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

Additional Materials
Agenda Item #6
October 1, 2015

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: September 30, 2015

Re: Statutory Proposal to Improve Disclosure of Political Donors

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This memo is to provide some additional information to you concerning the proposed legislation to provide more public access to the sources of money spent in political campaigns in Maine. To facilitate your discussion, we have listed below some of the key elements of the legislation and some alternatives that you might wish to consider. We have developed these alternatives in response to concerns raised in preliminary conversations about the proposed legislation. We are open to entering into any dialogue or outreach to interested parties you believe would improve the bill.

The Staff's Initial Proposal. Our initial proposal is that certain organizations[1] that are required to form PACs or ballot question committees (BQCs) due to election-related spending would report two types of contributions that they have received:

1. Maine-specific contributions. Under current law, the PACs and BQCs are required to report only those contributions made to the organization for purposes of influencing a Maine election. Our bill sets out a clearer definition of these contributions.

2. Most recent contributions greater than $1,000. If the Maine-specific contributions outlined in (1) do not account for the political spending of the organization, the organization would be required to disclose the most recent donations greater than

[1] Organizations that have a major purpose *other than* influencing a Maine election, but that are engaged in more than $5,000 in election-related spending.

$1,000 it had received to account for the full amount of the organization's political spending. For example, if an organization spent $100,000 to oppose a ballot question and had received one contribution of $20,000 for that purpose, the organization would report that one $20,000 contribution and other income totaling $80,000 comprised of donations over $1,000 on a last-in, first-out (LIFO) basis. (The organization could exclude certain donations from the LIFO reporting if the donor designated the funds for a specific non-election program or activity.)

Rationale for LIFO reporting of contributions over $1,000

The rationale for requiring disclosure of most recent contributions greater than $1,000 is that they are more likely to be the actual source of dollars used for the Maine-related political spending. Another benefit is that the standard is clear and not likely to cause confusion. Other states have turned to this LIFO reporting, such as California, Massachusetts, and Michigan.

Alternatives to LIFO Reporting of Donors over $1,000

Top ten donations in a six month period. One alternative to LIFO reporting of contributions over $1,000 is to require organizations to report the ten largest monetary donations they have received in the six months prior to making the election-related expenditures. Arguably, these larger donations would be more informative to Maine voters concerning the sources of political spending in Maine. Also, this disclosure of top ten donations would not be administratively difficult, because the organization would have to report a maximum of 10 payments received.

In order to provide greater flexibility for the Commission, after distributing the meeting packet to you, the Commission staff inserted language to this effect in the bill that we submitted to the Office of the Revisor. In our draft, organizations could choose between the LIFO reporting or the disclosure of top ten donations. Please see the draft subsection

1060-A(3) on the last page of this document, which is the language submitted to the Revisor.

Disclosure of larger donors. Another alternative to the LIFO reporting of donations over $1,000 is to increase the threshold above $1,000. For example, the organization could disclose its donations over $5,000 or $10,000 in a six-month period (again, excluding those donations designated by the donor for a specific non-election purpose).

- Arguably, larger donations provide more relevant information to voters about the sources of money used for political spending.
- A higher threshold could reduce the administrative burden in identifying and reporting the donations.
- Our general understanding is that organizations that have a 501(c) tax-exempt status are under an existing obligation to itemize major donors over $5,000 for purposes of tax reporting.

How much should an organization be able to donate without qualifying as a PAC?

As mentioned in my September 22 memo, we continue to believe that some organizations that merely make monetary donations to PACs, party committees, etc., should not necessarily qualify as PACs. In our legislation, organizations could donate up to $25,000 in a calendar year without being considered a PAC.[2] You may wish to consider a higher cap, such as $50,000, to address the concern of administrative burden on donors.

Accepting financial reports made to a federal agency. Our research indicates that a handful of organizations that made election-related expenditures in Maine in 2014 itemized their 2014 donors in publicly available filings to the Internal Revenue Service or

[2] The exemption would apply only if the organization has made no expenditures to influence a Maine election in the year other than the donations under $25,000 and if the organization has raised less than $5,000 to influence an election.

the Federal Election Commission.[3] The Commission could propose that if – at the time of making political expenditures in Maine – the organization has already submitted financial reports to the IRS or FEC listing donations received in the prior six months, the organization would submit a copy of the report to the Commission, which would post electronic copies of those reports on our website as a means of disclosing contributions. We suspect that this would affect relatively few organizations, however.

Should all revenue sources to political spenders be considered "contributions"? For your information, the Commission staff is continuing to debate whether the sources of revenue to the national or multi-purpose organizations should be identified in campaign finance reports as "contributors" and presented to the public as such on the Commission's e-filing website and in the Commission's database. Some of these donors may have given money to the organization with no knowledge that the funds would be spent to influence a Maine election. For reasons of public relations or exemption from taxation, this could be a complication for both the donors and recipient organizations.

We see two benefits to having sources of revenue to political spenders be identified as "contributors." First, this is a status that is already familiar to members of the public who research how political campaigns are financed. Secondly, contributions are searchable by the public. For example, some members of the public may be interested in knowing how much money has been given by a specific labor association, business or national group to political organizations in Maine. If revenue sources are categorized as something other than as "contributions," the public may not understand the distinction and the sources of revenue may not be easily accessible to the public using our website to search for contributions.

Thank you for your consideration of this memo.

[3] We have identified three organizations that filed these reports because they were tax-exempt political organizations under Section 527 of the Internal Revenue Code or were involved in congressional elections.

Revised §1060-A included in Legislation Submitted to Revisor

A person qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) or a ballot question committee shall disclose total contributions received in an amount at least equal to the committee's expenditures made in the reporting period. The report must include the following contributions and any additional information required by the commission to monitor the activities of political action committees:

1. Contributions to initiate or influence a campaign. The committee shall disclose the date and amount of any single contribution of more than $100 received that satisfy any of the following criteria, and the name, occupation, place of business and mailing address of the contributor:

A. Contributions solicited by the committee, in whole or in part, for the purpose of initiating or influencing a campaign;

B. Funds that the contributor specified were given in connection with a campaign;

C. Funds provided in response to a solicitation that would lead the contributor to believe that all or a portion of the funds would be used for the purpose of initiating or influencing a campaign; and

D. Funds that can reasonably be determined to have been provided by the contributor, in whole or in part, for the purpose of initiating or influencing a campaign when viewed in the context of the contribution and the recipient's activities regarding a campaign.

2. Other contributions. For the balance of its contributions, the committee shal report the information required in subsection 1 for any single contributions of more than $1,000 received by the committee based on a last-in, first-out accounting method.

A. For purposes of this section, "last-in, first-out accounting method" means an accounting method by which the committee's expenditures are attributed to contributions received by the committee in reverse chronological order beginning with the most recent contributions.

B. The committee shall not be required to report contributions received prior to May 1, 2016.

C. The committee may exclude funds from a donor who designates the funds to be used for a specific activity or program other than initiating or influencing a campaign.

D. For the purposes of this subsection, committees are not required to report income earned from providing goods, services or facilities, investment income, proceeds from the sale of assets, or other receipts that are not donations.

E. If the contributions reported under subsection 1 and this subsection do not account for the full balance of the committee's expenditures during a report period, the committee shall identify itself as the contributor of the remaining balance. The commission may require the committee to provide a general description of the sources of funds used for the expenditures.

3. Top ten donations. As an alternative to disclosure required under subsection 2, a committee may identify itself as the contributor for the remaining balance and list the ten largest monetary donations received by the organization in the six months prior to the end date of the reporting period, including the name of the donor and the date and amount of the donation, in a manner prescribed the commission. The committee does not have to include donations excluded in section 2, subsection C.