

# Agenda

## Item #15



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

To: Commissioners

From: Benjamin Dyer, Political Committee and Lobbyist Registrar

Date: January 15, 2015

Re: Request for Waiver of Late-Filing Penalty by the AFL-CIO Committee on Political Education PAC

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All political action committees are required to file campaign finance reports by the deadlines set in statute. Beyond simply filing the report by the deadline, a timely-filed campaign finance report must substantially conform to the disclosure requirements of Maine Election Law. This includes accurately reporting contributions in the form of general treasury transfers received during the reporting period. The AFL-CIO Committee on Political Education PAC (the PAC) filed its 2014 11-Day Pre-General report by the deadline of October 24, 2014, but this report did not include the substantial general treasury transfer the PAC received from the Maine AFL-CIO general treasury during the reporting period.

#### **LEGAL REQUIREMENTS**

PACs are required to file campaign finance reports according to a schedule set by statute. (21-A M.R.S.A. §1059(2)) The 2014 11-Day Pre-General report was due on October 24, 2014 and covered the reporting period of October 1, 2014 through October 21, 2014. PACs are required to report the names and addresses of contributors giving more than \$50 to the PAC during the reporting period and the amounts and dates of each

contribution. (21-A M.R.S.A. §1060(6)) A campaign finance report is not timely filed unless it substantially conforms to the disclosure requirements of Chapter 13, Subchapter 4. (21-A M.R.S.A. §1062-A(2)) If a PAC is late in filing a campaign finance report, the amount of the preliminary penalty is set by a formula which takes into consideration the amount of the transaction, 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. § 1062-A(3)) PACs may request a full or partial waiver of the penalty. Maximum penalties for PACs are \$10,000. (21-A M.R.S.A. §1062-A(4))

## **DISCUSSION**

The PAC is affiliated with the Maine AFL-CIO, but the PAC funds are in a separate bank account. This election cycle the PAC received a majority of its reported contributions from the AFL-CIO and other member unions. When initially filed on October 23, 2014, the PAC's 11-Day Pre-General report indicated only \$24.50 in contributions and a \$37,950.00 expenditure in the form of a contribution to the Committee to Rebuild Maine's Middle Class PAC. While preparing its 42-Day Post-General Report, the PAC noticed the discrepancy. When amended on December 16, 2014, the report showed that the PAC actually received a \$40,000.00 transfer from the general treasury of the Maine AFL-CIO on October 10, 2014.<sup>1</sup> The PAC reported this amendment to the Commission staff on that date.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount is calculated as follows:

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<sup>1</sup> The PAC later amended its report on December 23, 2014 to correctly show the contribution received as a general treasury transfer rather than a contribution from an outside non-profit organization.

<b>Filing</b>	<b>Due Date</b>	<b>Financial Activity</b>	<b>Penalty Rate</b>	<b>Days Late</b>	<b>Calculated Penalty</b>	<b>Statutory Maximum</b>
2014 11-Day Pre-General Report	10/24/2014	\$40,024.50	1%	53	\$21,213.25	\$10,000.00

In its request for a waiver, the PAC accepts full responsibility for the filing errors, but asks that the Commission waive or significantly reduce the preliminary penalty. The PAC admits it made an oversight in not reporting the transfer it received because PAC office staff did not understand that a transfer from the Maine AFL-CIO general treasury would count as a contribution received. The PAC also argues that the harm to the public resulting from this misreporting was minimal. It notes that all the expenditures for the reporting period were timely reported and that the PAC's reported cash balance was sufficient to support the expenditure it made even without the general treasury transfer.

#### **STAFF RECOMMENDATION**

The Commission staff highlights the following factors for the Commission to consider when deciding on the PAC's waiver request. The timely filing of accurate campaign finance reports is the bedrock of Maine's campaign finance disclosure system.

Violations of these reporting requirements can be serious because the public is denied information it needs to determine who is financing campaign activity in Maine and the connections among entities that money creates. In this case, a PAC that initially reported almost no contributions later amended its report to reveal it had received a \$40,000 general treasury transfer, and made this report weeks after the general election. This is

also a PAC with considerable campaign reporting experience and the PAC reported receiving similar large contributions from its affiliated organization in 2010 and 2012.<sup>2</sup>

That said, this case also contains mitigating factors which suggest that a reduction in the statutory maximum preliminary penalty would be appropriate. The preliminary penalty, at over half the value of the general treasury transfer, may be considered disproportionate to the harm to the public, especially where the PAC did not need that contribution to make the expenditures reported for the reporting period. The receiving organization did timely report the receipt of the expenditure. The PAC made the corrections on its own and indicates it has instituted policy changes to prevent this and similar situations in the future. The PAC has had no prior violations this year. The staff recommends that the Commission find that the PAC was late in filing its 11-Day Pre-General report due to the filed report substantially not conforming to the reporting requirements and impose a \$1,000 penalty.

Thank you for your consideration of this memo.

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<sup>2</sup> Although neither of these transfers were correctly reported as general treasury transfers.



# Maine AFL-CIO Committee on Political Education PAC

21 Gabriel Dr., Augusta, ME 04330 / (207) 622-9675

December 30, 2014

Benjamin Dyer  
Political Committee and Lobbyist Registrar  
Maine Commission on Governmental Ethics and Election Practices  
135 State House Station  
Augusta, ME 04333-0135

RE: Maine AFL-CIO Committee on Political Education PAC – Penalty Waiver Request

Dear Mr. Dyer:

On behalf of the Maine AFL-CIO Committee on Political Education (COPE) PAC (hereafter COPE PAC or PAC), I write to request a waiver of the preliminary penalties issued by the Commission staff for the incomplete/late filing of the 2014 11 Day Pre-General report. While the COPE PAC takes full responsibility for the filing error, the mistake outlined below was inadvertent and the result of a misunderstanding about how to properly categorize and report intra-organizational money transfers. In the end, the PAC believes that a significant penalty reduction is warranted as the harm to the public was minimal and the PAC moved to rectify and communicate with Commission staff as soon as the error was discovered.

## PAC BACKGROUND

The Maine AFL-CIO is a federation of 160 local unions representing 42,000 workers. We seek to improve the lives and working conditions of all working people in Maine through organizing and support for collective bargaining, political action and policy work. We engage in elections by educating and mobilizing our members and also, in some cases, educating and engaging the general public.

The Maine AFL-CIO has a state PAC, the Maine AFL-CIO Committee on Political Education (COPE) PAC. The PAC is used for a variety of electoral purposes – sometimes to help cover the costs of adding additional election year staff, sometimes to communicate with the general public and sometimes to support our internal member communications. The Maine AFL-CIO maintains and administers four different bank accounts – one of which is the COPE PAC account.

## FACTUAL SUMMARY

On December 16, 2014, we became aware that an administrative error had been made in the filing of our 2014 11-Day Pre-General campaign finance report, which was filed on October 23, 2014. In filling out the 11 Day Pre-General report, we inadvertently omitted an intra-organizational, general treasury transfer of \$40,000 from the Maine AFL-CIO general treasury to the PAC account that should have been listed as a contribution on the original 11 day report. We filed the original 11 Day Pre General report on time, properly listing all expenditures and other contributions, but inadvertently omitted the intra-organizational money transfer.

In order to give further context to how this error occurred, we thought it would be helpful to give you some information about the internal system we have in place for filing our PAC reports:

1. Our Maine AFL-CIO office manager keeps paper copies of all check contributions that our PAC receives and paper copies of all expenditures our PAC makes. Our office manager first reviews these paper copies;
2. Our office manager then reviews our QuickBooks PAC account summary as well as our PAC bank statement to make sure all records of contributions and expenditures match;
3. This information is then entered into the Campaign Finance report;
4. Our Executive Director and Treasurer then review the draft Campaign Finance report and sign off on it before it is submitted.

Generally all of the contributions that our PAC receives - and reports - are hard copy checks. In this instance, the contribution that we inadvertently omitted was an intra-organizational transfer of funds. This intra-organizational transfer of funds is not a practice that we utilize very often. The cause of our mistake was that our office manager did not realize that the intra-organizational transfer of funds between accounts was a "contribution." It was viewed as a transfer – such as one would move money from a checking to a savings account – and not a contribution.

So, while the general treasury transfer was on the QuickBooks account summary and the bank statement, our office manager did not think of it as a traditional "contribution" and as such, did not include it on the PAC report. While I did review the PAC's draft 11 day Pre-General campaign finance report before it was submitted, I did not catch that the transfer had not been properly included in the report draft.

By way of background, on October 10, 2014 we made an expenditure, all properly reported, totaling \$37,950. That same day, in an effort to keep the account balance at the previous level, we made the intra-organizational transfer of \$40,000 from the Maine AFL-CIO general treasury to the COPE PAC. It is important to note that the intra-organizational transfer did not need to happen prior to the election – it was merely an attempt to replenish the account.

On December 16, 2014, we were compiling our 42 Day Post-General campaign finance report, noticed the error and immediately filed an amendment to our 11 Day Pre-General report adding the contribution. We also immediately contacted the Maine Ethics Commission to notify them of our administrative error.

While this general treasury transfer obviously should have been listed as a contribution, harm done to the public was minimal. All PAC expenditures were reported in a timely and accurate manner and thus were publicly available. After this inadvertently omitted transfer on 10/10/14, the PAC made only one additional expenditure before election day – a contribution of \$14,000 to another PAC on 10/28/14. This was publicly reported in a 24 Hour contribution report and properly reported on the recipient's corresponding report.

Additionally, the money transferred between accounts was not raised or designated for PAC activities. No individual donor names were withheld – as this was a transfer of general treasury funds only. In the end, all expenditures were reported and individual donors accounted for, giving the public almost complete disclosure about the activities of the PAC. While the COPE PAC takes full responsibility for not properly reporting the transfer, we believe that the proposed penalty is very disproportionate to the actual minimal harm suffered by the public due to the disclosure error.

Please be assured that we do take our reporting obligations seriously. To that end, since this error has been realized, the PAC has taken the following steps to ensure that this kind of mistake does not happen again:

1. We have committed to provide better annual training to all individuals involved with the PAC, especially individuals involved in the reporting and filing part of the process.
2. We have institutionalized a more comprehensive process to review draft Campaign finance reports whereby the PAC treasurer, the Executive Director and one additional Maine AFL-CIO staff person will all review each draft PAC report along with the related PAC QuickBooks account summary and PAC bank statement prior to filing. We feel this will ensure accuracy in the future.
3. We are in the process of reviewing all of our PAC systems to ensure that we have the strongest systems in place and that we have sound controls in place to prevent this kind of mistake as well as any other possible related mistakes in the future.

While we take full responsibility for this violation, the PAC believes that a fine of \$10,000 is quite disproportionate to the mistake/omission that was made. We believe that the de minimus harm suffered by the public is in no way commensurate with such a significant fine. As such, the PAC requests that the Commission significantly reduce the preliminary penalty to match the relative seriousness of the violation.

Sincerely,

Matt Schlobohm  
Executive Director, Maine AFL-CIO



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

December 18, 2014

Ryan Jones, Treasurer  
AFL-CIO Committee on Political Education PAC  
21 Gabriel Drive  
Augusta, ME 04330

Re: Late Filing of 2014 11-Day Pre-General Report

Dear Mr. Jones:

The Commission staff has made a preliminary determination that the AFL-CIO Committee on Political Education PAC (the PAC) was late in filing its 2014 11-Day Pre-General campaign finance report. The Commission staff considers the report late as a result of substantial non-conformity with disclosure requirements. Under the Commission's statutes, the late filing of a report triggers an enforcement process. (21-A M.R.S.A. § 1062-A(3)). Based on the amount of financial activity in the report, the number of calendar days the report was late, the PAC's history of violations, and the statutory maximum penalty, the commission staff has determined that a penalty of \$10,000.00 is owed. (Please see attached penalty matrix for the calculation).

The PAC may make a written request that the Commission waive the violation or penalty in whole or in part. Any request for a waiver 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 PAC filed late. Upon receiving your request, the Commission staff will schedule your appeal for an upcoming Commission meeting.

The Commission may waive the penalty if it determines that the report was 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 the PAC made a bona fide effort to file the report on time. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

Please call me at (207) 287-4179 or send me an email at [benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov) if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Benjamin P. Dyer".

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar

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

Payment Receipt

Mail payment to:

The Maine Ethics Commission  
135 State House Station  
Augusta, ME 04333

Make checks payable to: "Treasurer, State of Maine."

Ryan Jones, Treasurer  
AFL-CIO Committee on Political Education PAC  
21 Gabriel Drive  
Augusta, ME 04330

**Violation:** Late 2014 11-Day Pre-General Report  
**Amount Due:** \$10,000.00

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**Committee Name:** AFL-CIO Committee on Political Education PAC

**Report Title:** 2014 11-Day Pre-General

**Due Date:** October 24, 2014

**Previous Violation(s):** N/A

**Filed Date:** December 16, 2014

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%

For the second violation, 3%

For the third and each subsequent violation, 5%

**A penalty begins to accrue at 11:59 p.m. on the day the report is due.**

<b>Penalty Example:</b>		<b>Your Penalty is calculated as follows:</b>	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$40,024.50
		X	
		Percent Prescribed:	1%
X .01	Percent prescribed for first violation		\$400.25
		X	
\$25.00	One percent of total contributions	Number of days late:	53
X 2	Number of calendar days late		
		Total penalty accrued:	\$21,213.25
		Statutory Maximum:	\$10,000.00
\$50.00	Total Penalty		

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

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

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

**MAXIMUM PENALTIES**

21-A M.R.S.A. Section 1062-A(3)

\$10,000 for Pre- and Post-Election Reports, Quarterly Reports and 24-Hour Reports, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.

**Maine Revised Statutes**  
**Title 21-A: ELECTIONS**  
**Chapter 13: CAMPAIGN REPORTS AND FINANCES**

**§1059. REPORT; FILING REQUIREMENTS**

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time 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. [2013, c. 334, §27 (AMD) .]

**1. Contents; quarterly reports and election year reports.**

[ 2007, c. 443, Pt. A, §35 (RP) .]

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

**A. All committees shall file quarterly reports:**

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th. [2011, c. 691, Pt. A, §19 (RPR) .]

**B. General and primary election reports must be filed:**

- (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. [2007, c. 443, Pt. A, §35 (AMD) .]

**C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:**

- (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. [2011, c. 389, §45 (AMD) .]

**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. [1991, c. 839, §29 (RPR) .]**

**E. A 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. [2013, c. 334, §28 (AMD) .]**

[ 2013, c. 334, §28 (AMD) .]

**Maine Revised Statutes**  
**Title 21-A: ELECTIONS**  
**Chapter 13: CAMPAIGN REPORTS AND FINANCES**

**§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.

[ 2013, c. 334, §30 (AMD) .]

→ 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; [1999, c. 729, §9 (AMD) .]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD) .]

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. [2007, c. 443, Pt. A, §38 (AMD) .]

[ 2009, c. 190, Pt. A, §29 (AMD) .]

→ 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, 1%; [1995, c. 483, §21 (NEW) .]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW) .]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW) .]

Any penalty of less than \$10 is waived.

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

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

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

[ 2007, c. 443, Pt. A, §39 (AMD) . ]

→ 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 financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late.

[ 2011, c. 389, §49 (AMD) . ]

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.

[ 2013, c. 334, §31 (AMD) . ]

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.

[ 2009, c. 302, §9 (AMD) . ]

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.

[ 2007, c. 443, Pt. A, §41 (AMD) . ]

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 B 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.

[ 2003, c. 628, Pt. A, §8 (AMD) . ]

**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.

[ 2009, c. 190, Pt. A, §31 (AMD) .]

**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.

[ 2009, c. 302, §10 (RPR) .]

**SECTION HISTORY**

1995, c. 483, §21 (NEW). 1999, c. 426, §34 (AMD). 1999, c. 729, §9 (AMD). 2003, c. 628, §§A7-9 (AMD). 2007, c. 443, Pt. A, §§38-41 (AMD). 2009, c. 190, Pt. A, §§28-31 (AMD). 2009, c. 302, §§8-10 (AMD). 2011, c. 389, §49 (AMD). 2013, c. 334, §§30, 31 (AMD).

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