

Agenda

Item #2



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: January 23, 2009  
Re: Revised Statutory Proposals -- **AMENDED MATERIALS**

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Thank you very much for your consideration of the statutory proposals drafted by the Commission staff. In addition to your suggestions and observations we made during the election year, they reflect input from sources outside the Commission, such as Donald Simoneau and the Maine Citizens for Clean Elections. In the last few weeks, the proposals have been revised to address issues that you raised at the December 29 meeting, points raised by the Commission's Counsel, and further thinking by the Commission staff. We have attached some written comments received from Donald Simoneau and Carl Lindemann.

In response to a request from Walter McKee, we distinguished those proposed changes which are relatively minor (labeled as "Minor") from those which would constitute a change in policy (labeled as "Significant"). We hope that is helpful and that you feel we have characterized them correctly. Some of the changes labeled as "significant" probably are not major policy changes. Also, we have tried to highlight in gray all language that is different from the language you reviewed for the December 29 meeting.

Unfortunately, our original materials for this agenda item mailed to you yesterday contained the wrong comments from Carl Lindemann. We have replaced them with the comments he intended. Also, we have made a few formatting improvements to the attached statutory proposals, and we were careful not to alter the pagination of the document.

If you approve of these proposals (with any amendments or deletions you would like to make, the Commission may submit them to the Legislature as a bill no later than February 2, 2009.

Our goal is that all Commission members would feel supportive of the Commission's bill. If any member is opposed to some provision, it may make more sense to delete it from the bill rather than have the Commission submit a divided message to the Legislature about the Commission's own bill.

Thank you again.

**CHAPTER 13**  
**CAMPAIGN REPORTS AND FINANCES**  
**SUBCHAPTER II**  
**REPORTS ON CAMPAIGNS FOR OFFICE**

**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 be assessed a penalty of no more than the amount by which the contribution exceeded the limitation.

**3. Contribution in name of another person.** A person that makes a contribution in the name of another person, or that knowingly accepts a contribution made by one person in the name of another person, may be assessed a penalty not to exceed \$5,000.

**4. Substantial misreporting.** A person that files a campaign finance report that substantially misreports contributions, expenditures or other campaign activity may be assessed a penalty not to exceed \$5,000.

**5. Material false statements.** A person that makes a material false statement or that makes a statement that includes a material misrepresentation in a document that is required to be submitted to the commission, or that is submitted in response to a request by the commission, may be assessed a penalty not to exceed \$5,000.

When the commission has reason to believe that a violation has occurred, the commission shall provide written notice to the candidate, party committee, political action committee, committee treasurer or other respondent and shall afford them an opportunity to appear before the commission and to request an adjudicatory hearing before the commission makes a determination or assessing any penalty. An adjudicatory hearing must be held if requested. In determining any penalty under subsections 3, 4 and 5, the commission shall consider, among other things, the level of intent to mislead, the penalty necessary to deter similar misconduct in the future and the harm suffered by the public from the incorrect disclosure. Any final determination by the commission may be appealed to Superior Court in accordance with Title 5, sections 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure. Penalties assessed pursuant to this section that have not been paid in full within thirty days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

Significant

Significant

**21-A M.R.S.A. § 1004-B. Enforcement of penalties assessed by the Commission.** Any assessment of a civil fine, penalty or forfeiture or order for return of Maine Clean Election Act funds by the Commission for a violation of the statutes or rules administered by the commission, determined after opportunity for hearing and after hearing if one is requested, is enforceable by the Superior Court by any suitable process, including execution against goods, chattel and real estate and proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court or in any other manner that decrees for equitable relief are enforced. The Commission may present certified copies of any final determination assessing a civil fine, penalty or forfeiture or order for return of Maine Clean Election Act funds to the clerk of courts for Kennebec County. Any Justice of the Superior Court shall then render a pro forma decision in accordance with the determination and cause all interested parties to be notified. The decision has the same effect and all proceedings in relation to the decision are the same as though rendered in an action in which equitable relief is sought, duly heard and determined by the court. The decision must be for enforcement of a Commission determination. Appeals from a Commission determination must be in accordance with title 5, sections 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure.

#### **§§ 1004-A and 1004-B – Enforcement of penalties**

*After conferring with the Commission's counsel, the Commission staff proposes two changes to the Commission's enforcement procedures. Under current procedures, the Commission assesses almost all penalties against candidates, PACs, and party committees (the respondents) through a meeting process that some may view as informal (testimony is not sworn, witnesses testify in narrative form rather than through question-and-answer examination, respondents do not necessarily need counsel). These procedures have their advantages for the Commission and for the respondents (efficiency), but a more formal process may be desired by some respondents and may be more appropriate for larger penalty matters. Also, when the Commission has assessed a penalty and the respondent does not voluntarily pay it, in order to enforce (collect) the penalty, the Attorney General's Office must now file a civil lawsuit in the courts. Even though the Commission has already gathered evidence sufficient to make its enforcement determination, the Commission through its counsel must re-prove its case in the court. This requires a substantial outlay of staff time by the Attorney General's Office, and delays the entry of a court judgment against the respondent.*

*In order to streamline the Commission's collection of unpaid civil penalties or returns of public funds, the Commission's staff proposes two changes. Under our proposal, candidates, PACs, and party committees who are respondents in enforcement actions could request that the Commission hold a formal adjudicatory hearing. An adjudicatory hearing would meet the requirements of the Maine Administrative Procedure Act and would provide respondents with some of the formal procedures that would operate in a court of law (e.g., right to call witnesses; testimony would be sworn). Second, the Commission proposes an enforcement procedure in the courts that is similar to the Workers Compensation Board and some other agencies. If a penalty assessed by the Commission remained unpaid for more than 30 days, the Commission could enforce the penalty by presenting the Commission's written penalty determination to the clerk of court for Kennebec County and request that a Justice of the Superior Court enter a pro forma decision that would have the same effect as though the Commission had prevailed in a civil*

*action to enforce the penalty. This would allow the Commission to obtain a court judgment against a respondent more quickly.*

*In addition, the staff's proposal clarifies the manner in which a respondent may file a court action to appeal an enforcement determination of the Commission.*

## **21A § 1011. Application**

This subchapter applies to candidates for all state and county offices and to campaigns for their nomination and election.

Candidates for municipal office as defined in Title 30-A, section 2502, subsection 1 ~~and referenda as defined in Title 30-A, section 2502, subsection 2~~ are governed by this subchapter, with the following provisions:

Minor

### ***§ 1011 – Application of subchapter II***

*To eliminate confusion, the Commission staff proposes deleting the language referring to ballot questions (referenda) in towns or cities with a population of at least 15,000. The language mistakenly states that these municipal ballot questions are governed by Subchapter II. In fact, the ballot questions are governed by Subchapter IV (the PAC law).*

**1. 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 file their reports by the close of business on 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.

**2. 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.

***21-A M.R.S.A. § 1012(5) – Definition of party candidate listing (slate card) (not shown here)***

*Note: the Commission staff has withdrawn a proposal to amend 21-A M.R.S.A. § 1012(5) presented to you at the Commission's December 29, 2009 meeting. The staff agrees with the points raised by Commission members Marsano and Youngblood.*

**21A § 1014. Publication or distribution of political statements**

**1. Authorized by candidate.** Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, 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, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. 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 and similar items determined by the Commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee ~~that is made through a broadcasting station~~ is not required to state the address of the candidate or committee that financed the communication.

Significant

***21-A M.R.S.A. § 1014(1) – Communications financed by a candidate***

*After conferring with some candidates, advocates, and party officials, the Commission staff proposes that if a sign, broadcast or print advertisement, or mailer is paid for by a candidate, the disclosure statement on the communication would only need to contain the statement that the communication was "paid for by the candidate." We believe that in most cases the candidate's address is unnecessary because the addresses of county and legislative candidates are accessible through the Commission, local directories, or other means.*

**2. Not authorized by candidate.** If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication. If the communication is in written form, the communication must contain at the bottom of the communication in 10-point bold print,

Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE."

**2-A. Communication.** Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 21 days before a primary election or 35 days before a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election.

**3. Broadcasting prohibited without disclosure.** No person operating a broadcasting station within this State may broadcast any communication, as described in subsections 1 to 2-A, without an oral or written visual announcement of the disclosure required by this section.

**3-A. In-kind contributions of printed materials.** A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ~~ballot question cause to be voted upon at referendum~~. Any in-kind contributions of printed materials used or distributed by a candidate, political committee or political action committee must include the name or title of that candidate, political committee or political action committee as the authorizing agent for the printing and distribution of the in-kind contribution.

Minor

~~The use or distribution of in-kind printed materials contributed to a candidate, political committee or political action committee must be reported as an expenditure on the campaign finance report of that candidate, political committee or political action committee.~~

Minor

**§ 1014(3-A) – Reporting in-kind printed materials received by candidates and others**  
*This subsection describes how a candidate or political committee must report the receipt of in-kind printed materials. In the view of the staff, the current language in subsection 3-A is confusing. The first sentence suggests that the materials be reported as an in-kind contribution (Schedule A-1 of the candidate reporting form). The last sentence of the subsection (on the following page) suggests that the materials should be reported as an expenditure by the candidate (Schedule B for candidates). We suggest deleting the last sentence. At the suggestion of counsel, we have replaced the term 'cause' with the term 'ballot question' to be consistent with terminology in the PAC statutes (Subchapter IV).*

**3-B. Newspapers.** A newspaper may not publish a communication described in subsections 1 to 2-A, without including the disclosure required by this section. For purposes of this subsection, "newspaper" includes any printed material intended for general circulation or to be read by the general public, including a version of the newspaper displayed on a website owned or operated by the newspaper. When necessary, a newspaper may seek the advice of the Commission regarding whether or not the communication requires the disclosure.

**4. Enforcement.** An expenditure, communication or broadcast made within 20 days before the election to which it relates that results in a violation of this section may result in a civil fine of no more than \$200. The person who financed the communication or who committed the violation shall correct the violation within ten (10) days after receiving notification of the violation from the commission. An expenditure, communication or broadcast made more than 20 days before the election that results in a violation of this section may result in a civil fine of no more than \$100 if the violation is not corrected within ten (10) days after the person who financed the communication or other person who committed the violation receives notification of the violation from the Commission. If the Commission determines that a person violated this section with the intent to misrepresent the name or address of the person who made or financed the communication, or whether the communication was or was not authorized by the candidate, the Commission may impose a fine of no more than \$5,000 against the person responsible for the communication. Enforcement and collection procedures must be in accordance with section 1020-A.

**5. Telephone calls.** Prerecorded automated telephone calls and scripted live telephone communications that name a clearly identified candidate during the 21 days before a primary election or the 35 days before a general election must clearly state the name of the person who made or financed the expenditure for the communication, except for prerecorded automated telephone calls paid for by the candidate that use the candidate's voice in the telephone call and that are made in support of that candidate. Telephone calls made for the purposes of researching the views of voters are not required to include the disclosure.

**21A § 1014-A. Endorsements of political candidates**

Minor

**1. Definition.** For purposes of this section, "endorsement" means ~~an expression of support for the election of a clearly identified candidate by methods including but not limited to the following: broadcasting stations, newspapers, magazines, outdoor advertising facilities, direct mails or other similar types of general public political advertising or through computer networks, flyers, handbills, bumper stickers and other nonperiodical publications.~~

**2. Authorization.** ~~A candidate may not use an endorsement unless the endorser has expressly authorized its use. The communication must clearly and conspicuously state that the endorsement has been authorized. If applicable, the communication must also satisfy the requirements of section 1014.~~

**3. Civil forfeiture.** ~~A candidate who uses an endorsement without the authorization of the endorser violates this section and is subject to a civil forfeiture of no more than \$200.~~

**4. Enforcement.** ~~The full amount of the forfeiture is due within 30 days of the Commission's determination that an endorsement has been used without the endorser's authorization. The Commission is authorized to use all necessary powers to collect the forfeiture. If the full amount of the forfeiture is not collected within the 30 days after the Commission has determined that a violation of this section has occurred, the Commission shall report to the Attorney General the name of the person who has failed to pay. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the forfeiture. This action must be brought in the Superior Court for the County of Kennebec or the District Court, 7th District, Division of Southern Kennebec.~~

**§ 1014-A – Endorsements**

*The staff suggests deleting this section because it was invalidated by the Maine Supreme Judicial Court in constitutional litigation brought by 2006 candidate Michael Mowles.*

**21A § 1017. Reports by candidates****[SUBSECTIONS 1 - 3 OMITTED]**

**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.

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 5-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.

Minor

**§ 1017(3-A)(D-1) – Campaign finance report due 42 days before a general election**

*In 2008, the Legislature added paragraph D-1, which required that candidates file a campaign finance report by 5:00 p.m. on the 42<sup>nd</sup> day before a general election. The staff proposes that the report be due at 11:59 p.m. in conformity with the other candidate filing deadlines. The staff also suggests that the report not be required for candidates for municipal office. We believe the Legislature likely did not intend the requirement to apply to municipal candidates, and the Commission staff has received informal comments from municipal clerks that this report is not necessary.*

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.

**§§ 1017(2)(F) and (3-A)(E) – Reporting a post-election debt on semiannual reports**

*Note: the staff has withdrawn changes presented to you at the December 29, 2008 meeting regarding the duty to file post-election semiannual reports if the campaign of a traditionally financed candidate has surplus cash, or a loan or debt, in excess of \$100.*

**3-B. Accelerated reporting schedule.** Additional reports are required from nonparticipating candidates as defined in section 1122, subsection 5, pursuant to this subsection.

A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under Chapter 14 and who receives, spends or obligates more than the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the Commission, within 48 hours of that event, a report with the Commission detailing the candidate's total campaign contributions, including any campaign balance from a previous election, obligations and expenditures to date.

B. A nonparticipating candidate who is required to file a report under paragraph A shall file no later than 5:00 p.m.:

~~(1) A report on the 42nd day before the date on which an election is held that is complete as of the 44th day before that date;~~

Minor

**§ 1017(3-B)(B)(1) – Accelerated report due 42 days before an election**

*Paragraph (3-B)(B) imposes an additional filing requirement on a traditionally financed candidate with a Maine Clean Election Act opponent if the traditional candidate has raised private contributions totaling more than the initial Maine Clean Election Act distribution paid to the opponent. These candidates are required to file “accelerated reports” under paragraph (3-B)(B), which are summary reports showing total contributions received by the*

*traditionally financed candidate and total spending to date. Because in 2008 the Legislature required that all legislative candidates file a more complete, fully itemized report on the 42<sup>nd</sup> day before the election, it seems unnecessary to require an accelerated report on the same deadline.*

(2) For gubernatorial candidates only, a report on the 25th day before the date on which an election is held that is complete as of the 27th day before that date;

(3) A report on the 18th day before the date on which an election is held that is complete as of the 20th day before that date; and

(4) A report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.

The reports must contain the candidate's total campaign contributions, including any campaign balance from a previous election, obligations and expenditures as of the end date of the reporting period.

The nonparticipating candidate shall file only those reports that are due after the date on which the candidate filed the report required under paragraph A.

C. A candidate who is required to file a report under paragraph A must file with the Commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 11:59 p.m. on the date of that election:

(1) For a candidate for Governor, a single expenditure of \$1,000;

(2) For a candidate for the state Senate, a single expenditure of \$750; and

(3) For a candidate for the state House of Representatives, a single expenditure of \$500.

A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure.

The Commission shall provide forms to facilitate compliance with this subsection. The Commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds ~~1% in excess of~~ the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A.

Minor

***§ 1017(3-B)(B)(last sentence) – Accelerated report***

*The staff proposes deleting “1% in excess of,” which was a concept that the Legislature deleted from paragraph (3-B)(A) in 2007 at the suggestion of the Commission. We believe it was an oversight that this language was retained in the last sentence of paragraph B.*

**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. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the candidate's the family-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.

Significant

***§ 1017(5) – Paying campaign funds to members of the candidate's immediate family and household***

*In 2008, the Legislature required candidates to disclose payments to members of the candidate's immediate family or household. A number of proposals were made to the Legislature, and the final three provisions enacted by the Legislature conflicted slightly:*

*21-A M.R.S.A. § 1017(5) imposed a reporting requirement on a candidate if the candidate made a payment to a member of the candidate's household (regardless of family status). Likewise, a prohibition in 21-A M.R.S.A. § 1125(6-B) on payments of Maine Clean Election Act funds applied to payees who are members of the candidate's household.*

*In contrast, the Legislature applied a separate reporting requirement for Maine Clean Election Act candidates if they paid MCEA funds to members of the candidate's immediate family, regardless whether the family member resided in the same household as the candidate. (21-A M.R.S.A. § 1125(12))*

*The Commission staff proposes changes to all three of these provisions so that they all apply to members of the candidate's household and to members of the candidate's immediate family.*

**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~~~~\$50~~ 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.

Minor

***§ 1017(5-A)(B) – Reporting proceeds from sale of donated items at an auction***

*This section relates to how candidates report the proceeds of items that are sold at an auction. The section contains a reference to a candidate's duty under §§ 1017(2)(F) and (3-A)(E) to file semiannual reports if the candidate has a post-election surplus or deficit. The staff proposes that the reporting threshold referred to in this section be amended from \$50 to \$100 in order to be consistent with the threshold in §§ 1017(2)(F) and (3-A)(E).*

**[SUBSECTIONS (6) – (9) OMITTED]**

**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 ~~in a campaign~~ 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 on behalf of candidates, others.** A party committee shall report all expenditures ~~in cash or in kind of the committee made on behalf of~~ made to support or oppose a candidate, political committee, political action committee or party committee registered under this chapter. 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 ~~in cash or in kind of the party committee that are not made on behalf of~~ to support or oppose a candidate, committee, political action committee or campaign-party committee must be reported separately. The party committee shall report:

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

Minor

Minor

***§§ 1017-A(2) and (3) – Candidate-related expenditures reported by party committees***

*The staff proposes a clarification that party committees must report expenditures made to “support or oppose a candidate,” rather than expenditures made “on behalf of a candidate.”*

#### **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~~January 5th;
- (2) On April 10th and must be complete up to March 31st;
- (3) On July 15th and must be complete up to ~~June 30th~~July 5th; and
- (4) On October 10th and must be complete up to September 30th.

Minor

**§ 1017-A(4-A)(A) – Quarterly reports filed by state party committees**  
*This paragraph sets forth the schedule for state party committees for filing quarterly campaign finance reports. The staff recommends changing the end dates for two of the reports so that they conclude on December 31 and June 30 to correspond with the quarters of the calendar year. We have proposed a similar change in the PAC filing schedule in § 1059(2).*

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. Reports of spending to influence 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 ten (10) days of the filing deadline established in paragraph B or C.

E. A state party committee shall report 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.

**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.

Minor

**§ 1017-A(4-B)(A)(2) – Filing schedule for municipal, district, and county committees**  
*In 2007, at the suggestion of the Commission, the Legislature amended language in this subparagraph to require a pre-election report for local party committees due 11 days before a general election. Unfortunately, the language proposed by the Commission staff could be read to imply that a report is also required 11 days before a primary election, which was not our intention. The staff proposes the insertion of the word “general” to clarify that local party committees do not have to file campaign finance reports on the 11<sup>th</sup> day before a primary election, which we believe is unnecessary.*

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 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.

**[SECTIONS (4-C) – (8) OMITTED]**

**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

Significant

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:

- A. A valid emergency 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;
- C. Failure to receive notice of the filing deadline; or
- D. 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.

Significant
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***§ 1020-A(2) – Mitigating factors for a late-filing penalty***

*The first insertion would clarify that the Commission may waive a penalty in part if the penalty was disproportionate to certain factors. This would give the Commission more flexibility in setting appropriate penalties. The second insertion expressly permits the Commission to waive penalties due to interruptions in internet service, which seems advisable since most campaigns are required to file reports electronically on the Commission's website.*

**3. Municipal campaign finance reports.** Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk on forms prescribed by the Commission on Governmental Ethics and Election Practices. The municipal clerk shall send any notice of lateness required by subsection 6 and shall notify the Commission of any late reports subject to a penalty.

**4. Basis for penalties. (REPEALED)**

**4-A. Basis for penalties.** The penalty for late filing of a report required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, 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 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least two (2) days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the Commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the Commission within 5 calendar days thereafter.

The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The Commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the Commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, “mitigating circumstances” has the same meaning as in subsection 2.

## 5. Maximum penalties. (REPEALED)

**5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

- A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; section 1017, subsection 4; and section 1019-B, subsection 3;

Minor

### ***§ 1020-A(5-A)(A) – Maximum penalties for late reports***

*Section 1020-A(5-A) imposes maximum amounts for late-filing penalties calculated under subsection 4-A. The staff proposes inserting a reference to the new 42-day pre-general report enacted in 2008 in § 1020-A(3-A)(D-1), so that a maximum penalty of \$5,000 will apply to the late filing of that report as well.*

- B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;
- C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E;
- D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; or
- E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the Commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

**6. Request for a commission determination.** If the Commission staff finds that a candidate or committee has failed to file a report required under this subchapter, the Commission staff shall mail a notice by certified mail to the candidate or committee treasurer within ~~Within~~ three (3) business days following the filing deadline, informing the candidate

or treasurer that no report was received. If a candidate or committee files a report required under this subchapter late, a notice of preliminary penalty must be sent to the a candidate and/or treasurer whose registration or campaign finance report was is not received by 11:59 p.m. on the deadline date, informing them of the staff finding of violation and preliminary penalty calculated basis for calculating penalties under subsection 44-A and providing them with an opportunity to request a commission-determination by the members of the commission. The notice must be sent by certified United States-mail. Any request for a determination must be made within ~~10~~ fourteen (14) calendar days of receipt of the Commission's notice. The ~~ten-day~~ fourteen-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 ~~ten-day~~ fourteen-day period begins on the day the post office indicates it has given first notice of a certified letter. A candidate or treasurer requesting a determination may either appear in person or designate a representative to appear on the candidate's or treasurer's behalf or submit a ~~notarized written explanation of~~ sworn statement explaining the mitigating circumstances for consideration by the Commission. A candidate or treasurer may also request an adjudicatory hearing prior to a determination by the Commission, and an adjudicatory hearing must be held if requested. Any final determination by the Commission may be appealed to Superior Court in accordance with Title 5, sections 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure.

**7. Final notice of penalty.** If a determination has been requested by the candidate ~~or committee~~ and made by the commission, notice of the Commission's final determination and the penalty, if any, imposed pursuant to this subchapter must be sent to the candidate and the treasurer.

If no determination is requested, the preliminary penalty calculated by the Commission staff shall be considered final. The Commission staff ~~shall calculate the penalty as prescribed in subsection 4 and~~ shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the Commission.

**§§ 1020-A(6) and (7) – Requesting a waiver of a civil penalty**

*This section sets forth the Commission's procedures when a candidate files a report late and requests a waiver of the late-filing penalty. The Commission's actual practices have differed slightly from the procedures described in this section. The Commission staff proposes amending subsections 6 and 7 to conform to the staff's actual practice. The proposed changes would also provide an opportunity to request an adjudicatory hearing and clarifies the procedures to appeal a Commission determination.*

**8. Failure to file report.** The Commission shall notify a candidate who has failed to file a report required by this subchapter, in writing, informing the candidate of the requirement to file a report. The notice must be sent by certified mail. If a candidate fails to file a report after 2 notices have been sent by the commission, the commission shall send a final notice by certified mail informing the candidate of the requirement to file and that the matter may be referred to the Attorney General for criminal prosecution. A candidate who fails to file a report as required by this subchapter after the Commission has sent the notices required by this subsection is guilty of a Class E crime.

**8-A. Penalties for failure to file report.** The penalty for failure to file a report required under this subchapter may not exceed the maximum penalties as provided in subsection 5-A.

Significant

**9. List of late-filing candidates.** The Commission shall prepare a list of the names of candidates who are late in filing a report required under section 1017, subsection 2, paragraph C or D or section 1017, subsection 3-A, paragraph B or C within 30 days of the date of the election and shall make that list available for public inspection.

**10. Enforcement.** ~~The Commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the candidate, treasurer, political party or other person whose campaign finance activities are required by this subchapter to be reported. Thirty days after issuing the notice of penalty, the Commission shall report to the Attorney General the name of any person who has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.~~

Significant

**10-A. Enforcement.** Any penalties assessed pursuant to this section that have not been paid in full within thirty days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

**§§ 1020-A(10) and (10-A) – Enforcement of penalties**

*Because of the new enforcement procedures proposed in § 1004-B above, the staff proposes replacing current subsection 10 with subsection 10-A.*

## 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.

~~This subchapter does not apply to any broadcast time concerning any referendum campaign, as defined in section 1, subsection 36, which is provided by a broadcaster in accordance with the requirements of the Federal Communications Act, United States Code, Title 47, Section 315, generally referred to as the "Fairness Doctrine."~~

Minor

#### *§ 1051 – Reference to fairness doctrine*

*The staff proposes deleting the reference to broadcasts formerly required under the Fairness Doctrine. The doctrine was abolished in 1987. Under the policy, broadcasters were required to present controversial issues of public importance and to do so in a manner that was equitable and balanced.*

#### 21A § 1052. Definitions

##### [DEFINITIONS (1) – (4) OMITTED]

**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 influence the outcome of an election, including a candidate election or ballot question;
- (2) **(REPEALED)**
- (3) **(REPEALED)**
- (4) Any organization, including any corporation or association, that has as its major purpose initiating, promoting, defeating or influencing a candidate election, campaign or ballot question and that receives contributions or makes expenditures aggregating spends more than \$1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum in this State; and
- (5) Any organization that does not have as its major purpose promoting, defeating or influencing candidate elections but that receives contributions or makes expenditures aggregating spends more than \$5,000 in a calendar year for the purpose of promoting, defeating or influencing in any way the nomination or election of any candidate to political office.

Significant

**§ 1052(5) – PAC definition**

*In 2008, at the suggestion of the Commission, the Legislature amended paragraphs (A)(4) and (A)(5) of the definition of the term ‘political action committee.’ The 2008 amendment proposed by the Commission focused on an organization’s spending to influence an election over certain thresholds (\$1,500 and \$5,000). Upon further reflection, the Commission staff proposes that an organization’s receipt of contributions made for the purpose of influencing an election should also trigger PAC status, as it does in the campaign finance laws of other states.*

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

**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. 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

**3. Statement of support or opposition.** A statement indicating the positions of the committee, support or opposition, with respect to a candidate, political committee, referendum, initiated petition or campaign, if known at the time of registration. If a committee has no position on a candidate, campaign or issue at the time of registration, the committee must inform the Commission as soon as the committee knows this information.

Every change in information required by this section must be included in an amended registration form submitted to the Commission within ten (10) days of the date of the change. The committee must file an updated registration form every two (2) years between January 1st and March 1st of an election year. 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.

Minor

~~At the time of registration, the political action committee shall file an initial campaign finance report disclosing all information required by section 1060.~~

**§ 1053 (last sentence) – Initial campaign finance report due at time of PAC registration**  
*In 2008, the Legislature simplified the registration requirement for PACs, and it included a requirement that a PAC must file an initial campaign finance report at the time of registration. The staff proposes moving this initial reporting requirement to the first sentence of § 1059 where the other reporting deadlines for PACs are listed.*

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

Significant

Organizations which qualify as political action committees under section 1052, subsection 5 and which are organized to influence elections on the municipal ballot 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.

#### **§ 1053-A – PACs influencing municipal elections**

*The staff proposes a new subsection relating to PACs that are influencing candidate or ballot question elections at the municipal (rather than statewide) level. This proposed section is intended to bring attention to and to clarify current requirements, rather than to change policy.*

*Under the proposed new section, PACs formed primarily to influence a municipal election must register and file reports with the municipal clerk. A statewide PAC, which already exists and is registered with the Commission because it is influencing statewide elections and which engages in financial activity to influence a municipal election, would be required to file a copy of its Commission report with the municipal clerk.*

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

Significant

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 an election or campaign in this state.

#### **§ 1053-B – Out-of-state PACs**

*Currently, the staff finds the PAC law confusing as it relates to PACs which are organized outside of Maine. Section 1058 directs out-of-state PACs to file with the Commission hard-copies of their out-of-state PAC forms. In actual practice, out-of-state PACs have adopted*

*different procedures. Some register with the Commission and file “our” reports electronically on our website in the same manner as in-state PACs. Other out-of-state PACs follow the direction in § 1058 and mail to us paper copies of their Federal Election Commission (FEC) reports according to FEC deadlines. This disclosure is not particularly helpful for public access to the information.*

*The staff proposes amending § 1058 (discussed below), and inserting a new § 1053-B clarifying that out-of-state PACs must register with the Commission and file the Commission’s reports in the same manner as in-state PACs. We propose one exception in the statute.*

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

Any person not defined as a political action committee who ~~solicits and~~ 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, promoting, defeating or influencing in any way a ballot question must file ~~a reports~~ with the Commission in accordance with this section. ~~In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.~~ Within seven 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 influencing in any way a ballot question. 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. In the case of a municipal election, the registration and reports must be filed with the clerk of that municipality.

Minor

### **§ 1056-B (first sentence) – Ballot question committees**

*Ballot question committees are organizations which spend more than \$5,000 to influence a statewide or municipal ballot question, but which do not qualify as a PAC. The staff proposes deleting the reference to soliciting contributions in the first line of § 1056-B. We suggest that if a committee is receiving more than \$5,000 in contributions for the purpose of influencing a ballot question, the committee should be considered a ballot question committee – regardless of who solicited the contributions or whether there was any solicitation at all.*

**1. Filing requirements.** A report required by this section must be filed with the Commission according to the a reporting schedule that the Commission shall establish that takes into consideration existing campaign finance reporting schedule requirements 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.

Significant

**§ 1056-B(1) – Reporting schedule for ballot question committees**

*The staff proposes a statutory change which specifies that ballot question committees file campaign finance reports according to the schedule that applies to PACs under § 1059. Currently the statute directs the Commission to establish a filing schedule, which it has in Chapter 1, Section 11 of the Commission rules. The staff proposes deleting the schedule in Chapter 1, Section 11, and simply referring to the PAC filing schedule in statute. The staff also proposes a requirement that ballot question committees must file reports electronically and terminate in the same manner as PACs.*

Significant

**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; ~~and~~ the name and address of each contributor, ~~and, each~~ 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, promoting, defeating or influencing in any way a ballot question 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.

**§ 1056-B(2) – Reporting occupation information for contributors**

*Under current law, candidates, PACs, and party committees must report the occupation and principal place of business of their contributors. The staff proposes that ballot question committees should make similar disclosure.*

**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 ballot question;
- 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, promoting, defeating or influencing in any way a ballot question;
- C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient’s activities regarding a ballot question; 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.

Significant

**4. Records.** A person filing a report required by this section shall keep records as required by this subsection for four years~~one year~~ 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, promoting, defeating or influencing in any way a ballot question 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.

***§§ 1056-B(4) and 1057 – Requirement for PACs and ballot question committees to keep records***

*Currently, the PAC law contains conflicting provisions regarding how long PACs must keep records of their contributions and expenditures. Section 1054 requires record-keeping for four years, and § 1057 requires that records be kept until 10 days after the next election. The staff proposes that the record-keeping requirement be four years for both PACs and ballot question committees.*

**21A § 1057. Records**

Any political action committee that is required to register under section 1053 or 1053-B ~~makes expenditures which 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 subsections 1, 2 and 3 shall be retained by the political action committee for four years until ten (10) days after the next election following the election to which the records pertain.~~

Significant

***§§ 1056-B(4) and 1057 – Requirement for PACs and ballot question committees to keep records***

*Currently, the PAC law contains conflicting provisions regarding how long PACs must keep records of their contributions and expenditures. Section 1054 requires record-keeping for four years, and § 1057 requires that records be kept until 10 days after the next election. The staff proposes that the record-keeping requirement be four years for both PACs and ballot question committees.*

**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.

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

A political action committee that is required to register under section 1053 or 1053-B ~~with the Commission shall file a reports on its activities in that campaign with the Commission on forms as prescribed by the Commission according to the schedule in .~~ A political action committee organized in this State required under this section to file a report shall file the report for each filing period under section 1059. A political action committee organized outside this State shall file with the Commission on Governmental Ethics and Election Practices of this State a copy of the report that the political action committee is required to file in the state in which the political action committee is organized. The political action committee shall file the copy only if it has expended funds or received contributions or made expenditures in this State. The copy of the report must be filed in accordance with the schedule of filing in the state where it is organized. If contributions or expenditures are made relating to a municipal office or referendum, the report must be filed with the clerk in the subject municipality.

Significant

#### ***§ 1058 – Duty of PACs to file campaign finance reports***

*This section sets forth the requirement that PACs must report their campaign finances to the Commission. The staff proposes an amendment to simplify this section. As described above, we have proposed new sections 1053-A and 1053-B to clarify reporting obligations for municipal and out-of-state PACs.*

### **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 filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the filing deadline.

Significant

#### **1. Contents; quarterly reports and election year reports. (REPEALED)**

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

A. Quarterly reports must be filed:

- (1) On January 15th and must be complete as of ~~January 5th~~ December 31<sup>st</sup>;
- (2) On April 10th and must be complete as of March 31st;

- (3) On July 15th and must be complete as of ~~July 5~~ June 30th; and
- (4) On October 10th and must be complete as of September 30th.

**§ 1059 – Filing schedule for PACs**

*The staff proposes that the requirement to file an initial PAC report at the time of registration be moved to the first sentence of § 1059 from § 1053. In paragraph 2(A), the staff proposes that quarterly reports filed by PACs would cover activity through December 31 and June 30 to correspond to the end of quarters of the calendar year.*

**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. Reports of spending to influence special elections, referenda, initiatives, bond issues or constitutional amendments 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 ten (10) days of the filing deadline established in paragraph B or C.

**E.** A committee shall report 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.

**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 support or oppose ~~on behalf of~~ any candidate, campaign, political committee, political action committee and party committee or to support or oppose a referendum or initiated petition, 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 or on whose behalf the expenditure was made; 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;

Minor

**§ 1060(4) – Expenditures reported by PACs**

*The staff proposes that PACs must report expenditures made “to support or oppose” candidates, ballot questions, and political committees,” rather than expenditures made “on behalf of” a candidate or political committee.*

- 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 promoting, defeating or 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 ~~in cash or in kind~~ 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 promoting, defeating or 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 solicit or accept any contributions, incur any obligations, or make any expenditures to or on behalf of any candidate, political committee, party committee or political action committee to initiate, support, defeat or influence in any way the outcome of a referendum, initiated petition or election and the committee has no outstanding loans, debts or other obligations, 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. ~~If a termination report is not filed, the committee shall continue to file periodic reports as required in this chapter.~~

Significant

#### **§ 1061 – Dissolution of PACs**

*Under current law, political action committees which have an outstanding loan, debt, or other obligation are prohibited from dissolving. As a result, some PACs have filed reports with the Commission for years because of longstanding debt that they could not resolve. The Commission staff proposes that PACs with an unpaid loan, debt, or obligation be permitted to terminate. The proposed amendment would also specify that PACs must dispose of any surplus funds at the time of termination and report the disposition of funds.*

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

**1. Registration.** A political action committee required to register under section 1053, 1053-B, or a ballot question committee required to register under section 1056-B that fails to do so ~~in accordance with section 1053~~ or that fails to provide the information required by the Commission for registration may be assessed a forfeiture of \$250.

Minor

#### **§ 1062-A(1) – Failure to register as a PAC or ballot question committee**

*The staff proposes an insertion that the Commission may assess a penalty if a ballot question committee fails to register with the Commission or a municipal clerk.*

**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

Significant

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.

**§ 1062-A(2) – Waiver of late-filing penalties**

*The staff proposes an insertion that the Commission may partially waive a penalty if the penalty is disproportionate to certain factors.*

**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 two (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 penalties under this subchapter are \$10,000 for reports required under sections 1056-B or 1059, subsection 2, paragraphs B, C and E and \$5,000 for reports required under section 1059, subsection 2, paragraph A.

Significant

**§ 1062-A(4) – Maximum penalties for late reports**

*The staff proposes that a single \$10,000 maximum apply to late-filing penalties for any campaign finance report required for a PAC or ballot question committee, rather than the different maximums that apply to different reports under current law.*

**5. Request for a commission determination.** If the Commission staff finds that a 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 committee within ~~Within~~ three (3) business days following the filing deadline, informing the treasurer that no report was received. If a committee files a report required under this subchapter late, a notice of preliminary penalty must be forwarded to the ~~principal officer and~~ treasurer of the ~~political action~~ committee whose report is not received by 11:59 p.m. on the deadline date, informing them of the ~~staff finding of violation and preliminary penalty calculated~~ basis for calculating penalties under subsection 3 and providing them with an opportunity to request a commission determination. The notice must be sent by certified ~~United States~~ mail. A request for determination must be made within ~~ten (10)~~ fourteen (14) calendar days of receipt of the Commission's notice. The ~~fourteen-day ten-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 ~~fourteen-day ten-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 ~~notarized written explanation of sworn statement explaining the mitigating circumstances for consideration by the Commission.~~ A principal officer or treasurer may also request an adjudicatory hearing prior to a determination by the Commission, and an adjudicatory hearing must be held if requested. Any final determination by the Commission may be appealed to Superior Court in accordance with Title 5, sections 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure.

Significant

**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 no determination is requested, the ~~preliminary penalty calculated by the Commission staff shall be considered final. The Commission staff shall calculate the penalty based on the provision of subsection 3 and~~ 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.

Significant

**§§ 1062-A(5) and (6) – Requests for waiver of civil penalties**

*This section sets forth the Commission's procedures when a political action committee or ballot question committee files a report late and requests the Commission to waive the late-filing penalty. The Commission staff's actual practices have differed slightly from the procedures described in these subsections. The staff proposes amending subsections 5 and 6 to conform to the staff's actual practice. The proposal also proposes that committees may request an adjudicatory hearing and clarifies the procedure to appeal a Commission determination.*

**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 sections 1056-B or 1059, subsection 2, paragraph B, C or E is \$10,000. ~~The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph A is \$5,000.~~

Significant

**§ 1062-A(8-A) – Penalties for failing to file a report**  
*The proposed change clarifies that the Commission may assess a civil penalty for altogether failing to file a campaign finance report (as opposed to filing a report late). The staff believes that was the Legislature’s intention when subsection 8-A was enacted at the request of the Commission. The staff proposes that the maximum penalty for failing to file a campaign finance report by a political action committee or ballot question committee would be \$10,000 for any report.*

**9. Enforcement.** ~~The Commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the political action committee and its treasurer. Thirty days after issuing the notice of penalty, the Commission shall report to the Attorney General the name of any political action committee, along with the name of its treasurer, that has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.~~

Significant

**9-A. Enforcement.** Any penalties assessed pursuant to this section that have not been paid in full within thirty days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B.

Significant

**§§ 1062-A(9) and (9-A) – Requesting a waiver of a civil penalty**  
*Because of the new enforcement procedures proposed in § 1004-B above, the staff proposes replacing current subsection 9 with subsection 9-A.*

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

**21A § 1125. Terms of participation [SUBSECTIONS (1) – (4) OMITTED]**

**5. Certification of Maine Clean Election Act candidates.** Upon receipt of a final submittal of qualifying contributions by a participating candidate, the commission or its executive director shall determine whether the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted the appropriate number of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means;
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;
  - D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year;
  - D-2. Not been found to have made a material false statement in a report or other document submitted to the commission;
  - D-3. Not otherwise substantially violated the provisions of this chapter or Chapter 13 ~~had prior requests for certification denied on the basis of substantial violations of this chapter or Chapter 13 or certification revoked under subsection 5-A, paragraphs C to E;~~

Minor

**§ 1125(5)(D-3) – Certification of Maine Clean Election Act candidates**

*In 2007, the Legislature enacted paragraphs D-2, D-3, and D-4, which created additional standards that a candidate must meet to qualify for public funding under the Maine Clean Election Act (MCEA). Also, the Legislature enacted subsection 5-A which provided standards by which the Commission could disqualify a candidate who was already certified. The staff proposes an amendment to paragraph (D-3) which would prevent a candidate for qualifying for MCEA funding if he or she had substantially violated provisions of the Maine Clean Election Act or the campaign finance and reporting law. This would bring paragraph D-3 into conformity with paragraph (5-A)(H). One potential application of the amended paragraph D-3 could be candidates that have violated the MCEA by spending public funds on personal expenses. The Commission could potentially prevent the candidate from participating in the MCEA program in a future election.*

- D-4. Not failed to pay any civil penalty assessed by the commission under this Title, except that a candidate has 3 business days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification; and
- E. Otherwise met the requirements for participation in this Act.

The commission or its executive director shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible after final submittal of qualifying contributions and other supporting documents required under subsection 4 but no later than 3 business days for legislative candidates and five (5) business days for gubernatorial candidates. The commission and its executive director may take additional time if further investigation is necessary to verify compliance with this Act as long as the commission notifies the candidate regarding the anticipated schedule for conclusion of the investigation.

A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

**5-A. Revocation of certification.** The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

- A. Did not submit the required number of valid qualifying contributions;
- B. Failed to qualify as a candidate by petition or other means;
- C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor;
- D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form;
- E. Failed to fully comply with the seed money restrictions;
- F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission;
- G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or Chapter 13; or
- H. Otherwise substantially violated the provisions of this chapter or Chapter 13.

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within three (3) days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

**5-B. Restrictions on serving as treasurer.** A certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign.

**6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank

accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

**6-A. Assisting a person to become an opponent.** A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

**6-B. Expenditures as payment to the candidate or family or household members.**

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services.

B. A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's immediate family or household, ~~or a business entity, corporation or nonprofit entity~~ in which the candidate or a member of the candidate's immediate family or household holds a significant proprietary or financial interest, or nonprofit entity in which the candidate or a member of the candidate's immediate family or household is a director, officer, executive director, or chief financial officer, unless the candidate submits evidence according to procedures established by the commission that the expenditure is will be made:

A. (1) For a legitimate campaign-related purpose;

B. (2) To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and

C. (3) In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

For the purpose of this subsection, "business entity" refers to corporations, limited liability companies, limited partnerships, limited liability partnerships, and general partnerships.

If a candidate uses fund revenues for an expenditure covered by this paragraph, the candidate shall submit evidence demonstrating that the expenditure complies with the requirements of this section if requested by the commission.

C. This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

***§§ 1125(6-B) and (12) – Payments of MCEA funds to members of the candidate's immediate family and household***

*In 2008, the Legislature required candidates to disclose payments to members of the candidate's immediate family or household. A number of proposals were made to the Legislature, and the final three provisions enacted by the Legislature conflicted slightly:*

Significant

*21-A M.R.S.A. § 1017(5) imposed a reporting requirement on a candidate if the candidate made a payment to a member of the candidate's household (regardless of family status). Likewise, a prohibition in 21-A M.R.S.A. § 1125(6-B) on payments of Maine Clean Election Act funds applied to members of the candidate's household. The Legislature applied a separate reporting requirement for Maine Clean Election Act candidates if they paid MCEA funds to members of the candidate's immediate family, regardless whether the relative resided in the same household as the candidate. (21-A M.R.S.A. § 1125(12))*

*The Commission staff proposes changes to all three of these provisions so that they all apply to members of the candidate's household and to members of the candidate's immediate family. Also, in interpreting the prohibition in § 1125(12), some Commission members expressed that they did not wish to pre-approve candidates' payments to family members that fell within the statutory exception based on information provided by the candidate in advance of making the payment. The staff proposes deleting the language in the statute that suggests pre-approval. The staff has amended the proposal since December 29 to avoid the conflicting provisions raised by Commission member Marsano.*

**[SUBSECTION (7) OMITTED]**

**8. Amount of fund distribution.** By July 1, 1999 of the effective date of this Act September 1, 2011, and at least every two (2) ~~four (4)~~ years after that date, the commission shall determine the amount of funds to be distributed to participating candidates in legislative elections based on the type of election and office as follows. In making this determination, the commission may take into consideration any relevant information, including but not limited to:

(1) the range of campaign spending by candidates for that office in the two preceding elections;

(2) the Consumer Price Index published monthly by the Bureau of Labor Statistics, United States Department of Labor, and any other significant changes in the costs of campaigning such as postage or fuel; and

(3) the impact of independent expenditures on the payment of matching funds.

Before making any determination, the commission shall provide notice of the determination and an opportunity to comment to the Speaker of the House of Representatives, the President of the Senate, 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.

A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding two primary elections, as reported in the initial filing period subsequent to the primary

Significant

~~election, for the respective offices of State Senate and State House of Representatives.~~

~~B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding two primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.~~

~~C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding two general elections, as reported in the initial filing period subsequent to the general election for the respective offices of State Senate and State House of Representatives.~~

~~D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election.~~

~~E. For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election.~~

~~F. For gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.~~

~~If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.~~

#### **§ 1125(8) – Calculation of initial MCEA payments**

*Under current law, the initial payments made to legislative candidates participating in the MCEA are determined by a strict mathematical calculation: averaging the total expenditures of each candidate in the two previous elections. The staff is required to perform the mathematical calculation every four years. The Commission staff is concerned that the payment of matching funds to candidates in competitive elections is increasing the average amount spent by candidates, which is artificially increasing the initial payment amounts paid to MCEA candidates in subsequent elections. Also, a high-spending traditionally financed candidate could increase the initial payment amounts in subsequent elections. Under current law, these factors may result in an increase in the overall cost of the program.*

*We propose a more open process to determine the initial payment amounts which would allow interested persons to provide input to the Commission members or staff. We also suggest that the Commission have greater latitude to take other factors into consideration, such as inflation or the increased cost of campaigning. If the proposed language is enacted, the Commission could certainly continue to consider average candidate spending if it wished.*

**[SUBSECTIONS (9) – (11) OMITTED]**

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations 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 must disclose the candidate's family-relationship to the payee in a manner prescribed by the commission. 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. 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.

Significant

**12-A. Required records.** The 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; ~~and~~

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. for any services provided to the campaign by a vendor for which the candidate paid \$500 or more for the election cycle, invoices, timesheets or other documentation specifying in detail the services the vendor has provided, the amount paid, and the basis for the compensation paid by the campaign.

Significant

The treasurer shall preserve the records for three (3) ~~two (2)~~ 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.

Significant

***§ 1125(12-A) – Documentation of large payments of MCEA funds for services; period for retaining campaign records***

*The staff has observed an increase in MCEA candidates who are paying larger amounts for staff and campaign workers. To verify that these payments are for valuable campaign-related services, the staff proposes reasonable documentation requirements for candidates who pay a campaign worker more than \$500 in an election. The Commission staff believes that the roughly \$3 million in public funds provided to legislative candidates every election year would be more accountable if candidates were required to keep records of their expenditures for three years, rather than the current requirement of two years. The staff cannot audit every candidate every election cycle, and may need in some cases to audit candidates who have run in previous elections.*

**[SUBSECTIONS (13) – (14) OMITTED]**

## 21-A M.R.S.A. § 1127. Violations

**1. Civil fine.** In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. ~~This fine is recoverable in a civil action.~~ In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the committee authorized by the candidate pursuant to section 1013-A, subsection 1, found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. Before making any determination or assessment or ordering the return of funds, the commission must provide an opportunity for the candidate, treasurer, consultant or other agent of the candidate or the committee to appear before the commission and must conduct an adjudicatory hearing if one is requested. Any final determination by the commission may be appealed to Superior Court in accordance with Title 5, sections 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure. Fines assessed or orders for return of funds issued by the Commission pursuant to this section that are not paid in full within thirty days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

Significant

**2. Class E crime.** A person who willfully or knowingly violates this chapter or rules of the commission or who willfully or knowingly makes a false statement in any report required by this chapter commits a Class E crime and, if certified as a Maine Clean Election Act candidate, must return to the fund all amounts distributed to the candidate.

### **§ 1127 - Violations of MCEA**

*The Commission proposes an opportunity for respondents to request an adjudicatory hearing and language specifying that the Commission could enforce penalties assessed under § 1127 in the courts through the provisions in § 1004-B rather than by filing a civil action.*

**21A § 1128. Study report**

Minor

By ~~January 30, 2002~~ March 15, 2011, and every four years after that date, the commission shall prepare for the joint standing committee of the Legislature having jurisdiction over legal affairs a report documenting, evaluating and making recommendations relating to the administration, implementation and enforcement of the Maine Clean Election Act and Maine Clean Election Fund.

***§ 1128 – Study Report on Maine Clean Election Act***

*The Commission staff will be publishing a study report later this year updating the Legislature on the operation of the MCEA program. The staff proposes changing the timing of this report so that it is published during the first regular session of each new Legislature just after a gubernatorial election. We believe this will lead to a better re-evaluation of the MCEA program.*

## CHAPTER 15

### LOBBYIST DISCLOSURE PROCEDURES

**3 § 312-A. Definitions [SOME DEFINITIONS ARE OMITTED, AND SOME ARE INCLUDED FOR CONTEXT. THE ONLY PROPOSED CHANGE IS TO THE TERM LOBBYIST IN SUBSECTION 10.]**

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

**4. Compensation.** "Compensation" means anything of value that is received or to be received in return for, or in connection with, services rendered or to be rendered.

**5. Employer.** "Employer" means a person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide services. Employer includes any political action committee as defined in this section which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

**6. Employment.** "Employment" means an agreement to provide services in exchange for compensation or reimbursement of expenditures.

**7. Expenditure.** "Expenditure" means anything of value or any contract, promise or agreement to transfer anything of value, whether or not legally enforceable.

**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. Lobbyist.** "Lobbyist" means any person who is specifically employed by another person for the purpose of and who engages in lobbying in excess of 8 hours in any calendar month, or any individual who, as a regular employee of another person, expends an amount of time in excess of 8 hours in any calendar month in lobbying. "Lobbyist" does not include a lobbyist associate. An individual who lobbies on behalf of another person is not a lobbyist if that individual receives no compensation for lobbying other than reimbursement for lobbying-related travel within the state.

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**§ 312-A(10) – Definition of lobbyist**

*Staff comment: For the December 29 meeting, the staff recommended creating a new exception to the definition of lobbyist for persons who lobby for a non-profit or other organization on a volunteer basis and who receive reimbursement for their travel expenditures. That proposal is displayed above without any change from the December 29 version.*

*Our intention was that the change would allow more viewpoints to be provided to the Legislature on behalf of individuals who do not wish to register as lobbyists and by organizations which are reluctant to take on the expense and paperwork involved with formally registering a lobbyist. Registration of a lobbyist involves paying a \$200 fee, and filing monthly and an annual lobbyist disclosure reports.*

*The staff was motivated to propose this exception by Donald Simoneau, a veteran who would like to continue lobbying on behalf of the American Legion but who does not wish to be presented to the public as a “lobbyist” because he believes that implies he has been compensated. He receives reimbursement for his travel expenses only. Some e-mail correspondence from him is attached. He suggests that there should be an alternative reporting status for citizens who are advocating for or against legislation which does not designate them as lobbyists.*

*The staff appreciates that Mr. Simoneau perceives that there is a problem with the current reporting system. We ask that you take into consideration administrative feasibility in any legislative proposal you endorse.*

*At the December 29 meeting, Commission member Francis Marsano expressed his opposition to the proposal initially presented. He views it as a mistake that could be harmful to what the Commission seeks to achieve. It is true that if the staff’s initial proposal were enacted, in some circumstances the public would be deprived of knowledge of which individuals had their expenditures reimbursed by nonprofit or other organizations to encourage their testimony before the Legislature. The staff had viewed that as an acceptable trade-off for facilitating more testimony from individuals who wished to testify on a volunteer basis, but we fully appreciate that you may disagree as a matter of policy.*

**10-A. Lobbyist associate.** "Lobbyist associate" means an individual who:

- A. Is a partner, associate or employee of a lobbyist or is a co-employee of a regular employee of another person if that regular employee is registered as a lobbyist;
- B. Lobbies on behalf of the employer named on the lobbyist registration; and
- C. Expends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

**3 § 317. Reports**

Reports required by this section must be on forms prescribed or approved by the commission. The forms must provide for a sworn statement that the persons signing the report acknowledge the truth and completeness of all the information contained therein.

**1. Monthly session reports.** During the period in which the Legislature is in session, every registered lobbyist shall file with the commission, no later than 11:59 p.m. on the 15<sup>th</sup> calendar day of each month, a report concerning the lobbyist's activities for the previous month regarding each employer.

Every lobbyist shall report that lobbyist's lobbying activities for each month that the Legislature is in session, even if no lobbying has been performed or compensation or reimbursement for expenses received for the month. In the case of a lobbyist representing multiple employers, if no lobbying or services in support of lobbying were performed, one report listing each employer on whose behalf no lobbying was conducted may be submitted. The monthly report must contain the following information:

- A. The month to which the report pertains;
- B. The name and address of the lobbyist and employer;
- C. The names of the individuals who lobbied during the month;
- D. The specific dollar amount of compensation received for lobbying activities, as defined in section 312-A, subsection 9, during the month. The amount of compensation received for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately.

In the case of a regular employee, the specific dollar amount must be computed by multiplying the number of hours devoted to the preparation of documents and research for the primary purpose of influencing legislative action and to lobbying by the employee's regular rate of pay based on a 40-hour week;

- E. The specific dollar amount of expenditures made or incurred by the lobbyist during the month that is the subject of the report for purposes of lobbying as defined in section 312-A, subject 9 for which the lobbyist has been or expects to be reimbursed. The amount of expenditures for lobbying officials in the legislative branch, officials in the executive branch and constitutional officers must be reported separately;
- F. The total amount of expenditures by the lobbyist or the employer directly to or on behalf of one or more covered officials, including members of the official's immediate family;
- G. For any expenditure of money or anything of value made by the lobbyist or employer on behalf of a covered official or a member of the official's immediate family with a total retail value of \$25 or more, the name of the official or family member, the person making the expenditure and the date, amount and purpose of the expenditure;
- G-1. The date, and a description of an event, a list of all officials in the legislative branch or executive branch or members of an official's immediate family in attendance and the total amount of expenditures for the event, if the total amount of the expenditures for officials and family members is \$250 or more;
- H. A list of each legislative action by Legislative Document number, specific issue, nomination or other matter in connection with which the lobbyist is engaged in lobbying;
- I. A list specifically identifying each legislative action for which the lobbyist was compensated or expects to be compensated, or expended in excess of \$1,000 for lobbying

activities related to those actions and a statement of the amounts compensated or expended for each; and

J. A list of all original sources who have contributed or paid \$1,000 or more during the lobbying year, directly or indirectly, to the employer for purposes of lobbying. If the original source is a corporation formed under Titles 13 or 13-A, nonprofit corporation formed under Title 13-B or limited partnership under Title 31, the corporation, nonprofit organization or limited partnership, not the individual members or contributors, must be listed as the original source.

**2. Annual report.** Thirty days following the end of the year in which any person lobbied pursuant to section 313, the lobbyist and the lobbyist's employer shall file with the Commission a joint report that must contain the information required in subsection 1, for all lobbying activities for the year.

The information in reports required by subsection 1 must be approved signed by the lobbyist or by a person designated by the lobbyist in section 316, subsection 1. The information in reports required by this subsection must be approved signed by ~~both~~ the lobbyist or designated person and the employer.

Minor

***§ 317(2) – Signatures required for annual report***

*Lobbyists are now required to file annual and monthly reports electronically on the Commission's website, rather than on paper reporting forms. The staff proposes deleting the reference to a report being "signed" by the lobbyist or client.*

If the date any report required by this section is due falls on a day other than a regular business day, the report is due on the first regular business day next following the due date.

In addition to the amounts identified in subsection 1 as compensation received or expenditure made for the primary purpose of lobbying, this annual report must include the total amount of compensation received by the lobbyist or the lobbying firm, or expended by the employer, except compensation received or expended for purposes not related to lobbying.

**[SUBSECTIONS 2-A – 4 OMITTED]**

## GOVERNMENTAL ETHICS

### SUBCHAPTER II

### LEGISLATIVE ETHICS

#### 1 M.R.S.A. § 1009. Recommendations to Legislature

Following a general election, the commission may solicit suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction. The commission shall review the suggestions and may submit legislation within 90 days of the general election based on those suggestions or on proposals by individual members or staff.

Minor

#### *§ 1009 - Statutory recommendations to Legislature*

*The staff proposes this insertion to clarify that the Commission may submit to the Legislature a single bill within 90 days of a general election that can include both suggestions from the public and proposals that originated with individual members of the Commission or from Commission staff.*

#### 1 M.R.S.A. § 1012 Definitions [DEFINITIONS 1-5, 7, 9-10 OMITTED]

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

##### **2-A. Domestic partner.** "Domestic partner" means the partner of a Legislator who:

- A. Has been legally domiciled with the Legislator for at least 12 months;
- B. Is not legally married to or legally separated from another individual;
- C. Is the sole partner of the Legislator and expects to remain so; and
- D. Is jointly responsible with the Legislator for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.

Significant

**6. Immediate family.** "Immediate family" means a Legislator's spouse, domestic partner or dependent children.

**8. Relative.** "Relative" means an individual who is related to the Legislator or the Legislator's spouse as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, domestic partner, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter,

stepbrother, stepsister, half brother or half sister, and shall be deemed to include the fiancé or fiancée of the Legislator.

**§ 1012(6) – Definition of immediate family**

*Staff comment: In our December 29 proposal, the staff had proposed inserting the concept of domestic partner in the existing definition of the term ‘immediate family’ in the Legislative Ethics Law (Title 1). We did not include a precise definition of the term ‘domestic partner,’ which was an oversight on our part. The staff appreciates Commission member Marsano’s suggestion to insert a definition of ‘domestic partner.’*

*We propose using the definition of domestic partner that tracks the existing definitions of the term in the Election Law and Lobbyist Disclosure Law (21-A M.R.S.A. § 1(13-A) and 3 M.R.S.A. § 312-A(4-B)). Those definitions were recently accepted by the Legal and Veterans Affairs Committee in 2007, and already apply to other statutes within the Commission’s jurisdiction.*

**1 M.R.S.A. § 1013(3-A) – Confidentiality of legislative ethics complaints (not shown)**

*Staff comment: the staff withdraws its proposed changes to this section. After hearing Commission member Francis Marsano’s comments, I had an opportunity to consult with the Commission’s Counsel and the legislative committee analyst about the intent behind the Legislature’s 2008 changes to this statute. After gaining a better understanding of the legislative intent, the staff is opposed to amending this section.*

**1 M.R.S.A. § 1014(2) – Undue influence by a Legislator (not shown)**

*Staff comment: the staff withdraws its proposed change to this section. We originally proposed replacing the term ‘conflict of interest’ in this section with the term ‘violation of legislative ethics.’ We regarded this as a very minor statutory clean-up with little or no substantive impact. Since there is some feeling on the part of a Commission member that this was inadvisable, we suggest no changes to this section.*

## Two Emails from Donald Simoneau

**From:** Donald Simoneau [mailto:amlegion1a@msn.com]  
**Sent:** Monday, December 29, 2008 10:00 AM  
**To:** Wayne, Jonathan; Governor; Hannah Pingree; Mitchell, SenLibby  
**Cc:** Lavin, Paul; Brown, Jeremy J  
**Subject:** Re: Questions on Lobbying

Mr. Jonathan Wayne  
Executive Director  
Maine Ethics Commission

It has been well over a month since your last communication, and I was hoping to hear from you sooner so that if a correction could not be done as (House Keeping) then I could find a Sponsor to help fix this injustice!

Please tell me your thoughts so that the Small Non-Profits and especially Maine's Veterans who have Stood Up and Were Counted to protect all out Freedom's can believe that our State Government still cares about our voice being heard in Augusta!

I have been hoping since my first question in December 11, 2007 that this could be corrected but I am still waiting today December 29, 2008 for help!

I also ask Governor Baldacci and the Leadership of the 124th Legislature how many Veterans have you seen in the past year within the State House compared to other years when we filled hearing rooms to overfilled?

For God & [Country](#)  
Donald Simoneau

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October 29, 2008

Mr. Jonathan Wayne  
Executive Director  
Maine Ethics Commission

It has been a while since this first question about Lobbying. First I want to say thank you for any help you can give me, but I believe that the answer below is hurting Every Non-Profit Veterans and Service Organization in the State of Maine! The small groups are locked out of Augusta. If you do not think so look at the millions of dollars reported on your own reports of lobbyists.

I believe that the rules to control to Paid Lobbyists is taking the Small Groups or Poor Groups from having any say in Augusta. This past year with the Cost of Gasoline alone I

could not afford to pay out of my pocket anymore as I have for the past 10 years to travel to and from Augusta in my Handicap Van which gets 12 mpg, so I only went to Augusta a few times to promote three Ld's that would have an influence on the Veterans of Maine.

So you know with the 8 hr a month limit all three bills died!! NO SUPPORT!! If we are not allowed to be there then the Veterans in Maine have no chance of survival in Maine and we now know, that we are not wanted. When I look at the Lobbyist listing and how much they are paid I see why.

The American Legion contacted a Paid Lobbyists to see what it would cost the American Legion to hire a lobbyists to do what I have done for FREE for the past 10 years. We were told it would cost us around \$25,000.00 per year for TWO COMMITTEES and if it went to other COMMITTEES it would cost much more. In the past 10 years I have worked bills in Appropriations, Criminal Justice and Public Safety, Education, Health and Human Services, IF&W, Insurance and Financial Services, Judiciary, Labor, Legal and Veterans Affairs, State and Local Government, Taxation and Transportation, can you imagine what it could cost us, as we never know what bills will be proposed and what committees they will go to!

The Veterans in Maine now have NO VOICE in Maine!!! THAT IS WRONG!! We stand no chance of changing the State of Maine lobbyists laws as I am sure the Paid Lobbyists would come out against us from everywhere, as that would be money out of their pockets directly!!

The rules need to be changed, but until they are I believe EVERY Non-Profit Veteran Group or Service organization will have no Voice in Augusta and that is wrong, and the State of Maine should hang their head in sham. It is funny because many of the friends I have in Augusta, have asked me why I am not working any bills in Augusta, and that the Committees need my voice the voice of the veterans, where have I been? I have been locked out because I am just a poor volunteer veteran.

Almost every session in Augusta has Bills to tighten control to lobbyists, but in fixing the Paid Lobbyists you have closed the doors to groups like the Veterans in Maine. The budget that the American Legion had hoped I could use to travel to Augusta starting in 2008 was 20 cents per mile up to \$600 per year, so the Veterans lose their voice over \$600 because we can not afford to pay the Tens of thousands to paid lobbyists

I believe an easy fix is to make a new group listing for Lobbyists.

1. Organization has to be Veterans or Service Group with 501 C3 or C19
2. Budget would have to be less than \$1500 - \$2500 per yr for completely Volunteer Work
3. Only direct Expenses such as Copies - Mail - Travel Reimbursement - Meals for the volunteers would be allowed.
4. NO Pay or Stipend of any type for the Volunteers would be allowed
5. Allowance to organization for Paid Advice from a Lawyer would be allowed and reported to the committee beyond the above limit as a Lawyer could be very expensive.

6. Any expenses paid directly to Legislators such as using Hall of Flags luncheon to introduce Veterans and Veterans Issues to a Legislature would be reported to the committee.
6. The organization would have to Register with Ethics Committee and report monthly all these numbers

These are things I have come up with and I am sure others that might be needed. The committee knows what has been needed in the past I am hoping we can come up with something that is workable.

I was told years ago if you are not part of the Solution you are part of the problem, so this is my shot at a solution! We need to talk!!

Donald Simoneau  
Department of Maine Commander  
2006 - 2007  
The American Legion  
3451 Main St, Fayette, ME 04349

# Carl Lindemann

P.O. Box 74  
Austin, Texas 78767-0074

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Phone 512-495-1511  
Email Carl@cyberscene.com

Maine Commission on Governmental  
Ethics and Election Practices

RE: Agenda Item #4: Proposed Statutory Changes

December 24, 2008

Dear Commission Chair Friedman and fellow Commissioners,

Thank you for this opportunity for public comment on this agenda item. I regret that I am unable to appear in person, so please accept these written comments.

One key item missing from the proposed changes offered by the Commission staff are any addressing the changes brought by this month's Supreme Judicial Court's decision regarding the appeal I filed against the Commission. Executive Director Wayne has indicated that this is to be included on the agenda for your January 29 session. However, that leaves little time to craft proposed legislative changes in time to meet the post election 90-day deadline. I thought to alert you to the issues raised here so that, if you deem it necessary, the staff might draft proposals for the January meeting.

From the outset, my interest in bringing that complaint has been the larger public policy issues. The Supreme Judicial Court's decision raises two such issues that will be of great interest to the Commission.

1.) **No Right of Appeal for Complaints made in the Public Interest:**

The Supreme Judicial Court's decision does not just apply to my case alone. It applies to any complaint brought in the public interest before the Commission – including those brought under the recent reforms allowing citizens the right to bring complaints against legislators. This has numerous consequences. My attorney in this matter, John Branson, expressed the public policy issues before the Law Court. Though its ruling does not address them, they are pertinent to the Commission. Assistant Attorney General Gardiner should be well aware of them. I attach these here for your consideration.

Though the Supreme Judicial Court's decision was silent on these policy issues directly, that does not make them any less pertinent to the Commission. The matter was discussed during oral arguments, and Assistant Attorney General Gardiner apparently suggested that one solution would be for the legislature to add standing for citizens. That may well be worthwhile, and the Commissioners should certainly consider her suggestion.

Other, larger questions raised here surround the basic operation of the Commission. Who should pursue cases that benefit the general public at the Commission? Why does staff pursue cases concerning MCEA and lobbyist laws proactively, while these other public interest cases are only addressed reactively when citizens and public interest groups bring complaints? In the pre-MECA Commission, the Executive Director pursued these cases *sua sponte*. Why is that no longer the practice? Should that continue given that public interested complaints now lack full standing? What are possible legislative changes and/or rulemaking that will ensure that this class of public interest complaints receives equal treatment as others before the Commission?

## 2.) Commission Chair Friedman's "Significant Purpose" Doctrine:

At the December 20, 2006 meeting of the Commission, Commissioner Friedman advanced his "Significant Purpose" doctrine. This was one of the key matters up for judicial review in my appeal. Several members of the Commission – including Commissioner Friedman himself if memory serves – indicated their interest in such a review. However, the Supreme Judicial Court's decision has denied that opportunity. Now, the Commission may wish to codify this doctrine.

The Friedman Doctrine, as I understand it, is that pre-existing organizations that take engage the majority (and even the totality) of their capabilities for the passage or defeat of a ballot initiative cannot be determined to be Political Action Committees (PACs) in a single election cycle. In this context, the "Major Purpose" of the organization in the election time frame becomes what Commissioner Friedman termed a "Significant Purpose" in the life of the organization. However, he noted, taking on this same "Significant Purpose" in subsequent ballot initiatives might alter the context such that the "Significant Purpose" would become, in retrospect, a "Major Purpose" and so trigger PAC reporting.

It seems clear that working out the mechanics of the Friedman Doctrine is necessary and should happen as soon as possible. It is possible that pre-existing organizations may take on upcoming ballot initiatives as their “Significant Purpose”. Without some refinement here, such entities may be able to take on PAC activities without PAC reporting.

Again, I look forward to a full discussion of these issues at the January 29 meeting, and hope that these comments are helpful should you deem it appropriate for the staff to prepare proposals for that session so as to meet the deadline for proposed legislative changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Lindemann". The signature is written in a cursive style with a long, sweeping underline.

# Carl Lindemann

P.O. Box 74  
Austin, Texas 78767-0074

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Phone 512-495-1511  
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Maine Commission on Governmental  
Ethics and Election Practices

RE: Addendas to December 24, 2008 Memo

January 16, 2009

Dear Commission Chair Friedman and fellow Commissioners,

I forward these items to enhance your understanding of the comments submitted in my memo of December 24, 2008 for the December 29 meeting. The discussion of the issues raised has been deferred till the January 29 meeting. These are submitted by the deadline that the Executive Director set for public comments regarding the December agenda item/discussion.

Addenda #1 is a part of an e-mail exchange with Executive Director Wayne last September. It addresses the differences between what triggers complaints for the Commission in MCEA, Lobbying and Ethics enforcement. During Executive Wayne's tenure, public interest ethics complaints have only been brought by private parties and so are unlikely to have the right to appeal.

Addenda #2 offers models for legislation to address the issues raised in my memo. Pursuant to 1 M.R.S.A. § 1009 cited in Executive Director Wayne's December 19, 2008 memo to Commission members, these are "suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction."

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Lindemann", with a long, sweeping underline.

encl.

## LINDEMANN: ADDENDA #1:

*Are ethics complaints initiated the same way as MCEA/Lobbying cases?*

From: Carl Lindemann  
Sent: Wednesday, September 10, 2008 3:38 PM  
To: Wayne, Jonathan  
Cc: Gardiner, Phyllis; Lavin, Paul  
Subject: Re: Policy & procedure

Much appreciated. Thank you.

In a separate matter, I've been looking through the records of the Commission for the past few years and have a question about what triggers cases. It seems that different mechanisms are in effect for what brings an item onto the agenda in the administration of MCEA, the lobbyists and then ethics. The same legal standard is in operation - evidence that a violation may have occurred - but the way that is reached seems different. As you know, I have expressed interest in the past - and have published - about Maine's pioneering combination of ethics enforcement and "clean election" administration and am curious about how the MCEA se compare and contrast in terms of triggering action from the Commission.

First, the bulk of what is on the agenda is MCEA administration and it is apparently triggered automatically by just checking who is and isn't in compliance plus the random audits for those that are otherwise compliant.

Second, I have seen a few lobbyist cases that seem to be triggered in much the same way - eg. late filings that turn up in carrying out the Commission's basic administrative function.

Now, it seems that enforcement of the ethics laws is fundamentally different in that it relies perhaps exclusively on third-parties bringing complaints - demonstrating that the legal standard for the Commission's intervention exists, and then bringing the case.

Are there ANY examples of the Commission going forward with a complaint sua sponte in an ethics violation? I've looked through, and can't seem to find anything recent. Can you think of any instances? As I recall, the Saviello case in early 2006 is an interesting counter-point. It was the sort of case that, given the CLF's lack of standing, that the Commission would take up sua sponte. But that did not happen. As I recall, Asst. AG Gardiner actually found that the Commission did have this ability, but the Commissioners voted against exercising it. That, as I understand it, was a core issue addressed in the recent ethics reforms that empowered citizen complaints.

Again, it seems that there is a fundamentally different mechanism at play here between the way the MCEA and lobbyist laws are administered versus the way the ethics laws are

enforced. If there are counter-examples of the Commission addressing ethics violations without a third-party triggering the case, please let me know.

Any thought, observations or examples you may have to illuminate these differences - or to show that such differences are illusory - would be most welcome.

Again, thank for your attention.

-CL

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Subject: RE: Policy & procedure  
Date: Thu, 11 Sep 2008 09:36:52 -0400  
From: Wayne, Jonathan  
To: Carl Lindemann  
Cc: Gardiner, Phyllis  
Lavin, Paul

There is a difference in the way that campaign finance and lobbyist disclosure violations come to the attention of the Commission, on one hand, compared to violations of legislative ethics on the other. In the case of campaign finance and lobbyist disclosure violations, the Commission receives reports of the activity that is regulated (campaign contributions and expenditures, lobbyist activity). We review those reports and if we see violations we bring them to the attention of the Commission members.

In contrast, the Commission does not receive reports of the activities of Legislators, so it is not as well positioned to know if a Legislator has committed an ethical violation that is within the Commission's jurisdiction. The Commission's jurisdiction over legislative ethics is quite limited: it primarily consists of three areas set forth in 1 MRSA 1014 (conflicts of interest, undue influence on an administrative agency, abuse of office or position). For example, with respect to conflicts of interest, there are hundreds of bills introduced each legislative session, and we generally do not know all of the Legislators who are influencing each bill, and we do not know to what extent, if any, each bill might affect the Legislator's private employment. So, practically speaking, it is more likely that a complaint of a conflict of interest will be raised by some source outside of the Commission who is involved in the legislative process (i.e., someone who understands the content of the bill, which Legislators have influenced the bill, and the extent to which the bill - if enacted - would affect the economic situation of the Legislator, or his or her family member, client, employer, or business).

Until recently the Commission's authority to investigate complaints was described in 1 MRSA 1013(1)(B) as "To investigate complaints filed by Legislators, or on its own motion, alleging conflict of interest against any Legislator, to hold hearings thereon if the commission deems appropriate and to issue publicly findings of fact together with its

opinion; ..." So, if the Commission became aware on its own of an ethics violation without a complaint being filed, it could pursue it "on its own motion."

I am aware of only one situation in which the staff of the Commission brought a matter to the members of the Commission which the staff believed might be a legislative ethics violation. The issued involved a possible conflict of interest by a Legislator, and was raised by my predecessor in 2001. I believe the Commission voted to dismiss the matter, although I have not researched it recently. I am required to keep the details of that matter confidential. There could be other examples of Commission-initiated investigations farther back in the history of the Commission, but I am not aware of them.

Regarding the Commission's authority in the Saviello issue, you are correct that the Commission was advised by its counsel that it had the ability to investigate the concerns raised by the Conservation Law Foundation. (A different Assistant AG provided advice to the Commission, not Phyllis Gardiner.) Two members of the Commission voted in favor of pursuing the inquiry (Drew Ketterer and Mavourneen Thompson), and two Commission members voted against (Jean Ginn Marvin and Vinton Cassidy). Unfortunately, we lacked a fifth member at that time to break the tie, so with a 2-2 vote no action was taken to pursue the CLF inquiry.

The language in Section 1013(1)(B) was amended in 2008 by Chapter 642. A link to Chapter 642 is below. Although the new law is in effect, it is not yet reflected in the statutes posted on the Legislature's website. You have not disclosed where you are headed with all this, but just in case you are considering bringing a legislative ethics matter to the attention of the Commission, please follow the procedures in Section 1013(2-B)(1) and keep in mind the confidentiality provisions in Section 1013(3-A).

Thank you.

Here is a link to Chapter 642:

<http://janus.state.me.us/legis/LawMakerWeb/externalsiteframe.asp?ID=280028078&LD=2219&Type=1&SessionID=7>

Here is a link to the index for Chapter 25 of Title 1, in case you wish to see Sections 1013 and 1014 before they were amended by Public Law 642:

<http://janus.state.me.us/legis/statutes/1/title1ch25sec0.html>

**-END-**

## LINDEMANN: ADDENDA #2 – MODEL LEGISLATION

1.) "An Act to Provide Judicial Review for the Public Interest in Ethics Proceedings"  
This provides equal standing for public interest complaints brought to the Maine Commission on Governmental Ethics and Election Practices. At present, complaints must demonstrate a specific injury to have standing for 80(c) petitions to appeal final determinations of the Commission. This demand cannot be met in a large class of election law cases typical to the Commission where citizens are harmed equally. This unequal system creates an unequal dynamic where the selfish, self-interested parties have advantage over those acting in the public interest. What is required is the following emendation to 21-A M.R.S.A. 1003(2) (**SEE ADDITION IN BOLD ITALICS UNDERLINED**):

### 21-A M.R.S.A 1003. Investigations by commission

**2. Investigations requested.** A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred. **In the event that the commission refuses to conduct the investigation requested by the person making application under this subsection, or concludes that a violation of law has not occurred, the person making application hereunder shall have standing to seek judicial review of the commissions final decision and/or action pursuant to the Maine Administrative Procedure Act, 5 M.R.S.A. 11001 et seq.**

#2: "An Act to Clarify Political Action Committee Status for Long-Standing Entities"  
This clarifies an ambiguity in 21A M.R.S.A. 1052(5)(4) that allows long-standing organizations to avoid the reporting responsibilities of Political Action Committees (PAC) despite taking on a PAC's "major purpose" of passing or defeating a candidate election, campaign or ballot question in a campaign cycle. What is required is to emend the existing statute to specify that the "major purpose" provision that defines PAC status be determined over the course of the single, particular campaign cycle rather than over the entire life of the entity (**SEE ADDITION IN BOLD ITALICS UNDERLINED**):

21A M.R.S.A. 1052 **5. Political action committee.** The term "political action committee:  
4. Any organization, including any corporation or association, that has as its major purpose **during that election cycle** initiating, promoting, defeating or influencing a candidate election, campaign or ballot question and that spends more than \$1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum in this State; and...

**-END-**

# Carl Lindemann

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Maine Commission on Governmental  
Ethics and Election Practices

RE: Opportunities to Comment on Statute, Rule and Policy Changes

January 16, 2009

Dear Commission Chair Friedman and fellow Commissioners,

Thank you for this opportunity for public comment. I regret that I will be unable to appear at the January 29 meeting in person. Please accept these written comments.

It appears that amendments to the campaign finance, lobbyist disclosure, and legislative ethics statutes within its jurisdiction that have been drafted by the Commission staff have not been processed according to the statute that authorizes such “proposed statutory changes” from the December agenda. It may be that such agency suggestions are not bound by the same statutory deadline.

In his memo of December 19, 2008, Executive Director Wayne identifies the election law statute that details the process for developing these proposed statutory changes as 1 § 1009:

**1 § 1009. Recommendations to Legislature**

Following a general election, the commission may solicit suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction. The commission shall review the suggestions and may submit legislation within 90 days of the general election.

A common language reading shows this as providing an opportunity for the Commission to have the general public participate in suggesting such recommendations. If the Commission exercises this option, the first step in the process is to “solicit suggestions”. Then, once these suggestions are in hand, the Commission *shall* review them. Finally, after this review, the Commission *may* submit legislation based on these suggestions.

The process observed by the Commission staff for the December 29 meeting seems altogether different. In introducing the “proposed statutory changes” agenda item,

Executive Director Wayne seemed to understand that the statute served a different purpose. He stated that:

One of the commission's duties in the election law is that it may, if it chooses, put forward legislation to improve the laws within its jurisdiction.

The February deadline he mentioned as well as his description of a solicitation of input from the Commission staff seems to reference 1 § 1009. In an e-mail correspondence about this, he neither confirmed nor denied that he was operating under this statute and, instead, states, "it is very common for administrative agencies to put in bills relating to the areas within the agency's jurisdiction."

### ***Wayne's Previous, Contrasting Interpretation***

Executive Director Wayne is now apparently operating under 1 § 1009 with a very different interpretation than what he apparently used in January 2007. Then, he seemed to understand that the process to "solicit suggestions" was through public solicitation, albeit about unrelated matters and not specific to seeking suggestions for legislative proposals. Now, he seems to understand that such "solicitations" can be limited to Commission staff members only. I have asked Assistant Attorney General Gardiner whether either of these interpretations properly carries out the statutory process. That request is attached here, along with the correspondence with Executive Director Wayne prompting it.

Any reading of 1 § 1009 should take into account an alternate means by which Executive Director Wayne has previously proposed legislation based on staff recommendations. In his memo to Commission Members and Counsel dated September 13, 2007, he states "Administrative agencies are permitted to submit bills before the deadline of October 3, 2007," then offers suggested proposals like what he brought to the Commission last month. This ability to bring forward agency legislative proposals apart from 1 § 1009 suggests that 1 § 1009 is intended to serve non-agency concerns and so should be based primarily on solicitations from outside the Commission staff.

### ***Addressing Commissioner Concerns***

As a practical matter, it would seem that the Commission staff's suggestions now before the Commission can be reviewed under the general agency provision after the 90-day post-election deadline set by 1 § 1009. If so, those should wait until the non-agency suggestions are processed. Perhaps improving 1 § 1009 should be a top priority. The opening sentence could be amended to read: "...the commission may solicit suggestions from the public for improving..." I believe this would address the concern Commissioner Thompson expressed for public input.

In addition, Commissioner Marsano expressed reservations over how these proposals are understood by the legislature. If they go forward by split vote, the legislature may get the misimpression that there was unanimous approval. The legislature may also assume that these proposals come to them after being properly processed under 1 § 1009. The interpretations of the statute that Executive Director Wayne is apparently applying may be something other than what the legislature understands. I agree with Commissioner Marsano that, as the legislature takes these proposals from the Commission, they should be receiving what it thinks it is getting. Given that the Executive Director says that these suggestions now carry great weight with the legislature, the need for such clarity is all the more crucial.

***The Commission's Process without Judicial Review***

There is an additional benefit for your consideration here of the propriety of Executive Director Wayne's apparent interpretations of 1 § 1009. The Commission touched on this matter during its meeting on January 19, 2007. Then-Chairman Ketterer suggested that the proper way to challenge the Commission's process is to file an 80(c) petition. Now, subsequent to the Law Court's ruling of December 16, 2008, there is no judicial review possible for such appeals brought in the public interest. So this matter provides an opportunity for the Commission to consider changes in its process in light of the Law Court's ruling. It is reasonable to expect a heightened responsibility for the Commission to carry out the necessary due diligence to assure the public that the process under 1 § 1009 is proper. However, that is one subject of my outstanding submission to the Commission for the December 29, 2008 meeting. The Executive Director has said that this sole public suggestion (unsolicited) will be carried over to the January meeting. Note that my response here is to his solicitation only for comments on the staff suggestions.

Finally, Executive Director Wayne has informed me that "prior to the November 4, 2008 general election the Commission Chair decided against permitting individuals to participate in Commission meetings by telephone." It is unclear as to whether this only bars active participation. As a courtesy to the Commission members, I will be available to respond to your questions at the telephone number above.

Yours Very Truly,

A handwritten signature in black ink, appearing to read "Carl Lindemann", with a long horizontal flourish extending to the right.

encl.

# THE WAYNE/LINDEMANN CORRESPONDENCE

At 04:54 PM 12/31/2008, Wayne, Jonathan wrote:

At the December 29 meeting, the Commission acknowledged receiving your comments on proposed statutory changes, but took no action on them. The members scheduled an opportunity for public comment on the statutory changes proposed by staff for the January 29 meeting. You are welcome to comment on statutory changes at that meeting. Also at that meeting, the members will hear public comment on proposed changes to the Commission rules. I have attached two invitations to comment.

I will be in touch with you next week regarding your interest in addressing the Commission on January 29 regarding the Supreme Judicial Court decision. Thank you.

<<Explanation and Statutory Changes Proposed by Ethics Commission Staff.pdf>>  
<<Opportunity to Comment on Ethics Statutes, Rules, and Policies.pdf>>

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**From:** Carl Lindemann [ <mailto:carl@cyberscene.com> ]  
**Sent:** Monday, January 12, 2009 12:17 PM  
**To:** Wayne, Jonathan  
**Cc:** Lavin, Paul; Gardiner, Phyllis  
**Subject:** Re: Update on Ethics Commission's December 29 Meeting

Jonathan,

I have not received your follow up mentioned below, and am standing by for it.

In the meantime, I have reviewed the audio from the Dec. 29 meeting. All I heard regarding my submission was Commissioner Marsano alerting you to the fact that he had computer troubles and so could not review the document of unknown authorship that had apparently been sent to him. It is unclear as to whether the problem was on his end or yours - could you please see to it that this is included in the upcoming packet so that hard copies are sent to the commissioners?

Also, I have an additional concern after reviewing these proceedings. This relates to the procedure you applied for developing these "recommendations to legislature." The statute is as follows:

**1 § 1009. Recommendations to Legislature**

Following a general election, the commission may solicit suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction. The commission shall review the suggestions and may submit legislation within 90 days of the general election.

As you may recall, the same issue came up two years ago. When you explained the process at the time, you made it clear that soliciting suggestions meant reaching out to the public, and was an integral part of the process. Now, it seems that you have arrived at a very different interpretation of the statute - that if you "solicit suggestions" only from the Ethics Commission staff, that is sufficient. That seems at odds with a plain-language reading of the statute. It seems that if the Legislature intended what you interpret it to mean, it would read "...the commission may **propose** suggestions...." instead of how it actually reads: "the commission may **solicit** suggestions..."

Again, the apparent meaning is that whatever legislation you submit, it must be based on

suggestions solicited from beyond the commission.

Reviewing the discussion from January 2007, I see that Asst. AG Gardiner was asked for her opinion on the matter. Apparently, that was never provided. In addition, then-Chair Ketterer insisted these staff actions MUST come from the direction of the commissioners. This is in contrast to your statements on the 29th where these actions are motivated by your interpretation of 1 § 1009. Note that the input given by Asst. AG Gardiner at the Dec. 29 meeting focused on a different matter - she indicated that there was no requirement for the commission to allow public comment about the legislation. That is altogether separate from the question as to whether or not that legislation must come as a result of outside solicitation.

Given this altogether new interpretation of the statute where the requirement that you "solicit suggestions" is met by only soliciting input from your staff, I reiterate the request made two years ago that she clarify this matter. In her opinion, are you authorized by this statute to craft legislation without soliciting suggestions from outside the ethics commission staff? If she prefers, I will make a separate, formal request for her opinion here. You may wish to review the recording of the January 19, 2007 session. Many of the crucial details are not captured in the minutes drawn from the session, especially Chair Ketterer's insistence that the staff cannot move forward developing legislative proposals sua sponte as you are now apparently doing. I've posted the relevant audio, the fine-minute clip is available here:

[http://www.truedialog.org/ethics/ethics\\_1\\_19\\_2007.mp3](http://www.truedialog.org/ethics/ethics_1_19_2007.mp3)

Please also be aware of what may be a consequence of the commission staff carrying out such lobbying activities without a clear mandate under 1 § 1009 or at the behest of the Commissioners. Since it seems likely that over eight hours was invested in December developing this proposed legislation, you may be in technical violation of the lobbying statutes you are charged to enforce.

So, to sum up:

- 1.) I await your promised follow up regarding my "interest in addressing the Commission on January 29 regarding the Supreme Judicial Court decision.
- 2.) I am seeking Asst. AG Gardiner's reading of 1 § 1009, specifically - is the commission authorized by this statute to craft legislation without soliciting suggestions from outside the ethics commission staff?

Sincerely,

-CL

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At 04:20 PM 1/12/2009, Wayne, Jonathan wrote:

Thank you for your communication.

1. The Commission members received your comments for the December 29, 2008 meeting, separate from the regular packet they received. Paul Lavin sent your comments to them by e-mail, and they received hard copies at the meeting. Since the members invited public comment on the proposed statutory changes, I will include your comments in the upcoming packet for the January 29 meeting under the agenda item in which the members consider statutory changes.

2 If you would like the Commission to schedule a separate item on its agenda for you to discuss the Supreme Judicial Court decision in the court challenge you brought, please provide something in writing by Tuesday, January 20 about what you would like to discuss. I would include your submission in the packet for the January 29 meeting, so that the members would

know in advance what you would like to discuss. To address your specific concern, some of the members might wish to review the court decision which I e-mailed to them on October 21, 2008 (three months before the 1/29 meeting). Even a short paragraph submitted by e-mail would assist the Commission members in knowing in advance what will be the subject for discussion for that agenda item.

Since you mentioned in your last e-mail that your mailing address is in Texas, I wanted to let you know for purposes of the January and March meetings that prior to the November 4, 2008 general election the Commission Chair decided against permitting individuals to participate in Commission meetings by telephone. Therefore, if you would like to discuss the court decision with the members live at the January 29, 2009 meeting, it would have to be in person. Or, the members could consider whatever written submission you would like to make.

3. With regard to your point about statutory proposals, I don't believe that the Commission is precluded from proposing statutory changes that have originated with Commission members and staff. My understanding is that it is very common for administrative agencies to put in bills relating to the areas within the agency's jurisdiction.

Thank you

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**From:** Carl Lindemann [mailto:carl@cyberscene.com]  
**Sent:** Tuesday, January 13, 2009 10:49 AM  
**To:** Wayne, Jonathan  
**Cc:** Lavin, Paul; Gardiner, Phyllis  
**Subject:** Re: January 29, 2009 Commission Meeting

Thank you for your response.

Please do include my comments dated December 24, 2008 in the January 29 packet.

Regarding #2 below, I will be back to you regarding that. In the meantime, I am confused by your response below. The Law Court ruling concerning my appeal was decided on December 16, 2008. You seem to be referring to the Law Court ruling on the Mowles case that was decided on October 21, 2008. That was included in the October 27 agenda and I see that it is also noted in the minutes with your comment that "this item was (for) informational purposes only". Is there some reason why the December 16 Law Court ruling wasn't treated in the same way - automatically included in the agenda of the next meeting if only for informational purposes? That seems to be the process in place with the previous ruling - is there some reason you departed from that process instead of including it on the December 29 agenda?

Regarding #3 below, I am also confused by your reply. Are you proceeding here under 1 § 1009? Or are the proposals you are crafting for the legislature going forward under this understanding you have of what is common practice for administrative agencies? Or perhaps you are operating under some combination of the two? Also, is there some special exemption from the lobbying statutes for such administrative agencies?

Let me explain why it is necessary to achieve clarity on this point. During the January 19, 2007 session, Commission Chair Ketterer said that the one remedy for concerns about your process here is to file an 80(c) petition to challenge what seem to be questionable actions. Now, subsequent to the Law Court's ruling, there is no such judicial review possible because such an appeal can only be brought in the public interest. Under these circumstances, it seems that there is a heightened responsibility for the Commission and the Assistant Attorney General to carry out the necessary due diligence to assure the public that the process here is proper.

In this light, let me repeat my question for Assistant Attorney General Gardiner regarding your reading of 1 § 1009: is the commission authorized by this statute to craft legislation without soliciting suggestions from outside the ethics commission staff?

Sincerely,

-CL

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Subject: January 29, 2009 Commission Meeting  
Date: Tue, 13 Jan 2009 11:10:51 -0500  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: January 29, 2009 Commission Meeting  
Thread-Index: Acl1lo0S+AUdawT9TiyFTTTrfpNqQ2wAAEt7w  
From: "Wayne, Jonathan" <Jonathan.Wayne@maine.gov>  
To: "Carl Lindemann" <carl@cyberscene.com>  
Cc: "Lavin, Paul" <Paul.Lavin@maine.gov>, "Gardiner, Phyllis" <Phyllis.Gardiner@maine.gov>  
X-OriginalArrivalTime: 13 Jan 2009 16:10:51.0263 (UTC) FILETIME=[811198F0:01C97599]  
X-Nonspam: Whitelist

Thank you for noticing I used the wrong date in my prior e-mail. On December 16, 2008, I e-mailed the Supreme Judicial Court decision regarding your challenge to the Commission decision on the Maine Heritage Policy Center (MHPC). I was interested in letting them know about the decision promptly, and presumed that they would let me know if they wanted me to take any action. I also foresaw that we would be in touch with you concerning your second complaint about the MHPC that its 1056-B report was incomplete, and that the Commission's consideration of your second complaint would likely be another opportunity to discuss the court decision if necessary. Since the Commission is not often a litigant in court proceedings, I have advised the Commission members of court decisions as I think best on a case-by-case basis.

Thank you, also, for conveying your views on the Commission's statute proposals. I'm afraid I don't see any impropriety in the Commission or other administrative agencies proposing statutory changes, and I don't have anything to add to our prior communications regarding this subject.

**-END-**

# Carl Lindemann

P.O. Box 74  
Austin, Texas 78767-0074

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Phone 512-495-1511  
Email Carl@cyberscene.com

Asst. Attorney General Phyllis Gardiner  
c/o Office of the Maine Attorney General  
6 State House Station  
Augusta, ME 04333  
BY ELECTRONIC & CERTIFIED MAIL

January 13, 2009

Dear Assistant Attorney General Gardiner,

I am following up on e-mail communications with Ethics Commission Executive Director Wayne regarding concerns about the process used by the Commission to develop legislative proposals.

Executive Director Wayne appears to be operating under the statute that applies to such activities:

## **1 § 1009. Recommendations to Legislature**

Following a general election, the commission may solicit suggestions for improving campaign financing and reporting and the administration of the other areas within the commission's jurisdiction. The commission shall review the suggestions and may submit legislation within 90 days of the general election.

As you may recall, there have been previous questions about his interpretation of the process here. At its January 19, 2007 meeting, the Commission considered proposals to revise the so-called "1056-B" statutes (21-A M.R.S.A. § 1056-B). My attorney, John Branson, questioned whether the proper process was being followed in the absence of solicitations from the Commission regarding this. As you will recall, you were asked specifically to offer your legal opinion on this. You deferred to Executive Director Wayne who detailed numerous individuals and entities he had contacted so as to fulfill the "solicit suggestions" provision of the statute.

After, I filed a request under the Maine Freedom of Access Act to see this solicitation. Apparently, there was no solicitation whatsoever regarding "1056-B" – only general questions to candidates, PACs and the like regarding the conduct of the previous election. A senior staff member confirmed that there was no solicitation specific to "1056-B".

So it would seem that, in 2007, Executive Director Wayne's interpretation of the statute was that any solicitation – even if unrelated to the proposed statutory changes – fulfills the 1 § 1009 process. Do you concur?

At the Ethics Commission's December 29, 2008 meeting, Executive Director Wayne apparently adopted a different, novel interpretation of 1 § 1009 and how to fulfill the "solicit suggestions" process. For the current proposed legislation, he introduced the item by making this paraphrase of the statute:

One of the commission's duties in the election law is that it may, if it chooses, put forward legislation to improve the laws within its jurisdiction.

This paraphrase omits the 1 § 1009 "solicit suggestions" process. However, he did go on to describe the process by which the staff arrived at the legislative proposals put forward at the meeting. Apparently, his "solicitation" for suggestions was limited to the Ethics Commission staff. It seems that Executive Director Wayne believes that the Commission staff's self-solicitation is sufficient to fulfill the 1 § 1009 process. Is it?

Please note that during the Commission's discussion of this issue on January 19, 2007, Chairman Andrew Ketterer suggested that the proper way to challenge the Commission's process is to file an 80(c) petition. Now, subsequent to the Law Court's ruling of December 16, 2008, there is no judicial review possible for such appeals brought in the public interest. It is reasonable to expect a heightened responsibility for the Commission to carry out the necessary due diligence to assure the public that the process under 1 § 1009 is proper. As a result, the Commission's actions under 1 § 1009 should wait until you provide a legal opinion regarding the propriety of that process now underway.

I await your reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Lindemann". The signature is fluid and cursive, with a long horizontal stroke at the bottom.

cc Attorney General Mills  
Maine Ethics Commission