

# Agenda

## Item #6

**Request for Waiver – Build Maine PAC**



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: September 15, 2014  
Re: Request for Waiver of Late-Filing Penalty by Build Maine PAC

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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.<sup>1</sup> The Build Maine PAC (the PAC) made a \$1,000 expenditure in the form of a contribution to another PAC on June 3, 2014, during the 24-hour reporting period leading up to the June 10, 2014 primary election, but was late in reporting this transaction.

#### 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-year period, and the number of days the report is late. (21-A M.R.S.A. § 1062-A(3))

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

## **DISCUSSION**

On June 3, 2014, the PAC made a \$1,000 contribution to the Leadership for Maine's Future PAC. In July, when the PAC entered the information about the transaction into the Commission's campaign finance reporting system for the 42-Day Post-Primary report, the system alerted the PAC to the late 24-hour report. The PAC filed the required 24-hour report on July 22, 2014. The report is attached.

Based on the statutory formula for calculating late-filed report penalties, the preliminary penalty amount totals \$480, calculated as follows:

<b>Transactions</b>	<b>Date</b>	<b>Financial Activity</b>	<b>Penalty Rate</b>	<b>Days Late</b>	<b>Preliminary Penalty</b>
Contributions to Leadership for Maine's Future PAC	6/3/2014	\$1,000	1%	48	\$480

### **Request by PAC**

The Build Maine PAC is organized by the Associated General Contractors of Maine. The PAC asks that the Commission waive the penalty because it did not receive any reminders that the 24-hour reporting period had begun and that it did not know that an expenditure to another PAC required the filing of a 24-hour report. The PAC also claims it has a good record of filing campaign finance reports on time since 2008.

## **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. In this situation, \$1,000 changed hands without being disclosed in a timely manner. The PAC did not file the 24-hour report until reminded by the campaign finance reporting system. The Commission staff disagrees that the PAC had no notice of the 24-hour reporting requirement. The 24-hour reporting requirement for large expenditures is set out in the attached filing schedule for all PACs. In a reminder postcard sent on May 7, 2014 and on reminder emails sent on May 19<sup>th</sup>, 23<sup>rd</sup>, 29<sup>th</sup>, and 30<sup>th</sup> (samples are attached), Commission staff reminded filers that the 24-hour reporting period began on May 28, 2014. If the PAC had questions concerning the reporting requirement, it could have called our office. Since 2008, the PAC has had two previous violations for filing campaign finance reports late.

Nevertheless, the amount of financial activity reported late (\$1,000) is not large.

Weighing the factors, the staff recommends that the Commission find that the PAC failed to timely file the 24-hour report required for the June 3, 2014 transaction and assess a penalty of \$250.

Thank you for your consideration of this memo.



August 11, 2014

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

Dear Benjamin:

I am in receipt of your letter of July 28, 2014 notifying us of our penalty for filing the 24-Hour Report late. Unfortunately, we feel the \$480 penalty is quite excessive, not fitting of the infraction, and would appreciate the opportunity to appear before the Commission at the next regularly scheduled meeting to appeal the determination.

We have been sending in our reports consistently since 2008, and with one or two exceptions over that period, we have been on time. We did not receive any reminders that the 24 hour reporting period had begun and further since it was a contribution to a PAC and not a direct expense for a candidate did not know a 24 hour report was required to be filed.

Regarding the penalty, I understand that the law requires you to calculate it according to the formula set in statute, and that it is based on a percentage of the amount reported and the number of days late.

In summary, we feel we do not deserve the penalty assessed, and would request that it be waived or at least reduced, for the following reasons:

- We have a good record of filing our PAC reports and 24 Hour Reports on time, over a 8-year period;
- While we take responsibility for making sure the 24 Hour Reports are filed on time, it was an oversight that the 24 Hour Reporting period had began and that the contribution to the Leadership for Maine's Future PAC required a 24 Hour Report. We consider these mitigating circumstances, and hope you will agree.

Again, I appreciate the time you have taken to listen to our case. I look forward to attending the next Ethics Commission meeting and having the opportunity to discuss this matter personally.

Sincerely,

Matthew E. Marks  
Chief Executive Officer



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

## 24-HOUR REPORT OF CONTRIBUTIONS AND EXPENDITURES

2014 CAMPAIGN YEAR

COMMITTEE		TREASURER	
BUILD MAINE PAC 188 WHITTEN ROAD AUGUSTA, ME 04330 PHONE: (207) 622-4741 EMAIL: MMARKS@AGCMAINE.ORG		Matthew Marks 188 Whitten Road Augusta, ME 04330 PHONE: (207) 622-4741 EMAIL: mmarks@agcmaine.org	
REPORT	DUE DATE	REPORTING PERIOD	
24 Hour Report of Major Contributions and Expenditures	06/04/2014	06/03/2014 - 06/03/2014	

### FINANCIAL ACTIVITY SUMMARY

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

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

REPORT FILED BY: SANDI METRANO  
REPORT FILED ON: 07/22/2014  
LAST MODIFIED: 07/23/2014  
PRINTED: 09/17/2014  
COMMITTEE ID: 615

**24-HOUR EXPENDITURE AND PAYEE INFORMATION**

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and Internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls			
DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
6/3/2014	LEADERSHIP FOR MAINE'S FUTURE P.O. BOX 476 NEWPORT, ME 04953	FUND RAISER	CON	\$1,000.00
6/3/2014	MCCABE FOR LEADERSHIP 13 OLIVE STREET SKOWHEGAN, ME 04976	FUND RAISER	FND	\$1,000.00
6/3/2014	MCCABE FOR LEADERSHIP 13 OLIVE STREET SKOWHEGAN, ME 04976	Offset due to update of filed item	FND	(\$1,000.00)
6/12/2014	MCCABE FOR LEADERSHIP 13 OLIVE STREET SKOWHEGAN, ME 04976	FUND RAISER	FND	\$1,000.00
<b>TOTAL EXPENDITURES FOR CANDIDATE:</b>				<b>\$2,000.00</b>



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES  
 Mail: 135 State House Station, Augusta, Maine 04333  
 Office: 45 Memorial Circle, Augusta, Maine

Website: [www.maine.gov/ethics](http://www.maine.gov/ethics)  
 Phone: 207-287-4179  
 Fax: 207-287-6775

## 2014 FILING SCHEDULE

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

Primary Election June 10, 2014		General Election November 4, 2014	
TYPE OF REPORT	FILING DEADLINE (11:59 P.M.)	REPORT PERIOD	
April Quarterly	April 10, 2014	January 1—March 31	
11-Day Pre-Primary	May 30, 2014	April 1—May 27	
42-Day Post-Primary	July 22, 2014	May 28—July 15	
October Quarterly	October 6, 2014	July 16—September 31	
11-Day Pre-General	October 24, 2014	October 1—October 21	
42-Day Post-General	December 16, 2014	October 22—December 9	
January Quarterly	January 15, 2015	December 10—December 31	

**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.

### 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.

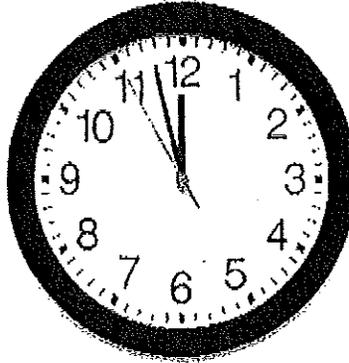
Commission staff will be available until 5:00 p.m. on all filing deadlines to offer assistance. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if a report is filed late.

Reminder  
Email

**Dyer, Benjamin P**

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**From:** Dyer, Benjamin P  
**Sent:** Monday, May 19, 2014 3:37 PM  
**To:** Dyer, Benjamin P  
**Cc:** Lavin, Paul  
**Subject:** 11-Day Pre-Primary Campaign Finance Report Reminder



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

**11-Day Pre-Primary Campaign Finance reports  
are due by 11:59 p.m. on May 30, 2014.**

**If you have already filed your 11-Day Pre-Primary Finance report, thank  
you.**

**Remember, the 24 hour reporting period begins May 28, 2014**

The report covers the dates between April 1, 2014 and May 27, 2014.

Reports must be filed by the deadline even if the committee had no financial activity.

Click <https://secure.mainelection.com/CampaignFinance/UserLogin.aspx>

to log in and file the report.

Please contact the Ethics Commission Staff with questions.

(207) 287-4179

Benjamin P. Dyer  
Political Committee and Lobbyist Registrar  
Maine Ethics Commission

Mailing: 135 State House Station  
Augusta, Maine 04333  
T: (207) 287-6221  
[benjamin.p.dyer@maine.gov](mailto:benjamin.p.dyer@maine.gov)

**11-Day Pre-Primary  
Campaign Finance Report Due  
For All Political Action Committees  
& Ballot Question Committees**

**DEADLINE: May 30, 2014**

- Reporting period is April 1, 2014 — May 27, 2014.
- For all PACs regardless of activity during this period.
- Remember, the 24 hour reporting period begins May 28, 2014

**Reports must be filed electronically by  
11:59 p.m. on 5/30/2014.**

Log in to your home page at:

<https://secure.maine.campaignfinance.com/CampaignFinance/UserLogin.aspx>

Contact the Ethics Commission with questions: (207) 287-4179  
or email: [ethics@maine.gov](mailto:ethics@maine.gov)

Postcard reminder  
mailed to two  
representatives  
of the PAC.

**11-Day Pre-Primary  
Campaign Finance Report Due  
For All Political Action Committees  
& Ballot Question Committees**

**DEADLINE: May 30, 2014**

- Reporting period is April 1, 2014 — May 27, 2014.
- For all PACs regardless of activity during this period.
- Remember, the 24 hour reporting period begins May 28, 2014

**Reports must be filed electronically by**

**11:59 p.m. on 5/30/2014.**

Log in to your home page at:

<https://secure.mainecampaignfinance.com/CampaignFinance/UserLogin.aspx>

Contact the Ethics Commission with questions: (207) 287-4179  
or email: [ethics@maine.gov](mailto:ethics@maine.gov)

Maine Ethics Commission  
State House Station 135  
Augusta, ME 04333-0135

Matthew Marks  
188 Whitten Road  
Augusta, ME 04330

Maine Ethics Commission  
State House Station 135  
Augusta, ME 04333-0135

BUILD MAINE PAC  
188 WHITTEN ROAD  
AUGUSTA, ME 04330



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

July 28, 2014

Matthew Marks, Treasurer  
Build Maine PAC  
188 Whitten Road  
Augusta, ME 04330

Re: Late Filing of 24-Hour Report

Dear Mr. Marks,

The Commission staff has made a preliminary determination that the Build Maine PAC (the PAC) was late in filing the 24-Hour Report required for the following expenditures in the form of a contribution: a \$1,000 expenditure to Leadership for Maine's Future PAC the PAC reported making on June 3, 2014. The report was due by 11:59 p.m. on June 4, 2014, but was not filed until July 22, 2014. 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 \$480 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](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

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."

Matthew Marks, Treasurer  
Build Maine PAC  
188 Whitten Road  
Augusta, ME 04330

**Violation:** Late 24-hour Report  
**Amount Due:** \$480.00

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**Committee Name:** Build Maine PAC

**Report Title:** 24-Hour Report

**Due Date:** June 4, 2014

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

**Filed Date:** July 22, 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		Contributions / Expenditures:	<u>\$1,000.00</u>
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	X	
		Percent Prescribed:	<u>1%</u>
X .01	Percent prescribed for first violation		<u>\$10.00</u>
		X	
\$25.00	One percent of total contributions	Number of days late:	<u>48</u>
X 2	Number of calendar days late		
		Total penalty accrued:	<u>\$480.00</u>
\$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.

## 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. [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) .]

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

[ 1989, c. 504, §§28, 31 (RP) .]

## 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.