

Agenda

Item #6



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

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: December 12, 2012  
Re: Revised Statute Changes for Your Consideration

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Thank you for your consideration of statute changes proposed by the Commission staff. Attached to this memo is the second round of proposals. Changes that are new or significantly different from the first proposal are shaded in grey. Changes that are largely the same as the first proposal are shaded in yellow. This memo highlights a few issues for your consideration.

**Issue #1: Duties and liabilities of PAC treasurers and principal officers**

In sections 1052-A and 1054-A, the Commission staff proposes:

- the duties and liabilities of the treasurer and principal officer of a PAC would be specified in statute
- the Commission would have the discretion to hold the treasurer and principal officer jointly liable with the PAC for penalties assessed against the PAC
- individuals who serve as a treasurer, principal officer, or primary decision-maker for the PAC would need to sign a statement of responsibilities and would be considered to be involved in the spending decisions of the PAC.

**Issue #2: Duties and liabilities of treasurers in candidate campaigns**

In section 1016-A (applicable to all state candidates) and section 1125(12-D) (Maine Clean Election Act candidates), the duties and liabilities of the candidate's treasurer are set out:

- For all candidates, the law would continue to state that the treasurer "shall" file the campaign finance reports. The verb "shall" is usually understood to impose a legal duty.
- Under current law, candidates accepting traditional campaign contributions may serve as their own treasurer. We propose a clarification in law that Maine Clean Election Act candidates could not file their own campaign finance reports, although we have some doubt whether this proposal will be acceptable to the Legislature.

- Either the candidate or treasurer could keep the records of the campaign. If the candidate keeps the records, the candidate must provide access to the records to the treasurer for purposes of filing campaign finance reports.
- For all candidates, the Commission would have the discretion to hold candidates and treasurers jointly liable with the campaign for penalties.

You may wish to propose a more flexible approach for MCEA candidates. For example, candidates and treasurers could decide who *actually* files the reports, provided that both may be held responsible for the campaign's compliance with reporting requirements.

*Recent history of statutes:* For years, the campaign finance law (Title 21-A, Chapter 13) has suggested that in candidate campaigns, the treasurer has two primary responsibilities: (1) filing campaign finance reports and (2) keeping certain records. This assignment of responsibility was suggested in sections 1016 and 1017 ("the treasurer shall ...") and by references to the treasurer in the registration statute (section 1013). These provisions pre-date the Maine Clean Election Act and continue to apply to publicly and traditionally financed candidates alike.

In spite of the wording of the law, historically, a significant number of candidates have preferred to keep track of their finances and prepare campaign finance reports themselves. The staff believes that there have been valid reasons for this preference, such as a desire by the candidate to perform this important responsibility themselves to make sure that it is done correctly; not wanting to bother campaign supporters; or, in some cases, difficulties in finding a campaign treasurer with the right combination of skills. Some House and county campaigns may have as little as five or ten expenditures for the entire year.

In 2008, the Legislature enacted a change proposed by Speaker Glenn Cummings that affected Maine Clean Election Act candidates (P.L. 2007, Chapter 642, signed into law on 4/17/2008 and taking effect on 11/4/2008). Chapter 642 did not explicitly forbid candidates from filing campaign finance reports, but it specified that MCEA candidates could not serve as their own treasurer (sections 1013-A(1)(A) and 1125(5-B)).

### **Issue #3: Disclosure of donations for inauguration and transition operations**

The Commission staff received feedback from a Commissioner that the governor-elect should be prohibited from *personally* raising contributions but may authorize others to raise the funds. The staff would certainly prefer that practice. We were uncertain whether to include that restriction in the Commission's proposal, which was designed to increase information for the public while avoiding restrictions that could result in possible objections during the legislative process. The staff appreciates your consideration of these questions and will move forward any policy you prefer.

**Issue #4: 24-Hour reporting during the last 13 days before an election**

In response to comments from William P. Logan, the former treasurer for the Maine Republican Party, the Commission staff has amended the 24-hour reporting requirement for PACs and parties to be any *single* contribution of \$5,000 or more – rather than aggregating contributions from the same source to determine if the total exceeds \$5,000. If enacted, this proposal will be simpler for PACs and parties to implement. The staff is aware that the proposed requirement would apply to all PACs and parties, and the Legislature declined to enact a similar proposal from the Commission in 2008.

The staff has declined to exempt from 24-hour reporting payments to *employees* of PACs and parties. We understand that some party committees and PACs believe that the disclosure of payments to an employee (e.g., a receptionist) has little value for the public. Nevertheless, such a proposal may meet resistance during the legislative process from reform groups and Legislators who are in favor of greater disclosure.

Thank you for your consideration of the proposed statute changes.

**CHAPTER 13**  
**CAMPAIGN REPORTS AND FINANCES**

**SUBCHAPTER I**  
**GENERAL PROVISIONS**

**21A § 1001. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Commission.** "Commission" means the Commission on Governmental Ethics and Election Practices established under Title 1, section 1002.

**2. Election.** "Election" means any primary, general or special election for state, county or municipal offices as defined in Title 30-A, section 2502, subsection 1.

**3. Person.** "Person" means an individual, committee, firm, partnership, corporation, association or organization.

**21A § 1002. Meetings of commission**

**1. Meeting schedule.** The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held. In the 28 days preceding an election, the commission shall meet in Augusta within 2 business days of the filing of any complaint with the commission, unless the complainant and respondent agree otherwise. Regardless of whether the complainant or respondent agree, the commission may defer until after the election considering complaints determined by the chair to involve allegations of minor violations of this chapter or chapter 14 such as disclaimer statements omitted from campaign signs or transactions of less than \$100 omitted from campaign finance reports.

**2. Telephone meetings.** The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 2 business days of the filing of any complaint with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation.

The commission may disclose investigative working papers, except for the information or records subject to a privilege against discovery or use as evidence, in a final audit or investigation report or determination if the information or record is materially relevant to a finding of fact or violation.

**4. Attorney General.** Upon the request of the commission, the Attorney General shall aid in any investigation, provide advice, examine any witnesses before the commission or otherwise assist the commission in the performance of its duties. The commission shall refer any apparent violations of this chapter to the Attorney General for prosecution.

#### **21A § 1004. Violations**

The violation of any of the following subsections is a Class E crime.

**1. Contributions and expenditures.** A person, candidate, treasurer, political committee or political action committee may not knowingly make or accept any contribution or make any expenditure in violation of this chapter.

**2. False statements.** No person, candidate, treasurer or political action committee may make a false statement in any report required by this chapter.

**3. Contributions in another's name.** No person may make a contribution in the name of another person or knowingly permit his name to be used to accomplish such a contribution, and no person may knowingly accept a contribution made by one person in the name of another person.

**4. Registration; political action committees.** No political action committee or ballot question committee required to be registered under section 1053 may operate in this State unless it is so registered.

*Some multi-purpose organizations spending large amounts of money to influence a ballot question are now required to register and file reports as a ballot question committee, rather than as a political action committee. The staff proposes adding ballot question committees to this prohibition.*

#### **21-A § 1004-A. Penalties**

The commission may assess the following penalties in addition to the other monetary sanctions authorized in this chapter.

**1. Late campaign finance report.** A person that files a late campaign finance report containing no contributions or expenditures may be assessed a penalty of no more than \$100.

**2. Contribution in excess of limitations.** A person that accepts or makes a contribution that exceeds the limitations set out in section 1015, subsections 1 and 2 may

## SUBCHAPTER II

### REPORTS ON CAMPAIGNS FOR OFFICE

#### 21A § 1011. Application

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election. [combine first and second paragraphs] Candidates for municipal office as described in Title 30-A, section 2502, subsection 1 are also governed by this subchapter. The commission does not have jurisdiction over financial activities to influence the nomination or election of candidates for federal office.

*The Commission staff proposes this amendment to clarify that the Commission does not have jurisdiction over candidates for federal office. Spending to influence those races are governed by the U.S. Code and the regulations of the Federal Election Commission.*

**1. Role of the municipal clerk; commission. (REPEALED)**

**2. Exemptions. (REPEALED)**

**3. Role of the municipal clerk; commission.** For candidates for municipal office, the municipal clerk is responsible for any duty assigned to the commission in this subchapter related to the registration of candidates, receipt of reports and distribution of information or forms, unless otherwise provided. Notwithstanding any other deadline set forth in this chapter, candidates ~~must shall~~ file their reports by the close of business on the day of the filing deadline established for the office of the municipal clerk. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns, except that ~~the commission shall enforce late filing penalties under section 1020-A, subsection 3 upon the request of a municipal clerk~~ it has the discretion to conduct investigations and assess penalties under subsection 3-A.

**3-A. Enforcement by the commission.** If a clerk of a town or city that is governed by this chapter pursuant to Title 30-A, section 2502 becomes aware of a potential violation of this chapter that the clerk considers to be substantial, the clerk may refer the matter to the commission for enforcement. Substantial violations include, but are not limited to, accepting contributions in excess of the limitations of section 1015 and failing to file a report that substantially complies with the disclosure requirements of section 1017. The commission has the discretion to conduct an investigation if the information referred by the municipal clerk shows sufficient grounds for believing that a violation may have occurred. After conducting the investigation, if the commission determines that a violation of this chapter has occurred, the commission may assess penalties provided in this chapter.

*Under the Counties and Municipalities Law (30-A M.R.S.A. § 2502), towns and cities with a population of 15,000 or more are governed by the state campaign finance law for purposes of municipal elections (both candidates and ballot questions). Smaller municipalities may opt into being governed by these provisions. Instead of the Commission, the clerk of the*

*municipality oversees the registrations and campaign finance reporting, although the Commission decides on the reporting forms used by candidates, PACs, and others.*

*Under current law, the municipal clerk may refer late-filing penalties to the Commission for enforcement. In practice, almost no clerks refer late-filing to the Commission. The staff proposes that clerks may additionally be able to refer serious violations to the Commission for enforcement (e.g., contribution limit violations, accepting contributions in the name of another, failure to register as a PAC). The staff's proposal is intended to fill a gap if more serious violations were to occur. The Commission staff believes the Commission would be better positioned to perform an enforcement process in these situations, because enforcement is part of the agency's usual duties and the Commission is politically independent from town officials.*

**4. Exemptions.** Exemptions for municipal candidates from the reporting requirements of this subchapter are governed by this subsection.

A. At the time a municipal candidate registers under section 1013-A, the candidate may notify the municipal clerk in writing that the candidate will not accept contributions, make expenditures or incur financial obligations associated with that person's candidacy. A candidate who provides this written notice is not required to appoint a treasurer or to meet the filing requirements of this section as long as the candidate complies with the commitment.

B. The notice provided to the municipal clerk in paragraph A may be revoked. A written revocation must be presented to the municipal clerk before the candidate may accept contributions, make expenditures or incur obligations associated with that person's candidacy. A candidate who has filed a notice with the municipal clerk under paragraph A and accepts contributions, makes expenditures or incurs obligations associated with that person's candidacy prior to filing a revocation may be assessed a penalty of \$10 for each business day that the revocation is late, up to a maximum of \$500. This penalty may be imposed in addition to the penalties assessed under other sections of this Title.

## **21A § 1012. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Clearly identified.** "Clearly identified," with respect to a candidate, means that:

- A. The name of the candidate appears;
- B. A photograph or drawing of the candidate appears; or
- C. The identity of the candidate is apparent by unambiguous reference.

**2. Contribution.** The term "contribution:"

A. Includes:

- (1) A gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing the nomination or election of any person to

state, county or municipal office or for the purpose of liquidating any campaign deficit of a candidate, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

(2) A contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

(3) Funds received by a candidate or a political committee that are transferred to the candidate or committee from another political committee or other source; and

(4) The payment, by any person other than a candidate or a political committee, of compensation for the personal services of other persons that are provided to the candidate or political committee without charge for any such purpose; and

B. Does not include:

(1) The value of services provided without compensation by individuals who volunteer a portion or all of their time on behalf of a candidate or political committee;

(2) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed ~~\$100~~ \$250 with respect to any election;

*This exception is for volunteers who purchase invitations, food, or beverages in the course of volunteering for a candidate. It also applies to the value of personal property or real property of the volunteer used in the course of volunteering for the candidate. Under current law, these purchases and these uses of the volunteer's property do not constitute a contribution if they total no more than \$100 per election. The Commission staff believes this exception for volunteers should be increased to \$250 per election, to encourage volunteerism and participation in political activity.*

(3) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed \$100 with respect to any election;

(4) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by an that individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed ~~\$100~~ \$350 with respect to any election;

*This exception is for people paying their own travel costs incurred when volunteering for candidates. Travel by vehicle or other means is necessary for many volunteer activities (e.g., going door-to-door on behalf of a candidate;*

*distributing signs; driving to attend a campaign meeting or event). Under the coordinated expenditure statute (21-A M.R.S.A. § 1015(5)), it is possible that expenditures for travel, if made at the request of a candidate or in consultation a candidate, could be considered a contribution to the candidate.*

*The Commission staff believes that to encourage volunteerism, volunteers should be relieved of the burden of keeping track of their campaign travel and assigning a value to that travel. Therefore, the Commission staff proposes increasing this exception to \$350. The staff would prefer that this exception be unlimited, provided that the volunteer is paying for their own travel and not being reimbursed. Nevertheless, because that could raise objections during the legislative process, the Commission staff proposes an increase of \$100 to \$350.*

- (4-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;
- (5) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;
- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
  - (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
  - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
  - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider;

(10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; or

(11) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

**3. Expenditure.** The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing the nomination or election of any person to political state, county or municipal office, except that a loan of money to a candidate by a financial institution in this State made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;

*The Commission staff proposes this change to be consistent with the definition of contribution in subsection 2(A)(1) and to further avoid any implication that expenditures to influence candidates for federal office are within the Commission's jurisdiction.*

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;

(3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and

(4) A payment or promise of payment to a person contracted with for the purpose of influencing any campaign as defined in section 1052, subsection 1; and

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or the candidate's immediate family the spouse or domestic partner of a candidate;

*The existing press exception allows TV, radio stations and newspapers to publish news stories about candidates and elections without the potential to be required to file PAC campaign finance reports, to file independent expenditure reports or to include disclaimer statements in articles and editorials. The staff proposes two statute changes to remove any obstacles from the press pursuing its traditional role in informing the public.*

*First, the Commission staff suggests clarifying that the exemption includes cable television systems and is not restricted to over-the-air stations.*

*Second, for purposes of absentee voting, the current definition of "immediate family" in Section 1 of the Election Law is broad and refers to many relatives that*

*one might not think of as immediate family (see definition below). If one of these more distant relations happens to be running for office, a press entity owned or controlled by an immediate family member of the candidate is no longer exempt, under the wording of the statute. For example, a community paper in Caribou, Maine could lose its exemption if the step-grandchild of the newspaper's owner decides to run for school board in Brunswick, Maine. Some of these family relationships are too tenuous to support removal of this important exemption for the press.*

*The Commission staff proposes that the exemption should apply to a newspaper or broadcast station, or other periodical publication, unless it is owned or controlled by the spouse or domestic partner of the candidate, or by a political party or political committee. In that circumstance, the exemption should not apply regardless of the good intentions of the newspaper or station to remain impartial.*

*"Immediate family" is defined in 1 M.R.S.A. § 1(20) to mean a person's spouse, parent, grandparent, child, grandchild, sister, half-sister, brother, half-brother, stepparent, step-grandparent, stepchild, step-grandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, domestic partner, the half-brother or half-sister of a person's spouse, or the spouse of a person's half-brother or half-sister."*

(1-A) Any communication distributed through a public access television station channel on a cable television system if the communication complies with the laws and rules governing the station channel and all candidates in the race have an equal opportunity to promote their candidacies through the station channel;

*The Commission staff proposes this wording change based on comments received from the Maine Association of Broadcasters that the term "station" usually refers to an over-the-air broadcast station, not a cable television system.*

(2) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate;

(3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;

(4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by an individual to a candidate in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities does not exceed \$100 \$250 with respect to any election;

Please see note in section 1012(2)(B)(2) above.

(5) Any unreimbursed travel expenses incurred by an individual in the course of providing voluntary personal services to a candidate and paid for by ~~an~~ that individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 \$350 with respect to any election;

*Please see note in section 1012(2)(B)(4) above.*

(5-A) Any unreimbursed campaign-related travel expenses incurred and paid for by the candidate or the candidate's spouse or domestic partner;

(6) Any communication by any person that is not made for the purpose of influencing the nomination for election, or election, of any person to state ~~or~~ county or municipal office;

*This exception covers payments made for a purpose other than influencing an election (e.g., influencing the public on a specific bill before the Legislature). As noted above, expenditures made to influence certain municipal elections are covered by the campaign finance law. So, the Commission staff proposes that a communication should only be exempt under this provision only if it is not made for the purpose of influencing a state county, or municipal office.*

(7) The payment by a party's state, district, county or municipal committee of the costs of preparation, display or mailing or other distribution of a party candidate listing;

(8) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election campaign;

(9) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;

(10) Compensation paid by a state party committee to its employees for the following purposes:

(a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;

(b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or

(c) Coordinating campaign events involving 3 or more candidates;

(10-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;

(11) Campaign training sessions provided to 3 or more candidates;

(11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;

(12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; or

(13) A purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

#### **4. Exploratory committee. (REPEALED)**

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

**5. Party candidate listing.** "Party candidate listing" means any communication that meets the following criteria.

A. The communication lists the names of at least 3 candidates for election to public office.

B. The communication is distributed through public advertising such as broadcast stations, cable television, newspapers and similar media, and through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery.

C. The treatment of all candidates in the communication is substantially similar, except for any requirement under federal law applicable to communications regarding federal candidates.

D. The content of the communication is limited to:

- (1) The identification of each candidate, with which pictures may be used;
- (2) The offices sought;
- (3) The offices currently held by the candidates;
- (4) The party affiliation of the candidates and a brief statement, including campaign slogans, about the party's or the candidates' positions, philosophy, goals, accomplishments or biographies;
- (5) Encouragement to vote for the candidates identified;
- (6) Information about voting, such as voting hours and locations; and
- (7) Campaign or party logos.

If the communication contains language outside the categories of this paragraph, it does not qualify as a party candidate listing.

#### **21A § 1013. Treasurer; political committees (REPEALED)**

##### **21A § 1013-A. Registration**

**1. Candidates, their treasurers and political committees.** A candidate shall register the candidate's name and the name of a treasurer with the commission at least once in each legislative biennium, as provided in this section. A candidate may have only one treasurer, who must be appointed pursuant to paragraph A or B. For purposes

of this section, "legislative biennium" means the term of office a person is elected to serve in the Legislature.

A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 4, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, **[Note: traditional candidates may serve as their own treasurer under current law]** except that a participating candidate, as defined in section 1122, subsection 6, or a candidate certified in accordance with section 1125 may not serve as treasurer, except that the candidate may serve as treasurer or deputy treasurer for up to 14 days after declaring an intention to qualify for campaign financing under chapter 14 until the candidate identifies another person to serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

(1) A candidate may appoint a deputy treasurer to act in the absence of the treasurer. The deputy treasurer, when acting in the absence of the treasurer, has the same powers and responsibilities as the treasurer. A candidate certified in accordance with section 1125 may not serve as deputy treasurer. When a treasurer dies or resigns, the deputy treasurer may not assume the position of treasurer unless the candidate appoints the deputy treasurer to the position of treasurer. The candidate shall report the name and address of the deputy treasurer to the commission no later than 10 days after the deputy treasurer has been appointed.

B. A candidate may authorize one political committee to promote the candidate's election. No later than 10 days after appointing a political committee and before accepting contributions, making expenditures or incurring obligations, a candidate for state, county or municipal office shall appoint a treasurer of the political committee. The treasurer of the political committee is responsible for filing campaign finance reports under this chapter. No later than 10 days after appointing a political committee, the candidate shall register with the commission the following information regarding the political committee:

- (1) The name of the committee;
- (2) The name and address of the committee's treasurer;
- (3) The name of the candidate who authorized the committee; and
- (4) The names and addresses of the committee's officers.

C. No later than 10 days after becoming a candidate, as defined in section 1, subsection 5, a candidate for the office of State House of Representatives or Senate shall file in writing a statement declaring that the candidate agrees to accept voluntary limits on political expenditures or that the candidate does not agree to accept voluntary

limits on political expenditures, as specified in section 1015, subsections 7 to 9. A candidate who has filed a declaration of intent to become certified as a candidate under the Maine Clean Election Act is not required to file the written statement required by this paragraph.

The statement filed by a candidate who voluntarily agrees to limit spending must state that the candidate knows the voluntary expenditure limitations as set out in section 1015, subsection 8 and that the candidate is voluntarily agreeing to limit the candidate's political expenditures and those made on behalf of the candidate by the candidate's political committee or committees, the candidate's party and the candidate's immediate family to the amount set by law. The statement must further state that the candidate does not condone and will not solicit any independent expenditures made on behalf of the candidate.

The statement filed by a candidate who does not agree to voluntarily limit political expenditures must state that the candidate does not accept the voluntary expenditure limits as set out in section 1015, subsection 8.

**2. Authorized political committees. (REPEALED)**

**3. Party committees.** The state, district and county committees of parties shall submit to the commission the names and addresses of all their officers and of their treasurers and the name and address of the principal paid employee, if any, within 30 days after the appointment, election or hiring of these persons. Municipal committees ~~must~~ shall file copies of the same information with the commission and the municipal clerk. District, county and municipal committees that provide their state party committees with the information required by this subsection to be submitted to the commission have met that requirement. No later than the 2nd Monday in April of each year in which a general election is scheduled, the state committee of a party shall submit a consolidated report, including the information required under this subsection, for the district, county and municipal committees of that party.

**4. Reporting by registered treasurers.** Any contribution accepted and any expenditure made or authorized by or on behalf of a candidate for state, county or municipal office registered under this section must be recorded and reported as provided in sections 1016 and 1017.

**5. Changes in registration information.** Every change in information required by this section to be reported to the commission ~~shall~~ must be reported within 10 days of the date of the change.

**21A § 1013-B. Removal of treasurer; filling vacancy of treasurer; substantiation of records of treasurer; notification to commission**

A candidate may remove any treasurer that the candidate has appointed. In case of a vacancy in the position of treasurer of a candidate or treasurer of a political committee before the obligations of the treasurer have been performed, the candidate shall serve as treasurer from the date of the vacancy until the candidate appoints a successor and reports the name and address of the successor to the commission. The candidate shall file a written statement of resignation of a treasurer of a candidate or a treasurer of a political committee and until that statement has been filed, the resignation is not effective. An individual who vacates the

**8. Political expenditure limitation amounts.** Total expenditures in any election for legislative office by a candidate who voluntarily agrees to limit campaign expenditures as provided in subsection 7 are as follows:

- A. For State Senator, \$25,000; and
- B. For State Representative, \$5,000.
- C. (REPEALED)

Expenditure limits are per election and may not be carried forward from one election to another. For calculation and reporting purposes, the reporting periods established in section 1017 apply.

**9. Publication of list.** The commission shall publish a list of the candidates for State Representative and State Senator who have agreed to voluntarily limit total expenditures for their campaigns as provided in section 1013-A, subsection 1, paragraph C.

For the purposes of subsections 7 and 8 and this subsection, "total expenditures" means the sum of all expenditures made to influence a single election that are made by a candidate or made on the candidate's behalf by the candidate's political committee or committees, the candidate's party or the candidate's immediate family.

#### **21A § 1015-A. Corporate contributions**

Contributions made by a for-profit or a nonprofit corporation including a parent, subsidiary, branch, division, department or local unit of a corporation, and contributions made by a political committee or political action committee whose contribution or expenditure activities are financed, maintained or controlled by a corporation are considered to be made by that corporation, political committee or political action committee.

**1. Single entities.** Two or more entities are treated as a single entity if the entities:

- A. Share the majority of members of their boards of directors;
- B. Share 2 or more officers;
- C. Are owned or controlled by the same majority shareholder or shareholders; ~~or~~  
C-1. Are limited liability companies that are owned or controlled by the same majority member or members; or
- D. Are in a parent-subsidiary relationship.

*The Commission staff proposes this change to treat affiliated limited liability companies the same as corporations, for purposes of the contribution limits in §§ 1015(1) & (2). If two LLCs are owned in their majority by the same member(s), they would be treated as a single contributor for purposes of the contribution limit.*

**2. Sole proprietorships.** A sole proprietorship and its owner are treated as a single entity.

## 21A § 1015-B. Donations to an individual considering whether to become a candidate

If an individual receives funds, goods or services for the purpose of deciding whether to become a candidate, the funds, goods or services may not exceed the limitations in section 1015, subsections 1 and 2. The individual shall keep an account of such funds, goods, or services received, and all payments and obligations incurred in deciding whether to become a candidate. If the individual becomes a candidate, the funds, goods, and services received are contributions and the payments and obligations are expenditures. The candidate shall disclose the contributions and expenditures in the first report filed by the candidate or the candidate's authorized campaign committee, in accordance with the commission's procedures.

*In 2012, the Commission adopted rules intended to clarify how campaign finance laws apply to individuals who are considering whether to run for office. Under the Commission's rules, these individuals must keep records of all funds, goods, and services received during this exploratory stage. If the individual becomes a candidate, the funds, goods, and services are contributions, which the candidate must report. The candidate would also have to report expenditures and obligations made in the course of deciding whether to run.*

*This legislative proposal would codify the approach in the Commission's rules and, further, would limit the value of the funds, goods, and services the individual could receive to the same amounts as the contribution limits in section 1015 (\$350, \$750, or \$1,500).*

*The approach proposed by the Commission staff is based on federal regulations applicable to congressional candidates. This statutory proposal would be an opportunity for Legislators, reform advocates, or others who believe that reporting should be required earlier in the process (e.g., during the exploratory stage) to argue for that policy before the Legislature.*

## 21A § 1016. Records

The candidate or ~~Each~~ treasurer shall keep detailed records of all contributions received and of each expenditure that the treasurer or candidate makes or authorizes, as provided in this section. ~~When reporting contributions and expenditures to the commission as required by section 1017, t~~The treasurer shall certify the completeness and accuracy of the information reported by that treasurer in any report of contributions and expenditures filed with the commission as required by section 1017.

**1. Segregated funds.** All funds of a political committee and campaign funds of a candidate must be segregated from, and may not be commingled with, any personal funds of the candidate, treasurer or other officers, members or associates of the committee. Personal funds of the candidate used to support the candidacy must be recorded and reported to the treasurer as contributions to the political committee, or the candidate if the candidate has not authorized a political committee.

**2. Report of contributions and expenditures.** A person who receives a contribution or makes an expenditure for a candidate or political committee shall report the contribution or expenditure to the candidate or treasurer within 5 days of the receipt of the contribution or the making of the expenditure. A person who receives a contribution in excess of \$10 for a candidate or a political committee shall report to the

candidate or treasurer the amount of the contribution, the name and address of the person making the contribution and the date on which the contribution was received.

**3. Record keeping.** A The candidate or treasurer shall keep a detailed and exact account of:

A. All contributions made to or for the candidate or committee, including any contributions by the candidate;

B. The name and address of every person making a contribution in excess of \$10, the date and amount of that contribution and, if a person's contributions in any report filing period aggregate more than \$50, the account must include the contributor's occupation and principal place of business, if any. If the contributor is the candidate or a member of the candidate's immediate family, the account must also state the relationship. For purposes of this paragraph, "filing period" is as provided in section 1017, subsections 2 and 3-A;

C. All expenditures made by or on behalf of the committee or candidate; and

D. The name and address of every person to whom any expenditure is made and the date and amount of the expenditure.

**4. Receipts preservation.** A The candidate or treasurer shall obtain and keep a receipted bill, stating the particulars, for every expenditure in excess of \$50 made by or on behalf of a political committee or a candidate and for any such expenditure in a lesser amount if the aggregate amount of those expenditures to the same person in any election exceeds \$50. The candidate or treasurer shall preserve all receipted bills and accounts required to be kept by this section for 2 years following the final report required to be filed for the election to which they pertain, unless otherwise ordered by the commission or a court.

*The Commission staff proposes changes to the record-keeping statute to clarify that candidates or treasurers could keep records for the campaign. In proposed section 1016-A (immediately below), the staff proposes that if the candidate keeps the records, he shall provide the treasurer or deputy treasurer with access to the records for the purpose of filing campaign finance reports. See 12/10/2012 memo.*

## **21A § 1016-A. Duties and liability of the candidate and treasurer**

**1. Keeping required records.** The candidate or treasurer shall keep records of contributions and expenditures as required by section 1016, chapter 14, and the commission's rules. If the candidate keeps the records, the candidate shall provide the treasurer or deputy treasurer with access to the records for the purpose of filing complete and accurate campaign finance reports. The candidate and treasurer are jointly responsible for ensuring that the campaign keeps all records required by law.

**2. Filing campaign finance reports.** The treasurer shall file complete and accurate campaign finance reports as required by section 1017. The treasurer may delegate the filing of the reports to the deputy treasurer.

**3. Liability for violations.** The commission may hold the candidate and treasurer jointly and severally liable for any penalties assessed for violations of the financial reporting or recordkeeping requirements of this chapter, chapter 14, and the commission rules. If the deputy treasurer files reports for the campaign, the commission may hold the deputy treasurer jointly and severally liable for any penalties related to reports filed by the deputy treasurer.

*The Commission staff proposes changes to clarify the respective duties of the candidate and treasurer. The candidate or treasurer could keep the records of the campaign. The treasurer would be required to file the reports, as has been the law in section 1017. In section 1125 (below), the Maine Clean Election Act would be amended to provide that the candidate could enter financial transactions into the campaign finance report, but the treasurer or deputy treasurer would need to file the reports. The Commission would have the discretion to hold the treasurer financially liable for violations, but that would not be required. The Commission staff anticipates that the candidate would continue to be primarily responsible for penalties assessed against the campaign. See 12/10/2012 memo.*

## **21A § 1017. Reports by candidates**

### **1. Federal candidates. (REPEALED )**

**2. Gubernatorial candidates.** A treasurer of a candidate for the office of Governor shall file reports with the commission as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year, other than a gubernatorial election year, in which the candidate or the candidate's political committee has received contributions in excess of \$1,000 or made or authorized expenditures in excess of \$1,000, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the candidate's treasurer as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which an election is held and must be complete as of the 49th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 49th day before the election.

C. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date.

D. ~~Any single cContributions aggregating of \$1,000 or more received from any one contributor~~ or any single expenditures of \$1,000 or more made after the 14th day before the election and more than 24 hours before 11:59 p.m. on the day of the

election must be reported within 24 hours of those contributions or expenditures. The candidate or treasurer is not required to include in this report expenditures for overhead expenses. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. The report must include any single expenditure of \$1,000 or more made to a member of campaign staff or a contractor providing campaign services.

*Under current law, candidates are required to disclose expenditures over \$1,000 made during the 13 days before an election. During this period, PACs, party committees, and gubernatorial candidates sometimes spend money on overhead or administrative expenses that do not directly relate to advocacy for or against a candidate or ballot question (e.g., rent, utilities, taxes, and insurance premiums). To reduce the burden on campaign committees during this very busy period, the Commission staff proposes excluding these expenses from 24-hour reporting during the last 13 days before the election. Under current law, the public is able to access this information 42 days after the election, when PACs, party committees, and candidates file their full campaign finance reports.*

E. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

F. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph E must be reported as provided in this paragraph. The treasurer of a candidate or political committee with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

G. Unless otherwise specified in this subsection, reports must be complete back to the end date of the previous report filing period. The reports described in paragraph E, if filed with respect to a primary election, are considered previous reports in relation to reports concerning a general election.

H. Reports with respect to a candidate who seeks nomination by petition for the office of Governor must be filed on the same dates that reports must be filed with respect to a candidate who seeks that nomination by primary election.

### **3. Other candidates. (REPEALED)**

**3-A. Other candidates.** A treasurer of a candidate for state or county office other than the office of Governor shall file reports with the commission and municipal candidates shall file reports with the municipal clerk as follows. Once the first required report has been filed, each subsequent report must cover the period from the end date of the prior report filed.

A. In any calendar year in which an election for the candidate's particular office is not scheduled, when any candidate or candidate's political committee has received contributions in excess of \$500 or made or authorized expenditures in excess of \$500, reports must be filed no later than 11:59 p.m. on July 15th of that year and January 15th of the following calendar year. These reports must include all contributions made to and all expenditures made or authorized by or on behalf of the candidate or the treasurer of the candidate as of the end of the preceding month, except those covered by a previous report.

B. Reports must be filed no later than 11:59 p.m. on the 11th day before the date on which an election is held and must be complete as of the 14th day before that date. If a report was not filed under paragraph A, the report required under this paragraph must cover all contributions and expenditures through the 14th day before the election.

C. Any single contributions aggregating of \$1,000 or more received from any one contributor or any single expenditures of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of any election must be reported within 24 hours of those contributions or expenditures. The candidate or treasurer is not required to include in this report expenditures for overhead expenses. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. The report must include any single expenditure of \$1,000 or more made to a member of campaign staff or a contractor providing campaign services.

*Please see explanation for section 1017(2)(D)*

D. Reports must be filed no later than 11:59 p.m. on the 42nd day after the date on which an election is held and must be complete for the filing period as of the 35th day after that date.

D-1. Reports must be filed no later than 11:59 p.m. on the 42nd day before the date on which a general election is held and must be complete as of the 49th day before that date, except that this report is not required for candidates for municipal office.

E. Unless further reports will be filed in relation to a later election in the same calendar year, the disposition of any surplus or deficit in excess of \$100 shown in the reports described in paragraph D must be reported as provided by this paragraph. The treasurer of a candidate with a surplus or deficit in excess of \$100 shall file reports semiannually with the commission within 15 days following the end of the 2nd and 4th quarters of the State's fiscal year, complete as of the last day of the quarter, until the surplus is disposed of or the deficit is liquidated. The first report under this

paragraph is not required until the 15th day of the period beginning at least 90 days from the date of the election. The reports will be considered timely if filed electronically or in person with the commission on that date or postmarked on that date. The reports must set forth any contributions for the purpose of liquidating the deficit, in the same manner as contributions are set forth in other reports required in this section.

F. Reports with respect to a candidate who seeks nomination by petition must be filed on the same dates that reports must be filed by a candidate for the same office who seeks that nomination by primary election.

3-B. Accelerated reporting schedule. (REPEALED)

**4. New candidate or nominee.** A candidate for nomination or a nominee chosen to fill a vacancy under Chapter 5, subchapter 3 is subject to section 1013-A, subsection 1, except that the candidate shall register the name of a treasurer or political committee and all other information required in section 1013-A, subsection 1, paragraphs A and B within 7 days after the candidate's appointment or at least 6 days before the election, whichever is earlier. The commission shall send notification of this registration requirement and report forms and schedules to the candidate and the candidate's treasurer immediately upon notice of the candidate's and treasurer's appointments.

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor and any refund that a payee has made to the candidate or an agent of the candidate. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

**5-A. Valuation of contributions sold at auction.** Any contribution received by a candidate that is later sold at auction must be reported in the following manner.

A. If the contribution is sold at auction before the commencement of the appropriate reporting period specified in subsections 2 to 4, or during that period, the value of the contribution is deemed to be the amount of the purchase price paid at auction.

B. If the contribution is sold after the termination of the appropriate reporting period specified in subsections 2 to 4, the value of the contribution is the difference between the value of the contribution as originally reported by the treasurer and the amount of the purchase price paid at auction. Unless further reports are filed in relation to a later election in the same calendar year, the disposition of any net surplus or deficit in excess of \$100 resulting from the difference between the auction price and the original contribution

value must be reported in the same manner as provided in subsection 2, paragraph F or subsection 3-A, paragraph E, as appropriate.

**6. Forms.** Reports required by this section not filed electronically must be on forms prescribed, prepared and sent by the commission to the treasurer of each registered candidate at least 7 days before the filing date for the report. Establishment of or amendments to the campaign report filing forms required by this section must be by rule. Persons filing reports may use additional pages if necessary, but the pages must be the same size as the pages of the form. Although the commission mails the forms for required reports to candidates who are exempt from filing electronically, failure to receive forms by mail does not excuse treasurers, committees and other persons who must file reports from otherwise obtaining the forms or from late filing penalties.

Rules of the commission establishing campaign report filing forms for candidates are routine technical rules as defined in Title 5, Chapter 375, subchapter 2-A.

**7. Reporting exemption. (REPEALED)**

**7-A. Reporting exemption.** A candidate seeking election to a county or municipal office is exempt from reporting as provided by this subsection.

A. A candidate seeking election to a county or municipal office may, at the time the candidate registers under section 1013-A, notify the commission that the candidate and the candidate's agents, if any, will not personally accept contributions, make expenditures or incur obligations associated with that candidate's candidacy. The notification must be sworn and notarized. A candidate who provides this notice to the commission is not required to appoint a treasurer and is not subject to the filing requirements of this subchapter if the statement is true.

B. The notice provided to the commission under paragraph A may be revoked. Prior to revocation, the candidate ~~must~~ shall appoint a treasurer. The candidate may not accept contributions, make expenditures or incur obligations before the appointment of a treasurer and the filing of a revocation notice are accomplished. A revocation notice must be in the form of an amended registration, which must be filed with the commission no later than 10 days after the appointment of a treasurer. The candidate and the candidate's treasurer, as of the date the revocation notice is filed with the commission, may accept contributions, make expenditures and incur obligations associated with the candidate's candidacy. Any candidate who fails to file a timely revocation notice is subject to the penalties prescribed in section 1020-A, subsection 4-A, up to a maximum of \$5,000. Lateness is calculated from the day a contribution is received, an expenditure is made or an obligation is incurred, whichever is earliest.

**8. Disposition of surplus.** A treasurer of a candidate registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355 ~~must~~ shall dispose of a surplus exceeding \$100 within 4 years of the election for which the contributions were received by:

A. Returning contributions to the candidate's or candidate's authorized political committee's contributors, as long as no contributor receives more than the amount contributed;

B. A gift to a qualified political party within the State, including any county or municipal subdivision of such a party;

- C. An unrestricted gift to the State. A candidate for municipal office may dispose of a surplus by making a restricted or unrestricted gift to the municipality;
- D. Carrying forward the surplus balance to a political committee established to promote the same candidate for a subsequent election;
- D-1. Carrying forward the surplus balance for use by the candidate for a subsequent election;
- E. Transferring the surplus balance to one or more other candidates registered under section 1013-A or qualified under sections 335 and 336 or sections 354 and 355, or to political committees established to promote the election of those candidates, provided that the amount transferred does not exceed the contribution limits established by section 1015;
- F. Repaying any loans or retiring any other debts incurred to defray campaign expenses of the candidate;
- G. Paying for any expense incurred in the proper performance of the office to which the candidate is elected, as long as each expenditure is itemized on expenditure reports; and
- H. A gift to a charitable or educational organization that is not prohibited, for tax reasons, from receiving such a gift.

The choice must be made by the candidate for whose benefit the contributions were made.

**9. Campaign termination report forms.** The commission shall provide each candidate required to report campaign contributions and expenditures with a campaign termination report form. A candidate shall file the campaign termination report with the commission as required in this subsection. The campaign termination report must be complete as of June 30th of the year following the campaign of the previous year. This form must show any deficits or surpluses to be carried over to the next campaign. Funds not carried forward to the next campaign must be disposed of as provided in subsection 8. Campaign reporting is as follows.

- A. Candidates with surplus campaign funds following an election shall file termination reports no later than July 15th of the year following the campaign of the previous year.
- B. Candidates with a campaign deficit following an election shall file termination reports no later than July 15th of the year following the campaign of the previous year.
- C. Candidates with a deficit who will not participate in the next election for the same office shall file semiannual reports until the deficit is liquidated.
- D. Candidates who collect funds subsequent to an election for purposes other than retiring campaign debt shall register with the commission pursuant to section 1013-A.

**10. Electronic filing.** The treasurer of a candidate or committee that has receipts or expects to have receipts of more than \$1,500 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 candidate or committee submits a written request that states that the candidate or committee lacks access to the technology or the technological ability to file reports electronically. The request for an

exception must be submitted by April 15th of the election year, except that a candidate registered according to subsection 4 has 10 business days from the date of registration to submit a request to the commission. The commission shall grant all reasonable requests for exceptions.

## **21A § 1017-A. Reports of contributions and expenditures by party committees**

**1. Contributions.** A party committee shall report all contributions in cash or in kind from a single contributor that in the aggregate total more than \$200. The party committee shall report the name, mailing address, occupation and place of business of each contributor. Contributions of \$200 or less must be reported, and these contributions may be reported as a lump sum.

**2. Expenditures to influence a campaign.** A party committee shall report all expenditures made to influence a campaign, as defined in section 1052, subsection 1. The party committee shall report:

- A. The name of each candidate, political committee, political action committee or party committee;
- B. The office sought by a candidate and the district that the candidate seeks to represent; and
- C. The date, amount and purpose of each expenditure.

**3. Other expenditures.** Operational expenses and other expenditures that are not made to influence a campaign, as defined in section 1052, subsection 1 must be reported separately. The party committee shall report:

- A. The name and address of each payee;
- B. The purpose for the expenditure; and
- C. The date and amount of each expenditure.

### **4. Filing schedule. (REPEALED)**

**4-A. Filing schedule.** A state party committee shall file its reports according to the following schedule.

- A. Quarterly reports must be filed by 11:59 p.m.:
  - (1) On January 15th and must be complete up to December 31st;
  - (2) On April 10th and must be complete up to March 31st;
  - (3) On July 15th and must be complete up to June 30th; and
  - (4) On October 5th and must be complete up to September 30th.
- B. General and primary election reports must be filed by 11:59 p.m.:
  - (1) On the 11th day before the date on which the election is held and must be complete up to 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 up to the 35th day after that date.

C. Pre-election and post-election reports for special elections, referenda, initiatives, bond issues or constitutional amendments must be filed by 11:59 p.m.:

- (1) On the 11th day before the date on which the election is held and must be complete up to 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 up to the 35th day after that date.

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

E. A state party committee shall report any single contribution of \$5,000 or more received or any single expenditure of \$1,000 ~~any expenditure of \$500~~ 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 expenditure. The committee is not required to include in this report expenditures for overhead expenses. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. The report must include any single expenditure of \$1,000 or more made to a member of campaign staff or a contractor providing campaign services.

*The Commission staff proposes that party committees and PACs report within 24 hours contributions of more than \$5,000 that they have received during the last 13 days before an election. The sources of funding can inform the public of who is behind campaign messages and can assist the public in evaluating those messages. Under current law, the public does not find out about these late, substantial contributions until 42 days after the election.*

*The Commission made this proposal in 2010, but it was not enacted by the Legislature.*

*Please see the note for section 1017(2)(D) concerning the exclusion for overhead expenses.*

#### **4-B. Filing schedule for municipal, district and county party committees.**

Municipal, district and county party committees shall file reports according to the following schedule.

A. Reports filed during an election year must be filed with the commission by 11:59 p.m. on:

- (1) July 15th and be complete as of June 30th;
- (2) The 11th day before the date on which the general election is held and must be complete up to the 14th day before that date; and
- (3) January 15th and be complete as of December 31st.

B. Reports filed during a nonelection year must be filed by 11:59 p.m. on:

- (1) July 15th and be complete as of June 30th; and
- (2) January 15th and be complete as of December 31st.

C. Any A committee shall report any single contribution of \$5,000 or more received or any single expenditure of \$1,000 or more made after the 14th day before any election and more than 24 hours before 11:59 p.m. on the day of the election must be reported within 24 hours of that expenditure. The committee is not required to include in this report expenditures for overhead expenses. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. The report must include any single expenditure of \$1,000 or more made to a member of campaign staff or a contractor providing campaign services.

*Please see the note for section 1017-A(4-A)(E).*

**4-C. Electronic filing.** State party 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 party committee submits a written request that states that the party committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by March 1st of the election year. The commission shall grant all reasonable requests for exceptions.

**5. Penalties.** A party committee is subject to the penalties in section 1020-A, subsection 4.

**6. Notice; forms.** A state party committee shall notify all county, district and municipal party committees of the same political party of the party committee reporting requirements. The party committees shall obtain the necessary forms from the commission to complete the filing requirements.

**7. Exemption.** Any party committee receiving and expending less than \$1,500 in one calendar year is exempt from the reporting requirements of this section for that year.

**8. Municipal elections.** When a party committee makes contributions or expenditures on behalf of a candidate for municipal office subject to this subchapter, it shall file a copy of the reports required by this section with the clerk in that candidate's municipality.

## **21A § 1017-B. Records**

Any party committee that makes expenditures that aggregate in excess of \$50 to any one or more candidates, committees or campaigns in this State shall keep records as provided in this section. Records required to be kept under this section must be retained by the party committee until 10 days after the next election following the election to which the records pertain.

**1. Details of records.** The treasurer of a party committee shall record a detailed account of:

A. All expenditures made to or on behalf of a candidate, campaign or committee;

B. The identity and address of each candidate, campaign or committee;

C. The office sought by a candidate and the district the candidate seeks to represent, for candidates that a party committee has made an expenditure to or on behalf of; and

D. The date of each expenditure.

**2. Receipts.** The treasurer of a party committee shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

**3. Record of contributions.** The treasurer of a party committee shall keep a record of all contributions to the committee, by name and mailing address, of each donor and the amount and date of the contribution. This subsection does not apply to aggregate contributions from a single donor of \$50 or less in an election. When any donor's contributions to a party committee exceed \$50, the record must include the aggregate amount of all contributions from that donor.

#### **21A § 1018. Reports by party committees**

**1. State committee; federal reports. (REPEALED)**

**2. Party committee. (REPEALED)**

#### **21A § 1018-B. Recounts of elections**

**1. Reporting.** Candidates who are involved in a recount of an election shall file a report 90 days after the election containing itemized accounts of cash, goods and services received for the recount and payments made by the candidate for the recount. The reports must be made on forms prepared and sent by the commission. Persons donating services to the candidate are required to provide the candidate with an estimate of the value of the services donated. Political action committees and party committees making expenditures for a candidate's recount shall identify on their regularly filed reports that the expenditures were made for the purposes of a recount.

**2. Limitations.** After an election, candidates may receive donations without limitation for purposes of a recount. The donations must be within the limitations of section 1015, except that no limitation applies to donations from party committees and caucus campaign committees and from attorneys, consultants and their firms that are donating their services without reimbursement. Candidates may not spend revenues received under Chapter 14 for recount expenditures

*When candidates are involved in a recount of an election, they often receive services from the political parties and sometimes from attorneys or consultants who are not seeking reimbursement from the candidate. In some cases, a few candidates have incurred expenses and collected money to defray those expenses.*

*In 2005, the Commission made a proposal to the Joint Standing Committee on Legal and Veterans Affairs to clarify whether money or services received by candidates for a recount*

*must be reported or are subject to the contribution limits in Section 1015. The proposal was made in the form of a proposed amendment to a campaign finance bill.*

*In subsection 2 of Commission's 2005 proposal (entitled "Limitations"), candidates could receive unlimited donations from party committees and attorneys, but the contribution limits in section 1015 would apply to all other donors. The Legal and Veterans Affairs Committee did not agree with the proposed limitation, and deleted it from the proposed subsection 2.*

*The Commission staff believes current law is ambiguous concerning donors other than the political parties and attorneys or consultants. We propose the same limitations contained in the Commission's 2005 proposal.*

## **21A § 1019. Reports of independent expenditures (REPEALED)**

### **21A § 1019-A. Reports of membership communications**

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of \$50 in any one candidate's election race, notwithstanding the fact that such communications are not expenditures under section 1012, subsection 3, paragraph A. Reports required by this section must be filed with the commission on forms prescribed and prepared by the commission and according to a reporting schedule that the commission shall establish by rule.

### **21A §1019-B. Reports of independent expenditures**

**1. Independent expenditures; definition.** For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee, political committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and

B. Is presumed ~~in races involving a candidate who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5~~ to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 21 days, including election day, before a primary election; the 35 days, including election day, before a general or special election; ~~or during a special election until and on election day.~~

**2. Rebutting presumption.** A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of making the expenditure stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and must determine by

a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate.

3. Report required; content; rules. (REPEALED)

**4. Report required; content; rules.** A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, provided that the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, provided that the report is not considered complete without the filing of the original signed statement.

**5. Exclusions.** An independent expenditure does not include:

A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents;

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate.

*Extending the rebuttable presumption to “traditional only” races.* The independent expenditure reporting requirement provides members of the public with prompt information concerning who is paying for communications (e.g., mailings and advertisements) that they are receiving in the weeks and months leading up to the election. In addition to the informational value for the public, the reporting requirement also reassures the public that candidates are complying with the contribution restrictions, because the organization making the expenditure must sign an affidavit that the expenditure was made independently of the candidate and the candidate’s committee.

The independent expenditure statute imposes a presumption over a broad range of advocacy communications made in the last 35 days before an election, but the presumption only applies if there is a Maine Clean Election Act candidate in the race. Any paid communication that names or depicts a clearly identified candidate is presumed to be an independent expenditure. The person making the expenditure can rebut the presumption by producing evidence that the expenditure was not intended to influence the election. The presumption was enacted to make the matching funds portion of the Maine Clean Election Act work more effectively.

When the presumption does not apply, the reporting requirement is fairly narrow because it only covers communications that contain “express advocacy” (words that explicitly urge a vote for or against a candidate). Partisan groups are easily able to create advocacy communications that do not explicitly urge a vote for or against a candidate.

Now that matching funds has been eliminated, there is no basis for making the rebuttable presumption contingent on whether there is a Maine Clean Election Act candidate in the race. The Commission staff proposes that it should apply to all races – regardless how the candidates are financing their political campaigns. The presumption should apply to races in which all candidates are “traditionally financed.” In the 2014 general election for governor, for example, all candidates could be traditionally financed. Voters considering paid communications in that race will deserve a high level of financial disclosure and assurance of independence, just as they currently receive in most legislative races.

Electronic filing. Currently, PACs, parties and others report independent expenditures by handwriting information on paper forms which are faxed, mailed, or hand-delivered to the Commission (a sample of a completed report is attached). The Commission staff would like to move to electronic filing of these reports, except for the affidavit the spender would file separately on paper. The spender would

visit our electronic filing website

enter the payment details, and the candidates supported or opposed

file the electronic portion of the report

print the affidavit (which would contain an index number linking it to the filed report)

sign the affidavit before a notary or attorney

*fax or mail the affidavit to the Commission where it would be available on request*

*(alternatively, the staff could post the form to the Commission website).*

*The public would benefit from this procedure because the report would be easier to read and there would be no delay in the posting of the information to the internet due to data entry by the Commission staff.*

*The filers would benefit because electronic filing would be quicker than handwriting the report and the website would add the expenditure amounts for purposes of the expenditure totals.*

*The Commission would benefit because the information would be in a database format immediately, with no entry necessary by the Commission staff.*

*The staff views the affidavit (statement made under oath or affirmation) as a very important part of the independent expenditure reporting form. We would not want the report to be considered complete unless our office received the original signed affidavit. Under current Commission Rule (Chapter 1, Section 10(3)(E)), an independent spender may provisionally file a independent expenditure report by facsimile or by electronic mail, as long as the original is received by the Commission within 5 calendar days thereafter.)*

*Rebuttable presumption in a special election. The Commission staff suggests clarifying that the rebuttable presumption applies during the 35 days before a special election – similar to a general election. Under current law, the presumption applies “during a special election,” which is an ambiguous time period.*

## **21A § 1020. Failure to file on time (REPEALED)**

### **21A § 1020-A. Failure to file on time**

**1. Registration.** A candidate that fails to register the name of a candidate, treasurer or political committee with the commission within the time allowed by section 1013-A, subsection 1 may be assessed a forfeiture of \$10. The commission shall determine whether a registration satisfies the requirements for timely filing under section 1013-A, subsection 1.

**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 7, the commission shall determine whether a report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if the commission determines that the penalty is disproportionate to the size of the candidate's campaign, the level of experience of the candidate, treasurer or campaign staff or 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:

**SUBCHAPTER IV**  
**REPORTS BY POLITICAL ACTION COMMITTEES**

**21A § 1051. Application**

This subchapter applies to the activities of political action committees organized in and outside this State that accept contributions, incur obligations or make expenditures for the election of state, county or municipal officers, or for the support or defeat of any campaign, as defined in this subchapter.

**21A § 1052. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Campaign.** "Campaign" means any course of activities to influence the nomination or election of a candidate or to initiate or influence any of the following ballot measures:

- A. A people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17;
- B. A direct initiative of legislation under the Constitution of Maine, Article IV, Part Third, Section 18;
- C. An amendment to the Constitution of Maine under Article X, Section 4;
- D. A referendum vote on a measure enacted by the Legislature and expressly conditioned upon ratification by a referendum vote under the Constitution of Maine, Article IV, Part Third, Section 19;
- E. The ratification of the issue of bonds by the State or any agency thereof; and
- F. Any county or municipal referendum.

**2. Committee.** "Committee" means any political action committee, as defined in this subchapter, and includes any agent of a political action committee.

**3. Contribution.** "Contribution" includes:

- A. A gift, subscription, loan, advance or deposit of money or anything of value made to a political action committee, except that a loan of money by a financial institution made in accordance with applicable banking laws and regulations and in the ordinary course of business is not included;
- B. A contract, promise or agreement, expressed or implied whether or not legally enforceable, to make a contribution to a political action committee;
- C. Any funds received by a political action committee that are to be transferred to any candidate, committee, campaign or organization for the purpose of initiating or influencing a campaign; or

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee that is used by the political action committee to initiate or influence a campaign.

**4. Expenditure.** The term "expenditure:"

A. Includes:

- (1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing a campaign;
- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and
- (3) The transfer of funds by a political action committee to another candidate or political committee; and

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or ~~candidate's immediate family~~ the candidate's immediate family the spouse or domestic partner of a candidate;

*Please see note for § 1012(3)(B)(1).*

- (2) Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;
- (3) Any communication by any membership organization or corporation to its members or stockholders, if that membership organization or corporation is not organized primarily for the purpose of influencing the nomination or election of any person to state or county office;
- (4) The use of real or personal property and the cost of invitations, food and beverages, voluntarily provided by a political action committee in rendering voluntary personal services for candidate-related activities, if the cumulative value of these activities by the political action committee on behalf of any candidate does not exceed ~~\$100~~ \$250 with respect to any election;

*This exception is for volunteers who purchase invitations, food, or beverages in the course of volunteering for a candidate. It also applies to the value of personal property or real property of the volunteer used in the course of volunteering for the candidate. Under current law, these purchases and these uses of the volunteer's property do not constitute a contribution if they total no more than \$100 per election. The Commission staff believes this exception for volunteers should be increased to \$250 per election, to encourage volunteerism and participation in political activity.*

(5) Any unreimbursed travel expenses incurred and paid for by a political action committee that volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed \$100 with respect to any election; and

(6) Any communication by any political action committee member that is not made for the purpose of influencing the nomination or election of any person to state or county office.

**4-A. Influence.** “Influence” means to promote, support or oppose or defeat.

**4-B. Initiate.** “Initiate” includes the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

**5. Political action committee.** The term "political action committee:"

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to initiate or influence a campaign;

(2) **(REPEALED)**

(3) **(REPEALED)**

(4) Any organization, including any corporation or association, that has as its major purpose initiating or influencing a campaign and that receives contributions or makes expenditures aggregating more than \$1,500 in a calendar year for that purpose; and

(5) Any organization that does not have as its major purpose influencing candidate elections but that receives contributions or makes expenditures aggregating more than \$5,000 in a calendar year for the purpose of influencing the nomination or election of any candidate to political office.

B. Does not include:

(1) A candidate or a candidate's treasurer under section 1013-A, subsection 1;

(2) A candidate's authorized political committee under section 1013-A, subsection 2;

(3) A party committee under section 1013-A, subsection 3; or

(4) An organization whose only payments of money in the prior 2 years for the purpose of influencing a campaign in this State are contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

**21A § 1052-A Registration** [NOTE: in this draft, the current registration section (1053) would be repealed. Some cross-references to section 1053 in this chapter would need to be amended to 1052-A]

Every political action committee shall register with the commission and amend its registration as required by this section. A registration is not timely filed unless it contains all the information required in this section.

**1. Deadlines to file and amend registrations.** Political action committees shall register and file amendments with the commission according to the following schedule.

A. Every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4) that makes expenditures in the aggregate in excess of \$1,500 and every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (5), that makes expenditures in the aggregate in excess of \$5,000 shall register with the commission within 7 days of exceeding the applicable amount.

B. A committee shall amend the registration within 10 days of a change in the information which committees are required to disclose under this section.

C. The committee shall file an updated registration form between January 1st and March 1st of each year in which a general election is held. The commission may waive the updated registration requirement for newly registered political action committees or other registered political action committees if it determines that the requirement would cause an administrative burden disproportionate to the public benefit of the updated information.

**2. Disclosure of treasurer and officers.** Each committee shall have a treasurer and a principal officer. The same individual may not serve in both positions. The registration must contain the names and addresses of the following individuals:

A. the treasurer of the committee;

B. a principal officer of the committee;

C. any other individuals who are primarily responsible for making decisions for the committee;

D. the individuals who are primarily responsible for raising contributions for the committee; and

E. the names of any other candidates or Legislators who have a significant role in fund raising or decision-making for the committee.

**3. Other disclosure requirements.** The registration must also include the following information:

A. a statement indicating the specific candidates, categories of candidates, or campaigns which the committee expects to support or oppose;

B. if the committee is formed to influence the election of a single candidate, the name of that candidate;

C. the form or structure of the organization, such as voluntary association, membership organization, corporation, or any other structure by which the committee functions, and the date of origin or incorporation of the organization;

D. if the committee has been formed by one or more for profit or non-profit corporations or other organizations for the purpose of initiating or influencing a campaign, the names and addresses of the corporations or organizations;

E. any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter.

**4. Acknowledgement of responsibilities.** The treasurer, principal officer, and any other individuals who are primarily responsible for making decisions for the committee shall submit a signed statement acknowledging their responsibilities on a form prescribed by the commission within 10 days of registering the committee. The signed acknowledgement statement serves as notification of the responsibilities of the committee to comply with the financial reporting, recordkeeping, and other requirements of this chapter and the potential personal liability of the treasurer and principal officer for civil penalties assessed against the committee. The commission shall notify the committee of any individual who has failed to submit the acknowledgement statement. Failure to return the acknowledgement statement is a violation of this subchapter for which a civil penalty of \$100 may be assessed against the committee. This section also applies to individuals named in an updated or amended registration required by this subsection who have not previously submitted an acknowledgement statement for the committee with the commission.

**5. Resignation and removal.** An individual who resigns as the treasurer, principal officer, or primary decision-maker of a committee shall submit a written resignation statement to the commission. An individual's resignation is not effective until the commission receives the written resignation statement from the individual. If an individual is involuntarily removed from the position of treasurer, principal officer or primary decision-maker by the committee, the committee shall notify the commission in writing that the individual has been removed from the position. The Commission may prescribe forms for these purposes.

*The Commission staff proposes reorganizing and amending the PAC registration statute. The re-organization would have the effect of highlighting when registrations and amendments are due.*

*The Commission staff proposes that PACs designate a "principal officer" who would be jointly responsible with the treasurer for the overall compliance of the PAC. The Commission staff intends that the principal officer would be someone with authority in the PAC. In some cases, the treasurer for a PAC, is someone who is responsible for keeping the books of the PAC, but who has little decision-making authority within the PAC.*

*The Commission staff proposes a new requirement that the PAC's treasurer, principal officer, and primary decision-makers would sign a written acknowledgement that they understand the basic responsibilities for the PAC and that they are jointly responsible for compliance by the PAC. The staff believes these written acknowledgements could serve several goals:*

*-- strengthen the Commission's authority to hold all officers and decision-makers responsible for the errors and violations by the PAC*

-- encourage more personal responsibility by the officers and decision-makers for the overall compliance by the PAC  
-- minimizing the risk that the PAC would carelessly identify people on a registration form who, in fact, had little or no involvement in the PAC  
-- allow the Commission to collect civil penalties in case the PAC did not voluntarily pay the penalties.

The staff envisions that these written acknowledgements would be a required "step 2" in the registration process. In the PAC's registration form, the PAC would identify the treasurer, principal officer, and decision-makers of the PAC. As part of an online registration process, the PAC would print the written acknowledgement forms and send them to the Commission, once signed. If the Commission did not receive the acknowledgement forms as part of the registration process, the Commission staff would send the forms to the individuals. If the individuals did not sign the form, the PAC could be assessed a penalty of \$100.

### **1. 21A § 1053. —Registration— [THIS SECTION WOULD BE REPEALED]**

Every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (1) or (4) that makes expenditures in the aggregate in excess of \$1,500 and every political action committee, as defined under section 1052, subsection 5, paragraph A, subparagraph (5), that makes expenditures in the aggregate in excess of \$5,000 must register with the commission within 7 days of exceeding the applicable amount on forms prescribed by the commission. These forms must include the following information and any additional information reasonably required by the commission to monitor the activities of political action committees in this State under this subchapter:

**1. Identification of committee.** The names and mailing addresses of the committee, its treasurer, its principal officers, the names of any candidates and Legislators who have a significant role in fund raising or decision making for the committee and all individuals who are the primary fund raisers and decision makers for the committee;

#### **2. Status. (REPEALED)**

#### **3. Depository of funds. (REPEALED)**

**4. Form of organization.** The form or structure of organization, including cooperatives, corporations, voluntary associations, partnerships or any other structure by which the committee functions. The date of origin or incorporation must also be specified; and

#### **5. Assets. (REPEALED)**

**6. Statement of support or opposition.** A statement indicating the positions of the committee, support or opposition, with respect to a candidate, political committee, or campaign.

#### **7. Contributions to committee. (REPEALED)**

Every change in information required by this section must be included in an amended registration form submitted to the commission within 10 days of the date of the change. The committee must file an updated registration form between January 1st and March 1st

of each year in which a general election is held. The commission may waive the updated registration requirement for newly registered political action committees or other registered political action committees if it determines that the requirement would cause an administrative burden disproportionate to the public benefit of updated information.

### **21A § 1053-A. Municipal elections**

Organizations that qualify as political action committees under section 1052, subsection 5 and that receive contributions or make expenditures to influence a municipal campaign in towns or cities with a population of 15,000 or more shall register and file reports with the municipal clerk as required by Title 30-A, section 2502. The reports must be filed in accordance with the reporting schedule in section 1059 and must contain the information listed in section 1060. A political action committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality. The commission retains the sole authority to prescribe the content of all reporting forms. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns, except that the commission shall enforce late-filing penalties under section 1020-A, subsection 3 upon the request of a municipal clerk.

### **21A § 1053-B. Out-of-state political action committees**

~~A political action committee organized~~ An organization that is registered as a political action committee or political committee with the Federal Election Commission or jurisdiction outside of this State shall register and file reports with the commission in accordance with this subchapter sections 1053 and 1058 upon receiving contributions or making expenditures to initiate or influence a campaign in Maine, in excess of the amounts that would require registration under section 1052-A. The committee is not required to register and file reports if the committee's only financial activity within the State is to make contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and the committee has not raised and accepted any contributions during the calendar year to influence a campaign in this State.

*This change seeks to clarify when an organization that qualifies as a political committee or political action committee under the laws of another jurisdiction and has registered in that jurisdiction may need to register and file reports with the Commission based on financial activity to influence Maine elections.*

### **21A § 1054. Appointment of treasurer; depository**

Any political action committee required to register under section 1053 ~~must~~ shall appoint a treasurer before registering with the commission. ~~The treasurer shall retain, for a minimum of 4 years, all receipts, including cancelled checks, of expenditures made in support of or in~~

opposition to a campaign, political committee, political action committee, referendum or initiated petition in this State.

If the committee receives or spends, or expects to receive or spend, more than \$25,000 for the purpose of influencing a campaign, the committee shall deposit its campaign funds in an account in a financial institution. The campaign funds must be segregated from, and may not be commingled with, any other funds. After receiving or spending more than \$25,000 to influence a campaign, all funds contributed to the committee or received by the committee for the purpose of influencing a campaign must be deposited in the account and all of the committee's expenditures to influence the election must be financed through the account. Expenditures by a committee to pay its employees from its general treasury are not considered for the purpose of the threshold of \$25,000 in expenditures. If the committee is controlled by or affiliated with another organization, the organization may pay its employees to influence the election through its own treasury, rather than through the separate account of the committee.

*After conducting recent investigations into allegations concerning PACs, the Commission staff supports a requirement that PACs segregate their funds in a separate account in a bank, credit union, or other financial institution. The Commission proposes a threshold of \$25,000 to allow multi-purpose advocacy organizations which are involved to a lesser extent in a ballot question or candidate elections to avoid the administrative burden of a separate bank account.*

*Segregating financial activity in a separate account will encourage more accurate financial reporting by the committees, because the activity in the account should mirror the transactions that the committee is required to disclose in campaign finance reports. If the PAC is the subject of an investigation by the Commission, the segregation of campaign funds will promote efficient investigations. The Commission staff proposes in section 1057 below that the committee would be required to keep bank account statements for four years.*

**21A § 1054-A. Duties and liabilities of the treasurer, principal officer, and others**

**1. Duties of the treasurer.** The treasurer of the committee shall file and amend the committee's registration, file complete and accurate financial reports with the commission, and maintain the committee's records as required by this chapter and the commission's rules. The treasurer is responsible for these committee's performance of these duties regardless of whether the treasurer has delegated administrative tasks related to these duties to another individual.

**2. Joint responsibilities of the treasurer and principal officer.** The treasurer and the principal officer are jointly responsible for the committee's compliance with the requirements of this chapter and the commission's rules. The treasurer and principal officer are responsible for accepting and responding to notices and correspondence from the commission on behalf of the committee.

**3. Participation in spending decisions.** Any individual who is the treasurer, principal officer, or primary decision-maker of the committee and who has signed the acknowledgement statement required by subsection 4 of section 1052-A is considered to have participated in the spending decisions of the committee until the commission receives the individual's resignation statement or a notice of the individual's involuntary removal from the committee.

**4. Financial liability.** The commission may hold the treasurer and principal officer jointly and severally liable with the committee for any penalties assessed against the committee for violations of this chapter and chapter 14. In addition, the commission may assess all or part of a penalty against any other agent of the committee who is directly responsible for a violation, including individuals who have resigned or have been removed involuntarily from the committee. In deciding whether to assess a penalty against a treasurer, principal officer, or any other individual, the commission may consider, among other things, whether the individual had actual knowledge of the action that constituted the violation or had authorized that action, and whether the violation was intentional or caused by an error by a vendor or someone outside the control of the committee.

*Specification of duties and responsibilities.* The proposed section would specify the responsibilities of the treasurer and principal officer of a PAC. The treasurer would be responsible for the committee's filing of accurate and complete registrations and financial reports, and for keeping records. The treasurer could delegate these duties to others but would be responsible for making sure that the committee complied with the requirements. The treasurer and principal officer would be jointly responsible for the overall legal compliance by the PAC. Both would be responsible for receiving and responding to correspondence from the Commission, although the staff anticipates that routine correspondence would be sent to the treasurer only.

*Accountability for spending decisions.* If a treasurer, principal officer or primary decision-maker has signed a written acknowledgement form set out in section 1052-A, the Commission would be required to conclude that the person has participated in the spending decisions of the committee. This would bring clarity to situations in which someone alleged that a candidate or member of the candidate's committee had cooperated with a spending decision by the committee.

*Financial liabilities.* Under the proposal, the Commission could hold a treasurer or principal officer jointly liable for penalties, but the Commission would not be required to. It would be a discretionary decision for the Commission. The provision set out certain factors to be considered by the Commission in holding individuals liable for the PAC's violations. These factors are intended to reassure Legislators that the Commission will exercise its discretion in holding individuals responsible for the violations by the committee.

## **21A § 1055-A. Political communications to influence a ballot question**

**1. Communications to influence ballot question elections.** Whenever a person makes an expenditure exceeding \$500 expressly advocating for or against an initiative or referendum that is on the ballot through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication must clearly and conspicuously state the name and address of the person who made or financed the expenditure for the communication.

**2. Exceptions.** The following forms of political communication do not require the name and address of the person who made or financed the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: clothing, envelopes and stationery, small promotional items, tickets to fundraiser, and electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. "Small promotional items" includes but is not limited to, ashtrays, badges and badge holders, balloons, campaign buttons, coasters, combs, emery boards, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers and swizzle sticks.

*The staff proposes consideration of a legal requirement that paid communications to promote or oppose a ballot question must contain a clear statement of who is paying for them. The objective of the proposal is to ensure that the public is provided with adequate information concerning who is funding campaign messages. Most organizations include such statements voluntarily, but the staff proposes that this should be a legal requirement.*

*In 1999, the U.S. District Court struck down a somewhat similar but more onerous requirement applying to political action committees in Yes for Life PAC v. Webster. More recent court decisions have upheld financial disclosure and disclaimer requirements in ballot question elections, however, and the Commission staff proposes a new, more limited requirement in line with those decisions.*

*Our proposal would apply only to paid communications that expressly advocate support or opposition of a question on the ballot. The staff proposes the \$500 threshold to exclude communications by individuals unconnected to political advocacy organizations who spend small amounts of their personal funds to express their support or opposition to a ballot question.*

## **21A § 1056. Expenditure limitations**

Any committee required to register under this chapter shall comply with the following expenditure limitations.

**1. Aggregate expenditures.** A committee may not make contributions in support of the candidacy of one person aggregating more than the contribution limits established by the commission pursuant to section 1015.

**2. Prohibited expenditures.** No committee may make any expenditure for liquor to be distributed to or consumed by voters while the polls are open on election day.

## **21A § 1056-A. Expenditures by political action committees**

A political action committee shall report all expenditures in cash or in kind made by the committee.

## **21A § 1056-B. Ballot question committees**

A person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of initiating or influencing a campaign as defined by section 1052, subsection 1, shall file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to influence the nomination or election of a candidate. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of initiating or influencing a campaign. The commission ~~must~~ shall prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee.

**1. Filing requirements.** A report required by this section must be filed with the commission according to the reporting schedule in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

**2. Content.** A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of \$100 in any election; the date of each contribution; the date and purpose of each expenditure; the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding \$100 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating or influencing a campaign and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

**2.A. Contributions.** For the purposes of this section, “contribution” includes, but is not limited to:

- A. Funds that the contributor specified were given in connection with a campaign;
- B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating or influencing a campaign;
- C. Funds that can reasonably be determined to have been provided by the contributor 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; and
- D. Funds or transfers from the general treasury of an organization filing a ballot question report.

**3. Forms.** A report required by this section must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for 4 years following the election to which the records pertain.

- A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of initiating or influencing a campaign and all expenditures made for those purposes.
- B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

## **21A § 1057. Records**

Any political action committee that is required to register under section 1053 or 1053-B shall keep records as provided in this section for 4 years following the election to which the records pertain.

**1. Details of records.** The treasurer of a political action committee must shall record a detailed account of:

- A. All expenditures made to or in behalf of a candidate, campaign or committee;
- B. The identity and address of each candidate, campaign or committee;
- C. The office sought by a candidate and the district he seeks to represent, for candidates which a political action committee has made an expenditure to or in behalf of; and
- D. The date of each expenditure.

**2. Receipts.** The treasurer of a political action committee must shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

**3. Record of contributions.** The treasurer of a political action committee must shall keep a record of all contributions to the committee, by name and mailing address, of each donor and the amount and date of the contribution. This provision does not apply to

aggregate contributions from a single donor of \$50 or less for an election or referendum campaign. When any donor's contributions to a political action committee exceed \$50, the record must include the aggregate amount of all contributions from that donor.

**4. Account statements.** The treasurer of a political action committee shall keep account statements for the depository of the committee required by section 1054.

*To assist the Commission in investigating whether the financial reporting of political action committees is accurate, the staff proposes that PACs be required to keep account statements for the bank or credit union account in which they keep their campaign funds.*

#### **21A § 1058. Reports; qualifications for filing**

A political action committee that is required to register under section 1052-A or 1053-B shall file reports with the commission on forms prescribed by the commission according to the schedule in section 1059.

#### **21A § 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. (REPEALED)**

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

A. All committees shall file quarterly reports:

- (1) On January 15th and must be complete as of December 31st;
- (2) On April 10th and must be complete as of March 31st;
- (3) On July 15th and must be complete as of June 30th; and
- (4) On October 5th and 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. Pre-election 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 ~~any expenditure of \$500~~ 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 expenditure. The treasurer is not required to include in this report expenditures for overhead expenses. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. The report must include any single expenditure of \$1,000 or more made to a member of campaign staff or a contractor providing campaign services.

*Please see explanation for § 1017-A(4-A)(E).*

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

**4. Special election reports. (REPEALED)**

**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.

## **21A § 1060. Content of reports**

The reports must contain the following information and any additional information required by the commission to monitor the activities of political action committees:

**1. Identification of candidates.** The names of and offices sought by all candidates whom the committee supports, intends to support or seeks to defeat;

**2. Identification of committees; parties.** The names of all political committees or party committees supported in any way by the committee;

**3. Identification of referendum or initiated petition.** The referenda or initiated petitions that the committee supports or opposes;

**4. Itemized expenditures.** An itemization of each expenditure made to initiate or influence any campaign, including the date, payee and purpose of the expenditure; the name of each candidate, campaign, political committee, political action committee or party committee supported or opposed; and each referendum or initiated petition

supported or opposed by the expenditure. If expenditures were made to a person described in section 1012, subsection 3, paragraph A, subparagraph (4), the report must contain the name of the person; the amount spent by that person on behalf of the candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition, including, but not limited to, expenditures made during the signature-gathering phase; the reason for the expenditure; and the date of the expenditure. The commission may specify the categories of expenditures that are to be reported to enable the commission to closely monitor the activities of political action committees;

**5. Aggregate expenditures.** An aggregation of expenditures and cumulative aggregation of expenditures to a candidate, campaign, political committee, political action committee, party committee, referendum or initiated petition;

**6. Identification of contributions.** Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political action committee in the reporting period and the amount and date of each contribution, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of influencing a ballot question or the nomination or election of a candidate to political office and all transfers to or funds used to support the political action committee from the general treasury of the organization; and

**7. Other expenditures.** Operational expenses and other expenditures that are not made on behalf of a candidate, committee or campaign, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those expenditures made for the purpose of influencing a ballot question or the nomination or election of a candidate to political office.

#### **21A § 1061. Dissolution of committees**

Whenever any political action committee determines that it will no longer accept any contributions or make any expenditures, the committee shall file a termination report that includes all financial activity from the end date of the previous reporting period through the date of termination with the commission. The committee ~~must~~ shall dispose of any surplus prior to termination. In the termination report, the committee shall report any outstanding loan, debt or obligation in the manner prescribed by the commission.

#### **21A § 1062. Failure to file on time (REPEALED)**

## 21A § 1062-A. Failure to file on time

**1. Registration.** A political action committee required to register under section 1053 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 ~~\$250~~ no more than \$2,500. In assessing a civil penalty, 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.

*PACs and BQCs are required to disclose their treasurer, primary decision-makers and fundraisers, and officers, and other information concerning the mission and affiliations of the committee. This information is important to inform voters who is behind the committee's activities and can be relevant in assessing the committee's overall compliance with campaign finance requirements. In order to encourage PACs and BQCs to show greater attention to providing complete and accurate information in their registrations (including by making amendments when necessary), the Commission proposes increasing the maximum penalty from \$250 to \$2,500.*

**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;
- B. An error by the commission staff; or
- 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.

**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%;

- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-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.

**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.

**5. Request for a commission determination. (REPEALED)**

**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 by certified mail 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. The notice must be sent by certified mail. A request for determination must be made within 14 calendar days of receipt of the commission's notice. The 14-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 14-day period begins on the day the post office indicates it has given first notice of a certified letter. 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.

**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.

**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.

**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.

**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.

**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.

#### **21A § 1062-B. Failure to keep records**

A committee that fails to keep records required by this chapter may be assessed a civil penalty of up to \$2,500. In assessing a civil penalty, the commission shall consider, among other things, whether the violation was intentional, whether the violation occurred as the result of an error by someone outside the control of the committee, whether the committee intended to conceal its financial activity, the amount of financial activity that was not documented, and the level of experience of the committee's volunteers and staff.

*Under current law, PACs and BQCs are required to keep certain records for four years. These records are necessary in case the Commission needs to investigate the compliance of the PAC or BQC. Failure by a PAC or BQC to keep the required records could result in the inability of the State to verify whether the public received accurate campaign finance disclosure. Under current law, there is no penalty for failing to keep records. The Commission proposes a penalty of up to \$2,500 for not keeping required records.*

#### **21A § 1063. Constitutional officers and State Auditor**

The Secretary of State, the Treasurer of State, the Attorney General, the State Auditor, or any individual running for these offices, may not form a political action committee or be involved in decision making for or solicit contributions to a political action committee.

**CHAPTER 14**  
**THE MAINE CLEAN ELECTION ACT**

**21A § 1125. Terms of participation**

**1. Declaration of intent.** A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission prior to or during the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. Qualifying contributions collected more than 5 business days before the declaration of intent has been filed will not be counted toward the eligibility requirement in subsection 3.

**2. Contribution limits for participating candidates.** Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. A participating candidate must limit the candidate's total seed money contributions to the following amounts:

- A. Two hundred thousand dollars for a gubernatorial candidate;
- B. One thousand five hundred dollars for a candidate for the State Senate; or
- C. Five hundred dollars for a candidate for the State House of Representatives.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

**2-A. Seed money restrictions.** To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification.

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

- A. The range of campaign spending by candidates for that office in the 2 preceding elections; and
- B. The Consumer Price Index published monthly by the United States Department of Labor, Bureau of Labor Statistics and any other significant changes in the costs of campaigning such as postage or fuel.
- C. (REPEALED)

Before making any determination, the commission shall provide notice of the determination and an opportunity to comment to the President of the Senate, the Speaker of the House of Representatives, all floor leaders, the members of the joint standing committee of the Legislature having jurisdiction over legal affairs and persons who have expressed interest in receiving notices of opportunities to comment on the commission's rules and policies. The commission shall present at a public meeting the basis for the commission's final determination.

For contested gubernatorial primary elections, the amount of revenues distributed is \$400,000 per candidate in a primary election. For uncontested gubernatorial primary elections the amount of revenues distributed is \$200,000. For contested and uncontested gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.

**9. Matching funds. (REPEALED)**

**10. Candidate not enrolled in a party.** An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 20 preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate no later than 3 days after certification. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1 preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

**11. Other procedures.** The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, the treasurer or deputy treasurer of participating and certified candidates shall report any money collected, all campaign expenditures, obligations, refunds received by a candidate or agent of that candidate and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or household or a business or nonprofit entity affiliated with a member of the candidate's immediate family or household, the candidate treasurer or deputy treasurer

must disclose the candidate's relationship to the payee in a manner prescribed by the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections, that candidate shall return all unspent fund revenues to the commission. If the candidate or agent of the candidate receives a refund of an expenditure made for the campaign after filing the final report, the candidate shall return those funds to the fund within 14 days of receiving the refund.

**12-A. Required records.** The candidate or treasurer shall obtain and keep;

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more;
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and
- D. (REPEALED)
- E. A contemporaneous document such as an invoice, contract or timesheet that specifies in detail the services provided by a vendor who was paid \$500 or more for the election cycle for providing campaign staff or consulting services to a candidate.

The candidate or treasurer shall preserve the records for 3 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the Commission upon its request.

**12-B. Audit requirements for candidates for Governor.** The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

**12-C. Payments to political committees.** If a certified candidate makes a payment of fund revenues to a political action committee or party committee, the candidate shall include in reports required under this section a detailed explanation of the goods or services purchased according to forms and procedures developed by the commission that is sufficient to demonstrate that the payment was made solely to promote the candidate's election.

**12-D. Duties of the campaign treasurer and deputy treasurer.** The treasurer shall file all campaign finance reports required by section 1017, this chapter, and the commission rules, unless the treasurer delegates the filing of reports to the deputy treasurer who is designated on the candidate's registration. A candidate may enter financial transactions in the online or paper forms of the Commission, but the report must be filed by the treasurer or deputy treasurer. The treasurer is jointly responsible with the candidate for ensuring that the campaign keeps all records required by section 1016, this chapter, and the commission rules. If the candidate keeps the records, the candidate shall provide the treasurer or deputy treasurer

with access to the records for the purpose of filing complete and accurate campaign finance reports. The commission may hold the candidate and treasurer jointly and severally liable for any penalties assessed for violations of the financial reporting or recordkeeping requirements of this chapter, chapter 13, and the commission rules. If the deputy treasurer files reports for the campaign, the commission may hold the deputy treasurer jointly and severally liable for any penalties related to reports filed by the deputy treasurer.

**13. Distributions not to exceed amount in fund. (REPEALED)**

**13-A. Distributions not to exceed amount in fund.** The Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8-A, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015, up to the applicable amounts set forth in subsection 8-A according to rules adopted by the commission.

...

## **1 § 1050. Disclosure of donations to fund transition and inaugural activities**

The Governor-elect may solicit and accept donations for the purposes of financing the costs related to the inauguration of the Governor-elect and financing the activities related to the transition to the office of Governor. If the Governor-elect accepts donations, the Governor-elect shall establish a committee and appoint a treasurer who is responsible for keeping records of donations and for filing a financial disclosure statement required by this section. All donations received must be deposited in a separate and segregated account and may not be commingled with any campaign contributions received by the Governor-elect or the political committee of the Governor-elect or any personal or business funds of the Governor-elect or any other person.

**1. Registration with the commission and financial disclosure statement of donors.** The committee shall register and file a financial disclosure statement with the commission as required by this subsection.

A. The committee shall register with the commission within 10 days of appointing a treasurer. The registration must include the name and mailing addresses of the committee, its treasurer, and all individuals who are raising funds for the committee.

B. The financial disclosure statement must contain the names, addresses, occupations and employers of all donors who have given money or anything of value to the committee, along with the amounts and dates of the donations. Loans must be disclosed as a form of donation. Any donors who have given ~~\$50~~ \$100 or less may be disclosed in the aggregate without itemization.

C. Any outstanding loan, debt or other obligation as of the filing deadline must be disclosed as by the committee.

D. The financial disclosure statement report must be complete and filed by 5:00 p.m. on February 15 and must be complete as of that date.

E. The commission may adopt procedures and forms for the committee to disclose its donors. The formatting of the reports should take into consideration easy access by the public to the information and reasonableness of burden for the committee or treasurer.

**2. Limitation on fundraising activity.** The committee may begin accepting donations on the day after the election of the Governor-elect until January 31 of the year following the election.

**3. Prohibited donations during a legislative session.** The Governor-elect, treasurer and committee may not directly or indirectly solicit or accept a donation from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment. A lobbyist, lobbyist associate or employer may not directly or indirectly give,

offer or promise a donation to the Governor-elect, treasurer or committee during any period of time in which the Legislature is convened before final adjournment.

**4. Anonymous donations.** The committee may not accept anonymous donations in excess of \$10.

**5. Disposing of surplus funds.** Prior to the filing of the financial disclosure statement, any surplus funds remaining in the committee's account must either be donated to a charitable organization which qualifies as a 501(c)(3) non-for-profit corporation under the federal Internal Revenue Code or be remitted to the state treasurer.

*The staff proposes a new requirement for a governor-elect to disclose donors for transition and inaugural activities. The staff's research indicates that at least eight states and New York City require some disclosure of inauguration and transition activities. Under current Maine law, donations for these activities are not subject to any disclosure requirement.*

*In the weeks following a gubernatorial election before taking office, the governor-elect makes important legislative, budget, and appointment decisions. The public should be informed of donors who may be seeking to influence these decisions.*

*The staff has purposefully kept the proposal narrow to focus on the disclosure of donors. Other requirements could be added during the legislative process in the discretion of the Legislature, such as limits on the amounts of donations or the reporting of expenses.*

### **3 § 312-A. Definitions**

As used in this chapter, unless the context otherwise indicates, the following words have the following meanings.

...

**4-A. Covered official.** "Covered official" means an official in the executive branch, an official in the legislative branch, a constitutional officer, the Governor and the Governor's cabinet and staff.

**9. Lobbying.** "Lobbying" means to communicate directly with any official in the legislative branch or any official in the executive branch or with a constitutional officer for the purpose of influencing any legislative action or with the Governor or the Governor's cabinet and staff for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. "Lobbying" includes the time spent to prepare and submit to the Governor, an official in the legislative branch, an official in the executive branch, a constitutional officer, or a legislative committee oral and written proposals for, or testimony or analyses concerning, a legislative action. "Lobbying" does not include time spent by any person providing information to or participating in a subcommittee, stakeholder group, task force or other work group regarding a legislative action by the appointment or at the

request of the Governor, a Legislator or legislative committee, a constitutional officer, a state agency commissioner or the chair of a state board or commission.

**10-C. Official in the executive branch.** "Official in the executive branch" means an individual in a major policy-influencing position in a department or agency listed in section 959 or in Title 5, Chapter 71, ~~and the Governor's cabinet and staff, the Governor-elect and his or her staff.~~ As used in this chapter, "major policy-influencing position" means those positions listed in Title 5, chapter 71 and officers or employees of departments and agencies listed in section 959 and in Title 5, Chapter 71 who have policy development as a major function of their positions.

**11. Official in the Legislative Branch.** "Official in the Legislative Branch" means a member, member-elect, ~~candidate for or officer of the Legislature~~ or an employee of the Legislature.

*The Commission staff proposes that communicating with a governor-elect or his or her staff to influence legislation, when compensated by a client, should constitute lobbying that is disclosed in reports to the Commission. This will increase the public's knowledge of organizations and interest groups paying employees or contract lobbyists to influence legislation at the beginning of a gubernatorial administration. The staff proposes deleting communications with (non-incumbent) legislative candidates from lobbyist disclosure.*