



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

Commission Meeting 10/01/2015
Agenda Item #7

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: September 22, 2015
Re: Second Bill – Simplifying the Filing of Independent Expenditure and 24-Hour Reports

The Commission staff has drafted a second bill for your consideration, which is intended to remove some confusion in our filing requirements for PACs, party committees and ballot questions committees (BQCs) and to remove one administrative burden in filing reports. We seek to reduce the bureaucratic burdens on party committees, PAC, and ballot question committees during the last 13 days before an election, when they are engaged in other First Amendment activities such as communicating with voters, getting out the vote, assisting candidates, *etc.*

Background

Maine campaign finance law contains two reporting requirements which are often confused by PACs, party committees and (probably) members of the public seeking information. The two types of reports have similar deadlines and some overlapping content (*i.e.*, some expenditures are actually covered by *both* statutory requirements).

24-Hour Reporting Requirement. Under current law, PACs, ballot question committees and party committees are required to file reports of any single expenditure greater than \$1,000 made in the last 13 days before an election.¹ The purpose of the requirement is to provide the public with access to information about significant political expenditures before election day.²

¹ Otherwise, the expenditures would not be disclosed until the report due 42 days after the election.

² These groups also need to report large contributions they have received. Candidates are under a similar reporting obligation.

During this 13-day period, the 24-Hour Reports are due within one calendar day of making the expenditure, even on the weekends.

It is a broad requirement in the sense that the purpose of expenditure does not matter. The only exemptions are for overhead expenses and compensation paid to an employee or member of campaign staff who has received regular payments previously.

Independent Expenditure Reporting. This requirement is for paid communications advocating for or against candidates. These communications are most frequently paid for by PACs and party committees. During the last 60 days before a general election, the IE must be disclosed within 2 calendar days of making the expenditure. In the last 13 days, the requirement is the next calendar day. Because these deadlines are similar to 24-Hour Reports, PACs, party committees (and probably the public) confuse the two types of reports. If an expenditure is over \$1,000 and for a paid communication to influence a candidate election, the payment can technically be covered by both requirements, which is duplicative.³

Proposal: Focus the 24-Hour of Reporting of Expenditures

To reduce confusion for our filers and to make the reporting requirements more reasonable during this critical period, the Commission staff proposes focusing the 24-Hour reporting of expenditures on those payments that are most critical for the public to access prior to the election:

- paid communications, such as mailers, ads, phone calls, etc., to influence voters regarding ballot measures,
- polling activities, and
- expenditures in the form of contributions over \$1,000 made by a PAC, party committee, or BQC to another committee or to a candidate.

By limiting the 24-Hour expenditure reporting to these three purposes, our goal is to avoid the current overlap between the 24-Hour and IE reporting requirements, and to diminish confusion for our filers.

³ Under our rules, if PACs and party committees file the IE report, the 24-Hour Report is not required.

We do not propose any change in the 24-Hour reporting *by candidates*. We also propose no change to the 24-Hour reporting of contributions. PACs, party committees, and BQCs would continue to report any contribution over \$5,000 received in the last 13 days before an election.

Removing the Affidavit from Independent Expenditure Reports

The Independent Expenditure Report contains a requirement that the spender make a statement under oath that the expenditure was not made in cooperation with the candidates in the race. Expenditures by outside groups that are coordinated with a candidate are deemed contributions, and may violate the limits on contributions to candidates.

IEs are most often made by PACs and party committees. Typically, the committee's treasurer (or other authorized agent)

1. enters the transaction information in our e-filing website, specifying the amount paid, the payee, date of the transaction, and the candidates supported or opposed,
2. files the report online (making the report available immediately to the public),
3. prints out the affidavit section of the form,
4. signs it before a notary, and
5. submits the affidavit to the Commission.

The Commission staff proposes deleting the requirement that the statement of no cooperation be made under oath. As an alternative, we propose that the treasurer or agent would affirm online that the expenditure was made with no cooperation with candidates in the race. We suggest using some procedure such as a checkbox or entry of the treasurer or agent's name or initials. This would eliminate the administrative burden of steps 3-5 above. The online form containing the affirmation would convey that making a false statement as part of an IE report is a Class D crime under 17-A M.R.S.A. § 453 (unsworn falsification).

Thank you for your consideration of this proposal.

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 13: CAMPAIGN REPORTS AND FINANCES

§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.

[2009, c. 190, Pt. A, §8 (AMD) .]

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

A. The name of each candidate, political committee, political action committee or party committee; [2007, c. 443, Pt. A, §17 (AMD) .]

B. The office sought by a candidate and the district that the candidate seeks to represent; and [1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF) .]

C. The date, amount and purpose of each expenditure. [2007, c. 443, Pt. A, §17 (AMD) .]

[2011, c. 389, §16 (AMD) .]

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

A. The name and address of each payee; [2009, c. 190, Pt. A, §10 (AMD) .]

B. The purpose for the expenditure; and [2007, c. 443, Pt. A, §17 (AMD) .]

C. The date and amount of each expenditure. [1993, c. 715, §2 (NEW) .]

[2011, c. 389, §17 (AMD) .]

4. Filing schedule.

[2003, c. 302, §2 (RP) .]

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

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

(1) On January 15th and must be complete up to December 31st;

(2) On April 10th and must be complete up to March 31st;

(3) On July 15th and must be complete up to June 30th; and

(4) On October 5th and must be complete up to September 30th. [2011, c. 367, §1 (AMD) .]

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. [2007, c. 443, Pt. A, §17 (AMD) .]

C. Preelection 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. [2011, c. 389, §18 (AMD) .]

D. A state party committee that files an election report under paragraph B or C is not required to file a quarterly report under paragraph A when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [2003, c. 302, §3 (NEW) .]

E. A state party committee shall report within 24 hours the following contributions and expenditures if made or received after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election:

(1) Any single contribution of \$5,000 or more received; and

(2) Any single expenditure of \$1,000 or more made for

(a) communications to influence a ballot measure as defined under section 1052, subsection I, paragraphs (A) through (F);

(b) polling that clearly identifies a candidate or ballot measure; or

(c) a contribution to a candidate, party committee, political action committee, or ballot question committee

~~any single contribution of \$5,000 or more received or any single expenditure of \$1,000 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 contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §12 (AMD) .]~~

[2013, c. 334, §12 (AMD) .]

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. [2009, c. 190, Pt. A, §12 (AMD) .]

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. [2007, c. 443, Pt. A, §17 (AMD) .]

C. A committee shall report within 24 hours the following contributions and expenditures if made or received after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election:

(1) Any single contribution of \$5,000 or more received; and

(2) Any single expenditure of \$1,000 or more made for

(a) communications to influence a ballot measure as defined under section 1052, subsection 1, paragraphs (A) through (F);

(b) polling that clearly identifies a candidate or ballot question; or

(c) a contribution to a candidate, party committee, political action committee, or ballot question committee

~~any single contribution of \$5,000 or more received or 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 within 24 hours of that contribution or expenditure. The committee is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §13 (AMD) .]~~

[2013, c. 334, §13 (AMD) .]

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.

[2007, c. 443, Pt. A, §17 (AMD) .]

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

[2003, c. 1, §13 (COR) .]

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.

[1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF) .]

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.

[1991, c. 839, §23 (NEW); 1991, c. 839, §33 (AFF) .]

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

[2011, c. 389, §19 (AMD); 2011, c. 389, §62 (AFF) .]

§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 [2003, c. 448, §3 (NEW) .]

B. Is presumed 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; or the 35 days, including election day, before a general or special election. [2013, c. 334, §15 (AMD) .]

[2013, c. 334, §15 (AMD) .]

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.

[2003, c. 448, §3 (NEW) .]

3. Report required; content; rules.

[2009, c. 524, §6 (RPR); T. 21-A, §1019-B, sub-§3 (RP) .]

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

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 558, §2 (AMD) .]

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 unsworn falsification/perjury, as provided in Title 17-A, section ~~451453~~, 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. [2009, c. 524, §7 (NEW) .]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission ~~receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission~~ adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. ~~The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement.~~ [2013, c. 334, §16 (AMD) .]

This subsection takes effect August 1, 2011.

[2013, c. 334, §16 (AMD) .]

5. Exclusions. An independent expenditure does not include:

A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents; [2011, c. 389, §21 (NEW) .]

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting; [2011, c. 389, §21 (NEW) .]

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and [2011, c. 389, §21 (NEW) .]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [2011, c. 389, §21 (NEW) .]

[2011, c. 389, §21 (NEW) .]

SECTION HISTORY

2003, c. 448, §3 (NEW). 2007, c. 443, Pt. A, §20 (AMD). 2009, c. 366, §5 (AMD). 2009, c. 366, §12 (AFF). 2009, c. 524, §§6, 7 (AMD). 2011, c. 389, §§20, 21 (AMD). 2011, c. 389, §62 (AFF). 2011, c. 558, §2 (AMD). 2013, c. 334, §§15, 16 (AMD) .

§1059. REPORT; FILING REQUIREMENTS

Committees required to register under section 1052-A, 1053-B or 1056-B shall file an initial campaign finance report at the time of registration and thereafter shall file reports in compliance with this section. All reports must be filed by 11:59 p.m. on the day of the filing deadline, except that reports submitted to a municipal clerk must be filed by the close of business on the day of the filing deadline. [2013, c. 334, §27 (AMD) .]

1. Contents; quarterly reports and election year reports.

[2007, c. 443, Pt. A, §35 (RP) .]

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

A. All committees shall file quarterly reports:

- (1) On January 15th, and the report must be complete as of December 31st;
- (2) On April 10th, and the report must be complete as of March 31st;
- (3) On July 15th, and the report must be complete as of June 30th; and
- (4) On October 5th, and the report must be complete as of September 30th. [2011, c. 691, Pt. A, §19 (RPR) .]

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. [2007, c. 443, Pt. A, §35 (AMD) .]

C. Preelection and post-election reports for special elections or ballot measure campaigns must be filed:

- (1) On the 11th day before the date on which the election is held and must be complete as of the 14th day before that date; and
- (2) On the 42nd day after the date on which the election is held and must be complete as of the 35th day after that date. [2011, c. 389, §45 (AMD) .]

D. A committee that files an election report under paragraph B or C is not required to file a quarterly report when the deadline for that quarterly report falls within 10 days of the filing deadline established in paragraph B or C. [1991, c. 839, §29 (RPR) .]

E. A committee shall report within 24 hours the following contributions and expenditures if made or received after the 14th day before the election and more than 24 hours before 5:00 p.m. on the day of the election:

- (1) Any single contribution of \$5,000 or more received; and
- (2) Any single expenditure of \$1,000 or more made for
 - (a) communications to influence a ballot measure as defined under section 1052, subsection 1, paragraphs (A) through (F);
 - (b) polling that clearly identifies a candidate or ballot question; or
 - (c) a contribution to a candidate, party committee, political action committee, or ballot question committee

~~any single contribution of \$5,000 or more received or single expenditure of \$1,000 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 contribution or expenditure. The treasurer is not required to include in this report expenditures for overhead expenses or compensation paid to an employee or other member of the campaign staff who has received payments at regular intervals that have been disclosed in previously filed campaign finance reports. As used in this paragraph, "overhead expenses" includes, but is not limited to, rent, utility payments, taxes, insurance premiums or similar administrative expenses. [2013, c. 334, §28 (AMD) .]~~

~~[2013, c. 334, §28 (AMD) .]~~

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

[1989, c. 504, §§28, 31 (RP) .]

4. Special election reports.

[1989, c. 504, §§28, 31 (RP) .]

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.

[2007, c. 443, Pt. A, §35 (AMD) .]