



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: August 17, 2016

Re: Request for Waiver of Late-Filing Penalty by the Energy PAC for Maine

In the thirteen days before an election, all political action committees, ballot question committees and political parties must file a report within 24 hours of receiving any single contribution of \$5,000 or more or making any expenditure of \$1,000 or more.¹ On June 9, 2016, the Energy PAC for Maine (the PAC) received a \$5,000 contribution from the Maine Energy Marketers Association, the trade association that founded the PAC. It was required to report these expenditures in a 24-Hour Report by June 10, 2016, but did not do so until July 22, 2016.

LEGAL REQUIREMENTS

PACs are required to report any single contribution of \$5,000 or more received or single expenditure of \$1,000 or more made during the 13 days before an election within 24 hours of that transaction. (21-A M.R.S.A. § 1059(2)(E)) If the PAC is late in filing the 24-Hour Report, the amount of the penalty is set by a formula which takes into consideration the amount of the transaction, the number of prior violations within a two-

¹ Candidates have a similar 24-hour reporting requirement, except with a lower reporting threshold (\$1,000) for contributions.

year period, and the number of days the report is late. (21-A M.R.S.A. § 1062-A(3)) The 2015 citizen initiative increased the late-filing penalties for campaign finance reports.

DISCUSSION

On June 9, 2016, the PAC received a \$5,000 contribution from the Maine Energy Marketers Association, its founding organization. This contribution was not entered into the Commission’s e-filing system until July 22nd, which triggered the system to remind the PAC of the late 24-Hour Report. The PAC immediately filed the report.

Based on the statutory formula for calculating late-filing penalties, the preliminary penalty amount totals \$4,200.00, calculated as follows:

Transactions	Date Due	Financial Activity	Penalty Rate	Days Late	Preliminary Penalty
24-Hr Report	06/10/2016	\$5,000.00	2%	42	\$4,200.00

The PAC asks that the Commission waive the penalty due to the inexperience of the treasurer with the 24-hour reporting requirement, the lack of harm to the public by the failure to file the 24-hour report, and that the penalty is disproportionate to the PAC’s activity. Although the treasurer of the PAC has been in place for the past five years, the PAC notes that 24-hour reports for contributions received were not required when she started and that thus she was unaware of the 24-hour reporting requirement in this instance. The PAC argues that the harm to the public by the late disclosure was minimal, as during the 24-hour reporting period the PAC only used \$1,000 of the transfer for contributions to primary election candidates, and that the four \$250.00 contributions the transfer funded were below the 24-hour reporting threshold themselves. Finally, the PAC argues that the penalty is disproportionate to the PAC’s activity, with the penalty

equaling approximately 80% of the contribution received. Also, the PAC notes that the preliminary penalty of \$4,200 is significantly greater than penalties the Commission has assessed for similar conduct in prior elections.

STAFF RECOMMENDATION

Violations of the 24-hour reporting requirements can be serious matters. 24-Hour Reports play an important role in informing the electorate about how money is changing hands in the critical days just before an election. That said, the Commission staff believes that the preliminary penalty of \$4,200.00 is disproportionate to the harm to the public resulting from this late filing.

The factors in this situation suggesting limited harm to the public from this late filing are compelling: the contribution received was a transfer from the PAC's founding organization, was just at the \$5,000 threshold for 24-hour reporting, and only a small portion was used to make expenditures in the form of contributions to primary election candidates. The PAC states that it used \$1,000 to make four \$250 contributions to candidates.² (The PAC is correct that it was not required to disclose these four \$250 contributions to candidates until the PAC filed its post-primary report on July 26, 2016.) Given the significant mitigating factors, we recommend the Commission impose a penalty of \$500.00.

² According to the PAC's post-primary report filed in July, these appear to be four contributions of \$250 made on June 9, 2016 to:

- Eric Brakey and Andre Cushing who were incumbent State Senators running for re-election who did not have opponents in their June 14, 2016 Republican primary elections.
- Mark Dion and Barry Hobbins who were State Representatives running in opposed Democratic primary elections for nominations to the State Senate.

For your reference, we have attached the chart of 2014 Commission decisions concerning 24-Hour Reports filed late by PACs for the June 2014 primary election. Those penalties were in the range of \$250 - \$1,000, depending on the amount of financial activity reported late. Since those decisions, the 2015 citizen initiative doubled the late-filing penalties for PACs. We have also attached the 2016 PAC filing schedule and reminder postcard sent to all PACs in May 2016.

Thank you for your consideration of this memo.



Daniel P. Riley, Esq.
Devin W. Deane, Esq.

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August 12, 2016

Via USPS and Electronic Mail

Jonathan Wayne, Executive Director
Maine Commission on Governmental Ethics and Election Practices
135 State House Station
Augusta, Maine 04333-0135

RE: Late Filing of 24-Hour Report—Energy PAC for Maine

Dear Mr. Wayne:

Our law firm represents the Energy PAC for Maine. Please accept this letter as its written request for a waiver of the preliminary penalty amount indicated in the July 27, 2016 correspondence from Mr. Dyer. The reasons supporting this request are as follows:

1. The Energy PAC for Maine's late filing was inadvertent and based on inexperience.

The Energy PAC for Maine's late filing of its 24-hour report was inadvertent and based on inexperience. The PAC is relatively small, both with respect to its staff resources and political activity. Its staff member that handles reporting to the Commission, Hannah Estes, was simply unaware of the 24-hour reporting requirement for contributions of \$5,000 or more received within 13 days of an election. 21-A M.R.S. § 1059(2)(E). Ms. Estes had no prior campaign finance experience when she took on the role of filing the PAC's reports to the Commission, and when she started five years ago, there was no 24-hour reporting requirement for contributions (of any amount) received within 13 days of an election. That changed in 2013, effective October 9, 2013 (L.D. 1299, § 29 (126th Legis. 2013)), but Ms. Estes was unaware that the change required the PAC to file a 24-hour report for contributions of \$5,000 or more received within 13 days of an election.

It is further noted that there was no intent to deceive the Commission or the public by filing a late 24-hour report. The PAC disclosed the \$5,000 contribution and its subsequent \$250 contributions to four candidates in the usual course, within its regularly scheduled report that was filed within 42 days of the election. Had the PAC known of the 24-hour reporting requirement, it would have filed the appropriate report.

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2. The public was not harmed by the late filing of the 24-hour report.

The public was not harmed by the PAC's late filing of its 24-hour report. The vast majority--\$4,000 of the \$5,000 contribution, was not used by the PAC during the 24-hour reporting period. In fact, the PAC made only four small \$250 contributions to primary candidates (totaling \$1,000) during the 24-hour reporting period; none of those \$250 contributions triggered a separate reporting requirement. They were appropriately reported within the PAC's regularly scheduled report, which was filed within 42 days of the elections. Thus, there was no delay in the public's knowledge of the PAC's expenditures on the primary elections. Therefore, there was no harm to the public caused by the PAC's inadvertent failure to file its 24-hour report.

3. The preliminary penalty is disproportionate to the PAC's activity.

The preliminary penalty of \$4,200 is disproportionate to the PAC's financial activity and any conceivable harm to the public.

First, the preliminary penalty is more than 80% of the \$5,000 contribution and more than four times the amount of the PAC's total expenditure during the 24-hour reporting period (\$1,000).

Second, the preliminary penalty greatly exceeds the penalties imposed on PACs in similar situations in the past. Please see the attached table summarizing the penalties imposed for violations of the 24-hour reporting requirements since January 1, 2014. For example, and most analogous to the facts of this case, the Commission imposed penalties of \$250 for the Maine Credit Union League PAC's and Citizens for Justice in Maine PAC's similar violations of the 24-hour reporting requirements (in August and September of 2014, respectively). Both of those violations, like the violation in this case, involved a modest amount of money (around \$5,000) and were first-time violations caused by the PACs' and their staffs' relative inexperience with the 24-hour reporting requirements. Therefore, the Commission should follow its precedent and impose a similar penalty in this case.

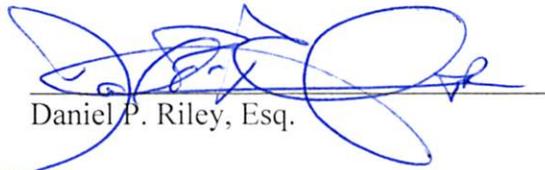
Finally, the preliminary penalty is disproportionate to any conceivable harm to the public caused by the late filing of the 24-hour report. The \$5,000 contribution took place on June 9, 2016, four days before the primary elections (and the end of the 24-hour reporting period) on June 13, 2016. Even assuming the public was somehow harmed, any harm was limited to three days leading up to the primary elections, but not after. Therefore, the imposition of a penalty for the 39 days following the elections would be disproportionate to any harmed caused by the delay in filing the 24-hour report.

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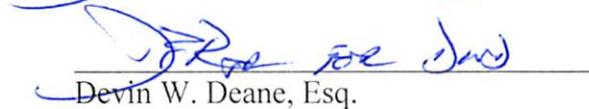
In light of the foregoing facts, the Energy PAC for Maine respectfully requests that the Commission waive the preliminary penalty assessed by Commission staff. If the staff or Commission would like any additional information, please contact either of us at your convenience. We will be present at the Commission meeting in this matter and will respond to any questions the Commission may have. Thank you for the Commission's time and its attention to this request.

Respectfully,



A handwritten signature in blue ink, appearing to read 'D. Riley', is written over a horizontal line.

Daniel P. Riley, Esq.



A handwritten signature in blue ink, appearing to read 'D. Deane', is written over a horizontal line.

Devin W. Deane, Esq.

Attachment #1

Commission Rulings on 24-Hour Report Violations January 1, 2014 to Present							
No.	Date	Name	Type of Entity	Financial Activity	No. of Days Late	Prelim. Penalty	Penalty Imposed
1.	06/25/2014	Maine Conservation Voters Action Fund	PAC	\$280,000.00	5 & 10	\$32,500.00	\$1,000.00
2.	07/31/2014	Maine Forward PAC	PAC	\$50,000.00	5	\$2,500.00	\$250.00
3.	08/27/2014	Karen Gerrish	Candidate	\$1,035.00	45	\$465.75	\$100.00
4.	08/27/2014	Dana Lajoie	Candidate	\$2,040.00	48	\$979.20	\$100.00
5.	08/27/2014	Steven Juskewitch	Candidate	\$3,200.00	47	\$736.00	\$150.00
6.	08/27/2014	Campaign of Paul LePage	Campaign	\$3,000.00	41	\$5,000.00	\$500.00
7.	08/27/2014	Michael Willette	Candidate	\$1,345.00	47	\$632.15	\$50.00
8.	08/27/2014	Alan Steele	Candidate	\$2,000.00	40	\$800.00	\$0.00
9.	08/27/2014	Maine Democratic Party	Party	\$10,000.00	48	\$4,800.00	\$750.00
10.	08/27/2014	Maine Credit Union League PAC	PAC	\$4,000.00	49	\$1,960.00	\$250.00
11.	09/24/2014	Citizens for Justice in Maine PAC	PAC	\$5,500.00	46	\$2,530.00	\$250.00
12.	09/24/2014	Build Maine PAC	PAC	\$1,000.00	48	\$480.00	\$250.00
13.	09/24/2014	ACTBlue Maine PAC	PAC	\$17,468.93	39 & 46	\$17,845.49	\$500.00
14.	01/23/2015	Eliot Cutler Campaign	Campaign	\$4,662.03	54	\$4,662.03	\$200.00
15.	01/23/2015	Anne PAC	PAC	\$3,500.00	52	\$1,820.00	\$250.00
16.	01/23/2015	William DeSena	Candidate	\$2,361.20	36 & 39	\$1,817.79	\$200.00
17.	01/23/2015	Owen Hill	Candidate	\$1,273.36	52	\$662.14	\$100.00
18.	01/23/2015	Workers Voice PAC	PAC	\$38,224.36	10	\$6,518.11	\$1,000.00
19.	02/25/2015	Environment Maine PAC	PAC	\$10,000.00	40	\$4,000.00	\$500.00
20.	02/25/2015	Maine Republican Party	Party	\$124,000.00	40-49	\$37,400.00	\$5,000.00
21.	04/27/2016	Stephen Martin	Candidate	\$7,322.78	6 & 2	\$548.25	\$150.00
22.	07/20/2016	Lincoln Cty. Dem. Committee	Committee	\$1,610.00	23	\$500.00	\$150.00



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

July 27, 2016

Michael McCormack, Treasurer
Energy PAC for Maine
18 Spring St
Brunswick, ME 04011

Re: Late Filing of 24-Hour Report

Dear Mr. McCormack,

The Commission staff has made a preliminary determination that the Energy PAC for Maine (the PAC) was late in filing the 24-Hour Report required for a contribution received on June 9, 2016. The report was due by 11:59 p.m. on June 10, 2016, but was not filed until July 22, 2016. 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, and the PAC's history of violations, the commission staff has determined that a penalty of \$4,200.00 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) 287-6221 or send me an email at 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

Enclosure: payment receipt & penalty matrix

Payment Receipt

Mail payment to:

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

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

Michael McCormack, Treasurer
Energy PAC for Maine
18 Spring St
Brunswick, ME 04011

Violation: Late 24-hour Report
Amount Due: **\$4,200.00**

Committee Name: Energy PAC for Maine

Report Title: 24-Hour Report

Due Date: June 10, 2016

Previous Violation(s): NA

Filed Date: July 22, 2016

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, 2%

For the second violation, 4%

For the third and each subsequent violation, 6%

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

Penalty Example:		Your Penalty is calculated as follows:	
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:	<u>\$5,000.00</u>
		X	
		Percent Prescribed:	<u>2%</u>
X .02	Percent prescribed for first violation		<u>\$100.00</u>
		X	
\$50.00	Two percent of total contributions	Number of days late:	<u>42</u>
X 2	Number of calendar days late		
\$100.00	Total Penalty	Total penalty accrued:	<u>\$4,200.00</u>

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(4)

\$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 100% of the amount reported late.



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

24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2016 CAMPAIGN YEAR

COMMITTEE		TREASURER	
ENERGY PAC FOR MAINE P.O. BOX 249 BRUNSWICK, ME 04011 PHONE: (207) 729-5298 EMAIL: JPY@MAINEENERGYMARKETERS.COM		MICHAEL MCCORMACK 18 SPRING STREET BRUNSWICK, ME 04011 PHONE: (207) 725-4333 EMAIL: MCCORMAC@DOWNEASTENERGY.COM	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/10/2016	06/09/2016 - 06/09/2016	

FINANCIAL ACTIVITY SUMMARY

CONTRIBUTIONS AND EXPENDITURES	
1. TOTAL CONTRIBUTIONS / LOANS	\$5,000.00
2. TOTAL EXPENDITURES	\$0.00
3. TOTAL DEBTS	\$0.00

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

REPORT FILED BY: HANNAH ESTES
REPORT FILED ON: 07/22/2016
LAST MODIFIED: 07/22/2016
PRINTED: 08/15/2016
COMMITTEE ID: 631

24-HOUR CONTRIBUTOR INFO

1 = Individual

2 = Candidate/ Spouse/ Domestic Partner

3 = Commercial Source

4 = Nonprofit Organization

5 = Political Action Committee

6 = Political Party Committee

7 = Ballot Question Committee

8 = Other Candidate/ Candidate Committee

9 = Candidate / Candidate Committee

10 = General Treasury Transfer

11 = Transfer from Previous Campaign

12 = Contributors giving \$50 or less

13 = Contributors giving \$100 or less

14 = Contributors giving \$200 or less

15 = MCEA Payment

16 = Financial Institution

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	CONTRIBUTOR/ CONTRIBUTION TYPE	AMOUNT
6/9/2016	Maine Energy Marketers Association PO Box 249, 25 Greenwood Road Brunswick, ME 04011	DESCRIPTION: Unknown PAC CONTRIBUTION	3 Monetary (Itemized)	\$5,000.00
TOTAL CONTRIBUTIONS / LOANS				\$5,000.00

**Penalty Decisions by Commission --
24-Hour Reports filed Late by PACs in 2014 Primary Election**

PAC Name	Circumstances	Financial Activity	# Days Late	Preliminary Penalty	Meeting Date	Final Penalty
Maine Conservation Voters Action Fund	PAC failed to report a \$250,000 contribution and a \$50,000 expenditure because they were not related to a candidate or ballot question in the Primary Election.	\$300,000.00	10	\$32,500.00	6/25/2014	\$1,000.00
Maine Forward	Bank failed to notify PAC of wire transfer receipt.	\$50,000.00	5	\$2,500.00	7/31/2014	\$250.00
Maine Credit Union League-Legislative Action Committee	PAC was not actively participating in the Primary Election and was unaware of 24-hour reporting requirement.	\$4,000.00	49	\$1,960.00	8/27/2014	\$250.00
ActBlue Maine	PAC was unaware of 24-hour reporting period and experienced internal software problems	\$17,468.93	39	\$17,845.49	9/24/2014	\$500.00
Build Maine PAC	PAC did not receive notification of 24-hour reporting period and was unaware that a contribution to another PAC during this period required filing a 24-Hour Report.	\$1,000.00	48	\$480.00	9/24/2014	\$250.00
Citizens for Justice in Maine, Inc.	PAC was unaware of 24-hour reporting period and treasurer was inexperienced	\$5,500.00	46	\$2,530.00	9/24/2014	\$250.00



2016 FILING SCHEDULE

FOR ALL POLITICAL ACTION COMMITTEES, BALLOT QUESTION COMMITTEES AND STATE POLITICAL PARTY COMMITTEES

Primary Election June 14, 2016		General Election November 8, 2016	
TYPE OF REPORT	FILING DEADLINE (11:59 P.M.)	REPORT PERIOD	
April Quarterly	April 11, 2016	January 1 — March 31	
11-Day Pre-Primary	June 3, 2016	April 1 — May 31	
42-Day Post-Primary	July 26, 2016	June 1 — July 19	
October Quarterly	October 5, 2016	July 20 — September 30	
11-Day Pre-General	October 28, 2016	October 1 — October 25	
42-Day Post-General	December 20, 2016	October 26 — December 13	
January Quarterly	January 17, 2017	December 14 — December 31	
<p>NEWLY FORMED POLITICAL ACTION COMMITTEES AND BALLOT QUESTION COMMITTEES: All new committees must file an Initial Report at the time of registration. For PACs, the Initial Report covers all activity from the beginning of the year through the date of registration. For BQCs, the Initial Report covers all activity from the beginning of the campaign through the date of registration.</p>			
24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES			
24-HOUR REPORTING PERIOD		WHAT CONTRIBUTIONS SHOULD BE REPORTED	
The reporting period begins 13 days before an election and runs through the day before the election.		Any <u>single</u> contribution of \$5,000 or more received during the reporting period.	
WHEN TO FILE		WHAT EXPENDITURES SHOULD BE REPORTED	
Within 24 hours, including Saturdays and Sundays, of receiving the contribution or making the expenditure, incurring the obligation, or placing the order. Reports can be filed via the committee's electronic filing website.		Any <u>single</u> expenditure of \$1,000 or more made during the reporting period. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the orders or obligations are made. Overhead costs, such as rent, taxes, utilities and some salary payments are not required to be reported.	

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. Committee treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline.

Commission staff will be available until 5:00 p.m. on all filing deadlines to offer assistance. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if a report is filed late.

Campaign Finance Report Reminder

Attention all Political Action Committees, Ballot Question Committees and State Party Committees.

**11-Day Pre-Primary Campaign Finance reports are due
by 11:59 p.m. on June 3, 2016.**

The report covers the period between April 1, 2016 and May 31, 2016.

Reports must be filed by the deadline regardless of activity.

Log in at www.mainecampaignfinance.com to file the report.

For all organizations: be aware that 24-Hour reporting requirements for large contributions received and expenditures made begin June 1st and last through June 13th.

Please contact (207) 287-4179 or ethics@maine.gov with questions.

Visit the Ethics Commission website at www.maine.gov/ethics for more information.

21-A M.R.S.A. § 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.

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.

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.

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.

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

E. 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.

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

[1989, c. 504, §§28, 31 (RP) .]

4. Special election reports.

[1989, c. 504, §§28, 31 (RP) .]

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

21-A M.R.S.A. § 1062-A. FAILURE TO FILE ON TIME

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

[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 E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[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) .]