



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

To: Interested Persons  
From: Jonathan Wayne, Executive Director  
Date: November 20, 2012  
Date: Invitation to Comment on Proposed Statute Changes

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The Maine Ethics Commission invites your input on its legislative proposal for the 2013 session. The Commission will be giving initial consideration to legislative changes proposed by its staff at its meeting on Wednesday, November 28 at 9:00 a.m.

The proposed changes are highlighted in yellow in the attached document. Below each proposed change is an explanation in italics.

The staff's proposal includes:

- disclosure of all large contributions (greater than \$5,000) received by PACs and party committees in the last 13 days before an election
- disclosure of contributions given to PACs and political parties specifically to fund independent expenditures
- requiring mailings and advertisements costing more than \$500 to influence a ballot question to contain a statement identifying who paid for the communication
- requiring disclosure of financial activities by a person considering whether to run for office
- disclosure of lobbying activities to influence the transition team of a governor-elect
- disclosure of donations received by a governor-elect for purposes of the transition or inauguration

The Commission staff intends to present more technical statute changes at the Commission's December 19 meeting. Thank you for your consideration of these changes.

**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 with respect to any election;
- (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 of 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 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;
- (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, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate's immediate family;
- (1-A) Any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and all candidates in the race have an equal opportunity to promote their candidacies through the station;
- (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 with respect to any election;
- (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;

**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**

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, the treasurer shall certify the completeness and accuracy of the information reported by that treasurer.

**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 treasurer within 5 days of the receipt of the contribution or the making of the expenditure. A person who receives a

**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. Contributions aggregating \$1,000 or more from any one contributor or 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 treasurer is not required to include in this report expenditures for rent, services from utilities, taxes, insurance premiums or similar overhead expenses.

*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. Contributions aggregating \$1,000 or more from any one contributor or 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 treasurer is not required to include in this report expenditures for rent, services from utilities, taxes, insurance premiums or similar overhead expenses.

*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

**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 contributions aggregating \$5,000 or more from any one contributor or single expenditures 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 rent, services from utilities, taxes, insurance premiums or similar overhead expenses.

*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 contributions aggregating \$5,000 or more from any one contributor or 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 the election must be reported within 24 hours of that expenditure. The committee is not required to include in this report expenditures for rent, services from utilities, taxes, insurance premiums or similar overhead expenses.

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.** Candidates may receive donations without limitation for purposes of a recount ~~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 sometimes receive services from attorneys or their political parties. Some candidates incur expenses and collect 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 accepts that in 2005 the Legislature decided that there should be no limitations on the amount of services or money received by candidates in recounts. We therefore propose a deletion to subsection 2 to clarify that there are no limitations – regardless of the donor.

## **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 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 contain the name of the source, date and amount of any contribution that was given to the person making the expenditure for the purpose of financing the communication. 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 urged 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.*

*Reporting of contributions made to finance independent expenditures. Independent expenditures are for paid communications that are, most often, made by party committees and PACs. The Commission staff proposes that if some donor gives money to a party committee*

or PAC for the purpose of financing the communication, the contribution should be disclosed in the independent expenditure report. Some states (at least nine) have a similar requirement. As courts have commented when upholding reporting requirements, the disclosure of donors can provide information to voters concerning who is “behind” the communication, which can assist the voter in evaluating the communication.

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 procedures 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.)

## **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

## **21A § 1053. Registration**

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. Registration [replaces prior section 1053]**

Every political action committee shall file periodic registration statements with the Commission to disclose the treasurer, officers, decision-makers, fundraisers and form of organization of the committee, and shall amend those registrations as required by this section to provide updated disclosures. A registration statement is not timely filed unless it is properly signed and contains all the information required in this section.

**1. Deadlines to file and amend registrations.** Political action committees must 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 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 the updated information.

**2. Disclosure of treasurer and officers.** Each committee must have a treasurer and a principal officer. The same individual may not serve in both positions. The registration form must be signed by the treasurer and principal officer. 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 and any other individuals who have accepted officer positions within 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 funds or obtaining the financing for the committee;

E. any candidates or Legislators who have a significant role in making decisions or obtaining financing or funds for the committee who have not been disclosed in the other categories in this subsection.

**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 promote 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 is controlled by, or is an assumed name for, another organization, the name and address of the other organization;
- 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 and liabilities**

The commission shall send a statement of responsibilities and liabilities to the treasurer, principal officer, and any other individual named in the committee's registration as an officer, or decision-maker within 5 days of receiving the committee's registration. The statement shall serve as notification of the responsibilities and liabilities of the committee, treasurer, principal officer, other officers and decision-makers pursuant to this chapter and the commission's rules. The individual receiving the statement shall acknowledge acceptance of these responsibilities and liabilities by signing the statement and returning it to the commission within 10 days of receiving the statement. The commission shall notify the committee of any individual who has failed to return the signed statement. Failure to return the signed statement is a violation of this subchapter for which a civil penalty of \$100 may be assessed. This section shall also apply to individuals named in annual or amended registration statements who have not previously submitted an acknowledgement statement for the committee with the commission.

*The Commission staff proposes replacing the current PAC registration statute to reorganize it and expand the disclosure requirements. The re-organization would have the effect of highlighting when registrations and amendments are due.*

*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 suggests that PACs be required to report an individual as the "principal officer" of the PAC other than the treasurer. The Commission would send important correspondence to the principal officer, as well as the treasurer.*

*The Commission staff proposes a new requirement that the PAC's treasurer, principal officer, other officers, and primary decision-makers would sign a written acknowledgement that they understand the basic responsibilities for the PAC and that they are liable for any penalties assessed against 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 officers and decision-makers of the PAC. Then, the Commission staff would send a written acknowledgement form to these individuals. If the individuals did not sign the acknowledgement form, the PAC could be assessed a penalty of \$100 per day.

#### **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 outside of this State shall register and file reports with the commission in accordance with sections 1053 and 1058. 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.

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

Any political action committee or ballot question committee required to register under section 1053 or 1056-B must 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 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. 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 and BQCs, the Commission staff supports a requirement that PACs and BQCs 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 moderate extent in a ballot question or candidate election 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 or BQC is the subject of an investigation by the Commission, the segregation of campaign funds will promote efficient investigations. The Commission staff proposes in sections 1056-B and 1057 below that the committee would be required to keep bank account statements for four years.*

**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 support or opposition of a campaign 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 clearly state the name and address of the person who made or financed the expenditure for the communication. For the purposes of this section, “campaign” does not include communications to influence the nomination or election of a candidate.

**2. Exceptions.** The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers, 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.

*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.*

*Because this requirement could be subject to a constitutional court challenge, the staff recommends further consultation between the Commission and its counsel concerning the constitutionality of the proposal. Until 1999, Maine law contained a similar, but more onerous, requirement. In that year, the U.S. District Court struck down a requirement applying to political action committees in *Yes for Life PAC v. Webster*. Because of subsequent court decisions upholding financial disclosure and disclaimer requirements, the Commission staff proposes a new, more limited requirement.*

*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 minimize the burden on individuals unconnected to political advocacy organizations who spend small amounts of their personal funds to express their support or opposition to a ballot question. This threshold is prudent to avoid over-regulation of personal expression by individuals and to strengthen the statute in case of a legal challenge.*

**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 **making a cash** 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 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.

*This proposal would have the effect of requiring advocacy, commercial or other organizations spending more than \$5,000 to register as ballot question committees with the Commission – even if they were cooperating with a political action committee in making the expenditure.*

*Under current law, if an organization pays money to make a cash or in-kind contribution to a PAC, the payment does not count toward the \$5,000 threshold for the organization to qualify as a BQC. So, even though in some cases an organization has made large payments to influence a ballot question, the organization may not be required to register and file financial reports as a BQC because those payments were an in-kind contribution to a PAC. The amount spent by the organization is publicly disclosed as a cash or in-kind contribution on Schedule A-1 of the recipient PAC's campaign finance report, but it is more difficult for the*

*public to access that information than if the organization is required to register and file campaign finance reports with the Commission.*

*If the organization spending more than \$5,000 were required to register with the Commission for or against a ballot question, the organization would be among the organizations prominently listed on the Commission's website as acting to support or to oppose a ballot question. That would enable the public easily to learn that this organization had spent more than \$5,000 to influence a ballot question. Also, the spending by the organization would be recorded in the Commission's database as an expenditure, rather than as an in-kind contribution, so the summary reporting of campaign spending compiled for public policy purposes by the press or by the Commission would be more accurate.*

*At the November 28 meeting, we will provide examples of organizations which made sizeable expenditures to promote or oppose a ballot question which were not required to register because their purchases were reported by PACs as in-kind contributions.*

**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.

C. The filer 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 ballot question committees is accurate, the staff proposes that BQCs be required to keep account statements for the bank or credit union account in which they keep their campaign funds.*

## **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 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 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 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 must 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 1053 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 1053, 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 contributions aggregating \$5,000 or more from any one contributor or single expenditures 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 rent, services from utilities, taxes, insurance premiums or similar overhead expenses.

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 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 \$5,000.**

*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 penalty from \$250 to \$5,000.*

**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

**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 that keeps may be assessed a civil penalty of up to \$5,000.

*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 \$5,000 for not keeping required records.*

#### **21A § 1062-C. Financial responsibility for penalties**

The treasurer, principal officer, primary decision-makers, and any other officers of the committee are jointly responsible for ensuring that the committee complies with the requirements of this chapter and chapter 14. They are jointly and severally liable with the committee for any penalties assessed against the committee. Notwithstanding section 1004-B of subchapter 1, in deciding whether to report an individual to the Attorney General for collection of the penalty, the commission may consider, among other things, whether the violation was intentional, the violation was the result of an error by a vendor, and the individual had actual knowledge of the action that constituted the violation.

*This provision clarifies that the Commission may seek to collect penalties assessed against PACs and BQCs from the committee's treasurers and other key personnel. This proposal is designed to encourage more personal responsibility for compliance with PAC and BQC requirements. It also resolves an ambiguity in Maine campaign finance law that could be relevant if the Commission needed to file a collection action in the courts to collect a civil penalty against a PAC or BQC.*

*The proposal includes a number of factors that the Commission would be required to consider if it sought to collect penalties from individuals other than PAC itself. This part of the*

*proposal is intended to reassure Legislators that the Commission will exercise its discretion in holding individuals responsible for the violations by the committee.*

## **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 operations related to the transition to the office of Governor. If the Governor-elect accepts donations, the Governor-elect must 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 political 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 primary fundraisers for the committee.

B. The financial disclosure statement shall 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 or less may be disclosed in the aggregate without itemization.

C. Any outstanding loan, debt or other obligation as of the filing deadline shall be disclosed as donations to the committee.

D. The financial disclosure statement report will be due 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 shall 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 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 may make 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-election 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 legislative candidates from lobbyist disclosure.*