

Agenda

Item #6



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

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: January 19, 2010

Re: Revised Statutory Proposals

Thank you for your consideration of statutory proposals from the Commission staff at your December 20, 2010 meeting. I have attached the revised proposals. The insertions and deletions that you have not seen before are shaded in the hard copy versions that you will receive.

The staff would be happy to make any changes you would like, or to eliminate proposed subsections. The Commission has until February 2, 2011 to submit its bill to the Legislature.

Thank you.

CHAPTER 13
CAMPAIGN REPORTS AND FINANCES

SUBCHAPTER I
GENERAL PROVISIONS

21A § 1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held ~~and every two weeks in the 60 days preceding an election.~~ In the 28 days preceding an election, the commission shall meet in Augusta within ~~one calendar day~~ **two business days** of the filing of any complaint ~~or question~~ with the commission, **unless the persons who filed the complaint and who are named in the complaint agree otherwise. Regardless whether the complainant or respondent agree, the Commission may defer until after the election considering complaints deemed by the chair to involve allegations of minor violations of this chapter or chapter 14 of this title, such as disclaimer statements omitted from campaign signs or transactions of less than \$100 omitted from campaign finance reports.** ~~Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.~~

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

A. During the 28 days prior to an election when the commission is required to meet within ~~24 hours~~ **two business days** of the filing of any complaint ~~or question~~ with the commission; or

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

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election, ~~and from 8 a.m. until at least 8 p.m. on election day.~~

§ 1002: under current law, during the last 28 days before an election, the Commission is required to meet within one calendar day of receiving any complaint or question. This can be impractical for a citizen Commission, and some matters cannot be completed in such a short time frame. Instead, the staff proposes that the Commission be required to meet within two business days of the receipt of a complaint, and that a complaint which the chair deems to involve a minor violation be considered after the election. Also, the staff proposes that the office be permitted to close at the usual time on election day (5:00 p.m.), because there is little for the Commission to do between 5:00 p.m. and 8:00 p.m. on election day, and the Commission receives almost no telephone calls after 5:00 p.m. To minimize potential objections before the Legislature, the Commission staff has amended its earlier proposal from 3 business days to 2 business days and has provided examples of minor compliance issues which the Commission would have the discretion to consider after the election.

21A § 1003. Investigations by commission

1. Investigations. The commission may undertake audits and investigations to determine the facts concerning the registration of a candidate, treasurer, ~~party committee, political action committee, ballot question committee or other political committee or political action committee~~ and contributions by or to and expenditures by a person, candidate, treasurer, ~~party committee, political action committee, ballot question committee or other political committee or political action committee~~. For this purpose, the commission may subpoena witnesses and records whether located within or without the State and take evidence under oath. A person or ~~political action committee entity~~ that fails to obey the lawful subpoena of the commission or to testify before it under oath must be punished by the Superior Court for contempt upon application by the Attorney General on behalf of the commission.

§ 1003(1): the insertion is proposed to clarify that the Commission is authorized to investigate the disclosure of financial activities of a party committee, PAC, or ballot question committee.

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~~ as described in subsection 1. 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.

2-A. Confidentiality. (REPEALED)

3. State Auditor. The State Auditor shall assist the commission in making investigations and in other phases of the commission's duties under this chapter, as requested by the commission, and has all necessary powers to carry out these responsibilities.

3-A. Confidential records. Investigative working papers of the commission are confidential and may not be disclosed to any person except the members and staff of the commission, the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of

reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, “investigative working papers” means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an investigation or audit:

- A. Financial information not normally available to the public;
- B. Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate’s authorized committee, that if disclosed, would reveal sensitive political or campaign information;
- C. Information or records subject to a privilege against discovery or use as evidence; and
- D. Intra-agency or interagency communications related to an audit or investigation.

Staff
withdraws
previous
proposal to
this
subsection

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

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

SUBCHAPTER II
REPORTS ON CAMPAIGNS FOR OFFICE

21A § 1011. Application

This subchapter applies to candidates for all state and county offices ~~and all candidates for municipal office as defined in Title 30-A, section 2502, subsection 1~~ 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:~~

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. The commission does not have responsibility to oversee the filing of registrations or campaign finance reports relating to municipal campaigns, except that the commission shall enforce late-filing penalties under section 1020-A, subsection 3 upon the request of a municipal clerk.~~

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.~~

§ 1011: under law that is currently in effect, the Commission receives campaign finance reports from county, legislative, and gubernatorial candidates. This adds up to roughly 500 - 600 candidates every election year. The duties of the Commission staff include: following up with candidates who do not file a registration form; sending reminders to the candidates

concerning the filing deadlines for campaign finance reports; answering questions from candidates about what they are required to include in financial reports; notifying the candidates of any deficiencies in reporting; following up with late reports; and assessing penalties for late reports. The Commission has two permanent employees (Candidate Registrars) who perform this work, and, in recent election years, the Legislature has funded a one-year “project position” to serve as a third Candidate Registrar. In addition, the Commission receives registrations and campaign finance reports from PACs and BQCs that raise and spend money to influence statewide ballot questions. The PAC/Party/Lobbyist Registrar oversees reporting by these PACs and BQCs.

Under the Counties and Municipalities Law in effect now (30-A M.R.S.A. § 2502, which is attached after the Chapter 13 amendments), municipal candidates in towns or cities with a population of 15,000 or more must file registrations and campaign finance reports with the clerks of their municipalities. According to the 2000 census, there are 13 towns and cities with that level of population: Portland, South Portland, Bangor, Auburn, Lewiston, Scarborough, Westbrook, Sanford, Saco, Biddeford, Brunswick, Augusta, and Waterville. Similarly, PACs and BQCs that are influencing municipal ballot questions in those towns and cities must file registrations and campaign finance reports with the municipal clerks.

In the view of the Commission’s Executive Director, the status quo is working acceptably, except that the reports need to be more accessible to the public through the Internet for a longer period of time. This was underscored in 2009 when some political observers in Portland (including members of the City Council) were concerned that the Portland City Clerk’s Office only retained campaign finance reports for three or four years.

In response to concerns within Portland, State Senator Justin Alford sponsored a bill in 2009 under which the Commission would take over receiving municipal campaign finance reports for municipalities with a population over 15,000. In 2009, the bill was enacted as Chapter 366 (attached). The Commission staff was neutral on the bill.

Chapter 366 takes effect in six months on August 1, 2011. Because of events since the 2009 enactment, the Commission staff is now opposed to taking over the full responsibilities of receiving municipal campaign finance reports. We prefer an approach that we would receive pdfs of campaign finance reports from the towns and cities with a population of 15,000 or more, and we would post the reports on the Commission’s website for at least ten years. We would create a home page on our public access website for each municipality, and the local clerks could provide a link to the Commission’s website. Under our proposal, the local clerks would retain the duties of making sure that candidates have registered; answering questions from candidates about financial reporting; reminding candidates of the filing deadlines, if necessary; reviewing reports for completeness, if necessary; and following up with missing reports.

We prefer this approach for the following reasons:

- Maine state government is going through a period of reduced resources and spending. The Commission’s personnel budget is tied to the Maine Clean Election Act (MCEA) program. If the Maine Clean Election Act program is cut back or eliminated, that could

affect our staffing. For example, we could lose our funding for our project position during the election year or funding for one of our permanent Candidate Registrars.

- Even without reductions in staffing, we are worried that taking over dozens of municipal candidates will reduce our ability to provide services to the 500+ legislative, gubernatorial, and county candidates already within our jurisdiction. We are sending out questionnaires to the municipal clerks to better understand the increase in our workload that would result from Chapter 366.
- Incorporating municipal candidates into our public access database software could cost \$70,000. Since the fall of 2010, there has been turnover in the staffing of our IT company that has complicated making enhancements to our e-filing and public access system.
- We continue to believe that municipal clerks can provide more convenient service to the candidates in their municipalities than the Commission staff.

The Commission staff has started a dialog with Sen. Alford, and he is open to working with the Commission staff in the 2011 legislative session to best meet the needs of the public, the Commission, and the municipal clerks. We organized an initial telephone meeting with the municipal clerks. Overall, they are quite flexible. With a couple of exceptions, they believe the current law is working fine.

The staff recommends the approach that the municipal clerks would continue to receive campaign finance reports from municipal candidates, and the Commission would promote public disclosure by posting the reports as pdfs on the Commissions website for at least 10 years. Accordingly, we have included that approach in the Commission's bill, which involves reversing most (but not all) of the insertions and deletions in Chapter 366. The staff has a good working relationship with the Joint Standing Committee on Veterans and Legal Affairs and will work cooperatively with the committee and Sen. Alford to arrive at a solution that works for all concerned.

One contextual note: under 30-A M.R.S.A. § 2502, towns and cities with a population under 15,000 can voluntarily opt into the campaign finance reporting system in state Election Law. Under Chapter 366, the municipal clerks would continue receiving those reports – not the Commission.

21A § 1012. Definitions

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

- 1. Clearly identified.** "Clearly identified," with respect to a candidate, means that:
 - A. The name of the candidate appears;
 - B. A photograph or drawing of the candidate appears; or
 - C. The identity of the candidate is apparent by unambiguous reference.
- 2. Contribution.** The term "contribution:"

A. Includes:

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

§ 1012(A)(1): the staff is withdrawing its suggested change to this part of the contribution definition and is instead proposing to insert a definition of the term "influencing" in a new subsection 4-A on page 11 below.

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

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

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

B. Does not include:

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

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

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

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

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

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

- (6) Documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this Title, lists of registered voters and voter identification information, created, obtained or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party;
- (7) Compensation paid by a state party committee to its employees for the following purposes:
- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
 - (b) Recruiting and overseeing volunteers for campaign activities involving 3 or more candidates; or
 - (c) Coordinating campaign events involving 3 or more candidates;
- (8) Campaign training sessions provided to 3 or more candidates;
- (8-A) Costs paid for by a party committee in connection with a campaign event at which 3 or more candidates are present;
- (8-B) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes;
- (8-C) The use or distribution of any communication, as described in section 1014, obtained by the candidate for a previous election and fully paid for during that election;
- (9) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider; ~~or~~
- (10) Activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention a clearly identified candidate; ~~or~~
- (11) Any purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

§ 1012(2)(B)(11): in 2008 and 2010, the Commission staff received questions from candidates inquiring whether they could provide a campaign graphic or logo to an internet-based commercial vendor (e.g., Café Press) so that supporters of the candidate could purchase baseball caps or t-shirts with the candidate's name and logo. We were sympathetic to the proposal, but we cautioned that under current law these purchases could be construed as a contribution to the candidate under § 1015(5), because they constituted an expenditure that was coordinated with the campaign or made at the suggestion of a campaign. The staff proposes an exception to the term "contribution" for these activities. The staff proposal has been amended to clarify that the exception applies to purchases from a commercial vendor – not a candidate's campaign.

3. Expenditure. The term "expenditure:"

A. Includes:

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

§ 1012(3)(A)(1): the staff is recommending no change to this subparagraph due to the proposed definition of the term "influencing." See note on page 11.

- (2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure;
- (3) The transfer of funds by a candidate or a political committee to another candidate or political committee; and
- (4) A payment or promise of payment to a person contracted with for the purpose of ~~influencing supporting or opposing any candidate, campaign as defined in section 1052(1), political committee, political action committee, political party, referendum or initiated petition or circulating an initiated petition;~~ and

§ 1012(3)(A)(4): for reasons of consistency, the staff proposes replacing "supporting or opposing" with "influencing," which is defined in subsection 4-A below. See note on page 11. The term "campaign" is defined in subsection 1052(1) of the PAC statute to include initiatives and referenda as well as candidate campaigns, so this proposal just eliminates language that seems redundant.

B. Does not include:

- (1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, candidate, or candidate's immediate family or unless the facilities have been compensated for the production or distribution of the news story, commentary or editorial by any political party, political committee, candidate, or candidate's immediate family;

§ 1012(3)(B)(1): current law contains an exception to the term "expenditure" for news stories and commentaries, provided that the broadcast station, newspaper, or other medium is not owned or controlled by a party, PAC, or candidate. The exception is based on federal law. The Commission staff recommends extending the exception to news stories and commentaries transmitted through cable television. Also, we recommend that if a political action committee or other political organization is sponsoring the news story or editorial, the payments for the news story or commentary should not be exempt. Such a payment would qualify as an expenditure if it meets the definition of expenditure in § 1012(3)(A)(1) (a payment made for the purpose of promoting or defeating a candidate).

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

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

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

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

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

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

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

§§ 1012(3)(B)(3) & (6): **no change is necessary here because of the definition of "influencing."** See note on page 11.

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

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

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

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

- (a) Providing no more than a total of 40 hours of assistance from its employees to a candidate in any election;
- (b) Recruiting and overseeing volunteers for campaign activities involving three (3) or more candidates; or
- (c) Coordinating campaign events involving three (3) or more candidates;
- (10-A) Costs paid for by a party committee in connection with a campaign event at which three (3) or more candidates are present;
- (11) Campaign training sessions provided to three (3) or more candidates;
- (11-A) Wood or other materials used for political signs that are found or contributed if not originally obtained by the candidate or contributor for campaign purposes; or
- (12) The use of offices, telephones, computers and similar equipment when that use does not result in additional cost to the provider.
- (13) Any purchase of apparel from a commercial vendor with a total cost of \$25 or less by an individual when the vendor has received a graphic or design from the candidate or the candidate's authorized committee.

§ 1012(3)(B)(12): see note to § 1012(2)(B)(11) on page 8.

4-A. Influence and influencing. The term "influence" means to promote, support, oppose or defeat. The term "influencing" means promoting, supporting, opposing or defeating.

§ 1012(4-A): the staff proposes this definition in order to clarify the meaning of these terms which the U.S. District Court found unconstitutionally vague, in an August 2011 decision in *NOM v. McKee*. The Court specifically upheld use of the words "promote," "support," "oppose," and "defeat."

21A § 1013-A. Registration

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

A. No later than ten (10) days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county or municipal office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 2, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, except that a participating

candidate or a candidate certified in accordance with section 1125 may not serve as treasurer, **except that the candidate may serve as treasurer or deputy treasurer for fourteen days after declaring an intention to qualify for campaign financing under chapter fourteen while the candidate identifies another person to serve as treasurer.**

The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than ten (10) days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

§ 1013(A)(1): in 2008, the Legislature prohibited Maine Clean Election Act (MCEA) candidates from serving as their own treasurer. The 2008 restriction applied to “certified” candidates, who are defined in § 1122(1) to mean candidates who have already met the requirements to receive MCEA funding. Before certification, a candidate who has declared an intention to qualify for MCEA funds is considered a “participating candidate” under § 1122(6). During this qualifying period, campaigns seeking MCEA funding typically raise and spend seed money, and file a campaign finance report of the seed money activity. Usually, this period starts in February or March (whenever the candidate registers), and ends around April 20.

*The Commission staff proposes that participating candidates (candidates who have declared an intention to qualify for MCEA funding) could not serve as their own treasurers or deputy treasurers, **except in the fourteen days after declaring an intention to qualify for public campaign financing while the candidate identifies another person to serve as treasurer.** We believe the change would be consistent with the Legislature’s intentions in 2008, and would encourage good practices during the qualifying period. In 2010, some candidates served as their own treasurer for weeks until they were advised by the Commission staff that they would not receive their primary election payment unless they appointed someone else as treasurer.*

A corresponding change is also proposed for § 1125(5-B) within the MCEA.

As explained in the note on pages 4-6, the staff also proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

...

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, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, 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, electronic media advertisements where compliance with this section would be impracticable due to size or character limitations and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. A communication in the form of a sign that is financed by a candidate or the candidate's committee and that clearly identifies the name of the candidate and is lettered or printed individually by hand is not required to include the name and address of the person who made or financed the communication or to include a statement that the communication has been authorized by the candidate, the candidate's authorized committee, or their agents.

§ 1014(1): the Commission staff recommends that paid advertisements on cable television should be covered by the disclaimer requirement. We also recommend that small advertisements on the internet (e.g., "banner ads" or ads on Google) should not be covered by the disclaimer requirement when it is impractical to include the full disclaimer in such a small space. Usually these ads are merely links to a campaign website, where the disclaimer is posted. In addition, the Commission staff recommends a change to the final sentence concerning hand-painted signs of candidates. In 2009, the Legislature amended the last sentence to exempt these signs from including the name of the person who financed the signs. For these hand-painted signs, the Commission staff additionally proposes eliminating the required statement whether the sign was – or was not – authorized by the candidate.

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.

§ 1014(2-A): no change is necessary to this subsection because of the definition of the term "influencing." See note on page 11.

3. Broadcasting prohibited without disclosure. No person operating a broadcasting station or cable television system 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.

§ 1014(3): the Commission staff recommends that cable television systems be prohibited from airing paid communications to voters about candidates that lack the required disclaimer.

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. 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.

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~~ A violation of this section may result in a civil penalty of no more than \$5,000, except that an expenditure for yard signs lacking the required information may result in a maximum penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor, or whether the person who financed the communication intended to conceal or misrepresent its identity. ~~The~~ If the person who financed the communication or who committed the violation shall correct corrects the violation within ten (10) days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no penalty. ~~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.~~

§ 1014(4): under current law, if a communication lacks the required disclaimer it is subject to a penalty of up to \$200. This maximum penalty is too low because some communications can reach a wide audience as was shown in the 2010 investigation of Michael Dennehy (who paid for phone calls to 7,700 households) or a targeted website (e.g., the Cutler Files) which can reach tens of thousands of voters. The staff recommends a maximum penalty of \$5,000, with the exception of yard signs. Candidates sometimes neglect to put the disclaimer on yard signs. The proposed amendments retain a ten-day correction period. The staff proposes a non-exhaustive list of factors that the Commission would consider in deciding on a penalty between zero and \$5,000.

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.

6. Exclusions. The requirements of this section do not apply to

A. handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and are acting without authorization by a candidate, a candidate's campaign committee, or their agents,

B. campaign signs paid for by an individual or group of individuals without any authorization by a candidate, a candidate's campaign committee, or their agents and produced at a cost of \$100 or less, and

C. internet and e-mail activities by individuals who are acting independently of candidates and their campaign committees and who incur limited costs, as excluded by regulation of the Commission.

§ 1014(6): the Commission's counsel and staff proposes limited exclusions to the disclaimer requirement for communications that are paid for by individuals who seek to express their personal views about political candidates, are acting independently of candidate campaigns, and are spending very modest sums. Because there are a number of issues to be addressed with respect to internet and e-mail communications, the staff recommends sorting those out in

rulemaking. The specific exclusions are designed to avoid burdening personal First Amendment expression typically engaged in by individuals. The staff will need to confer further with the Commission's counsel prior to the January 27 meeting on this proposal, and may amend this proposal.

21A § 1015. Limitations on contributions and expenditures

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$750 in any election for a gubernatorial candidate or more than \$350 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

2. Committees; corporations; associations. A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than \$750 in any election for a gubernatorial candidate or more than \$350 in any election for any other candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every two years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by \$25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

4. Political committees; intermediaries. For the purpose of the limitations imposed by this section, contributions made to any political committee authorized by a candidate to accept contributions on the candidate's behalf are considered to be contributions made to that candidate. **If the campaign activities of a political action committee within a calendar year primarily promote or support the nomination or election of a single candidate, contributions to the committee that were solicited by the candidate are considered to be contributions made to the candidate for purposes of the limitations in this section. For purposes of this subsection, solicitation of contributions includes but is not limited to the candidate appearing at a fundraising event organized by or on behalf of the political action committee or suggesting that a donor make a contribution to that committee.**

For the purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate that are in any way

earmarked or otherwise directed through an intermediary or conduit to the candidate are considered to be contributions from that person to the candidate. The intermediary or conduit shall report the original source and the intended recipient of the contribution to the commission and to the intended recipient.

§ 1505(4): in 1996, the people of Maine enacted lower contribution limits through a direct initiative. These limits were amended for the 2010 election cycle by the Legislature (\$750 for gubernatorial candidates, and \$350 for other candidates). The purpose of contribution limits is to prevent donors from corrupting public officials through large campaign contributions and to avoid the appearance to the public of such corruption. In contrast, there are no limitations on how much a donor may give to a PAC.

In recent years, a small number of political action committees have been organized for the purpose of promoting a single candidate for the office of Governor. The Commission staff believes that these PACs are legal and have a First Amendment right to spend money to promote the candidate of their choice, provided that they are spending money independently of the candidate. In fact, in 2007, the Commission staff proposed a statutory change to clarify that contributions to such a PAC are, generally, not contributions to the candidate who is supported by the PAC.

In 2010, the Commission staff received two separate inquiries from proposed PACs which would be formed to promote a single gubernatorial candidate. Each PAC asked whether the candidate himself could raise money for the PAC.

The Commission staff responded that the question was a novel one, and that the arrangements might be compliant under current law. Nevertheless, we cautioned against having the candidate raise money for the PAC – knowing that the PAC would spend the money to promote the candidate. We suggested that fundraising by the candidate could lead to a complaint before the Commission that the candidate was attempting to circumvent the \$750 contribution limit by encouraging unlimited contributions to the PAC. We also cautioned that if the candidate participated in the PAC's expenditures to promote the candidate, the candidate would be receiving a contribution under § 1505(5) below.

Under current law, if the candidate raises money for the candidate's authorized campaign committee, those are contributions to the candidate. The Commission staff additionally recommends that if a candidate raises money for a PAC whose primary activities in the current year are to promote or support the candidate, the contributions raised by the candidate should be viewed as contributions to the candidate for purposes of the \$350 or \$750 limit. This restriction furthers the state's interest in preventing corruption from soliciting contributions in unlimited amounts through a PAC whose primary purpose is to promote or support his or her candidacy.

The language proposed by staff has been amended to underscore that the proposal does not apply to PACs of the legislative caucuses which promote multiple candidates. The previous proposal was:

If a candidate participates in fundraising for a political action committee whose primary campaign activities within the calendar year are to promote or support the nomination or election of the candidate, contributions raised by the candidate for the committee are considered to be contributions made to the candidate.

5. Other contributions and expenditures. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate.

The financing by any person of the dissemination, distribution or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, the candidate's political committee or committees or their authorized agents is considered to be a contribution to that candidate.

6. Prohibited expenditures. A candidate, a treasurer, a political committee, a party or party committee, a person required to file a report under this subchapter or their authorized agents may not make any expenditures for liquor to be distributed to or consumed by voters while the polls are open on election day.

7. Voluntary limitations on political expenditures. A candidate may voluntarily agree to limit the total expenditures made on behalf of that candidate's campaign as specified in section 1013-A, subsection 1, paragraph C and subsections 8 and 9.

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

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

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

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

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

§ 1015(9): **no change due to the definition of "influence."** See note on page 11.

21A § 1017. Reports by candidates

...

3-A. Other candidates. A treasurer of a candidate for state **or , county or municipal** 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.

§ 1017(3-A): as explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

...

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

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

2. Expenditures to support or oppose candidates, others. A party committee shall report all expenditures made to influence a campaign, as defined in section 1052(1) 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 that are not made to influence a campaign, as defined in section 1052(1) support or oppose a candidate, committee, political action committee or party committee must be reported separately. The party committee shall report:

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

§§ 1017-A(2) & (3): for reasons of consistency, the staff proposes replacing “support or oppose” with “influence,” which is defined in subsection 4-A above, and to use the term “campaign” to refer to candidate and ballot question elections. See note on page 11.

4. Filing schedule. (REPEALED)

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

A. Quarterly reports must be filed by 11:59 p.m.:

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

B. General and primary election reports must be filed by 11:59 p.m.:

- (1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

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

- (1) On the 11th day before the date on which the election is held and must be complete up to the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete up to the 35th day after that date.

§ 1017-A(4-A)(C): the Commission staff recommends referring to these reports as “Pre- and post-election reports,” rather than “reports of spending.” These reports are not limited to spending, and include all information required by subsections 1-3.

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.

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.

4-C. Electronic filing. State party committees shall file each report required by this section through an electronic filing system developed by the commission. The commission may make an exception to this electronic filing requirement if a party committee submits a written request that states that the party committee lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted by March 1st of the election year. The commission shall grant all reasonable requests for exceptions.

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

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

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

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

§ 1017-A(8): as explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

To simplify the bill, staff has withdrawn previous proposal to clarify section 1018 on recounts

21A § 1019-A. Reports of membership communications

Any membership organization or corporation that makes a communication to its members or stockholders expressly advocating the election or defeat of a clearly identified candidate shall report any expenses related to such communications aggregating in excess of \$50 in any one candidate's election race, notwithstanding the fact that such communications are not expenditures under section 1012, subsection 3, paragraph A. Reports required by this section

must be filed with the commission on forms prescribed and prepared by the commission and according to a reporting schedule that the commission shall establish by rule.

21A §1019-B. Reports of independent expenditures

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

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

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

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

§ 1019-B(2): no changes are necessary due to the definition of the term "influence." See note on page 11.

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election **in a town or city that has chose to be governed by this subchapter**, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under Chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, Chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and

must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

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

§ 1019(3): as explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

4. Exclusions. An “independent expenditure” does not include:

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

B. Telephone surveys that meet generally accepted standards for polling research and that are not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting;

C. Telephone calls naming a clearly identified candidate that identify an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, provided that the call contains no advocacy for or against any candidate; and

D. Voter guides that consist primarily of candidates' responses to surveys and questionnaires and that contain no advocacy for or against any candidate.

§ 1019-B(4): the independent expenditure reporting requirements provide the public with information concerning who is spending money for communications to voters which advocate the election or defeat of a candidate. During the last 35 days before a general election, any communication naming or depicting a clearly identified candidate is presumed to be an independent expenditure. The party making the expenditures may rebut the presumption by providing the Commission with evidence that it was not intended to influence the election:

The Commission staff proposes four exceptions to what is an independent expenditure.

- 1) Expenditures for communications made with the cooperation of the candidate*
- 2) Telephone surveys which are not intended to change the recipient's vote or to discourage the recipient from voting*
- 3) “Voter identification” calls*
- 4) Voter guides which consist of candidates' responses to survey questions and which do not advocate for or against a candidate.*

The staff amended the previous proposal to eliminate the phrase “get out the vote,” which may not be generally understood.

NOTE: If the Commission proceeds with rulemaking this winter, the Commission staff will recommend a rule clarifying that when a candidate requests an outside organization not to spend money on their behalf, such a request would not constitute consultation on an expenditure.

21A §1020-A. Failure to file on time

...

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk ~~in a town or city that has chosen to be governed by this subchapter~~ 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.

§ 1020-A(3): as explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

...

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; ~~and~~ section 1017, subsection 4; ~~and section 1019-B, subsection 3;~~

~~A-1. Five thousand dollars for reports required under section 1019-B, subsection 3, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late;~~

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, ~~except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late;~~

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.

§ 1020-A(5-A): the Commission staff occasionally has received comments that the \$5,000 maximum penalty for filing a campaign finance report late is too small, when the amount of activity reported late is very large. The staff proposes a higher maximum for independent expenditure reports and reports by political parties, when the financial activity reported late exceeds \$50,000.

SUBCHAPTER IV
REPORTS BY POLITICAL ACTION COMMITTEES

21A § 1051. Application

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

21A § 1052. Definitions

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

1. Campaign. "Campaign" means any course of activities ~~for a specific purpose such as the initiation, promotion or defeat of to influence the nomination or election of a candidate or question, including to initiate or influence any of the following ballot measures:~~

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

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

3. Contribution. "Contribution" includes:

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

of signatures for a direct initiative, in this State initiating or influencing a campaign;
or

§§ 1052(1) & (3)(C): the staff proposes changes to this section because of the definition of the term “influencing” above. The staff also proposes clarifying the term “campaign” in subsection 1 so that it can be relied upon in order to simplify other definitions below in this section.

D. The payment, by any person or organization, of compensation for the personal services of other persons provided to a political action committee which is used by the political action committee to promote, defeat or initiate a candidate, campaign political party, referendum or initiated petition in this State initiate or influence a campaign.

3-A. Influence and influencing. The term “influence” means to promote, support, oppose or defeat. The term “influencing” means promoting, supporting, opposing or defeating.

3-B. Initiate. The terms “initiate” and “initiating” include the collection of signatures and related activities to qualify a state or local initiative or referendum for the ballot.

§§ 1052(3-A) & (3-B): the Commission staff proposes defining “influence” and “influencing” to avoid vagueness. Please see note on page 11.

4. Expenditure. The term "expenditure:"

A. Includes:

(1) A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made for the purpose of initiating or influencing the nomination or election of any person to political office; or for the initiation, support or defeat of a campaign, referendum or initiative, including the collection of signatures for a direct initiative, in this State;

§ 1052(4)(A): the Commission staff proposes deleting “support” and “defeat” because they are included in the new proposed definition of “influencing.” See note on page 11.

(2) A contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure for the purposes set forth in this paragraph; and

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

B. Does not include:

(1) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, cable television system, newspaper, magazine or other periodical publication, unless these facilities are owned or controlled by any political party, political committee, candidate or candidate's immediate family or unless the facilities have been compensated for the production or distribution of the news story, commentary or editorial by any political party, political committee, candidate, or candidate's immediate family;

§ 1052(4)(B)(1): current law contains an exception to the term “expenditure” for news stories and commentaries, provided that the broadcast station, newspaper, or other medium is not owned or controlled by a party, PAC, or candidate. The exception is based on federal law. The Commission staff recommends extending the exception to news stories and commentaries transmitted through cable television. Also, we recommend that if a political action committee or other political organization is sponsoring the news story or editorial, the payments for the news story or commentary should not be exempt. Such a payment would qualify as an expenditure if it meets the definition of expenditure in § 1052(4)(A)(1) (a payment made for the purpose of promoting or defeating a candidate election or campaign).

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

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

§ 1052(4)(B)(3): the proposed change clarifies those membership organizations which are covered by the exception for membership communications.

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

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

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

§ 1052(4)(B)(6): *the staff proposes this change for consistency.*

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

A. Includes:

(1) Any separate or segregated fund established by any corporation, membership organization, cooperative or labor or other organization whose purpose is to ~~initiate or influence the outcome of an election, including a candidate election or ballot question a campaign;~~

(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 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 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.

§ 1052(5)(A): *the proposed amendments to the definition of "political action committee" eliminate the terms "promoting" and "defeating" because of the definition of "influencing." We also propose simplifying the language in the definition. See note on page 11.*

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-; ~~or~~

(4) An organization whose only payments of money in the prior two years for the purpose of influencing a campaign in this State is to make contributions to candidates, party committees, political action committees or ballot question

committees registered with the commission or a municipality and that has not raised and accepted any contributions during the calendar year for the purpose of influencing a campaign in this State.

§ 1052(5)(B): there are many businesses, nonprofit corporations, and associations that occasionally may make a contribution to a candidate, party committee, PAC, or ballot question committee in order to influence an election. These donors should not be viewed as a PAC merely because they have made a contribution over \$5,000 to influence an election. These donors are publicly disclosed by the recipient committee as a contributor. The staff proposes an exception to the PAC definition to clarify that these contributors do not become PACs merely because they made a contribution to influence an election.

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

§ 1053(3): the proposed change would ensure that, at the time of registration, every PAC provides some statement of purpose regarding its position on candidates or ballot questions.

21A § 1053-A. Municipal elections

Organizations that qualify as political action committees under section 1052, subsection 5 and that are organized to influence a municipal campaign ~~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: the staff proposes a change to clarify which municipal elections are subject to the reporting requirement.

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

A political action committee organized outside of this State shall register and file reports with the commission in accordance with sections 1053 and 1058. The committee is not required to register and file reports if the committee's only financial activity within the State is to make contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and the committee has not raised and accepted any contributions during the calendar year to influence an election or a campaign in this State.

§ 1053-B: the staff proposes a change to clarify which out-of-state PACs are subject to the reporting requirement.

21A § 1054. Appointment of treasurer

Any political action committee required to register under section 1053 must appoint a treasurer before registering with the commission. The treasurer shall retain, for a minimum of four (4) years, all receipts, including cancelled checks, of expenditures made in support of or in opposition to a campaign, political committee, political action committee, referendum or initiated petition in this State.

21A § 1055. Publication or distribution of political communications

A political action committee that makes an expenditure to finance a communication expressly advocating the election or defeat of a candidate or that names or depicts a clearly identified candidate is subject to the requirements of section 1014.

21A § 1056. Expenditure limitations

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

1. Aggregate expenditures. A committee may not make contributions in support of the candidacy of one person aggregating more than the contribution limits established by the commission pursuant to section 1015 of this title ~~\$500 in any election for a gubernatorial candidate, or \$250 in any election for any other candidate.~~

§ 1056: in 2009, the Legislature amended § 1015 to increase the contribution limits to \$350 and \$750 and to require the Commission to update the limits every two years based on inflation. The proposed change would eliminate the reference to the former limits of \$250 and \$500.

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

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

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

21A § 1056-B. Ballot question committees

A person not defined as a political action committee who receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$5,000 for the purpose of ~~initiating, promoting, defeating or influencing in any way~~ a campaign as defined by section 1052, subsection 1, must file reports with the commission in accordance with this section. For the purposes of this section, "campaign" does not include activities to ~~promote or defeat or in any way influence~~ the nomination or election of a candidate. Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of ~~initiating or influencing in any way~~ a campaign. The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee. ~~Until July 31, 2011, in the case of a municipal election, the registration and reports must be filed with the clerk of that municipality. Beginning August 1, 2011, in the case of a municipal election, the registration and reports must be filed with the commission.~~

§ 1056-B: the Commission staff proposes deleting “promoting” and “defeating” because of the proposed definition of the term “influencing.” See note on page 11.

As explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

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

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

§ 1056-B(2): the staff proposes deleting “promoting” or “defeating” because of the definition of “influencing.”

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

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

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, ~~promoting, defeating~~ or influencing ~~in any way~~ a campaign;

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

§ 1056-B(2-A): the staff proposes deleting “promoting” or “defeating” because of the definition of “influencing.”

D. Funds or transfers from the general treasury of an organization filing a ballot question report.

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

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

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose initiating, ~~promoting, defeating~~ or influencing ~~in any way~~ a campaign and all expenditures made for those purposes.

B. The filer shall retain a vendor invoice or receipt stating the particular goods or services purchased for every expenditure in excess of \$50.

§ 1056-B(4)(A): the staff proposes deleting “promoting” or “defeating” because of the definition of “influencing.”

21A § 1057. Records

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

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

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

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

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

21A § 1058. Reports; qualifications for filing

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

21A § 1059. Report; filing requirements

Committees required to register under section 1053, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the filing deadline, except that reports submitted to a municipal clerk in a town or city that has chosen to be governed by this subchapter must be filed by the close of business on the filing deadline.

§ 1059: as explained in the note on pages 4-6, the staff proposes that the clerks of towns and cities would continue to receive campaign finance reports concerning municipal elections.

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

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

A. All committees must file Quarterly quarterly reports must be filed:

- (1) On January 15th and must be complete as of December 31st;
- (2) On April 10th and must be complete as of March 31st;
- (3) On July 15th and must be complete as of June 30th; and
- (4) On October 10th and must be complete as of September 30th.

B. General and primary election reports must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date.

C. Reports of spending to influence Pre- and post-election reports for special elections or campaign, referenda, initiatives, bond issues or constitutional amendments ballot measure campaigns must be filed:

§§ 1059(2)(A) & (C): the Commission staff recommends referring to these reports as “Pre- and post-election reports,” rather than “reports of spending.” These reports are not limited to spending, and include all information required by sections 1060, such as contributions.

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

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

6. Identification of contributions. Names, occupations, places of business and mailing addresses of contributors who have given more than \$50 to the political action committee in

the reporting period and the amount and date of each contribution, except that an organization qualifying as a political action committee under section 1052, subsection 5, paragraph A, subparagraph (5) is required to report only those contributions made to the organization for the purpose of **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 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.

§§ 1060(4), (6) & (7): the Commission staff recommends deleting “support,” “oppose,” “promoting” and “defeating” because of the definition of “influence” and “influencing.” See note on page 11. The staff also recommends deleting the reference to ballot questions in the “except clause,” because organizations qualifying as a PAC under § 1052(A)(5) influence candidate elections only, not ballot questions.

21A § 1062-A. Failure to file on time

...

4. Maximum penalties. The maximum penalty under this subchapter is \$10,000 for reports required under section 1056-B or section 1059, **except that if the financial activity reported late exceeds \$50,000, the maximum penalty is one-fifth of the amount reported late.**

§ 1062-A: the Commission staff occasionally has received comments that the \$10,000 maximum penalty for filing a campaign finance report late is too small, when the amount of activity reported late is very large. The staff proposes a higher maximum penalty for late-filing by PACs when the financial activity reported late exceeds \$50,000.

[AFTER RECEIVING ADVICE FROM THE REVISOR’S OFFICE, THE COMMISSION STAFF WILL INSERT LANGUAGE INDICATING THAT THOSE SECTIONS RELATING TO MUNICIPAL ELECTIONS HIGHLIGHTED IN BLUE TAKE EFFECT BEGINNING ON AUGUST 1, 2011]

30-A §2502. Campaign reports in municipal elections

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, except that registrations and campaign finance reports must be filed with the municipal clerk instead of and must register and file campaign reports with the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A candidate in a town or city with a population of less than 15,000 that has adopted those provisions must register and file campaign finance reports with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

2. Municipal referenda campaigns. Municipal referenda campaigns in towns or cities with a population of 15,000 or more are governed by Title 21-A, chapter 13, subchapter 4. The registrations and reports of political action committees and ballot question committees must be filed with the municipal clerk Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, chapter 13, subchapter 4 by vote of its legislative body at least 90 days before a referendum election. The registrations and reports of political action committees and ballot question committees in a town or city that has adopted those provisions must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to that subchapter.

3. ~~Preservation and destruction of~~ Public access to records. A town or city with a population of less than 15,000 that has adopted the provisions of Title 21-A, chapter 13 pursuant to this section must keep the campaign reports for at least 8 years. Towns and cities that are governed by Title 21-A, chapter 13 shall transmit the registrations and campaign finance reports to the Commission on Governmental Ethics and Election Practices in a format specified by the Commission. The Commission shall display these documents on its publicly accessible website for at least 10 years.

[PLEASE SEE NOTES ON PAGES 4-6 OF THE PROPOSED CHANGES TO CHAPTER 13 OF THE ELECTION LAW. JW TO INSERT LANGUAGE INDICATING THAT THE AMENDMENTS WOULD TAKE EFFECT BEGINNING ON AUGUST 1, 2011]

CHAPTER 14
THE MAINE CLEAN ELECTION ACT

21A § 1121. Short title

This chapter may be known and cited as the "Maine Clean Election Act."

21A § 1122. Definitions [SHOWN FOR REFERENCE]

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

1. Certified candidate. "Certified candidate" means a candidate running for Governor, State Senator or State Representative who chooses to participate in the Maine Clean Election Act and who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

...

6. Participating candidate. "Participating candidate" means a candidate who is running for Governor, State Senator or State Representative who is seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

...

8. Qualifying period. "Qualifying period" means the following.

A. For a gubernatorial participating candidate, the qualifying period begins October 15th immediately preceding the election year and ends at 5:00 p.m. on April 1st of the election year.

B. For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 20th of that election year or the next business day following April 20th if the office of the commission is closed on April 20th.

21A § 1125. Terms of participation

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

§ 1125(1): under current statute, a candidate seeking to qualify for Maine Clean Election Act (MCEA) funding must publicly declare that intention by filing a “DOI” form with the Commission. The proposed change is intended to clarify that a candidate may collect a \$5 qualifying contribution before filing the DOI form, as long as the form is filed within five business days after collecting the contribution. As currently written, the third and fourth sentences seem to be inconsistent.

...

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of qualifying contributions by a participating candidate, the executive director of 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 **no later than five business days after the end of the qualifying period**;
- C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money contributions from registered voters in the State;
- 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;
 - 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~~
 - D-5. Not submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions or seed money contributions; 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 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. Candidates and other interested persons may appeal the decision of the executive director to the members of the Commission in accordance with subsection 14.

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.

§ 1125(5): the proposed changes to this section and to § 1125(14) below are intended to clarify that the Commission's initial decision on a candidate's request for certification as a Maine Clean Election Act candidate will be made by the Commission's executive director. This is the current practice of the Commission. Under subsection 14, candidates and other interested persons may appeal the executive director's decision to the Commissioners through a formal hearing held under the Administrative Procedure Act.

The change also sets forth an additional reason for which the Commission or its executive director may deny a candidate's request for certification: the submission of false qualifying contributions or seed money contributions.

Also, the staff proposes that, in order to be eligible to receive MCEA funding, an individual must have qualified as a candidate within five business days of the end of the qualifying period. This proposal is intended to address the deadline for independent candidates to qualify for MCEA funding. In 2009, the Maine Legislature modified the "qualifying periods" for MCEA candidates. The qualifying period is the time during which an MCEA candidate must collect the required number of qualifying contributions to be eligible to receive public campaign funds. In amending the qualifying periods, the Legislature eliminated any distinction between "party candidates" and independent candidates (who are not enrolled in any party). The members of the Veterans and Legal Affairs Committee decided that independent candidates must qualify for MCEA funding at the same time as party candidates who are enrolled in a political party (April 20 for legislative candidates and April 1 for gubernatorial candidates).

Under the part of the Election Law that is administered by the Secretary of State and municipal clerks, independent candidates for state office have until June 1 to qualify for the ballot by submitting petitions with sufficient signatures. In the original MCEA enacted by voters in 1996, independent candidates had the option of waiting until June 2 of the election year to qualify for MCEA funding by submitting \$5 qualifying contributions to the Commission. If they qualified by June 2, however, they would receive public campaign funds only for the general election – not the primary election. In 2009, the VLA committee intended to eliminate the June option for independent candidates to qualify for MCEA funding.

In administering the new qualifying periods in 2010, the Commission was asked by a few independent legislative candidates whether they had to qualify for the ballot by April 20 or by June 1. Unfortunately, the 2009 changes left the MCEA internally inconsistent because the MCEA contains a section relating specifically to independent candidates (§ 1122(8)) which retained language permitting independent candidates until June 2 to qualify.

To fulfill the 2009 objectives of the VLA committee and to remedy the inconsistency, the staff suggests an amendment to § 1125(5) requiring candidates to qualify for the ballot within five business days of the end of the qualifying period. This would have no effect on party candidates for the Legislature, because their deadline for qualifying for the ballot is March 15 and the end of the qualifying period is April 20. Under the staff's proposal, in order to be eligible to receive MCEA funding, an independent gubernatorial candidate would have to

qualify as a candidate no later than five business days after April 1 and an independent legislative candidate would have to qualify as a candidate no later than five business days after April 20 (rather than the June 1 deadline that applies to independent candidates who are traditionally financed).

...

5-B. Restrictions on serving as treasurer. A participating or certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign, except that the candidate may serve as treasurer or deputy treasurer for fourteen days after declaring an intention to qualify for campaign financing under this chapter while the candidate identifies another person to serve as treasurer.

§ 1125(5-B): in 2008, the Legislature prohibited Maine Clean Election Act (MCEA) candidates from serving as their own treasurer. The 2008 restriction applied to "certified" candidates, who are defined in § 1122(1) to mean candidates who have already met the requirements to receive MCEA funding. Before certification, a candidate who has declared an intention to qualify for MCEA funds is considered a "participating candidate" under § 1122(6). During this qualifying period, campaigns seeking MCEA funding typically raise and spend seed money, and file a campaign finance report of the seed money activity. Usually, this period starts in February or March (whenever the candidate registers), and ends around April 20.

The Commission staff proposes that participating candidates (candidates who have declared an intention to qualify for MCEA funding) could not serve as their own treasurers. We believe the change would be consistent with the Legislature's intentions in 2008, and would encourage good practices during the qualifying period. In 2010, some candidates served as their own treasurer for weeks until they were advised by the Commission staff that they would not receive their primary election payment unless they appointed someone else as treasurer.

...

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. A television advertisement purchased with these revenues must be closed captioned when closed-captioning is available from the broadcasting station who will broadcast the advertisement.

The commission shall publish guidelines outlining permissible campaign-related expenditures.

§ 1125(6): the Commission staff proposes to move the closed-captioning requirement to its own separate subsection 6-E (below) because the issue of television advertising is distinct from the general restrictions in subsection 6 and affects relatively few candidates.

6-D. Expenditures for personal electronic devices. Certified candidates for legislative office may not use fund revenues to purchase personal computers, tablet computers, mobile telephones with enhanced computing or electronic mail capabilities, personal digital assistants, mobile electronic mail devices, or other personal electronic devices with enhanced computing or electronic mail capabilities as determined by the commission.

§ 1125(6-D): Under current Commission rule, if an MCEA candidate purchases property or equipment that could be converted to the candidate's personal use (such as a personal computer, a cell phone or fax machine), the campaign is required to sell the item for fair market value and return the proceeds to the state. In 2009, the Commission adopted a rule stating that if the campaign sold the property to the candidate, or a member of the candidate's immediate family or campaign staff, the campaign was required to recover at least 75% of the original purchase price. The Commission's rule was proposed by staff to minimize any appearance that a candidate could be enriching themselves by purchasing personal equipment at a discount through the MCEA program.

The Commission's rules concerning the MCEA are major-substantive, which means that the Legislature reviewed the 2009 rule amendments during the 2009 session. The Legislature reduced the percentage for purchases by the candidate from 75% to 40%.

In 2010, four legislative candidates purchased personal computers with MCEA funds. One of the candidates posted a message on a bulletin board noting her intention to buy the computer for 40% of the purchase price, in conformance with the Commission's rule. This caused an opposing political party to issue a press release threatening to file a complaint with the Ethics Commission that the Legislator had benefitted from the MCEA program by purchasing a computer at a 60% discount. There were a number of editorial columns and news stories about the incident. Ultimately, the candidate received an offer from someone else to buy it for approximately 67% of the purchase price.

Upon further reflection after the 2010 election year, the Ethics Commission staff proposes that MCEA candidates running for State Representative or State Senator should not be permitted to use MCEA funds to purchase certain personal electronic devices such as computers, iPads, or smartphones. We recognize that there are legitimate campaign uses for these devices. Nevertheless, given the understandable sensitivity about candidates enriching themselves, we believe MCEA funds should not be used by legislative candidates for these purchases. Because these are personal devices, candidates are welcome to buy them using personal funds and use them temporarily for campaign purposes. The proposed restriction would not apply to gubernatorial campaigns, which have a much greater need to engage in travel and communications statewide.

6-E. Expenditures for television advertising. Candidates must include closed-captioning within any television advertisement that they provide to a broadcasting or cable television station for broadcast to the public, except for advertisements aired in the final four days before an election if inclusion of closed-captioning during that period is impractical or would materially affect the timing of the candidate's advertisement.

§ 1125(6-E): the Commission staff proposes to move the closed-captioning requirement to its own separate subsection because the issue is distinct from the other restrictions in subsection 6. Also, the staff proposes amended language to clarify that the duty to insert closed-captioning in television advertisements rests with the candidate, not the television stations which are outside the Commission's jurisdiction. It would encourage candidates to put the captioning in advertisements before providing the advertisement to television stations. The change would also extend the requirement to cable television systems (not just broadcast). The Commission staff proposes an exception to this requirement during the final four days before an election, because of anecdotes suggesting that some 2010 candidates had considerable difficulty airing advertisements on broadcast television just before the 2010 general election due to this requirement, and because we have been advised that closed-captioning can take six hours (most of a business day) to be created. The staff believes that the candidates' interest in communicating with voters during the crucial weekend before the election should be given some consideration in the closed-captioning requirement, and we would not want to see an MCEA candidate disproportionately burdened relative to an opponent who did not opt into Maine's public campaign finance program.

...

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 15th 20th preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and 8. ~~Otherwise, an unenrolled candidate for the Legislature must submit the required number of qualifying contributions and the other required documents under subsection 4 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsection 8.~~ Revenues for the general election must be distributed to the candidate no later than 3 days after certification. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

§ 1125(10): the Commission staff proposes changing the April 15 deadline to April 20 to be consistent with the definition of qualifying period in § 1122(8) for legislative candidates that was amended in 2009. The staff also recommends eliminating the June option, as described in the note to § 1125(5), which we believe the Legislature intended to eliminate in 2009.

...

13. Distributions not to exceed amount in fund. The Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8 or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015 of this title ~~\$750 per donor per election for gubernatorial candidates and \$350 per donor per election for State Senate and State House candidates~~, up to the applicable amounts set forth in subsections 8 and 9 according to rules adopted by the commission.

§ 1125(13): this provision permits the Commission to authorize MCEA candidates to raise contributions if there is insufficient money in the MCE Fund. The provision makes reference to the \$350 and \$750 contribution limits in section 1015 that apply to traditionally financed candidates. Under § 1015, those limits are now indexed to inflation and will increase over time. So, the Commission staff suggests referring to the contribution limits in general terms and deleting the specific amounts of \$350 and \$750.

14. Appeals. A candidate who has been denied certification as a Maine Clean Election Act candidate by the commission's executive director, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the ~~commission or its~~ executive director as follows.

A. A challenger may appeal to the ~~full~~ commissioners within 7 days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within 5 days after an appeal is properly made and after notice is given to the challenger and any opponent, the commissioners shall hold a hearing, except that the commissioners may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commissioners must rule on the appeal within 5 business days after the completion of the hearing.

C. A challenger may appeal the decision of the commission in paragraph B by commencing an action in Superior Court within 5 days of the date of the commission's decision. The action must be conducted in accordance with Rule 80C of the Maine Rules of Civil Procedure, except that the court shall issue its written decision within 20 days of the date of the commission's decision. Any aggrieved party may appeal the decision of the Superior Court by filing a notice of appeal within 3 days of that

decision. The record on appeal must be transmitted to the Law Court within 3 days after the notice of appeal is filed. After filing the notice of appeal, the parties have 4 days to file briefs and appendices with the clerk of the court. The court shall consider the case as soon as possible after the record and briefs have been filed and shall issue its decision within 14 days of the decision of the Superior Court.

D. A candidate whose certification as a Maine Clean Election Act candidate is reversed on appeal must return to the commission any unspent revenues distributed from the fund. If the commission or court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the moving party to pay costs of the commission, court and opposing parties, if any.

§ 1125(14): the proposed changes are intended to clarify that the Commission's initial decision on a candidate's request for certification as a Maine Clean Election Act candidate will be made by the Commission's executive director, and that appeals will be made to the Commissioners through a formal hearing held under the Administrative Procedure Act. This is the current practice of the Commission.

CHAPTER 15
LOBBYIST DISCLOSURE PROCEDURES

3 § 315-A. Registration docket; disclosure website

1. Registration. The Commission shall prepare and maintain a docket for the registration of lobbyist and employers of lobbyists required to register pursuant to this chapter. The registration docket and all supplementary files of information and materials filed pursuant to this chapter must be open to public inspection during the office hours of the Commission. The docket must contain the name of the lobbyist and the person employing the lobbyist, the business address of each, the nature of the business of the person employing the lobbyist and a statement as to the compensation that the lobbyist will receive for lobbying services, or if an exact amount is not ascertainable, the basis upon which the lobbyist will charge for services. This docket must be updated on a monthly basis and arranged and indexed as follows:

- A. An alphabetical listing of those persons who have employed a lobbyist, which listing must indicate the names of all lobbyists employed by the employer; and
- B. An alphabetical listing of those persons employed as lobbyists, which listing must indicate the names of all persons by whom each lobbyist is employed.

The docket must be reestablished annually by the Commission and the docket for any year must be maintained and be available for public inspection in the office of the Commission for four (4) years from the expiration of the docket.

2. Disclosure website. The commission shall develop and maintain a publicly accessible website that displays:

- A. A list of all persons who have employed a lobbyist during the current year;
- B. A list of all lobbyists and lobbyist associates registered for the year;
- C. A profile of each registered lobbyist and lobbyist associate, including contact information, the name of the lobbyist's employer or employers, and if provided by the lobbyist or lobbyist associate, a photograph of the lobbyist or lobbyist associate;
- D. A profile of each person employing a lobbyist, including contact information for the employer, and a list of lobbyists and lobbyist associates engaged by the employer;
- E. For each employer, a list of all legislative actions that have been the subject of lobbying for the year, including hyperlinks to the summary page of the Legislature's publicly accessible website for each legislative document listed; ~~and~~
- E-1. The monthly reports filed under section 317, and an annual summary of those monthly reports; and
- F. A list of officials in the executive branch as defined in section 312-A, subsection 10-C.

§ 315-A(2): currently, the Commission receives monthly reports and annual reports from lobbyists. Since 2005, lobbyists have been required to file these reports electronically on the

Commission's e-filing website. Once a monthly or annual report is filed, the report is posted immediately on the Commission's public access website. The proposed statutory change reflects current practice.

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 15th 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;

E-1. When expenditures for the purposes of indirect lobbying exceed \$15,000 during the month that is the subject of the report, the specific dollar amount of expenditures for indirect lobbying made or incurred during the month by a lobbyist, lobbyist associate or employer, with separate totals for expenditure categories as determined by the commission, the legislative actions that are the subject of the indirect lobbying and a general description of the intended recipients;

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 of the employer's original sources and a statement of the dollar amounts contributed or paid by the original sources to the employer. 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 reports required by subsection 1 must be signed by the person designated by the lobbyist in section 316, subsection 1. The reports required by this subsection must be signed by both the designated person and the employer.~~

~~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.~~

§ 317(2): every month, registered lobbyists file detailed reports of their activities, including the compensation received from the client for lobbying, expenses paid by the lobbyist in the course of lobbying, the specific bills lobbied, the costs of events, etc. The monthly reports are required through the end of the lobbying year (November 30th), and then the lobbyist is required under subsection 2 to file an annual report by December 30. The annual report is

merely a compilation of all the information contained in the monthly reports. The annual report was required by the Legislature during an era in which lobbyist reports were filed on paper forms.

For the past few years, the Commission staff has developed the e-filing system to prepare a draft annual report that consists of a summation of all the information in the monthly reports. The lobbyist must review the information in the annual report and press the “file button” by the deadline of December 30.

The Commission staff proposes that the annual summary be posted to the Commission’s website automatically upon the filing of the last monthly report by the lobbyist. Under this change, the lobbyist would no longer be required to file an annual report. This would eliminate an administrative burden for lobbyists to file the annual report at one of the worst times of the year (December 30) and would eliminate time spent by the Commission staff sending reminders and dealing with late reports.

2-A. Electronic filing. Beginning January 1, 2006, a lobbyist shall file monthly session reports under subsection 1 and annual reports under subsection 2 through an electronic filing system developed by the Commission. The Commission may make an exception to this electronic filing requirement if a lobbyist submits a written request that states that the lobbyist lacks access to the technology or the technological ability to file reports electronically. The request for an exception must be submitted at least 10 days prior to the deadline for the first report that the lobbyist is required to file for the lobbying year. The Commission shall grant all reasonable requests for exceptions.

3. Facsimile copies. The Commission may, by rules adopted pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, establish procedures and fees by which facsimile copies of duly executed reports required by this section may be received and filed with the Commission.

4. Monthly non-session reports. When the Legislature is not in regular session, every registered lobbyist must either file:

A. With the lobbyist's last monthly report for that regular session a statement that the lobbyist will not engage in lobbying activities when the Legislature is not in session. The lobbyist is required to file a monthly report for lobbying activity conducted during a special session; or

B. If the lobbyist is engaged in lobbying in any of those months, a monthly report in the manner prescribed in subsection 1 even if compensation or reimbursement for expenses has not been received for the month.

If the lobbyist did not expect to be engaged in lobbying when the Legislature was not in session, the Commission may waive the requirement for the months between the end of the session and the renewal of lobbying.

3 § 319. Penalty

1. Failure to file registration or report. Any person who fails to file a registration or report as required by this chapter, may be assessed a fine of \$100 ~~for each person listed or who should have been listed on the lobbyist registration~~ for every month the person fails to register or is delinquent in filing a report pursuant to section 317. After a registration or report is filed late, the staff of the Commission must send a notice of the staff finding of violation and preliminary penalty. The notice shall provide the lobbyist with an opportunity to request a waiver of the preliminary penalty. If a lobbyist files a report required pursuant to section 317 within 24 hours after the deadline, the amount of the preliminary penalty is \$50. The commission may waive the penalty in whole or in part if the Commission determines the failure to register or report was due to mitigating circumstances or the penalty is disproportionate to the level of experience of the lobbyist or the harm suffered by the public from the late filed report. 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; 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 Internet service.

§ 319: the Commission staff proposes a fuller explanation in statute of the late-filing penalty procedures for lobbyist reports and registrations. One change we propose is that the monthly penalty would be \$100, regardless of how many lobbyists or lobbyist associates (assistant lobbyists) are listed on the registration. We also propose that if a lobbyist files a monthly report one day late (typically, after receiving an e-mail or call from the Commission staff) the preliminary penalty would be \$50. The changes also define "mitigating circumstances" to mean roughly the same considerations that justify waivers of late-filing penalties for candidates (§ 1020-A(2)) and PACs (1062-A(2)).

1-A. Notice of suspension. Any person who fails to file a report or pay a fee as required by this chapter may be suspended from further lobbying by written notice of the Commission until such failure is corrected.

2. (REPEALED).

3. Exemption. Notwithstanding section 317, subsection 1, a registered lobbyist is exempt from the penalty imposed under this section if, while the Legislature is convened in special session, the lobbyist failed to file a report with the Commission pursuant to section 317 if no lobbying has been performed during that special session.

3 § 320. Disposition of fees

Fees collected pursuant to this chapter must go in equal portions to the General Fund and to the Commission.

The Commission shall, no later than November 15th of the year prior to any proposed change, establish the amount of the registration fee required to be paid pursuant to section 313 for the subsequent year.

To simplify the bill, the staff has withdrawn the proposed amendment to keep the entire lobbyist registration fee.

CHAPTER 25
GOVERNMENTAL ETHICS

1 § 1013. Authority; procedures

1. Authority. The commission has authority:

- A. To issue, on request of any Legislator on an issue involving that Legislator, or on its own motion, written advisory opinions and guidance on problems or questions involving possible violations of legislative ethics;
- B. To investigate complaints alleging a violation of legislative ethics against any Legislator, to investigate a possible violation of legislative ethics upon the commission's own motion, to hold hearings on ~~those complaints~~ an alleged violation if the commission determines it is appropriate and to issue findings of fact together with its opinion; and
- C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

§ 1013(1)(B): in 2006, the presiding officers of the Legislature established an advisory committee to review the legislative ethics law. In 2008, the committee's recommendations were enacted after some modifications as P.L. 2007, Chapter 642 (included at the end of the materials for this agenda item). The law amended the Ethics Commission's procedures for considering complaints concerning legislative ethics. Most notably, it permitted members of the public to file complaints, through insertions and deletions to paragraph § 1013(1)(B) and through replacing § 1013(2)(B) with (2)(B-1). The Ethics Commission's executive director was a non-voting member of the advisory committee, and observed the consideration of the legislation by the Joint Standing Committee on Legal and Veterans Affairs.

When the Legislature amended § 1013(1)(B), it deleted the explicit authorization to the Ethics Commission to investigate ethics complaints "on its own motion." In the opinion of the Commission staff, this was inadvertent. We saw no indication that the advisory committee or the joint standing committee intended that the Ethics Commission would not to pursue a valid ethics violation brought to its attention through some means other than a complaint.

The Commission staff believes it is good policy for the Commission to be able to consider a legislative ethics violation on its own initiative, even if no complaint were to be filed. There are understandable reasons that Legislators, legislative or agency staff, or advocates around the State House would not wish to file a complaint (e.g., impaired relations, political pressure, or fear of retaliation).

2. Procedure. The following procedures apply.

- A. Requests for advisory opinions by members of the Legislature must be filed with the commission in writing and signed by the Legislator requesting the opinion and

must contain such supporting data as the commission requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it determines necessary. A copy of the commission's advisory opinion must be sent to the Legislator concerned and to the presiding officer of the legislative body of which the Legislator is a member.

B. (REPEALED)

B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in section 1014 and 1015. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015 that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires. A complainant shall agree in writing not to disclose any information about the complaint during the time the commission is determining whether or not to pursue the complaint or during the investigation of a complaint. A complaint that does not meet the criteria of this paragraph is considered incomplete and will not be forwarded to the commission.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and the name of the complainant. **Before deciding whether to conduct an investigation or to hold any hearings, the commission shall afford the Legislator an opportunity to answer the complaint in writing and in person to the commission. The commission staff may gather preliminary factual information that will assist the commission in deciding whether to conduct a full investigation or to hold hearings.**

§ 1013(2)(B-1)(1): paragraph B-1 describes the Commission's procedures if a legislative ethics complaint has been filed with the Commission. The staff proposes that the statute explicitly provide the Legislator with an opportunity to answer the complaint before the Commission decides whether to conduct an investigation or to hold hearings. The staff also proposes explicit authority for the Commission staff to gather preliminary factual information before the Commission meets to consider whether to conduct a full investigation or to hold hearings. We envision these preliminary steps might include collecting publicly available documents such as legislation or interviewing the complainant if the complaint does not include all of the relevant facts. Under existing subsection 3-A, these documents would become public only if the Commission votes to conduct a full investigation or to hold hearings, but would otherwise remain confidential.

(2) The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within two (2) years of the complaint. Upon a majority vote of the commission, the commission shall conduct an investigation and hold hearings as it determines necessary.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged violation of legislative ethics to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.

(4) If the commission determines that a Legislator has potentially violated professional standards set by a licensing board, its opinion and such other information as may be appropriate must be referred to the licensing board that oversees the Legislator's professional conduct.

B-2. If the commission receives information other than through a complaint suggesting that a Legislator may have committed a violation of legislative ethics, the commission may commence an investigation or conduct hearings when there is probable cause to believe that a violation has occurred. The commission may only consider activities by a Legislator in office at the time of the investigation and that occurred or were ongoing within two (2) years of the investigation. The commission shall provide the Legislator with written notice of the potential violation and an opportunity to be heard in accordance with the requirements of paragraph B-1. The commission's consideration of the potential violation is subject to the confidentiality provisions of subsection 3-A.

§ 1013(2)(B-2): the staff proposes paragraph (2)(B-2) to clarify the procedures the Commission would use to investigate, on its own initiative, whether a Legislator has committed a possible ethics violation. The Commission could only conduct an investigation or hearing if there were probable cause to believe that a violation occurred. The proposed procedures would provide the Legislator with the same protections afforded to a Legislator who is the subject of the complaint. The Commission's jurisdiction would extend only to current Legislators and to activity in the past two years. The Commission would provide the Legislator with written notice of the potential investigation prior to any decision to conduct an investigation or hold public hearings. If the Commission decided not to conduct an investigation, all investigative materials would remain confidential under existing subsection 3-A.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator must be given written notification of the time and place at which the hearing is to be held. Such notification must be given not less than ten (10) days prior to the date set for the hearing.

D. The commission has authority, through its chair or any member designated by the chair, to administer oaths, subpoena witnesses and compel the production of books,

records, papers, documents, correspondence and other material and records the commission determines relevant. The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents the commission designates as being necessary for the exercise of its functions and duties. In the case of refusal of any person to obey an order or subpoena of the commission, the Superior Court, upon application of the commission, has jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

E. The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

The commission is not bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing.

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate must be referred to the Attorney General. Any determination by the commission or by a legislative body that a violation of legislative ethics has occurred does not preclude any criminal action relating to the violation that may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is frivolous or filed in bad faith or if the complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed that Legislator's costs of investigation and defense, including any reasonable attorney's fees. This order is considered a final agency action, and the complainant may appeal the order pursuant to the Maine Administrative Procedure Act. If the commission determines that the complaint was filed in bad faith, the commission shall refer the case to the Attorney General for investigation.

Such an order does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to the Legislator's reputation.

H. The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and guidance issued by the commission that were formally requested by a Legislator and that were considered by the commission at a public meeting, with such deletions and changes as the commission considers necessary to protect the identity of the person seeking the opinions or others. The Clerk of the House shall keep a copy of such opinions and guidance in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part of an opinion from release, publication or inspection if it considers such action appropriate for the protection of third parties and makes available to the public an explanatory statement to that effect.

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators must also be filed with the Clerk of the House and the Secretary of the Senate. The Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. (REPEALED).

K. When a Legislator has a question or problem of an emergency nature about a possible violation of legislative ethics or an issue involving that Legislator that arises during the course of legislative action, the Legislator may request an advisory opinion from the presiding officer of the legislative body of which the Legislator is a member. The presiding officer may issue an advisory opinion. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, be in writing and be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

3. Confidentiality. (REPEALED)

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.

4. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

- A. Investigative records relating to complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission.
- B. Legislators' statements of sources of income are public records.
- C. Findings of fact and recommendations of the commission on complaints alleging violation of legislative ethics are public records.
- D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.

5. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

1 § 1014. Violations of legislative ethics

1. Situations involving conflict of interest. A Legislator engages in a violation of legislative ethics if that Legislator votes on a question in connection with a conflict of interest in committee or in either body of the Legislature or attempts to influence the outcome of that question unless a presiding officer in accordance with the Joint Rules of the Legislature requires a Legislator to vote or advises the Legislator that there is no conflict in accordance with section 1013, subsection 2, paragraph K. A conflict of interest includes:

- A. When a Legislator or a member of the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation;
- B. When a Legislator or a member of the Legislator's immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in an entity affected by proposed legislation and the Legislator knows or reasonably should know that the purpose of the donor in making the gift is to influence the Legislator in the performance of the Legislator's official duties or vote or is intended as a reward for action on the Legislator's part;
- C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator;
- D. Appearing for, representing or advocating on behalf of another before the Legislature, unless without compensation and for the benefit of a citizen;
- E. When a Legislator or a member of the Legislator's immediate family accepts or engages in employment that could impair the Legislator's judgment, or when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded the Legislator or a member of the Legislator's immediate family with intent to influence the performance of the Legislator's official

duties, or when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community; and

F. When a Legislator or a member of the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of the Legislator's immediate family is engaged, and the benefit derived by the Legislator or a member of the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

2. Undue influence. (REPEALED)

2-A. Undue influence. It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes the exertion of undue influence, including, but not limited to:

A. Appearing for, representing or advocating for another person in a matter before a state agency or authority, for compensation other than compensation as a Legislator, if the Legislator makes reference to that Legislator's legislative capacity, communicates with the agency or authority on legislative stationery or makes threats or implications relating to legislative action;

B. Appearing for, representing or advocating for another person in a matter before a state agency or authority if the Legislator oversees the policies of the agency or authority as a result of the Legislator's committee responsibilities, unless:

(1) The appearance, representation or advocacy is provided without compensation and for the benefit of a constituent;

(2) The Legislator is engaged in the conduct of the Legislator's profession and is in good standing with a licensing board, if any, that oversees the Legislator's profession;

(3) The appearance, representation or advocacy is provided before a court or office of the judicial branch; or

(4) The representation consists of filing records or reports or performing other routine tasks that do not involve the exercise of discretion on the part of the agency or authority; and

C. Representing or assisting another person in the sale of goods or services to the State, a state agency or a state authority, unless the transaction occurs after public notice and competitive bidding.

3. Abuse of office or position. It is a violation of legislative ethics for a Legislator to engage in conduct that constitutes an abuse of office or position, including but not limited to:

A. When a Legislator or a member of the Legislator's immediate family has a direct financial interest or an interest through a close economic associate in a contract for goods or services with the State, a state agency or state authority unless the contract is awarded through competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws or the payment provisions are based on uniform rates established by the State, a state agency, a state authority or other governmental entity;

- B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs; and
- C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

4. Contract with state governmental agency. It is a violation of legislative ethics for a Legislator or an associated organization to enter with a state agency into any contract that is to be paid in whole or in part out of governmental funds unless the contract has been awarded through a process of public notice and competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws.

1 § 1015. Prohibited campaign contributions and solicitations

1. Actions precluded. (REPEALED)

2. Reports. (REPEALED)

3. Campaign contributions and solicitations prohibited. The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session.

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A. As used in this subsection, "contribution" has the same meaning as in Title 21-A, section 1012 and includes seed money contributions defined in Title 21-A, section 1122, subsection 9.

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to contributions directly and indirectly solicited or accepted by, or given, offered and promised to a political action committee, ballot question committee or party committee of which the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials is a treasurer, officer or primary fund-raiser or decision maker.

C. This subsection does not apply to:

- (1) Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- (2) Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election;

(3) Solicitations or contributions accepted by a member of the Legislature supporting that member's campaign for federal office.

C-1. This subsection does not prohibit the attendance of the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer at fund-raising events held by a municipal, county, state or national political party organized pursuant to Title 21-A, chapter 5, nor the advertisement of the expected presence of any such official at any such event, as long as any such official has no involvement in soliciting attendance at the event and all proceeds are paid directly to the political party organization hosting the event or a nonprofit charitable organization.

D. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action.

4. Contract with state governmental agency. (REPEALED)

1 § 1016. Statement of sources of income. (REPEALED)

1 § 1016-A. Disclosure of specific sources of income

Each Legislator shall file a statement of specific sources of income received in the preceding calendar year with the commission by 5:00 p.m. on February 15th of each year on forms provided by the commission. Prior to the end of the first week in January of each year, the commission shall deliver a form to each Senator and member of the House of Representatives. The statement of specific sources of income filed under this subchapter must be on a form prescribed by the commission and is a public record.

1. Disclosure of Legislator's income. The Legislator filing the statement shall name and give the address of each specific source of income received as follows.

A. A Legislator who is an employee of another shall name the employer and each other source of income of \$1,000 or more.

B. A Legislator who is self-employed shall state that fact and the name and address of the Legislator's business. The Legislator shall name each source of income derived from self-employment that represents more than 10% of the Legislator's gross income or \$1,000, whichever is greater, provided that if this form of disclosure is prohibited by law, rule or an established code of professional ethics, the Legislator shall only specify the principal type of economic activity from which the income is derived. With respect to all other sources of income, a self-employed Legislator shall name each source of income of \$1,000 or more. The Legislator shall also indicate major areas of economic activity and, if associated with a partnership, firm, professional association or similar business entity, the major areas of economic activity of that entity.

C. In identifying the source of income, it shall be sufficient to identify the name and address and the principal type of economic activity of the corporation, professional association, partnership, financial institution, nonprofit organization or other entity or person directly providing the income to the Legislator.

D. With respect to income from a law practice, it shall be sufficient for attorneys-at-law to indicate their major areas of practice and, if associated with a law firm, the major areas of practice of the firm, in such manner as the commission may require.

2. Campaign contributions. Campaign contributions duly recorded as required by law shall not be considered income.

3. Disclosure of gifts. The Legislator shall name the specific source of each gift that the Legislator receives.

4. Disclosure of income of immediate family. The Legislator shall disclose the type of economic activity representing each source of income of \$1,000 or more that any member of the immediate family of the Legislator received and the name of the spouse or domestic partner of the Legislator. The disclosure must include the job title of the Legislator and the members of the Legislator's immediate family if the source of income is derived from employment or compensation.

5. Disclosure of honoraria. The Legislator shall disclose the name of each source of honoraria that the Legislator accepted.

6. Representation before state agencies. The Legislator shall identify each executive branch agency before which the Legislator has represented or assisted others for compensation.

7. Business with state agencies. The Legislator shall identify each executive branch agency to which the Legislator or the Legislator's immediate family has sold goods or services with a value in excess of \$1,000.

1 § 1016-B. Disclosure of reportable liabilities

Each Legislator shall include on the statement of income under section 1016-A all reportable liabilities incurred during the Legislator's term of office.

1. Definition. For the purposes of this section, "reportable liability" means any unsecured loan of \$3000 or more received from a person not a relative. "Reportable liability" does not include:

- A. A credit card liability;
- B. An educational loan made or guaranteed by a governmental entity, educational institution or nonprofit organization; or
- C. A loan made from a state or federally regulated financial institution for business purposes.

2. Reporting. A Legislator shall make a supplementary statement to the commission of any reportable liability within 30 days after it is incurred. The report shall identify the creditor in the manner of section 1016-A, subsection 1, paragraph C.

3. Campaign contributions. Campaign contributions duly recorded as required by law are not required to be reported under this section.

1 § 1016-C. Reports by legislative candidates

A candidate, as defined in Title 21-A, section 1, subsection 5, for the Legislature who is not required to file a report under section 1016-A, ~~or 1016-B~~ or 1016-E shall file a report containing the same information required of Legislators under sections 1016-A, ~~and 1016-B~~ and 1016-E no later than 5 p.m. on the first Monday in August preceding the general election unless the candidate withdraws from the election in accordance with Title 21-A, section 374-A by that date.

§ 1016-C: historically, candidates for the Legislature who are not incumbents have been required to file the same personal financial statements as are filed by Legislators. The candidates' statements cover the calendar year before the general election. (For example, in August 2010, non-incumbent candidates filed statements covering 2009.) The statements require the candidates to disclose the sources of their personal income (e.g., employment, investments, gifts) (required by § 1016-A) and their unsecured debts over \$3,000 (required by § 1016-B).

In 2008, the Legislature enacted P.L. 2007, Chapter 704, which required Legislators to disclose any positions, offices, directorships, or trusteeships that they held during the previous year in any for-profit or non-profit firm (§ 1016-E). The Commission incorporated this disclosure into the annual statement of sources of income and debts filed by Legislators.

The Commission staff proposes that legislative candidates who are not incumbents also disclose their positions, offices, directorships, or trusteeships. That would make the information disclosed by non-incumbent candidates the same as for Legislators, and we would use the same form for both Legislators and non-incumbent candidates.

1 § 1016-D. Disclosure of bids on government contracts

When a Legislator or associated organization bids on a contract with a state governmental agency, the Legislator or associated organization shall file a statement with the commission no later than 5:00 p.m. on the day the bid is submitted that discloses the subject of the bid and the names of the Legislator, associated organization and state governmental agency as appropriate. The bid disclosure statement filed under this section must be on a form prescribed by the commission and is a public record as defined in section 402.

1 § 1016-E. Disclosure of interests

Beginning in 2010, each Legislator shall file with the commission by 5:00 p.m. on February 15th of each year on the form provided by the commission a statement of those positions set forth in this section that were held in the preceding calendar year. Prior to the end of the first week in January of each year, the commission shall deliver a form to each Senator and member of the House of Representatives. The statement of positions is a public record.

1. Disclosure of officer or director position. A Legislator filing a statement under this section shall report:

A. Any offices, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, held by the Legislator in the preceding calendar year with any for-profit or nonprofit firm, corporation, association, partnership or business; and

B. Any officers, trusteeships, directorships or positions of any nature, whether compensated or uncompensated, hold by a member of the immediate family of the Legislator with any for-profit or nonprofit firm, corporation, association, partnership or business and the name of that member of the Legislator's immediate family.

1 § 1016-F. Internet disclosure

The commission shall publish on its publicly accessible website the completed forms submitted by Legislators pursuant to sections 1016-A, 1016-B, 1016-D, 1016-E and 1018 and by candidates for the Legislature pursuant to section 1016-C.

1 § 1017. Form; contents (REPEALED)

1 § 1017-A. Civil penalties; late and incomplete statements; failure to file

A Legislator who fails to file a statement in accordance with this subchapter after being notified by the commission may be assessed a fine not to exceed \$100. A statement is not considered filed unless it substantially conforms to the requirements of this subchapter and is properly signed. The commission shall determine whether a statement substantially conforms to the requirements of this subchapter.

§ 1017-A: upon further consideration, the Commission staff proposes no changes to this section. Please see note to § 1019.

1 § 1018. Updating statement

A Legislator shall file an updating statement with the commission on a form prescribed and prepared by the commission. The statement must be filed within 30 days of

addition, deletion or change to the information relating to the preceding year supplied under this subchapter.

1 § 1019. False statement; failure to file

The intentional filing of a false statement shall be a Class E crime. If the commission concludes that it appears that a Legislator has willfully filed a false statement, it shall refer its findings of fact to the Attorney General.

If the commission determines that a Legislator has willfully failed to file a statement required by this subchapter or has willfully filed a false statement, the Legislator shall be presumed to have a conflict of interest on every question and shall be precluded or punished as provided in section ~~1015~~ 1014.

§ 1019: in February of each year, the Commission receives annual statements from Legislators of the sources of their personal income, their unsecured debts over \$3,000, and their offices or positions in for-profit or non-profit firms. Under § 1019, if the Commission determines that a Legislator has willfully failed to file a statement required by this chapter, he or she is presumed to have a conflict of interest on every question before the Legislature and is precluded from voting on or influencing those questions. In P.L. 2007, Ch. 642 (attached), the Legislature moved the preclusion language from § 1015(1) to the first sentence of § 1014. So, the staff proposes amending the reference to section 1014.

In the staff's previous proposal, we proposed to delete this preclusion sanction in favor of reporting the violation to the Presiding Officer of the member's chamber. We have withdrawn that amendment to simply the bill.

1 § 1022. Disciplinary guidelines

The Legislature shall adopt, publish, maintain and implement, as authorized in the Constitution of Maine, Article IV, Part Third, Section 4, disciplinary guidelines and procedures for Legislators, including the violations of ethical standards, penalties of reprimand, censure or expulsion and the procedures under which these or other penalties may be imposed.

1 § 1023. Code of ethics

The Legislature by Joint Rule shall adopt and publish a code of ethics for Legislators and legislative employees.

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
124th Legislature
First Regular Session

Chapter 366
S.P. 411 - L.D. 1100

An Act To Preserve Government Documents

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 21-A MRSA §1011, as amended by PL 2007, c. 571, §8, is further amended to read:

§ 1011. Application

This subchapter applies to candidates for all state and county offices and all candidates for municipal office as defined in Title 30-A, section 2502, subsection 1 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:

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.~~

Sec. 2. 21-A MRSA §1013-A, sub-§1, ¶A, as amended by PL 2007, c. 642, §9 and affected by §14, is further amended to read:

A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state ~~or~~ , county or municipal office ~~or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 2, paragraph A~~ shall appoint a treasurer. The candidate may serve as treasurer, except that a candidate certified in accordance with section 1125 may not serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

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

Sec. 3. 21-A MRSA §1017, sub-§3-A, as amended by PL 2007, c. 642, §10, is further amended to read:

3-A. Other candidates. A treasurer of a candidate for state ~~or~~ , county or municipal 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 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.

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.

Sec. 4. 21-A MRSA §1017-A, sub-§8, as enacted by PL 1995, c. 483, §10, is amended to read:

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

Sec. 5. 21-A MRSA §1019-B, sub-§3, as enacted by PL 2003, c. 448, §3, is amended to read:

3. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election in a town or city that has chosen to be governed by this subchapter, a copy of the same information must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements and matching fund provisions under chapter 14. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

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

Sec. 6. 21-A MRS §1020-A, sub-§3, as amended by PL 1995, c. 625, Pt. B, §5, is further amended to read:

3. Municipal campaign finance reports. Municipal campaign finance reports must be filed, subject to all the provisions of this subchapter, with the municipal clerk in a town or city that has chosen to be governed by this subchapter 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.

Sec. 7. 21-A MRS §1056-B, first ¶, as amended by PL 2007, c. 477, §4, is further amended to read:

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 report with the commission. ~~In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.~~ Within 7 days of receiving contributions or making expenditures that exceed \$5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of 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.

Sec. 8. 21-A MRS §1058, as amended by PL 2007, c. 477, §5, is further amended to read:

§ 1058. Reports; qualifications for filing

A political action committee that is required to register with the commission shall file a report on its activities in that campaign with the commission on forms as prescribed by the commission. 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 in a municipality subject to this subchapter, the report must be filed with the clerk ~~in the subject municipality~~ commission.

Sec. 9. 21-A MRSA §1059, first ¶, as amended by PL 2007, c. 571, §9, is further amended to read:

Committees required to register under section 1053 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 in a town or city that has chosen to be governed by this subchapter must be filed by the close of business on the filing deadline.

Sec. 10. 30-A MRSA §2502, as amended by PL 1999, c. 645, §15, is further amended to read:

§ 2502. Campaign reports in municipal elections

1. Reports by candidates. A candidate for municipal office of a town or city with a population of 15,000 or more is governed by Title 21-A, sections 1001 to 1020-A, ~~except that notices of appointment of a treasurer and campaign reports must be filed with the municipal clerk instead of and must register and file campaign reports with~~ the Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, sections 1001 to 1020-A by vote of its legislative body at least 90 days before an election for office. A candidate in a town or city with a population of less than 15,000 that has adopted those provisions must register and file campaign finance reports with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to those sections.

A. ~~Notwithstanding Title 17-A, section 4-A, a candidate who fails to file a notice or report as required by this section is guilty of a Class E crime and may be punished by a fine of \$5 for every day the candidate is in default or by imprisonment for not more than 30 days, or both.~~

2. Municipal referenda campaigns. Municipal referenda campaigns in towns or cities with a population of 15,000 or more are governed by Title 21-A, chapter 13, subchapter ~~IV 4~~. The registrations and reports of political action committees and ballot question committees must be filed with the ~~municipal clerk~~ Commission on Governmental Ethics and Election Practices. A town or city with a population of less than 15,000 may choose to be governed by Title 21-A, chapter 13, subchapter ~~IV 4~~ by vote of its legislative body at least 90 days before a referendum election. The registrations and reports of political action committees and ballot question committees in a town or city that has adopted those provisions must be filed with the municipal clerk instead of the Commission on Governmental Ethics and Election Practices. A town or city that votes to adopt those provisions may revoke that decision, but it must do so at least 90 days before an election subject to that subchapter.

3. Preservation and destruction of records. A town or city with a population of less than 15,000 that has adopted the provisions of Title 21-A, chapter 13 pursuant to this section must keep the campaign reports for at least 8 years.

Sec. 11. Appropriations and allocations. The following appropriations and allocations are made.

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Provides one-time funding for programming changes to the electronic filing system.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$24,800	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$24,800	\$0

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Increases the number of months worked for one Planning and Research Assistant position from 9 to 11 months.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	\$8,325	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	\$8,325	\$0

ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL DEPARTMENT TOTALS	2009-10	2010-11
OTHER SPECIAL REVENUE FUNDS	\$33,125	\$0
DEPARTMENT TOTAL - ALL FUNDS	\$33,125	\$0

Sec. 12. Effective date. This Act takes effect August 1, 2011.

Effective August 1, 2011.

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
Second Regular Session

Chapter 642
H.P. 1585 - L.D. 2219

**An Act To Promote Transparency and Accountability
in Campaigns and Governmental Ethics**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §1003, sub-§2, as enacted by PL 1975, c. 621, §1, is amended to read:

2. Records. Except as provided in section 1013, ~~subsection 2, paragraph J,~~ all records of the commission, including business records, reports made to or by the commission, findings of fact and opinions, ~~shall~~must be made available to any interested member of the public who may wish to review them. Any member of the public may request copies of any record held by the commission ~~which~~that is available for public inspection. The commission shall furnish these copies upon payment of a fee covering the cost of reproducing them.

Sec. 2. 1 MRSA §1005, as amended by PL 2001, c. 430, §3, is further amended to read:

§ 1005. Open meetings

Notwithstanding chapter 13 ~~and except as provided in section 1013, subsection 3-A,~~ all meetings, hearings or sessions of the commission are open to the general public unless, by an affirmative vote of at least 3 members, the commission requires the exclusion of the public.

Sec. 3. 1 MRSA §1008, sub-§1, as enacted by PL 1975, c. 621, §1, is amended to read:

1. Legislative ethics. To investigate and make advisory recommendations to the appropriate body of any apparent violations of the ~~ethical standards set by the Legislature~~ legislative ethics;

Sec. 4. 1 MRSA §1012, sub-§4, as amended by PL 1995, c. 33, §§1 and 2, is further amended to read:

4. Gift. "Gift" means anything of value, including forgiveness of an obligation or debt, given to a person without that person providing equal or greater consideration to the giver. "Gift" does not include:

A. Gifts received from a single source during the reporting period with an aggregate value of \$300 or less;

B. A bequest or other form of inheritance;

- C. A gift received from a relative; and
- D. A subscription to a newspaper, news magazine or other news publication; or
- E. Legal services provided in a matter of legislative ethics.

Sec. 5. 1 MRSA §1012, sub-§10 is enacted to read:

10. Violation of legislative ethics. "Violation of legislative ethics" means a violation of the prohibitions in section 1014 or 1015.

Sec. 6. 1 MRSA §1013, as amended by PL 1989, c. 561, §§5 and 6, is further amended to read:

§ 1013. Authority; procedures

1. Authority. The commission shall ~~have the~~ has authority:

A. To issue, on request of any Legislator on an issue involving ~~himself~~ that Legislator, or on its own motion, written advisory opinions and ~~guidelines~~ guidance on problems or questions involving possible ~~conflicts of interest in matters under consideration by, or pertaining to, the Legislature~~ violations of legislative ethics;

B. To investigate complaints ~~filed by Legislators, or on its own motion, alleging conflict of interest~~ violation of legislative ethics against any Legislator, to hold hearings ~~thereon~~ on those complaints if the commission ~~deems~~ determines it is appropriate and to issue publicly findings of fact together with its opinion; and

C. To administer the disclosure of sources of income by Legislators as required by this subchapter.

2. Procedure. The following procedures shall apply:

A. Requests for advisory opinions by members of the Legislature shall ~~must~~ be filed with the commission in writing; ~~and~~ signed by the Legislator requesting the opinion and shall ~~must~~ contain such supporting data as the commission shall ~~require~~ requires. Commission staff shall inform a Legislator upon that Legislator's request for an advisory opinion that written opinions issued by the commission are public and are submitted to the Clerk of the House and the Secretary of the Senate and entered into the legislative record. When preparing an advisory opinion on its own motion, the commission shall notify the Legislator concerned and allow ~~him~~ the Legislator to provide additional information to the commission. In preparing an advisory opinion, either upon request or on its own motion, the commission may make such an investigation as it ~~deems~~ determines necessary. A copy of the commission's advisory opinion shall ~~must~~ be sent to the Legislator concerned and to the presiding officer of the ~~House~~ legislative body of which the Legislator is a member;

B. ~~A Legislator making a complaint shall file the complaint under oath with the chairman. The complaint shall specify the facts of the alleged conflict of interest. The Legislator against whom a complaint is filed shall immediately be given a copy of the complaint and the name of the complainant. Only those complaints dealing with alleged conflicts of interest related to the current Legislature shall be considered by the commission. Upon a majority vote of the commission, the commission shall conduct such investigation and hold such hearings as it deems necessary. The~~

commission shall issue its findings of fact together with its opinion regarding the alleged conflict of interest to the House of which the Legislator concerned is a member. That House may take whatever action it deems appropriate, in accordance with the Constitution of the State of Maine.

B-1. Any person may file a complaint against a Legislator alleging a violation of legislative ethics only as described in section 1014 and 1015. The complaint must be filed in writing and signed under oath and must specify the facts of the alleged violation citing the specific provisions of sections 1014 and 1015 that are alleged to have been violated, the approximate date of the alleged violation and such other information as the commission requires. A complainant shall agree in writing not to disclose any information about the complaint during the time the commission is determining whether or not to pursue the complaint or during the investigation of a complaint. A complaint that does not meet the criteria of this paragraph is considered incomplete and will not be forwarded to the commission.

(1) The Legislator against whom a complaint is filed must immediately be given a copy of the complaint and the name of the complainant.

(2) The commission shall consider only complaints against Legislators in office at the time of the filing of the complaint and only complaints relating to activity that occurred or was ongoing within 2 years of the complaint. Upon a majority vote of the commission, the commission shall conduct an investigation and hold hearings as it determines necessary.

(3) The commission shall issue its findings of fact together with its opinion regarding the alleged violation of legislative ethics to the legislative body of which the Legislator concerned is a member. That legislative body may take whatever action it determines appropriate, in accordance with the Constitution of Maine.

(4) If the commission determines that a Legislator has potentially violated professional standards set by a licensing board, its opinion and such other information as may be appropriate must be referred to the licensing board that oversees the Legislator's professional conduct.

C. When the conduct of a particular Legislator is under inquiry and a hearing is to be held, the Legislator ~~shall~~must be given written notification of the time and place at which the hearing is to be held. Such notification ~~shall~~must be given not less than 10 days prior to the date set for the hearing.

D. The commission ~~shall have the~~has authority, through its ~~chairman~~chair or any member designated by ~~him~~the chair, to administer oaths, subpoena witnesses and compel the production of books, records, papers, documents, correspondence and other material and records ~~which the committee deems~~commission determines relevant. ~~The commission shall subpoena such witnesses as the complainant Legislator or the Legislator against whom the complaint has been filed may request to be subpoenaed.~~ The State, its agencies and instrumentalities shall furnish to the commission any information, records or documents ~~which the commission designates as being necessary for the exercise of its functions and duties.~~ In the case of refusal of any person to obey an order or

subpoena of the commission, the Superior Court, upon application of the commission, shall have ~~has~~ jurisdiction and authority to require compliance with the order or subpoena. Any failure of any person to obey an order of the Superior Court may be punished by that court as a contempt thereof.

~~E. Any person whose conduct is under inquiry shall be accorded due process and, if requested, the right to a hearing. All witnesses shall be subject to cross-examination. The commission shall adopt rules consistent with due process for the conduct of investigations and hearings under this subchapter. Rules adopted pursuant to this paragraph are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.~~

~~Any person whose name is mentioned in an investigation or hearing and who believes that testimony has been given which adversely affects him shall have the right to testify, or at the discretion of the commission and under such circumstances as the commission shall determine to protect the rights of the Legislator under inquiry, to file a statement of facts under oath relating solely to the material relevant to the testimony of which he complains. Any witness at an investigation or hearing, subject to rules and regulations promulgated by the commission, shall be entitled to a copy of such testimony when the same becomes relevant to a criminal proceeding or subsequent investigation or hearings.~~

~~All witnesses shall be sworn. The commission may sequester witnesses as it deems necessary. The commission shall is not be bound by the strict rules of evidence, but its findings and opinions must be based upon competent and substantial evidence.~~

~~Time periods and notices may be waived by agreement of the commission and the person whose conduct is under inquiry.~~

E-1. The commission may permit the complainant to make a presentation to the commission as part of its consideration whether to conduct an investigation or public hearing.

F. If the commission concludes that it appears that a Legislator has violated a criminal law, a copy of its findings of fact, its opinion and such other information as may be appropriate ~~shall~~must be referred to the Attorney General. Any determination by the commission or by a ~~House of the Legislature~~legislative body that a ~~conflict of interest~~violation of legislative ethics has occurred does not preclude any criminal action relating to the ~~conflict which~~violation that may be brought against the Legislator.

G. If the commission determines that a complaint filed under oath is ~~groundless and without foundation, frivolous or was filed in bad faith~~ or if the Legislator ~~filing the complaint~~complainant fails to appear at the hearing without being excused by the commission, the commission may order the complainant to pay to the Legislator against whom the complaint has been filed ~~his~~that Legislator's costs of investigation and defense, including any reasonable attorney's fees. ~~The~~This order is considered a final agency action, and the complainant may appeal ~~such an~~the order to the ~~House of which he is a member~~pursuant to the Maine Administrative Procedure Act. If the commission determines that the complaint was filed in bad faith, the commission shall refer the case to the Attorney General for investigation.

Such an order ~~shall~~does not preclude any other remedy available to the Legislator against whom the complaint has been filed, including, but not limited to, an action brought in Superior Court against the complainant for damages to ~~his~~the Legislator's reputation.

H. ~~A copy of the commission's~~The commission shall file with the Clerk of the House and the Secretary of the Senate a copy of written advisory opinions and ~~guidelines~~guidance issued by the commission that were formally requested by a Legislator and that were considered by the commission at a public meeting, with such deletions and changes as the commission ~~deems~~considers necessary to protect the identity of the person seeking the opinions; or others, shall be filed with the Clerk of the House. The ~~clerk~~Clerk of the House shall keep ~~them~~a copy of such opinions and ~~guidance~~ in a special binder and shall finally publish them in the Legislative Record. The commission may exempt an opinion or a part thereof of an opinion from release, publication or inspection; if it ~~deems~~considers such action appropriate for the protection of 3rd parties and makes available to the public an explanatory statement to that effect.

I. A copy of the commission's findings of fact and opinions regarding complaints against Legislators ~~shall~~must also be filed with the Clerk of the House and the Secretary of the Senate. The ~~clerk~~Clerk of the House shall keep them in a special binder and shall finally publish them in the Legislative Record.

J. ~~The records of the commission and all information received by the commission acting under this subchapter in the course of its investigation and conduct of its affairs shall be confidential, except that Legislators' statements of sources of income, evidence or information disclosed at public hearings, the commission's findings of fact and its opinions and guidelines are public records.~~

K. When a Legislator has a question or problem of an emergency nature about a possible ~~conflict of interest~~violation of legislative ethics or an issue involving ~~himself~~that Legislator that arises during the course of legislative action, ~~he~~the Legislator may request an advisory opinion from the presiding officer of the legislative body of which ~~he~~the Legislator is a member. The presiding officer may, at his discretion, issue an advisory opinion, ~~which shall~~. An advisory opinion issued by the presiding officer must be in accordance with the principles of this subchapter, which shall be in writing; and which shall be reported to the commission. The commission may then issue a further opinion on the matter. The presiding officer may refer such a question or problem directly to the commission, which shall meet as soon as possible to consider the question or problem.

L. The commission shall make reasonable efforts to resolve a complaint within 90 days of its filing.

3. Confidentiality. ~~The subject of any investigation by the commission shall be informed promptly of the existence of the investigation and the nature of the charges or allegations. Otherwise, notwithstanding chapter 13, all complaints shall be confidential until the investigation is completed and a hearing ordered or until the nature of the investigation becomes public knowledge. Any person, except the subject of the investigation, who knowingly breaches the confidentiality of the investigation is guilty of a Class D crime.~~

3-A. Confidentiality of records and proceedings relating to screening complaints alleging a violation of legislative ethics. Notwithstanding chapter 13, a complaint alleging a violation of legislative ethics is confidential and is not a public record until after the commission has voted pursuant to subsection 2, paragraph B-1 to pursue the complaint, and a commission proceeding to

determine whether to pursue a complaint must be conducted in executive session. If the commission does not vote to pursue the complaint, the complaint and records relating to the investigation of that complaint remain confidential and are not public records unless the Legislator against whom the complaint is made submits a written request that the complaint and all accompanying materials be made public. This subsection does not prohibit a complainant from disclosing information that the complainant provided to the commission as part of the complaint or investigation once the commission has determined not to pursue the complaint or the investigation of a complaint is complete. This subsection does not prevent the commission from including general information about complaints in any report to the Legislature. Any person who knowingly breaches the confidentiality of a complaint investigation commits a Class D crime. This subsection does not prevent commission staff from disclosing information to a person from whom the commission is seeking information or evidence relevant to the complaint that is necessary to investigate the complaint or prevent the complainant or the Legislator against whom the complaint is made from discussing the complaint with an attorney or other person assisting them with the complaint. The commission or commission staff shall inform any person with whom they communicate of the requirement to keep any information regarding the complaint investigation confidential.

4. Confidentiality of records other than complaints. Commission records other than complaints are governed by this subsection.

A. Investigative records relating to complaints that the commission has voted to pursue are confidential unless they are provided to commission members or otherwise distributed at a public hearing of the commission.

B. Legislators' statements of sources of income are public records.

C. Findings of fact and recommendations of the commission on complaints alleging violation of legislative ethics are public records.

D. Advisory opinions of the commission and requests for advisory opinions from the commission are public records, except as provided in subsection 2, paragraph H.

5. Prohibited communications. Communications concerning a complaint filed under this section between commission members and a complainant or between commission members and the subject of a complaint are prohibited until after the commission has voted not to pursue a complaint or the commission has taken final action on the complaint.

Sec. 7. 1 MRSA §1014, as enacted by PL 1975, c. 621, §1, is amended to read:

§ 1014. Violations of legislative ethics

1. Situations involving conflict of interest. A Legislator engages in a violation of legislative ethics if that Legislator votes on a question in connection with a conflict of interest in committee or in either body of the Legislature or attempts to influence the outcome of that question unless a presiding officer in accordance with the Joint Rules of the Legislature requires a Legislator to vote or advises the Legislator that there is no conflict in accordance with section 1013, subsection 2, paragraph K. A conflict of interest shall include the followingincludes:

A. ~~Where~~When a Legislator or a member of ~~his~~the Legislator's immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise ~~which~~that would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation.;

B. ~~Where~~When a Legislator or a member of ~~his~~the Legislator's immediate family accepts gifts, other than campaign contributions duly recorded as required by law, from persons affected by legislation or who have an interest in a ~~business~~an entity affected by proposed legislation, ~~where it is known~~and the Legislator knows or reasonably should be ~~known~~know that the purpose of the donor in making the gift is to influence the Legislator in the performance of ~~his~~the Legislator's official duties or vote; or is intended as a reward for action on ~~his~~the Legislator's part.;

C. Receiving compensation or reimbursement not authorized by law for services, advice or assistance as a Legislator.;

D. Appearing for, representing or ~~assisting~~advocating on behalf of another ~~in respect to a claim~~ before the Legislature, unless without compensation and for the benefit of a citizen.;

E. ~~Where~~When a Legislator or a member of ~~his~~the Legislator's immediate family accepts or engages in employment ~~which~~that could impair the Legislator's judgment, or ~~where~~when the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded ~~him~~the Legislator or a member of ~~his~~the Legislator's immediate family with intent to influence ~~his~~ conduct in the performance of ~~his~~the Legislator's official duties, or ~~where~~when the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.;

F. ~~Where~~When a Legislator or a member of ~~his~~the Legislator's immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of ~~his~~the Legislator's immediate family is engaged, ~~where~~and the benefit derived by the Legislator or a member of ~~his~~the Legislator's immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

2. Undue influence. It is presumed that a conflict of interest exists ~~where~~when there are circumstances ~~which~~that involve a substantial risk of undue influence by a Legislator, including but not limited to the following cases.

A. Appearing for, representing or assisting another in a matter before a state agency or authority, unless without compensation and for the benefit of a ~~constituent~~constituent, except for attorneys or other professional persons engaged in the conduct of their professions.

(1) Even in the excepted cases, an attorney or other professional person must refrain from references to ~~his~~that attorney or professional person's legislative capacity, from communications on legislative stationery and from threats or implications relating to legislative action.

B. Representing or assisting another in the sale of goods or services to the State, a state agency or authority, unless the transaction occurs after public notice and competitive bidding.

3. Abuse of office or position. ~~It is presumed that a conflict of interest exists where a Legislator abuses his~~ It is presumed that a conflict of interest exists where a Legislator abuses his ~~a violation of legislative ethics for a Legislator to engage in conduct that constitutes an abuse of office or position, including but not limited to the following cases.:~~

A. ~~Where~~ When a Legislator or a member of his ~~the Legislator's~~ the Legislator's immediate family has a direct financial interest or an interest through a close economic association ~~associate~~ associate in a contract for goods or services with the State, a state agency or ~~state~~ state authority ~~in a transaction not covered by public notice and competitive bidding or by, unless the contract is awarded through competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws or the payment provisions are based on~~ uniform rates established by the State, a state agency, a state authority or other governmental entity ~~or by a professional association or organization.;~~

B. Granting or obtaining special privilege, exemption or preferential treatment to or for oneself or another, which privilege, exemption or treatment is not readily available to members of the general community or class to which the beneficiary belongs. ~~;~~ and

C. Use or disclosure of confidential information obtained because of office or position for the benefit of self or another.

4. Contract with state governmental agency. It is a violation of legislative ethics for a Legislator or an associated organization to enter with a state agency into any contract that is to be paid in whole or in part out of governmental funds unless the contract has been awarded through a process of public notice and competitive bidding or is exempt from competitive bidding pursuant to state purchasing laws.

Sec. 8. 1 MRSA §1015, as amended by PL 2007, c. 279, §§1 and 2, is further amended to read:

§ 1015. Prohibited campaign contributions and solicitations

1. Actions precluded. ~~When a member of the Legislature has a conflict of interest, that member has an affirmative duty not to vote on any question in connection with the conflict in committee or in either branch of the Legislature, and shall not attempt to influence the outcome of that question.~~

2. Reports. ~~When the commission finds that a Legislator has voted or acted in conflict of interest, the commission shall report its findings in writing to the house of which the Legislator is a member.~~

3. Campaign contributions and solicitations prohibited. The following provisions prohibit certain campaign contributions and solicitation of campaign contributions during a legislative session.

A. As used in this subsection, the terms "employer," "lobbyist" and "lobbyist associate" have the same meanings as in Title 3, section 312-A. As used in this subsection, "contribution" has the same meaning as in Title 21-A, section 1012 and includes seed money contributions as defined in Title 21-A, section 1122, subsection 9.

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise.

C. This subsection does not apply to:

- (1) Solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes;
- (2) Solicitations or contributions relating to a special election to fill a vacancy from the time of announcement of the election until the election; and
- (4) Solicitations or contributions accepted by a member of the Legislature supporting that member's campaign for federal office.

C-1. This subsection does not prohibit the attendance of the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer at fund-raising events held by a municipal, county, state or national political party organized pursuant to Title 21-A, chapter 5, nor the advertisement of the expected presence of any such official at any such event, as long as any such official has no involvement in soliciting attendance at the event and all proceeds are paid directly to the political party organization hosting the event or a nonprofit charitable organization.

D. A person who intentionally violates this subsection is subject to a civil penalty not to exceed \$1,000, payable to the State and recoverable in a civil action.

4. Contract with state governmental agency. ~~A Legislator or an associated organization may not enter with a state governmental agency into any contract that is to be paid in whole or in part out of governmental funds, when such a contract is normally awarded through a process of public notice and competitive bidding, unless the contract has been awarded through a process of public notice and competitive bidding.~~

Sec. 9. 21-A MRSA §1013-A, sub-§1, ¶A, as corrected by RR 1995, c. 2, §35, is amended to read:

A. No later than 10 days after becoming a candidate and before accepting contributions, making expenditures or incurring obligations, a candidate for state or county office or a candidate for municipal office who has not filed a written notice in accordance with section 1011, subsection 2, paragraph A shall appoint a treasurer. The candidate may serve as treasurer, except that a candidate

certified in accordance with section 1125 may not serve as treasurer. The candidate may have only one treasurer, who is responsible for the filing of campaign finance reports under this chapter. A candidate shall register the candidate's name and address and the name and address of the treasurer appointed under this section no later than 10 days after the appointment of the treasurer. A candidate may accept contributions personally or make or authorize expenditures personally, as long as the candidate reports all contributions and expenditures to the treasurer. The treasurer shall make a consolidated report of all income and expenditures and provide this report to the commission.

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

Sec. 10. 21-A MRSA §1017, sub-§3-A, ¶D-1 is enacted to read:

D-1. Reports must be filed no later than 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.

Sec. 11. 21-A MRSA §1125, sub-§5-B is enacted to read:

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

Sec. 12. Report. The Commission on Governmental Ethics and Election Practices shall report no later than January 15, 2010 to the joint standing committee of the Legislature having jurisdiction over legal and veterans affairs on the effects of the legislative ethics and elections changes to the Maine Revised Statutes, Title 1, subchapter 2 and Title 21-A made by this Act. The joint standing committee of the Legislature having jurisdiction over legal and veterans affairs may submit legislation concerning legislative ethics and elections to the Second Regular Session of the 124th Legislature.

Sec. 13. Application. Notwithstanding the Maine Revised Statutes, Title 1, section 1013, subsection 2, paragraph B as amended by this Act, a complaint filed under Title 1, chapter 25, subchapter 2 prior to the effective date of this Act and subjected to a vote of the Commission on Governmental Ethics and Election Practices may not be refiled, and the conduct at issue in that complaint may not be challenged in any other complaint.

Sec. 14. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 21-A, section 1013-A, subsection 1, paragraph A takes effect November 5, 2008.

See title for effective date, unless otherwise indicated.