

Chapter 1: PROCEDURES

SUMMARY: The Maine Ethics Commission proposes a new section 15 to implement 21-A M.R.S. § 1064, which prohibits foreign governments from making contributions or expenditures to influence elections in Maine.

SECTION 15. FOREIGN GOVERNMENT-INFLUENCED ENTITIES

1. **Definitions.** For purposes of this section, the Commission incorporates the definitions in 21-A M.R.S. § 1064(1). In addition, the following terms have the following meanings when used in § 1064 or in this section:
 - A. **Campaign Advertisement.** “Campaign advertisement” means a paid public communication to influence the nomination or election of a candidate or to influence the initiation or approval of a referendum.
 - B. **Contribution.** “Contribution” has the meaning set forth in 21-A M.R.S. § 1012(2) if the contribution is directed to a candidate or a candidate’s political committee. “Contribution” has the meaning set forth in 21-A M.R.S. § 1052(3) if the contribution is directed to any other person or entity.
 - C. **Direct participation in a decision-making process.** To “directly” participate in ~~the a decision-making process~~² means to participate in ~~communicate a direction or preference concerning the outcome of~~ the decision-making process through a person who is an employee or official of a foreign government or an employee, director, owner, or member of a foreign government-owned entity.
 - D. **Donation.** “Donation” means any gift, subscription, loan, advance or deposit of money or anything of value, regardless of whether it satisfies the definition of a contribution.
 - E. **Disbursement of funds.** “Disbursement of funds” means any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, regardless of whether it satisfies the definition of an expenditure.
 - F. **Expenditure.** “Expenditure” has the meaning set forth in 21-A M.R.S. § 1012(3) if made by a candidate for office or the candidate’s political committee. “Expenditure” has the meaning set forth in 21-A M.R.S. § 1052(4) if made by any other person or entity.
 - G. **Indirect beneficial ownership.** “Indirect beneficial ownership” means having an ownership interest in an entity as a result of owning an interest in an intermediate entity that either directly owns part or all of the entity or indirectly owns part or all of the entity through other intermediate entities. For example:-

(1) if a foreign government wholly owns a firm that has a 10% interest in a Maine corporation, the foreign government indirectly owns 10% of that corporation; or

(2) if a foreign government holds a 25% ownership interest in Maine Corporation A and Maine Corporation A, in turn, holds a 40% ownership interest in Maine Corporation B, the foreign government indirectly owns 10% of Maine Corporation B.

H. **Indirect participation in a decision-making process.** To “indirectly” participate in ~~the~~ a decision-making process” means to ~~knowingly communicate a direction or preference concerning the outcome of~~ participate in the decision-making process using an intermediary, whether or not the intermediary has any formal affiliation with the foreign government or foreign government-owned entity.

I. **Internet platform.** “Internet platform” means an entity that controls any public-facing website, internet application, or mobile application that sells advertising space and:

(1) is also a print news outlet, television or radio broadcasting station, or provider of cable or satellite television; or

(2) publishes content primarily intended for audiences within Maine.

J. **Media provider.** “Media provider” means a television or radio broadcasting station, provider of cable or satellite television, print news outlet or Internet platform, as defined in this section.

K. **Print news outlet.** “Print news outlet” means an entity that publishes physically printed news or news commentary on a periodical basis in which advertisers may purchase advertising space and which distributes at least 25 percent of its copy for one or more publications within the State of Maine.

L. **Participate.** To “participate” in a decision-making process with regard to the activities of a firm, partnership, corporation, association, organization or other entity to influence the nomination or election of a candidate or the initiation or approval of a referendum, means, with the invitation, consent, or acquiescence of the firm, partnership, corporation, association, organization, or other entity, to deliberate or vote on a decision of that firm, partnership, corporation, association, organization or other entity concerning donations and disbursements to influence the nomination or election of a candidate or the initiation or approval of a referendum.

Participation does not include:

(1) making, deliberating on, or voting on a shareholder resolution concerning donations and disbursements to influence the nomination or election of a candidate or the initiation or approval of a referendum if the person making, deliberating on, or voting on the resolution holds, owns, controls or otherwise has direct or indirect beneficial ownership of less

than 5% of the total equity, outstanding voting shares, membership units or other applicable ownership interests;

(2) sending an unsolicited communication regarding a decision-making process; or

(3) participating in an entity's decision-making process for general budget decisions, including setting overall budgets for political donations and disbursements on an annual basis at a "not to exceed" amount, provided that there is no participation in any other decision-making concerning political donations and disbursements or the selection of individuals who will make such decisions.

LM. **Provider of cable or satellite television.** "Provider of cable or satellite television" means an entity that is engaged in the provision of cable or satellite television service in Maine to a public audience and sells advertising space for transmission through its service.

MN. **Structure.** "Structure" means to arrange for financial activity to be made by or through a person for the purpose of evading the prohibitions and requirements of 21-A M.R.S. § 1064. Structuring includes, but is not limited to, creating a business entity whose ownership is difficult to ascertain cannot be readily ascertained for the purpose of concealing ownership or control by a foreign government.

NO. **Television or radio broadcasting station.** "Television or radio broadcasting station" means an entity that broadcasts television or radio signals from within the state of Maine to a public audience and sells advertising space for broadcast through those signals.

2. **Ownership or control by a foreign government.** An entity does not qualify as a foreign government-influenced entity pursuant to 21-A M.R.S. § 1064(1)(E)(2)(a) solely because multiple foreign governments or foreign government-owned entities have ownership interests in the entity that, if combined, would exceed 5% of the entity's total equity or other ownership interests.

3. **Campaign spending by foreign governments prohibited.** A foreign government-influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.

4. **Solicitation or acceptance of contributions from foreign governments prohibited.** A person may not knowingly solicit, accept or receive a contribution or donation prohibited by subsection 3.

5. **Substantial assistance prohibited.** A person may not knowingly or recklessly provide substantial assistance, with or without compensation:

A. In the making, solicitation, acceptance or receipt of a contribution or donation prohibited by subsection 34; or

- B. In the making of an expenditure, independent expenditure, electioneering communication or disbursement prohibited by subsection 3.

6. **Circumvention through structuring financial activity**

- A. **Prohibition.** A person may not structure or attempt to structure a solicitation, contribution, expenditure, independent expenditure, electioneering communication, donation, disbursement or other transaction to evade the prohibitions and requirements in 21-A M.R.S. § 1064.
- B. **Enforcement.** The Commission shall assess a penalty against a person for illegally structuring a transaction only upon finding that the person intended to evade the prohibitions and requirements in 21-A M.R.S. § 1064.

7. **Disclaimer in paid communications**

- A. **Disclaimer required.** A disclaimer is required whenever a foreign government-influenced entity makes a disbursement of funds to finance a public communication not otherwise prohibited by 21-A M.R.S. § 1064 or this section if it meets either of the following criteria:

- (1) A reasonable observer would understand the content of the public communication to be seeking to influence the public or any state, county or local official or agency regarding the formulation, adoption or amendment of any state or local government policy; or,
- (2) The public communication promotes the political or public interest of or government relations with a foreign country or a foreign political party.

- B. **Disclaimer content.** A public communication subject to the disclaimer requirement of this subsection must clearly and conspicuously contain the words “Sponsored by” immediately followed by the name of the foreign government-influenced entity that made the disbursement and a statement identifying that foreign government-influenced entity as a “foreign government” or a “foreign government-influenced entity.” The disclaimer may include ~~additional truthful and accurate language describing the entity, including~~ language to indicate that “foreign government” and “foreign government-influenced entity” are defined terms under state law, ~~for example, as follows:~~ “sponsored by [entity], a [foreign government or foreign government-influenced entity, as appropriate] as defined in Maine law.”

- BC. **Applicability.** This subsection applies only to public communications purchased from media providers or otherwise intended to be viewed primarily by Maine residents.

8. **Requirements for media providers**

- A. **Policies, procedures and controls.** Each media provider must establish due diligence policies, procedures and controls that are reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by a foreign government-influenced entity. Nothing in these rules may be interpreted to prohibit or otherwise restrict a media

provider from reproducing a campaign advertisement prohibited by 21-A M.R.S. § 1064 as part of a news story, commentary, or editorial.

- B. **Safe harbor.** A media provider will be deemed to satisfy the requirements of subsection 8(A) if it adopts a policy containing the following features:
- (1) The policy prohibits publication of any campaign advertisement that the media provider knows to originate from a foreign government-influenced entity, except that the policy may allow reproduction of a campaign advertisement in a news story to which the campaign advertisement is relevant.
 - (2) The policy requires a purchaser of a campaign advertisement to certify in writing that it is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity. The policy may allow certification via electronic means and may allow the advertiser to certify by checking a box or other similar mechanism, as long as the box or other mechanism is clearly labeled as a certification that the advertiser is not a foreign government-influenced entity or acting on behalf of a foreign government-influenced entity.
 - (3) The policy requires that such certifications be preserved by the media provider for a period of not less than 2 years.
 - (4) The policy requires the media provider to decline to publish a campaign advertisement if:
 - a. the purchaser fails to provide the certification required by subsection (8)(B)(2); or
 - ~~b. the purchaser is listed by the Commission on its website as a foreign government influenced entity in accordance with subsection (8)(E) below; or,~~
 - eb. the media provider has actual knowledge of facts indicating that, notwithstanding the purchaser's written confirmation to the contrary, the purchaser is a foreign government-influenced entity or is acting on behalf of a foreign government-influenced entity.
 - (5) If the media provider is an Internet platform, its policy provides that, upon discovery that the Internet platform has distributed a campaign advertisement purchased by or on behalf of a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.
- C. **Other policies permitted.** Nothing in this section prevents a media provider from adopting a due diligence policy containing provisions other than those described in subsection (8)(B) above, so long as the policy is reasonably designed to ensure that it does not broadcast, distribute or otherwise make available to the public a campaign advertisement purchased by or on behalf of a foreign government-influenced entity.

D. **Investigations not required.** A due diligence policy need not require the media provider to investigate their advertisers or to monitor comment sections or other similar fora that the media provider makes available to subscribers, users, or the general public to post commentary.

~~E. **Public list.** The Commission will maintain a list on its website of all entities that it has determined in enforcement proceedings to meet the definition of a foreign government-influenced entity. An entity may request to be removed from the list by presenting satisfactory evidence to Commission staff that it no longer meets the definition of a foreign government-influenced entity. If Commission staff reject the request, the entity may request a determination by the Commission.~~

~~FE.~~ **Takedown requirement.** If an Internet platform discovers that it has distributed a campaign advertisement purchased by a foreign government-influenced entity, the Internet platform shall immediately remove the communication and notify the Commission.

~~9. **Effective Date.** This section takes effect and becomes enforceable on the date, if any, that the U.S. District Court for the District of Maine removes or modifies the injunction against enforcement of 21-A M.R.S. § 1064 issued in *Central Maine Power, et al. v. Comm'n on Governmental Ethics and Election Practices, et al.*, Docket No. 1:23-cv-00450 (D. Me.), provided that, if the District Court modifies the injunction, this section takes effect and becomes enforceable only to the extent that the District Court permits enforcement of the corresponding provisions of § 1064.~~

~~10. **Severability.** In the event any portion of 21-A M.R.S. § 1064 is finally determined by a court of competent jurisdiction to be invalid or unenforceable, these rules are enforceable to the extent that corresponding provisions of 21-A M.R.S. § 1064 are valid and enforceable.~~