be the person's place of residence, but a person may acquire a separate residence if the person takes another abode with the intention of remaining there. This subsection does not apply to uniformed service voters, students and others covered by subsection 7.

[ 2003, c. 407, §5 (AMD) .]

**5. Spouse may have separate residence.** A married person may be considered to have a residence separate from that of the person's spouse for the purposes of voting or holding office. For those purposes, residence is determined as if the person were single.

[ 1993, c. 695, §3 (AMD) .]

**6. Voting in another state.** A person loses the person's voting residence in this State if the person registers to vote in another state or votes in another state's election, either in person or by absentee ballot. That person is not eligible to register or vote in this State until the person again qualifies under section 111.

[ 2007, c. 455, §5 (AMD) .]

**7. Uniformed service voters, students, institutional patients, Indians.** A person does not gain or lose a residence solely because of the person's presence or absence while employed in the uniformed service or the merchant marine of the United States, while a student in any institution of learning, while kept in any institution at public expense or while residing upon any Indian or military reservations. This subsection may not be construed to prevent a student at any institution of learning from qualifying as a voter in the municipality where the student resides while attending that institution.

[ 2003, c. 407, §5 (AMD) .]

**8. Voting residence retained.** A person who has gained a voting residence in a municipality retains it, if the person so desires, when the person becomes a patient at a federal institution or an employee of a federal agency where the person is required to reside on land ceded to the Federal Government by the State. This subsection applies to a member of the uniformed service, merchant marine or the National Guard who is required to be in a place other than that in which the person has gained a voting residence.

[ 2003, c. 407, §5 (AMD) .]

**9. Federal property.** A person residing on federal property, except as stated in subsection 5, is eligible to register and vote in the voting district in which the federal property is located.

[ 1985, c. 161, §6 (NEW) .]

**10. Becoming 18 on federal property.** A person who becomes 18 years of age while residing on federal property as a patient at a federal institution or an employee of a federal agency, or while in the uniformed service, is considered to have gained a voting

residence in the municipality in which the person resided at the time the person became such a patient, employee or member of the uniformed service.

[ 2003, c. 407, §6 (AMD) .]

**11. Spouse of member of uniformed service or merchant marine.** A person may have the same voting residence as that person's spouse who is a member of the uniformed service or merchant marine. A member of the uniformed service or merchant marine on active duty, whose spouse has a place of residence in this State, may establish a residence in the place of residence of the spouse by filing an affidavit with the registrar declaring an intention to reside in that place upon severance from the uniformed service or merchant marine.

[ 2003, c. 407, §6 (AMD) .]

**12. Spouse may have separate residence.**

[ 1985, c. 614, §5 (RP) .]

**13. Voting in another state.**

[ 1985, c. 614, §5 (RP) .]

**14. Persons incarcerated in correctional facilities.** The residence of a person incarcerated in a correctional facility, as defined in Title 34-A, section 1001, or in a county jail does not include the municipality where a person is incarcerated unless the person had resided in that municipality prior to incarceration.

A person incarcerated in a correctional facility may apply to register to vote in any municipality where that person has previously established a fixed and principal home to which the person intends to return.

[ 1997, c. 436, §21 (AMD) .]

**15. Nontraditional residence.** A person may have a nontraditional residence, including, but not limited to a shelter, park or underpass. A person's residency is not subject to challenge on the sole basis that the person has a nontraditional residence.

[ 1993, c. 473, §5 (NEW); 1993, c. 473, §46 (AFF) .]



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: December 10, 2018  
Re: Proposed Rulemaking

---

The Commission staff recommends conducting a rulemaking to amend your Chapter 1 rules to address two topics related to debts and unpaid obligations:

- What process should the Commission use to consider whether a candidate's debt for goods or services that remains unpaid for years after an election should be considered a contribution?
- What actions by a candidate or committee constitute a promise or agreement to pay for campaign goods or services, such that the action must be included in a campaign finance report?

In addition, earlier this year the Commission postponed consideration of a rule amendment suggested by some Commissioners arising out of an enforcement matter:

- When may an employee of a party committee who prepares paid communications to voters concerning candidates be considered acting independently of the party committee?

Because the rule amendments do not relate to the Maine Clean Election Act program, they are routine technical and would not require legislative approval. We recommend holding a public hearing at a meeting on January 30, 2019 to receive public comments, although a hearing is not required. You may rely on written comments only. You could adopt the rules at a meeting in February or March.

## **When Should Post-Election Debts be Considered Contributions? (Chapter 1, Section 6(6))**

Every election year, a small number of candidates for Governor, the Legislature or other offices do not pay off debts for campaign goods or services in the weeks following an election. If a candidate continues to owe a post-election debt over \$100, they must file semi-annual campaign finance reports every January 15 and July 15 disclosing the debt. If the Commission staff continues to see a candidate semiannually reporting a debt for more than a year, we encourage the candidate to pay off the debt so that the candidate can discontinue filing campaign finance reports. Only a handful of candidates report ongoing debts that are more than a year old. Almost all these debts are paid off, eventually.

After a debt remains unpaid for some time, it is may be appropriate for the Commission to determine whether the candidate's receipt of goods and services before the election without paying full price should be considered (retroactively) a contribution. Without such a procedure, the reporting of debts could become a way for a candidate to mischaracterize their receipt of goods and services prior to the election without paying for them (*i.e.*, circumventing the restrictions on contributions).

The Commission staff believes that any such determination should be made with careful deliberation and with a full opportunity for the candidate to explain why the debt arose in the first place and remains unpaid. A candidate's debt could just as easily be due to overestimating financial support or poor decision-making as an intention to receive free or discounted services. We also believe that the Commission and its staff should give weight to the factor of whether the person providing the goods or services *had a purpose* of influencing that candidate's nomination or election. That is a required element in the contribution definition in the Election Law (21-A M.R.S.A. § 1012(2)(A)) and the Commission Rules (Chapter 1, Section 1(12)).

In 2009, the Commission adopted a rule proposed by staff that:

- created a presumption that any debt remaining unpaid six months after the election is a contribution, and

- requires the Commission to determine if any debt that is unpaid for more than four years should be deemed a contribution.

After relying on this rule for nine years, the Commission staff proposes some amendments. We think it might be unnecessary to create a presumption after six months, provided that the rule puts candidates on notice that debts could be considered contributions if they remain unpaid. Also, four years seems too long to wait for the Commission to determine whether an unpaid debt is a contribution. We propose a more flexible approach under which the Commission staff would monitor candidate debts and bring them to you at some appropriate point, if they are more than one year old. In many cases, it seems that 1½ - 3 years would be sufficient.

### **Reporting Debts and Unpaid Obligations**

In 2005, the Commission adopted a rule specifying that certain actions not involving a payment of money (*e.g.*, ordering goods or services from a vendor) constitute an expenditure that must be reported. This was part of a Commission effort to address candidates' concerns that payments of "matching funds" under Maine Clean Election Act were delayed, because PACs and party committees were disclosing independent expenditures based on the date of payment – rather than the date when goods and services were ordered or invoiced.

The Commission staff proposes some clarifications and changes of emphasis in the rule. If a candidate or committee incurs a debt and pays off the debt during the *same* report period, the filer would only report the payment – not the debt. (We believe it would confuse the public to see a debt and an expenditure for the same goods and services in a report.) The rule also states that if a candidate reports a debt in the report due 11 days before the election and pays the debt in the next two weeks, the candidate or committee would not need to report the payment in a 24-Hour Report. This follows your decision concerning Heather Sanborn at the July 25, 2018 meeting.

**Communications Prepared by Employees of Party Employees (Chapter 1, Section 7(9)(C))**

At the February 22, 2018 meeting, the Commission considered a request the Maine Examiner website which had published negative stories about a mayoral candidate in Lewiston. The Executive Director of the Maine Republican Party responded that he was solely responsible for website, which he described as a personal project he undertook on his own time, apart from his employment with the party.

At the April 25 meeting, the Commission considered a draft rule (requested by some Commissioners) stating that if an employee of a party committee prepares a communication to voters advocating for or against candidates, those activities would be presumed to be in the scope of the employee's job responsibilities. The Commission discussed concerns whether the rule would constrain free speech and the difficulty of calculating a portion of compensation attributable to preparing the communications. It was agreed that the staff would come back with a revised rule for your consideration after the election. The Commission's Counsel suggested inserting the provision in the Commission's existing rule interpreting the exception for handbills, campaign signs, and internet communications costing no more than \$100 created independently of candidates, party committees, etc.

A new proposal is attached for your consideration: an individual who prepares handbills, campaign signs or internet or email communications costing \$100 or less and who is employed by a party committee, political action committee or ballot question committee would be presumed not to be acting independently of that committee. The employee could rebut the presumption by demonstrating to the satisfaction of the Commission that the employee acted without any authorization by or knowledge of the committee's officers or the employee's supervisors, and that the activity was not related in any way to the employee's work responsibilities.

Thank you for your consideration of these proposed amendments.

**Chapter 1: PROCEDURES**

---

**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

---

...

**SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS**

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.
2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.
3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than \$50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the *Maine Clean Election Act*. Candidates, political action committees, ballot question committees, and party committees must make a reasonable effort to obtain the employment information of the contributor when required by statute. The reasonable effort must include requesting the employment information and providing a convenient means for the donor to provide the information, such as a paper form to be submitted with a contribution or text fields to enter the information on an online fundraising screen. If a candidate or committee is unable to obtain the information from the contributor in response to a candidate's or committee's request, the candidate or committee shall indicate "information requested" in the occupation and employer sections of the campaign finance report. If the Commission staff believes that due to the amount of missing information further inquiry is warranted, the Commission staff shall verify whether the candidate or committee has made a reasonable effort to obtain the information.
4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

- A. A commercial vendor that has provided a discount to a candidate or political committee because of a defect in performance or other business reason has not made a contribution if the vendor grants substantially similar discounts to other customers in the ordinary course of the vendor's business.
- B. If a candidate is a public official who is provided a vehicle for transportation by a public entity for the purpose of conducting official duties, the use of such vehicle for campaign purposes is considered to be an in-kind contribution to the candidate from the public entity unless the candidate reimburses the public entity for the use of the vehicle.

5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. ~~The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission staff shall monitor debts that are reported by candidates in post-election campaign finance reports. If debts remain unpaid more than one year after the election in which the debt occurred, the Commission staff may bring the debt to the attention of the Commission for consideration whether the debt shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. In deciding whether the debt constitutes an over-the-limit contribution and whether to assess any penalty, the Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.~~

...

## SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign**
  - A. Each expenditure made on behalf of a candidate, political committee, or political action committee by any person, agency, firm, organization, etc., employed or retained for the purpose of organizing, directing, managing or assisting the candidate, the candidate's committee, or the political action committee must be reported separately by the candidate or committee as if made or incurred by the candidate or committee directly. The report must include the name of the third party vendor or payee to whom the expenditure was made, the date of the

expenditure, and the purpose and amount of the expenditure. It is not sufficient to report only the total retainer or fee paid to the person, agency, firm, organization, etc., if that retainer or fee was used to pay third party vendors or payees for campaign-related goods and services.

- B. If a candidate or committee has paid a media buyer, advertising consultant or similar contractor to purchase advertising time or for the production of television or radio advertising, the candidate or committee may disclose the advertising time and production costs in the aggregate, rather than itemizing each payment made by the contractor to a third party vendor or payee. *Maine Clean Election Act* candidates must obtain from their contractor(s) documentation of every payment of \$50 or more made on their behalf by a contractor or subcontractor related to television or radio advertising.
- 2. **Expenditures by Political Action Committees.** In addition to the requirements set forth in 21-A M.R.S.A. §1060(4), the reports must contain the purpose of each expenditure and the name of each payee and creditor.

3. **Timing of Reporting Expenditures**Reporting Debts and Unpaid Obligations

- A. ~~Placing an order with a vendor for a good or service; signing a contract for a good or service; the delivery of a good or the performance of a service by a vendor; or a promise or an agreement (including an implied one) that a payment will be made constitutes an expenditure, regardless whether any payment has been made for the good or service.~~
- B. Expenditures must be reported at the earliest of ~~t~~The following events constitute expenditures, even if the payment for a good or service has not been made at the time of the event:
  - (1) The placement of an order for a good or service;
  - (2) The signing of a contract for a good or service;
  - (3) The acceptance of the delivery of a good or the performance of a service by a vendor; or
  - (4) A promise or an agreement (including an implied one) that a payment will be made in exchange for a good or service; ~~or~~
  - (5) ~~The making of a payment for a good or service.~~
- B. For reporting purposes, the expenditures listed in paragraph A are designated as debts or obligations prior to payment for the goods or services being made.
- C. If a person required to file a campaign finance report has a debt or obligation which remains unpaid at the end of the report period, the person

shall report the date, amount, vendor, and purpose of the debt or obligation. If the exact amount is not known, the person filing the report shall report an estimate of the amount (preferably obtained in a written statement from the vendor).

C. At the time the duty to report an expenditure arises, the person submitting the report is required to determine the value of goods and services to be rendered (preferably through a written statement from the vendor) and to report that value as the amount of the expenditure. If the expenditure involves more than one candidate election, the report must include an allocation of the value to each of those candidate elections.

D. If a debt or obligation occurs in the same report period as a payment for that debt or obligation, the person filing the report will report only the payment, not the debt or obligation.

E. A candidate or committee is not required to report a payment for a good or service in a 24-Hour Report, if the candidate or committee reported a debt for that good or service in the last regularly scheduled campaign finance report.

4. **Advance Purchases of Goods and Services for the General Election *[Repealed]***
5. All campaign-related payments made with the personal funds or credit card of the candidate or an individual authorized by the candidate must be reported as expenditures in the reporting period during which the payment to the vendor or payee is made. The candidate must report the name of the vendor or payee to whom the payment was made, the date of the expenditure, and the purpose and amount of the expenditure. When the expenditure is reported, the candidate should indicate the person who made the payment by entering "Paid by [name of candidate or supporter]" in the remarks section of the expenditure schedule. It is not sufficient to report only the name of the candidate or authorized individual to whom reimbursement was made and the total amount of the reimbursement.
6. Multiple expenditures for bank fees and for vehicle travel may be reported in an aggregate amount, provided that the candidate or committee identifies the time period of the expenditures in the remarks section of the report.
7. When a political action committee or party committee makes an expenditure for a communication to voters for the purpose of influencing the election of a clearly identified candidate, the amount spent to influence that candidate's election must be specified on the regularly filed campaign finance report of the committee, regardless whether the communication expressly advocates for the election or defeat of the candidate. If a single expenditure influences the election of more than one candidate, the political action committee or party committee shall itemize the amount spent per candidate.
8. Payments made or obligations incurred solely for the purpose of conducting activities to determine whether an individual should become a candidate are not expenditures if the individual does not become a candidate. Examples of such activities include, but are not

limited to, conducting a poll, telephone calls, and travel. The individual shall keep records of all such payments and obligations. If the individual becomes a candidate, the payments made or obligations incurred are expenditures and are subject to the reporting requirements of 21-A M.R.S.A. §1017. Such expenditures must be disclosed in the first report filed by the candidate or the candidate's authorized campaign committee, regardless of the date when the funds were expended, in accordance with the Commission's procedures for reporting expenditures.

Payments made for activities indicating that an individual has decided to become a candidate for a particular office are expenditures. Examples of such activities include, but are not limited to: using general public political advertising to publicize his or her intention to campaign for office; hiring staff or consultants for campaign activities; raising funds in excess of what could reasonably be expected to be used for exploratory activities; making or authorizing statements that refer to him or her as a candidate; or taking action to qualify for the ballot.

**9. Exception to Disclaimer Requirements for Certain Handbills, Campaign Signs, and Internet or E-Mail Communications**

For purposes of applying the exclusions listed in Title 21-A, section 1014, subsection 6, paragraphs A through C, the following terms have the following meanings:

- A. "Cost" includes all payments or obligations incurred, and the value of all goods and services received, for the purpose of creating, designing, preparing or distributing the communications.
- B. "Internet or e-mail communication" means any communication transmitted over the Internet, including but not limited to: sending or forwarding electronic messages; social networking; providing a hyperlink or other direct access to another person's website; creating, maintaining or hosting a website or blog; placing material on another person's website; and any other form of communication distributed over the Internet.
- C. "Acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent [thereof]" means acting without any suggestion, request, direct or indirect authorization or compensation or reimbursement from any such candidate, committee or agent. An individual who engages in any of the activities described in Title 21-A, section 1014, subsection 6, paragraphs A through C while employed by a party committee, political action committee or ballot question committee is presumed not to be acting independently of that committee. The employee may rebut the presumption by demonstrating to the satisfaction of the Commission that the employee acted without any authorization by or knowledge of the committee's officers or the employee's supervisors, and that the activity was not related in any way to the employee's work responsibilities.

...



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: December 10, 2018  
Re: Insertion to Candidate Guidebook – Disclosure Statements

---

At your November meeting, you considered two pieces of campaign literature which were distributed by Rep. Patty Hymanson, when going door to door to meet voters in her district. One piece was a commercially printed brochure that indicated it had been authorized by the candidate and paid for by her treasurer. The other piece was a flyer concerning her voting record, which contained no disclosure statement. Rep. Hymanson expressed her belief that – because she personally distributed both items together by hand – the disclosure statement on the brochure was sufficient for the other flyer.

I have attached Chapter 8 from the 2018 guidebook for Maine Clean Election Act candidates, which describes candidates' responsibility to include the disclosure statement in paid communications. At your direction, the Commission staff drafted an insertion that we propose to include in guidebooks in future election years (the asterisk on page 35 indicates where we propose to make the insertion):

**Distributing Multiple Pieces of Literature Together**

Some candidates distribute two or more pieces of campaign literature together in an envelope, or by giving them to volunteers or a local political party committee to distribute. The Commission suggests that each communication should include the disclosure statement, in case the communications become separated from each other. Including the disclosure statement on each communication will prevent confusion about the source of the communications.

Thank you for your consideration of this memo.

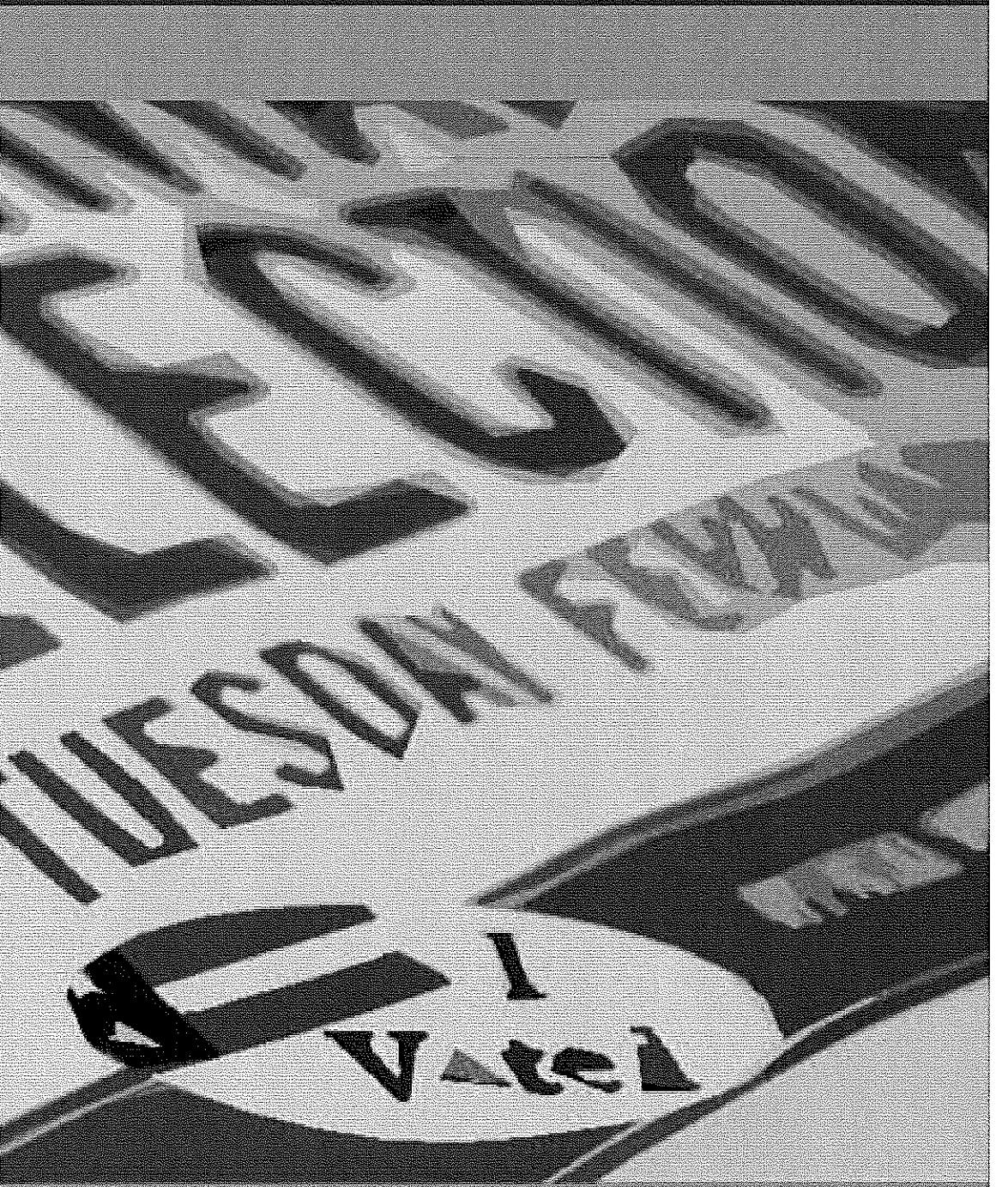
COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE 04333

# 2018 Candidate Guidebook

*Running for Office in Maine*

Maine Clean Election  
Act

Legislative Candidates





## CHAPTER 8

# Campaign Communications & Disclosure Statements

### DISCLOSURE ON CAMPAIGN COMMUNICATIONS

Whenever a candidate, or a candidate's authorized political committee or agent, authorizes a communication expressly advocating the election of the candidate (or defeat of the candidate's opponent), the communication must clearly and conspicuously state that it has been so authorized. These communications include those made through broadcasting stations, newspapers, magazines, campaign signs or outdoor advertising facilities, publicly accessible websites, direct mail or other similar types of general public political advertising, flyers, handbills, bumper stickers, and other non-periodical publications. The communication must also clearly state the name of the person who paid for or financed the expenditure.

A communication financed by a candidate or a candidate's committee is not required to include the address of the person who made or financed the communication. If anyone other than the candidate or the candidate's committee financed the communication, the disclosure statement must include the full address of that person, unless the communication is broadcast by radio (see next page).

In addition, the disclosure requirements apply to any communication that names or depicts a clearly identified candidate and is disseminated to voters in the last 21 days before the primary election or in the

last 35 days before the general election, even if the communication does not expressly advocate for or against a candidate.

**What Does "Expressly Advocate" Mean?** "Expressly advocate" is defined in Chapter 1, Section 10(2)(B) of the Commission's Rules. Express advocacy takes place when a communication includes wording or phrases that urge voters to elect or defeat a candidate. This includes phrases such as "Jones for House of Representatives" or "Vote for the Governor," and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates. The determination of whether a communication contains express advocacy is based on its entire content, and whether it has any reasonable meaning other than to urge the election or defeat of a candidate.

**What Does "Clearly Identified" Mean?** "Clearly identified" is defined in 21-A M.R.S.A. § 1012(1). A communication clearly identifies a candidate when the communication includes the name of the candidate, a photograph or drawing of the candidate, or identification of a candidate by an unambiguous reference.

### EXAMPLES OF DISCLOSURE STATEMENTS



The following are examples of suitable disclosure statements for political communications, including campaign websites, based on the person who paid for the communication.

***Communication Paid for by the Candidate or the Candidate's Committee (address not required):***

- "Paid for and authorized by Jane Smith"
- "Paid for and authorized by the Candidate"
- "Paid for and authorized by the Committee to Elect Jane Smith"

***Communication Paid for by a Candidate's Agent (address not required):***

- "Authorized by the Candidate and paid for by David Jones, Treasurer"
- "Authorized by the Candidate and paid for by Peter Brown, Chair of the Committee to Elect Jane Smith"

***Communication Paid for by Others not Associated with the Campaign (address is required):***

- "Authorized by Candidate Jane Smith and paid for by Sam White, 5 Oak Street, Pinetree City, Maine"

A communication authorized by a candidate and paid for by a third party who is not associated with the campaign must be reported as an in-kind contribution, to which the contribution limit applies. If necessary, the campaign must make a partial reimbursement to bring the in-kind contribution within contribution limits.

The disclosure statement for radio advertisements paid for by a third party does not have to include the street address of the person who paid for the communication, but must include the town or city and state, as in the

following example:

- "Authorized by Candidate Jane Smith and paid for by Sam White, Pinetree City, Maine"

**COMMUNICATIONS EXEMPT FROM DISCLOSURE**

***Signs That Are Lettered or Printed by Hand.*** A sign is not required to have a disclosure statement if it:

- is lettered or printed individually by hand, including silk-screened, stenciled, or painted,
- has been paid for and authorized by the candidate/candidate committee, and
- clearly identifies the name of the candidate.

***Small Items.*** Some items are exempt from the disclosure requirement because of their small size:

Balloons	Lapel Stickers	Swizzle Sticks
Clothing	Memory Sticks	Fundraiser Tickets
Envelopes	Paper/Plastic Cups	Business Cards
Keychains	Pencils/Pens	Noisemakers
Buttons	Plastic Tableware	Plastic Jewelry

A disclosure statement is also not required on advertisements in electronic media where including the disclosure statement would be impractical due to size or character limitations.

The Commission may exempt similar, small items as well. If a candidate has any questions as to whether an item is required to have a disclosure statement, he or she should call the Commission staff.

**"ROBOCALLS" & SCRIPTED LIVE CALLS**

The Federal Communications Commission (FCC) has specific regulations regarding the sponsor identification



that must be included in “robocalls,” which are phone calls to landlines and mobile phones that use certain automated dialing technology, deliver a pre-recorded message, or use an artificial voice. The federal disclosure requirement is not limited to recorded voice messages, as it also applies to live calls if automated dialing technology is used to make the call.

Maine also has a requirement that robocalls and scripted live calls include a disclosure statement that clearly states the name of the person who paid for the communication. However, the FCC regulation is stricter than Maine’s and preempts Maine’s disclosure statute. Candidates are urged to read the FCC Enforcement Advisory in the Appendix to understand and comply with the federal disclosure requirements for robocalls.

There is one type of phone call that is subject to Maine’s disclosure requirement but not the FCC’s — a scripted live call made by a person without the use of automated dialing technology. For those calls, the caller must clearly state the name of the person who financed the communication.

#### FREE ELECTRONIC COMMUNICATIONS

Certain types of communications are free to use and disseminate (e.g., email, social media posts/pages, etc.). If there is no cost associated with creating and disseminating a communication, the requirement to include a disclosure statement is not applicable. Nevertheless, the Commission staff recommends that candidates include a disclosure statement on these types of free electronic communications, stating they have authorized the communications. Doing so makes it clear to the public who is sending the communication and that it is authorized by the candidate.

If there is a cost associated with the communication (e.g., paid staff time to produce the communication, the use of an email marketing service, the purchase of an email list, production costs for a video posted on or distributed through social media, etc.), a complete disclosure statement is required.



#### ENFORCEMENT

A person who violates the disclosure requirement may be subject to a civil penalty up to 100% of the amount of the expenditure. If a disclosure statement on a yard sign is lacking or inadequate, the maximum penalty is \$200. In determining the amount of a penalty, the Commission will consider factors such as how widely the communication was disseminated, whether the omission was intentional, and whether the communication conceals or misrepresents the identity of the person who paid for the communication. If the person who paid for the communication or is responsible for the violation corrects it within 10 days of being notified by the Commission, the Commission may decide to assess no civil penalty.

#### REQUIREMENTS FOR BROADCASTERS AND NEWSPAPERS

Broadcasting stations, cable television systems, and newspapers in Maine may not broadcast or print a communication that lacks the required information about the sponsor of the communications, and whether the communication was authorized by a candidate.

Under federal regulations (47 CFR § 73.1212(a)(2)(ii) and 47 CFR § 76.1615(a)), in the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent (4%) of the vertical picture height which must be visible on screen for not



---

less than four seconds. This requirement applies to broadcast and cablecast television ads for all candidates, not just federal candidates.

If a candidate has any questions concerning these requirements, he or she should consult with the personnel who are producing the advertisements.

#### **TELEVISION ADS: CLOSED-CAPTIONING REQUIREMENT**

If a candidate uses MCEA funds to purchase television advertising, the candidate must include closed-captioning in the advertisement provided to the broadcast station or cable television system. It is the candidate's responsibility to ensure that the closed-captioning is included in the ad.

In the final four days before an election, closed-captioning may not be required under two circumstances: 1) if it would be impractical to include it or 2) if the timing of the advertisement would be delayed by including the closed-captioning.

#### **USE OF COPYRIGHTED MATERIAL**

If a candidate plans on using photographs or other material from an online source in campaign literature, the Commission staff recommends that the candidate check with the source first, to avoid copyright infringement.

#### **CONSTITUENT MAILINGS**

Constituent newsletters sent by incumbent Legislators are used to inform their constituents of the work accomplished during the legislative session. They are reviewed by the Clerk of the House or Secretary of the Senate to verify they do not advocate for the election or defeat of any candidate. The purpose of these mailings is a factual account of the session and are not

to be used for campaign purposes; thus, a disclosure statement is not required.

#### **PLACEMENT OF POLITICAL SIGNS**

The Commission has no jurisdiction over where candidates place roadside signs, or for how long they are posted. Guidance from the Maine Department of Transportation is included in the Appendix.

#### **UNAUTHORIZED REMOVAL OF CAMPAIGN SIGNS FROM PUBLIC ROADWAYS**

The unauthorized removal or destruction of political signs in the public right of way is a civil violation under Maine law (23 M.R.S.A. § 1917-B), and may carry a fine of up to \$250. The law does not apply to a person authorized to remove the sign.

A candidate may file a complaint with the local police and/or the District Attorney's office if a sign has been removed in an unauthorized manner.



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: December 17, 2018  
Re: Recommended Findings of Violation and Penalty / Cynthia Soma-Hernandez

---

Cynthia Soma-Hernandez was a Maine Clean Election Act (MCEA) candidate for the Maine House of Representatives in the 2018 elections. She was not elected to the Legislature.

After qualifying for public campaign funding, MCEA candidates may not spend their own money to promote their election. Ms. Soma-Hernandez spent \$366.75 of her personal funds for campaign brochures intending to be reimbursed by her campaign, but (due to a misunderstanding concerning a deadline) did not have any more campaign funds with which to reimburse herself.

### **Applicable Law – Maine Clean Election Act Program**

Limits on Spending. After a candidate has qualified for MCEA funding, he or she may spend only public funds received from the state:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission.

(21-A M.R.S.A. § 1125(6)) If a candidate violates the MCEA, the Commission may assess a penalty of up to \$10,000. (21-A M.R.S.A. § 1127(1))

## **Facts**

Since she initially telephoned our office on October 17, 2018 concerning this matter, Ms. Soma-Hernandez has been forthcoming about making a couple of errors.

On October 11, 2018, the candidate made a purchase of campaign brochures from Bromar Printing Solutions in Skowhegan in the amount of \$1,655.05. She paid with an ATM or debit card associated with her campaign account at the Camden National Bank. Shortly after making the purchase, she received a phone call from the bank stating that there were insufficient funds to cover the payment. She deposited \$391.75 in personal funds into the account, which represented \$366.75 to cover the payment to Bromar Printing Solutions plus another \$25.00 “to make sure that nothing else happened.”

On October 11 (the day of the deposit of personal funds), she anticipated that she would be able to qualify for a supplemental payment of MCEA funds (\$1,275). Unfortunately, she was confused about the October 16, 2018 deadline to apply for supplemental payments. On October 17, she telephoned our office with a question and was notified that the deadline for submitting additional qualifying contributions was the previous day. At that time, she informed the staff that she had used personal funds to partially pay for the brochures, intending to be subsequently reimbursed by the campaign. I met with Ms. Soma-Hernandez on October 18 to discuss the situation.

## **Staff Analysis**

The MCEA program is a system of full public campaign financing. After qualifying for public funds, candidates are permitted to spend only MCEA funds to promote their election and may not receive contributions. Beginning in 2006, the Commission staff has encountered one or two candidates per election year who spent some of their personal funds to pay for campaign goods or services – usually due to a bookkeeping or communication error within the campaign or by a vendor. The staff believes that some financial penalty is appropriate even in the case of small, unintentional overspending violations to underscore that it is an important responsibility of publicly financed candidates to keep their total spending within the legal limitation.

<b>Election Year/ Office</b>	<b>Candidate</b>	<b>Amount of Overspending – Explanation Offered by Candidate</b>	<b>Outcome</b>
2006/ House	Anne Graham	Spent \$253.49 more than was permitted. A local newspaper's delay in charging a first-time candidate misled her into thinking that she had more campaign funds available to spend.	Staff recommended \$125 penalty. Commission assessed \$50 penalty.
2008/ House	Frederick Austin	Spent \$29.85 more than was permitted. After treasurer became ill, candidate was confused about how much was left in her account.	Commission assessed \$50 penalty.
2008/ House	Seth Yentes	Spent \$51.80 more than was permitted. Candidate paid for last-minute advertising, not realizing that another media vendor was late in billing him.	Commission assessed \$50 penalty.
2010/ Senate	Roger Katz	Spent \$1,083.13 more than was permitted. Volunteer made second purchase of campaign signs, which candidate assumed had been paid. After the bill arrived, the candidate used personal funds to pay the bill.	Commission assessed \$50 penalty.
2014/ House	Alice Elliott	Audit determined candidate used \$52.91 in personal funds for photocopying services with her personal funds	Commission assessed \$50 penalty.

In this case, the Commission staff recommends assessing a penalty between \$50 and \$150 against Ms. Soma-Hernandez. In general, we do have some concern that a penalty of \$50 does not sufficiently underscore the need for careful bookkeeping by MCEA candidates to avoid overspending. It may be appropriate to adopt an incrementally higher standard penalty for this violation in good-faith, low-impact cases. Please be aware, however, that the 2015 citizen initiative made *no* statutory changes to the penalties for MCEA violations. We do view Ms. Soma-Hernandez's situation as roughly analogous the previous examples described above, with the one difference that the amount of personal funds that she spent (\$366.75) is higher than the other House candidates. (The amount she paid represents about 5% of her overall spending for the 2018 campaign.) After speaking with her on October 17 and 18, we believe she earnestly intended to qualify for a supplemental payment of MCEA funds with which to reimburse herself, but was prevented because she was confused about the October 16 deadline. Thank you for your consideration of this item.

Received

NOV 26 2018

Maine Ethics Commission

Jonathan Wayne  
Executive Director  
Commission on Governmental Ethics  
135 State House Station  
Augusta, Me. 04333

Cynthia J Soma-Hernandez  
PO Box 35318 Water St  
N. Anson, Me.  
04958

cynthiasoma914@gmail.com  
207 612 6249  
207 635 1053

These were the acts:

I paid the bill to BROMAR - \$1655.05 on 10.11.18.  
The bank called informing me I had  
insufficient funds moments later.

I paid the bank (Arden, Madison - \$391.75, \$25.00  
over.

I failed to make the supplemental  
fund deadline on October 16, 2018.

Sincerely,

(gSoma

Bromar Printing  
17 Parlin Street  
Skowhegan, ME 04976 US  
(207) 474-3784  
apr@bromarprinting.com  
www.bromarprinting.com



# INVOICE

PAID

INVOICE # 24308  
DATE 10/11/2018  
DUE DATE 11/10/2018  
TERMS Net 30

BILL TO

Cynthia Soma-Hernandez

Please detach top portion and return with your payment.

SHIP VIA	PROJECT #	APR
USPS	18-3127	MD

DESCRIPTION	QTY	AMOUNT
Mail Processing	2,390	240.00T
Print Indicia	2,390	120.00T
US Postage	2,390	1,208.77T

We thank you for your order. We appreciate your business  
and look forward to our next opportunity to serve you.

SUBTOTAL	1,568.77
TAX (5.5%)	86.28
TOTAL	1,655.05
BALANCE DUE	<b>\$1,655.05</b>

# Camden NATIONAL BANK

PO Box 310, Camden, ME 04843

Address Service Requested

## Contact Us

Customer Assistance Center: 1-800-860-8821  
Telephone Banking Services: 1-800-887-7874  
CamdenNational.com

Page: 1 of 3  
Statement Date: 10/31/18  
Primary Account: 15715048



RMCA

019897 0.6200 AV 0.378 TR00069

Cynthia J Soma-Hernandez  
DBA For House District 112  
8 Water St  
PO Box 353  
North Anson, ME 04958-0353

### Summary of Accounts

Account Number	Type of Account	Current Balance
■■■■■	Business Promise Checking	\$25.00



**Send money fast.  
We make it easy.**

Split the bill or pay back your bestie in online or mobile banking. All you need is the email address or phone number of the person you want to pay.

Go to "Pay a friend" to give it a try.

Friends are **truly rewarding**. Invite a friend, and you'll both **get \$25**.

It's a win - win. Refer someone today at: [CamdenNational.com/refer-a-friend](http://CamdenNational.com/refer-a-friend)

RMCA-002-019897-001-001-181101 019897 S06  
04958035353



Member  
**FDIC**

# Camden NATIONAL BANK

Cynthia J Soma-Hernandez  
DBA For House District 112  
8 Water St.  
PO Box 363  
North Anson, ME 04958-0363

Page: 2 of 3  
Statement Date: 10/31/18  
Primary Account: [REDACTED]

## Business Promise Checking

Account: 15715048

Account Title: Cynthia J Soma-Hernandez  
DBA For House District 112

Business Promise Checking	Acct. Enclosures	1
Account Number	Statement Dates	10/01/18 thru 10/31/18
Balance Last Statement	Days in the statement period	31
1 Deposits/Credits	Average Ledger Bal.	\$534.91
2 Checks/Debits	Average Collected Bal.	\$534.91
Service Charge		
Interest Paid		
Balance This Statement		

## Summary of Deposits

Reference	Date	Amount	Reference	Date	Amount	Reference	Date	Amount
	10/11	391.75						

## Summary of Withdrawals

Date	Description	Amount
10/11	IN *SKOWHEGAN PRES DBT CRD 2347 10/10/18 26100457 SKOWHEGAN ME Card	151.92
10/12	IN *SKOWHEGAN PRES DBT CRD 2315 10/11/18 24100011 SKOWHEGAN ME Card	1,655.05

## Transaction Activity

Date	Description	Withdrawal(-)	Deposit(+)	Balance
10/11	Checking Deposit			
10/11	IN *SKOWHEGAN PRES DBT CRD 2347 10/10/18 26100457 SKOWHEGAN ME Card # 4614	151.92		1,831.97
10/12	IN *SKOWHEGAN PRES DBT CRD 2315 10/11/18 24100011 SKOWHEGAN ME Card # 4614	1,655.05		25.00

### IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS:

Contact us as soon as you can if you think your statement or receipt is wrong, or if you need more information about a transfer on the statement or receipt.

Call us at: (800) 860-8821

Or

Write to: Camden National Bank  
ATTN: Deposit and Payment Services  
245 Commercial Street  
Rockport, ME 04856

We must hear from you no later than 60 days after we send you the first statement on which the error or problem appeared.

- Tell us your name and account number.
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

VIRTUAL Internal Use Only Form-Cadence National Bank			
2 ELM ST CADEN ME 04843-0000 - 800-560-8821-011201458			
Cash Advance			
CREDIT	Drawer:17005	10/11/2018	
	Trans#: 28	11:28:16	
Acct# [REDACTED]			
DDA Deposit		391.75	
10/11/2018 \$391.75			





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

November 7, 2018

*By Email and Regular Mail*  
Ms. Cynthia J. Soma-Hernandez  
P. O. Box 353  
North Anson, Maine 04958

Dear Ms. Soma-Hernandez:

Thank you for meeting with the staff of the Commission on Governmental Ethics and Election Practices on October 18, 2018 concerning your deposit of personal funds into your campaign account to partially pay for brochures to promote your election to the Maine House of Representatives (District 112).

**Facts You Presented**

At our meeting, you explained that one or two weeks earlier, you purchased brochures from Skowhegan Press. You paid with an ATM or debit card associated with your campaign account at the Camden National Bank. (Your last campaign finance report indicated that the purchase was made on October 12 for \$1,655.05)

Shortly after making the purchase, you received a phone call from the bank stating that there were insufficient funds to cover the payment. Nevertheless, the bank allowed the payment to go through. You deposited \$366.75 in personal funds to cover the costs of the brochures plus another \$25.00 "to make sure that nothing else happened." At that time, you anticipated that you would be receiving a supplemental payment of Maine Clean Election Act (MCEA) funds from the Commission, and the campaign would pay you back.

**Applicable Law – Maine Clean Election Act Program**

Limits on Spending. After a candidate has qualified for MCEA funding, he or she may spend only public funds received from the state:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission.

(21-A M.R.S.A. § 1125(6))

OFFICE LOCATED AT: 45 MEMORIAL CIRCLE, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

In addition, MCEA candidates may not commingle campaign funds with personal funds:

A candidate or a committee authorized pursuant to section 1013-A, subsection 1 shall deposit all revenues from the fund and all seed money contributions in an account, referred to in this subsection as a "campaign account," with a bank or other financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds.

(21-A M.R.S.A. § 1125(7-A))

### **Ethics Commission's Consideration of this Matter**

On its face, your deposit of personal funds to cover the brochures appears to violate two restrictions on MCEA candidates. The Commission is currently scheduled to consider this matter at its next meeting on November 28, 2018, beginning at 9:00 a.m. at the Commission office, 45 Memorial Circle in Augusta, Maine.

Staff recommendation. The Commission staff will recommend that the Commission find that you violated 21-A M.R.S.A. §§ 1125(6) & (7-A) by spending money other than MCEA funds to promote your election and by commingling personal funds with campaign funds. The staff will likely recommend monetary penalties totaling no more than \$400.

Your opportunity to respond. You are encouraged to attend the November 28 meeting to provide any information which you believe is relevant and to respond to the proposed findings of violation and monetary penalties. You are also welcome to provide a written response by Friday, November 16, 2018, so that it may be included in a packet of information which we send to the Commissioners on November 19.

Please email me at [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov) or call me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne  
Executive Director

## 21-A MRSA §1125. TERMS OF PARTICIPATION

...  
**6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for post-election parties. This section does not prohibit a candidate from using personal funds for post-election parties as governed by rules of the commission. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[ 2017, c. 31, §1 (AMD) .]

## §1127. VIOLATIONS

→ **1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines

paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

[ 2011, c. 558, §10 (AMD) .]

**2. Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

[ 1995, c. 1, §17 (NEW) .]

**SECTION HISTORY**

IB 1995, c. 1, §17 (NEW). 2003, c. 81, §1 (AMD). 2005, c. 301, §33 (AMD). 2005, c. 542, §6 (AMD). 2009, c. 302, §23 (AMD). 2011, c. 558, §10 (AMD).