



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

MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: February 7, 2012

Subject: Invitation to Comment on Proposed Rule Amendments

The Ethics Commission is inviting comments on proposed amendments to Chapters 1 and 3 of the Commission's Rules. The proposed amendments cover a number of topics, including:

- Which internet publishers of news and commentary should be exempt from campaign finance disclosure, under the current "press exception"? (*see* proposed insertions on pages 7-8 of the Chapter 1 Rules)
- Should payments by individuals who are considering running for office be counted as expenditures that must be disclosed in campaign finance reports? What activities indicate that an individual has moved from deciding whether to run to actually being a candidate? (*see* proposed insertions on pages 4 and 6 of the Chapter 1 Rules)
- In 2011, the Legislature created an exception to the "paid for" disclaimer requirement for low-cost campaign signs, handbills, and internet communications made by individuals operating independently of political campaigns and parties. What criteria should the Commission use to determine independence? (*see* proposed insertions on pages 6-7 of the Chapter 1 Rules)

In case you are interested in commenting, I have enclosed the proposed insertions and deletions, followed by a summary of the changes. The amendments to Chapter 3 would be considered major substantive, and would be submitted to the Legislature for its consideration in March.

The Commission will hold a public hearing on Wednesday, February 29, 2012 at 9:00 a.m. at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Written and e-mailed comments are also welcome. My e-mail address is Jonathan.Wayne@maine.gov. The deadline for written and e-mailed comments is 5:00 p.m. on Monday, March 12, 2012.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the 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 1. DEFINITIONS

In addition to the definitions provided in Title 21-A, chapters 1, 13, and 14, the following definitions shall apply to the rules of the Commission, unless the context otherwise requires:

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11-A. **Influence.** "Influence" means to promote, support, oppose or defeat.

SECTION 4. INITIATION OF PROCEEDINGS

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2. Election Campaign Reporting and Maine Clean Election Act Violations

- A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
- B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
- (1) Lateness of report or registration,
 - (2) Reason for lateness,
 - (3) Kind of report (more stringent application for pre-election reports),
 - (4) Amount of campaign funds not properly reported,

- (5) Previous record of the filer,
- (6) Good faith effort of the filer to remedy the matter; and
- (7) Whether the late filing had an effect on a certified candidate's eligibility for matching funds.

- C. ~~Reports of noncompliance with the provisions of the campaign registration and reporting laws or the Maine Clean Election Act that may come to the attention of the Commission staff from any source other than review of the reports filed will be reported to the Commission Chair.~~ Any person (as defined in 21-A M.R.S.A. §1001) may make an official complaint or request for a Commission investigation ~~or determination~~ by filing a signed written request at the Commission's office, setting forth such facts with sufficient details as are necessary to specify the alleged violation. A copy of the signed request may be filed by facsimile or by electronic mail, provided that the original signed request is submitted to the Commission. Statements should be made upon personal knowledge. Statements which are not based upon personal knowledge must identify the source of the information which is the basis for the request, so that respondents and Commission staff may adequately respond to the request. A copy of any such written request will be promptly mailed to the candidate or organization alleged to have violated the statutory requirements. The Director may conduct preliminary fact finding to prepare a matter for presentation to the Commission. The Director, in consultation with Counsel, will prepare a summary of staff findings and recommendations for inclusion on the agenda. ~~An official request will be placed on the agenda of the next Commission meeting.~~
- D. An oral report of a violation, or a written request containing insufficient detail to specify the violation charged, does not constitute an official request for a Commission determination, and a person registering such a complaint will be so notified.
- E. The signature of a person authorized to sign a report or form constitutes certification by that person of the completeness and accuracy of the information reported. The use of a password in filing an electronic report constitutes certification of the completeness and accuracy of the report.

3. Lobbyist Disclosure Procedures

- A. ~~**Report Review.** The Commission staff will monitor all filings made pursuant to 3 M.R.S.A. §311 *et seq.* for timeliness, legibility, and completeness. The staff will send the lobbyist a notice of any apparent reporting deficiency, including failure to use prescribed forms. The notice will include a request that the deficiency be corrected within 15 business days of the notice. If remedy is not made, it will be noted on the agenda of the next Commission meeting. The Commission may reject reports that are incomplete or illegible.~~

Report Review. The Commission staff will review lobbyist registrations and monthly reports for compliance with disclosure requirements. The Commission staff will establish a reasonable deadline by which a lobbyist must remedy any apparent omission or error. If the lobbyist fails to respond by the deadline, the

Commission staff may extend the deadline by which the lobbyist must comply or may place the matter on the agenda of a Commission meeting. Additionally, the Commission staff may place on the agenda of a Commission meeting any substantial violation of the disclosure requirements, regardless of whether the lobbyist has remedied the violation.

- B. **Late Registrations and Reports.** Notice will be given by mail to any lobbyist whose registration, ~~or~~ monthly disclosure report, ~~or annual report is delinquent is~~ late. In the case of a late monthly report, the notice must be mailed within 7 business days following the filing deadline for the report. In the case of late annual reports and registrations, the notice must be mailed within 15 business days following the filing deadline. The notice must include a statement specifying the amount assessed. A penalty of \$100 will be assessed the lobbyist for every month that a monthly disclosure report is late and a penalty of \$200 will be assessed the lobbyist and employer for every month a registration or annual report is filed late. The Commission and its staff shall follow the notice and penalty procedures set out in 3 M.R.S.A. § 319(1). For purposes of 3 M.R.S.A. §319(1), the month will end on the 15th day of the month following the month in which a report was due. Any failure to submit a required report, registration, or penalty fee will be noted on the Commission agenda.
- C. **Suspensions.** The Commission may suspend any person from lobbying who fails to file a required report or pay an assessed fee. A notice of the suspension must be mailed to the lobbyist by U.S. Certified Mail within three days following the suspension. Reinstatement will occur on the date the required report or payment is received in the Commission office. A notice of the reinstatement must be mailed to the lobbyist by U.S. Certified Mail or given directly to the lobbyist within three days following receipt of the required report or payment.
- D. **Request for Penalty Waiver.** A lobbyist may request a waiver of any late penalty the lobbyist incurs. The request must be made in writing to the Commission and must state the reason for the delinquency. Any such request must be noted on the agenda of the next Commission meeting. Only the Commission may grant penalty waivers.
- E. **Request for Waiver of Nonsession Reporting Requirement.** A lobbyist may request a waiver of the monthly nonsession reporting requirement set forth in 3 M.R.S.A. §317(4) if the lobbyist does not expect to be engaged in lobbying when the Legislature is not in session. The Director is authorized to provisionally grant such waivers pending approval by the Commission. Provisional waivers may be granted only where a request is properly filed, the statement properly completed, and where there is no apparent reason to doubt the statement is true. During the period in which the waiver is effective, reports will not be required. If lobbying is resumed during the period for which the waiver was granted, the lobbyist must file a monthly disclosure report for the month or months lobbying was conducted.
- F. **Faxing Duly Executed Lobbyist Registration, Reports.** Any registration or report required by 3 M.R.S.A. chapter 15 may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, provided that the original of the same report is received by the Commission within 5 calendar days thereafter.

4. **Matters Outside the Commission's Jurisdiction.** If the Director and Counsel are in agreement that the subject matter of a request for an investigation is clearly outside the jurisdiction of the Commission, the staff may forward the request to the appropriate authority or return it to the person who made the request, provided that the staff notifies the Commission members of the action at the next Commission meeting.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

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10. Funds or services received solely for the purpose of conducting activities to determine whether an individual should become a candidate are not contributions 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 funds or services received. If the individual becomes a candidate, the funds or services received are contributions and are subject to the reporting requirements of 21-A M.R.S.A. § 1017. The amount and source of such funds or the value of services received 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 or services were received, in accordance with the Commission's procedures for reporting contributions.

Funds or services used by an individual for activities indicating that he or she has decided to become a candidate for a particular office are contributions. 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.

SECTION 7. EXPENDITURES

1. **Expenditures by Consultants, Employees, and Other Agents of a Political Campaign.** 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.
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**

- 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 the following events:
 - (1) The placement of an order for a good or service;
 - (2) The signing of a contract for a good or service;
 - (3) The delivery of a good or the performance of a service by a vendor;
 - (4) A promise or an agreement (including an implied one) that a payment will be made; or
 - (5) The making of a payment for a good or service.
- 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.

~~4. **Advance Purchases of Goods and Services for the General Election**~~

- ~~A. Consulting services, or the design, printing or distribution of campaign literature or advertising, including the creation and broadcast of radio and television advertising, contracted or paid for prior to the primary election must be received prior to the primary election in order to be considered primary election expenditures.~~
- ~~B. If the Commission receives a complaint stating that a candidate or a committee purchased goods or services before a primary election for use in the general election, the Commission may request that the candidate or committee distinguish which of the goods and services were used in the primary election and which were used in the general election.~~

- 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. If a Maine Clean Election Act candidate or an individual authorized by the candidate uses ~~his or her~~ personal funds to make an expenditure on behalf of the candidate, the campaign candidate or the individual must be reimbursed the candidate within the same reporting period.

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**

A. Definitions.

For purposes of this section, the following terms have the following meanings:

- (1) "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.

(2) “cost of the communication” means all disbursements of money made or obligations incurred to create, design, prepare, or distribute the communication, and the value of all goods or services which have been provided for the purpose of creating, designing, preparing, or distributing the communication.

B. Exemption for Certain Handbills, Campaign Signs, and Internet and E-Mail Communications.

(1) Under Title 21-A, chapter 13, subchapter II [§ 1014(6)], a handbill, campaign sign or Internet or e-mail communication is exempt from the disclosure requirements of § 1014 if the total cost of the communication is less than \$100 and the communication was produced and distributed independently of and without the authorization by a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents.

(2) In determining whether a handbill, campaign sign, or Internet or e-mail communication was produced and distributed independently of and without authorization by a candidate, committee or their agents, the Commission will consider whether:

(a) the handbill, campaign sign, or Internet or e-mail communication was created, designed, prepared, or distributed at the suggestion or request of, or with the direct or indirect authorization of, a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents;

(b) the individuals who created, designed, prepared, or distributed the handbill, campaign sign, or Internet or e-mail communication have been compensated or reimbursed for expenditures by a candidate or the candidate’s authorized campaign committee, a political party committee, a political action committee, a ballot question committee, or their agents for the purpose of influencing the candidate or ballot question election that is the subject of the communication; and

(c) at the time of the creation of the handbill, campaign sign or Internet or e-mail communication, the individuals who created, designed, prepared, or distributed the communication were required to file campaign finance reports with the Commission or to register with the Commission under Title 21-A, chapter 13.

10. **Press exemption.** The costs incurred in preparing or publishing a news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication are exempt from the definitions of expenditure, under Title 21-A, chapter 13, subchapters II and IV [§§ 1012(3)(B)(1) & 1052(4)(B)(1)].

This exemption applies to the costs for a “periodical publication” in electronic form distributed on the Internet that meets the following criteria:

- a. the publication either (i) has been gathering and disseminating news stories, commentaries or editorials on a variety of topics to the general public on a periodic basis for a period of at least the previous twelve months, or (ii) if it has been publishing on the Internet for a period of less than twelve months, has a record of gathering and disseminating news stories, commentaries or editorials on a variety of topics to the general public that indicates that the persons or entities who own, control and operate the publication have the intention to continue publishing on a periodic basis beyond the election cycle during which the media exemption is claimed;
- b. the names of the persons or entities who own, control and operate the publication are identified within the publication;
- c. the names of the authors, editors and other individuals responsible for the content of the publication are identified within the publication;
- d. none of the individuals or entities described in paragraphs b and c of this subsection are being compensated for or reimbursed for expenditures relating to the publication by a candidate, candidate’s authorized campaign committee, political party committee, political action committee, or ballot question committee, or their agents for the purpose of influencing the candidate or ballot question election that is the subject of the news story, commentary, or editorial; and
- e. the facilities are not owned or controlled by any political party, political committee, candidate or candidate’s immediate family.

SECTION 9. ACCELERATED REPORTING SCHEDULE

- ~~1. **General.** In addition to other reports required by law, any candidate for Governor, State Senator or State Representative who is not certified as a Maine Clean Election Act candidate under Title 21-A §1121 *et seq.*, and who has a certified candidate as an opponent in an election must comply with the following reporting requirements on forms prescribed, prepared, and provided by the Commission.~~

~~INFORMATIONAL NOTE: Title 21-A §1017 prescribes reporting requirements for candidates.~~

- ~~2. **Trigger Report.** Any candidate subject to this section, who receives, spends or obligates more than the primary or general election distribution amounts for a Maine Clean Election Act candidate opponent in the same race, must file with the Commission, within 48 hours of such receipt, expenditure, or obligation, a report detailing the candidate’s total campaign contributions, receipts, expenditures and obligations to date. The Commission will notify all candidates who have an opposing certified candidate of the applicable distribution amounts and of the trigger report requirement.~~

~~3. A nonparticipating candidate who is required to file a report under subsection 2 shall file no later than 5:00 p.m.:~~

~~A. a report on the 42nd day before the date on which an election is held that is complete as of the 44th day before that date;~~

~~B. for gubernatorial candidates only, a report on the 25th day before the date on which an election is held that is complete as of the 27th day before that date; and~~

~~C. a report on the 18th day before the date on which an election is held that is complete as of the 20th day before that date; and~~

~~D. a report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.~~

~~4. **24 Hour Report.** Any candidate who is required to file a trigger report must file an updated report with the Commission reporting single expenditures of \$1,000 or more by candidates for Governor, \$750 by candidates for State Senator, and \$500 by candidates for State Representative made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the date of that election. The report must be submitted to the Commission within 24 hours of those expenditures.~~

~~5. **Filing by Facsimile or Electronic Means.** For purposes of this section, reports may be filed by facsimile or by other electronic means acceptable to the Commission, and such reports will be deemed filed when received by the Commission provided that the original of the same report is received by the Commission within 5 calendar days thereafter.~~

SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.

2. **Definitions.** For purposes of this section, the following phrases are defined as follows:

A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

B. "Expressly advocate" means any communication that

- (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s),

such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

- (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

A. Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.

~~(1) **Quarterly Reports.** Quarterly reports must be filed by 5:00 p.m. on:~~

~~(a) January 15th and be complete as of December 31st;~~

~~(b) April 10th and be complete as of March 31st;~~

~~(c) July 15th and be complete as of June 30th; and~~

~~(d) October 5th and be complete as of September 30th.~~

(1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.

~~(2)~~(1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 14th 11th day before the election is held and be complete as of that day the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

B. Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.]

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:
1. the date on which the person making the expenditure placed the order with the vendor for the goods or services;
 2. the approximate date when the vendor began providing design or any other services in connection with the expenditure;
 3. the date on which the person making the expenditure first learned of the total amount of the expenditure; and
 4. a statement why the expenditure could not be reported by the eighth day before the election.

- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.
- E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

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SECTION 13. REPORTS OF COMMUNICATIONS BY MEMBERSHIP ORGANIZATIONS OR CORPORATIONS

When a membership organization or corporation is required under 21-A M.R.S.A. § 1019-A to file a report of a communication to members or shareholders, the organization or corporation must file the following reports by 11:59 p.m. on the following deadlines:

1. A report must be filed on the 42nd day before the election is held and be complete as of the 49th day before the election.
2. A report must be filed on the 3rd day before the election is held and be complete as of the 5th day before the election.
3. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.

SECTION 2. PROCEDURES FOR PARTICIPATION

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4. Qualifying Contributions

- A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on forms provided by the Commission.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) ~~the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign; the form must also include the residential and mailing addresses and telephone number of the circulator~~ an affirmation by the person who circulated the form that the circulator collected the contribution, that the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution,

and any additional information required by the Commission in order to protect the reliability of the qualification process.

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SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. **Publication of Fund Revenue Estimates.** By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.
3. **Computation of Disbursement Amounts.** By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)].
4. **Authorizing Contributions due to Shortfall in the Fund.**
 - A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].
 - B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds \$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
 - C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates. ~~The Commission shall reduce the initial payments to legislative candidates for the general election and the matching funds available for gubernatorial candidates in the general election, unless the Commission determines that there are policy reasons to apportion the reductions differently.~~

- ~~D. **Campaign contributions to replace matching funds.** If the Commission reduces the amount of matching funds to be paid to certified candidates, it may permit candidates to raise contributions to replace matching funds in advance of the authorization to spend matching funds. Any amount of contributions raised that exceeds the amount of campaign funds the candidate has been authorized to spend must be deposited into a separate account with a bank or other financial institution. The candidate may spend the contributions as matching funds only if authorized by the Commission staff. The unauthorized expenditure of contributions raised to replace matching funds is a substantial violation of the Act and this rule.~~
- E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.
- F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, except funds which must be deposited in a separate account under paragraph D. The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.
- G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.
- ~~H. **Effect of fundraising on matching funds calculation.** If the Commission authorizes a certified candidate to accept campaign contributions pursuant to section 1125(13) of the Act and this subsection, the amount of the contributions that the candidate has been authorized to spend shall be treated as fund revenues received by the candidate for the purpose of calculating matching funds. Any reduction in the amount of public campaign funds paid to a certified candidate under sections 1125(8) or (10) of the Act will not affect the fundraising or spending threshold that triggers accelerated reporting by an opponent of the certified candidate under 21-A M.R.S.A. § 1017(3-B).~~

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.
- C. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

2. ~~Timing of Fund Distributions~~

- ~~A. **Distribution of Applicable Amounts.** The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.~~
- ~~B. **Matching Fund Allocations.** At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.~~
- ~~C. **Advances**~~
- ~~(1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.~~

- (2) ~~A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.~~

~~3. Matching Fund Provision~~

- ~~A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].~~

~~B. Matching Fund Computation Involving Only Certified Candidates~~

- (1) ~~For each certified candidate, the Commission will:~~
- ~~(a) add to the initial distribution amount for that election:

 - ~~(i) the sum of any matching funds previously provided for that election, and~~
 - ~~(ii) the sum of independent expenditures made in support of each certified candidate; and~~~~
 - ~~(b) subtract the sum of independent expenditures made in opposition to each certified candidate.~~
- (2) ~~The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.~~

- (3) ~~In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.~~

~~C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.~~ In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

- (1) ~~The Commission will first determine the applicable amount for the nonparticipating candidate~~
- ~~(a) by adding:

 - ~~(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or~~~~

~~unspent funds carried forward from a previous election to the current election, whichever is greater, and~~

~~(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and~~

~~(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.~~

~~(2) The Commission then will determine the applicable amount for the certified candidate~~

~~(a) by adding:~~

~~(i) the amount of the initial distribution for that election;~~

~~(ii) the sum of independent expenditures made in support of the certified candidate;~~

~~(iii) the sum of matching fund allocations already provided to the certified candidate; and~~

~~(iv) the amount of:~~

~~a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or~~

~~b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or~~

~~c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and~~

~~(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.~~

~~(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.~~

~~**D. Matching Fund Computation Not Involving a Nonparticipating Candidate.**
In races in which there are two or more certified candidates and at least one nonparticipating candidate,~~

- ~~(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and~~
- ~~(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then~~
- ~~(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.~~

~~E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~

~~F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe—he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.~~

~~G. **Matching Fund Cap.** Matching funds are limited as provided in the Act [§1125(9)]. Certified candidates are not entitled to cumulative matching funds for multiple opponents.~~

~~H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.~~

~~I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.~~

~~J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.~~

~~4. **Advance Purchases of Goods and Services for the General Election**~~

~~A. If, prior to the primary election, a candidate purchases or receives in kind contributions of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for any certified candidate in the same race.~~

- ~~B. — If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.~~
- ~~C. — The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.~~

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts ~~plus any authorized matching fund allocations;~~
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. **Record Keeping by Participating and Certified Candidates.** Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a

violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.

- A. **Fiduciary Responsibility for Funds.** All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. ~~Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account and may not be used until the candidate receives authorization to spend those funds.~~
- B. **Meal Expenses.** A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
- C. **Vehicle Travel Expenses.** If a campaign uses public campaign funds to reimburse the candidate or another individual for their vehicle travel, the A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made ~~from campaign funds.~~
- (1) **Amount of reimbursement.** ~~Reimbursement must be based on~~ may not exceed the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. ~~For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~ A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election.
- (2) **Contents of record.** For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination (if different than the residence of the person reimbursed), destination and purpose of the travel, and the total amount claimed for reimbursement. The record should contain an affirmation by the person being reimbursed that it is an accurate record of the dates, purpose, and distance of the campaign travel. The person seeking the reimbursement must have recorded the details of the campaign travel contemporaneously with the travel or within two calendar days afterward.

- (3) **Penalties for non-compliance.** The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record maintained in accordance with this Rule and may require the campaign to repay the amount of the reimbursement to the Maine Clean Election Fund. The Commission may also assess a penalty pursuant 21-A M.R.S.A. § 1127(1) if a campaign reimburses travel expenses without having kept a record that is fully compliant with the requirements of this Rule.

2. Reporting by Participating and Certified Candidates

- A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].
- B. **Return of Matching Fund Advances and Unspent Fund Revenues.** ~~Matching fund advance revenues that have not been authorized for spending and unspent Unspent Fund revenues shall be returned to the Fund as follows:~~
- ~~(1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.~~
 - (2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
 - ~~(2-A) **Unspent Matching Funds for Successful Primary Election Candidates.** Upon the filing of the 42-day post primary election report for a primary election in which a certified candidate was successful, that candidate must return any unspent matching funds received for the primary election. Matching funds received for the primary election may not be used for campaign expenditures for the general election.~~
 - (3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.
- C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment purchased

for \$50 or more must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above. Candidates may not return unsold property or equipment to the Commission.

- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value. A campaign's sale of property or equipment through an on-line commercial auction shall be considered by the Commission as a factor in favor of determining that the campaign has recovered the fair market value of the property or equipment.
- (3) If the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least ~~40%~~ 75% of the original purchase price.



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

To: Interested Persons

From: Jonathan Wayne, Executive Director

Date: January 16, 2012

Re: Summary of Proposed Amendments to Chapter 1 and 3 Rules

Proposed Amendments to Chapter 1 Rules

Chapter 1, Section 1(11-A) – Definitions

The Commission proposes adding a definition for the term “influence” that was enacted by the Maine Legislature in the 2011 session. The term would be used in two new Rules proposed below (Chapter 1, Sections 7(10) & (11)).

Chapter 1, Section 4(2)(C) – Procedures for Complaints and Requests for Investigation Chapter 1, Section 4(3) – Procedures for Handling Reporting Deficiencies by Lobbyists

The Commission proposes amending the Commission Rules concerning campaign finance complaints and deficient reporting by lobbyists to conform to the current practices of the Commission.

Chapter 1, Sections 6(10) & 7(8) – Testing the Waters

The Commission proposes amendments to the Rules to clarify how campaign finance reporting requirements apply to individuals who engage in financial activity when deciding whether or not to become a candidate. Such activities could include polling, telephone calls, or travel. The Commission received questions in the 2010 gubernatorial election and 2011 Portland mayoral election suggesting the need for clarification.

The Commission proposes a policy that is similar to the regulations applicable to federal candidates in 11 Code of Federal Regulations §§ 100.72 & 100.131. Under the proposed policy,

- Individuals could receive and spend funds for the purpose of determining whether to become a candidate. These funds would not be considered reportable contributions and expenditures, unless the individual decided to run.

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- If the individual decides to run, the funds received and spent would be considered contributions and expenditures that the candidate would be required to disclose in their first campaign finance report.

Members of the public may wish to comment on whether funds received during an exploratory period should be subject to the seed money restrictions, if that candidate were subsequently to seek Maine Clean Election Act funding. Also, the proposed Rule does not address whether the contribution limits in 21-A M.R.S.A. § 1015(1) and (2) should apply to funds received when exploring a possible candidacy.

Chapter 1, Section 7(4) – Using Primary Funds to Pay for General Election Goods and Services

When first enacted, the Maine Clean Election Act program contained a matching funds provision which was intended to equalize the amount of resources that candidates in the general election had at their disposal. The Commission occasionally received complaints from candidates that their opponents had circumvented this equalization by using their campaign funds before the primary election to purchase advertising or other services for the general election. The Commission adopted Chapter 1, Section 7(4) to address when purchases made with primary election funds would be considered expenditures for the primary or general election. Since the payment of matching funds has been eliminated from the MCEA program, the Commission proposes deleting this provision from the Commission’s Rules.

Chapter 1, Section 7(8) – Testing the Waters

Please see explanation for Chapter 1, Section 6(10).

Chapter 1, Section 7(9) – Exception to Disclaimer Requirements for Certain Handbills, Campaign Signs, and Internet or E-Mail Communications

In Chapter 389 of the Public Laws of 2011, the Maine Legislature enacted certain exceptions to the “paid for” (disclaimer) requirement for paid communications to voters. (see 21-A M.R.S.A. § 1014) The exceptions were for low-cost handbills, campaign signs, and internet or e-mail communications by individuals acting independently of political campaigns. The Commission proposes Chapter 1, Section 7(9) to interpret the new statutory exceptions.

Chapter 1, Section 7(10) – Press Exception

In Maine campaign finance law, news media which periodically publish news stories, editorials, or commentaries are exempt from campaign finance reporting requirements. The Commission proposes a rule interpreting the statute, particularly with respect to internet publishers.

Chapter 1, Section 9 – Schedule for Accelerated Reports

When the Maine Clean Election Act (MCEA) program was enacted, it required traditionally financed candidates with an MCEA opponent to file additional “accelerated reports” to facilitate the matching funds component of the program. Because matching funds have been eliminated from the MCEA program, the Commission proposes deleting the accelerated reports from the Commission Rules. The Commission expects that the Maine Legislature will eliminate the accelerated reporting requirement in statute during the Second Regular Session.

Chapter 1, Section 10(3) – Schedule for Independent Reports

Independent expenditures are paid communications to voters (e.g., advertisements or mailings) by non-candidate organizations such as PACs or political parties that advocate for or against candidates. The reporting schedule is set out in this Rule.

The current Rule contains a reporting deadline on the 14th day before an election for independent expenditures between \$100 and \$250 per candidate. The Commission proposes moving the 14-day pre-election report to the 11th day before the election, so that this report will coincide with the 11-day pre-election report that is required for PACs and party committees. The Commission staff seeks to reduce confusion for PACs and party committees who have reports due on different deadlines. The Commission also proposes deleting the four quarterly deadlines. Instead, it suggests a report due on the 60th day before a primary or general election, which would disclose independent expenditures made more than 60 days before the election.

Also, the Commission proposes that the Commission Rules permit the filing of an independent expenditure report by e-mail or fax, provided that the Commission receives the original report within five calendar days.

Chapter 1, Section 13 – Reports of Membership Communications

When a membership organization (e.g., a labor union or a trade association) spends money on a communication to its members advocating for or against a candidate, those expenses are exempt from the statutory definition of the term “expenditure.” As a result, the organizations do not need to file independent expenditure reports and these communications are not counted toward the \$5,000 threshold for the organization to qualify as a PAC.

Nevertheless, if a membership organization spends \$50 or more to promote or oppose a candidate’s election through distributing communications to its members, it may be required to file a financial report with the Commission under a special reporting requirement for membership organizations and corporations in 21-A M.R.S.A. § 1019-A. The Commission is required by 21-A M.R.S.A. § 1019-A to adopt a Rule setting out a reporting schedule for membership communications.

Proposed Amendments to Chapter 3 Rules

Chapter 3, Section 2(4)(A)(5) – Affirmation by Circulator on Acknowledgement Form for Qualifying Contributions

When candidates or their campaign volunteers collect contributions of \$5 or more to qualify for Maine Clean Election Act (MCEA) funding, the donors are required to sign a “Receipt & Acknowledgment Form.” Beginning in 2007, the Commission added a section to the “R&A” form for the “circulator” – the person other than the candidate who has collected the \$5 contributions. Also, in 2007, the Commission decided to list in Chapter 3, Section 2(4)(A)(5) all of the specific affirmations that the circulator must make.

Based on the Commission’s experience administering the qualification process, it may be interested in consolidating or simplifying the affirmations in the circulator section of the form in future election years. Therefore, the Commission proposes simplifying the affirmations that are required by Chapter 3, Section 2(4)(A)(5) to provide the Commission greater flexibility to amend the R&A form in future election years.

Chapter 3, Section 4(4) – Shortfall in the Maine Clean Election Fund

In Section 4(4), the Commission has set out procedures in case there is insufficient money in the Maine Clean Election Fund to make payments to candidates. The Commission proposes deleting two paragraphs and amending a third to reflect the elimination of matching funds from the MCEA program.

Chapter 3, Section 5 – Payment of Maine Clean Election Act Funds

Because of the elimination of matching funds from the MCEA program, the Commission proposes deleting subsections 5(2), 5(3), and 5(4), which mostly relate to the payment of matching funds.

The current Section 5(2) contains two provisions that pertain to the Commission’s payments of public campaign funds generally. The Commission proposes moving these two provisions from Section 5(2) to 5(1):

- That the Commission staff will pay MCEA funds to candidates in accordance with the schedule in 21-A M.R.S.A. § 1125(7) (the Commission proposes moving this provision to Section 5(1)(B); and
- That the Commission will coordinate with the Office of State Controller to make payments to candidates in a manner that is expeditious, ensures public accountability, and safeguards the integrity of the Maine Clean Election Fund (proposed to be a new Section 5(1)(C)).

Chapter 3, Section 6(1) – Limitations on Campaign Expenses

The Commission proposes deleting the reference to matching funds from Section 6(1).

Chapter 3, Section 7(1)(A) – Procedures for Candidates' Handling of Matching Funds

The Commission proposes deleting the provision specifying that MCEA candidates must deposit matching funds that they have been advanced in a federally insured financial institution.

Chapter 3, Section 7(1)(C) – Using MCEA Funds to Reimburse for Vehicle Travel

This Rule states that if a campaign uses MCEA funds to reimburse someone for their vehicle travel, the person being reimbursed must have kept a record showing the dates of travel, number of miles traveled, and destination and purpose of the travel.

The Commission proposes to re-organize the Rule for greater clarity. In addition, the Commission proposes two substantive changes:

- The details of the campaign trip would need to be recorded contemporaneously with (on the same day as) the travel or within two calendar days afterward.
- The record should contain an affirmation by the person being reimbursed that it is an accurate record of the dates, purposes and distance of the campaign travel.

Chapter 3, Section 7(2)(B) – Procedures for Candidates to Return Unspent MCEA Funds

This Rule requires candidates to return unspent MCEA funds to the Commission after the election. The Commission proposes deleting references to matching funds.

Chapter 3, Section 7(2)(C) – Selling Property or Equipment Purchased with MCEA Funds

If a campaign has used MCEA funds to purchase property or equipment that could be converted to the candidate's personal use after the election, this Rule requires the campaign to sell the equipment after the election and to return the proceeds to the Maine Clean Election Fund. The existing Rule states that if the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least 40% of the original purchase price. In the 2011 session, the Maine Legislature enacted a resolve (Resolve Chapter 19) directing the Commission to amend its Rules so that the campaign must recover at least 75% of the original purchase price.

Thank you for your consideration of this summary of proposed rule amendments.