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An Act To Increase Penalties for Certain Violations of the Campaign Reports and Financing Laws

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

Sec. 1. 21-A MRSA §1017-A, sub-§5, as corrected by RR 2003, c. 1, §13, is amended to read:

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

Sec. 2. 21-A MRSA §1020-A, sub-§4-A, as amended by PL 2007, c. 443, Pt. A, §22, is further amended to read:

4-A. Basis for penalties; candidates. The penalty for late filing of a report by a candidate required under this subchapter, except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B, is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

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

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

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

a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

Sec. 3. 21-A MRSA §1020-A, sub-§4-B is enacted to read:

4-B. Basis for penalties; party committees. The penalty for late filing of a report by a party committee required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 5%;
- B. For the 2nd violation, 10%; and
- C. For the 3rd and subsequent violations, 15%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

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

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

Sec. 4. 21-A MRSA §1020-A, sub-§5-A, as amended by PL 2009, c. 190, Pt. A, §14, is further amended to read:

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 ~~A~~, B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; ~~section 1017, subsection 4;~~ and ~~section 1019-B, subsection 3;~~
- B. ~~Five~~One hundred thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E;
- C. One thousand dollars for reports required under section 1017, subsection 2, ~~paragraphs A~~ and ~~paragraph F~~ and section 1017, subsection 3-A, ~~paragraphs A~~ and ~~paragraph E~~;
- D. ~~Five hundred~~One thousand dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B; ~~or~~

D-1. One hundred thousand dollars for reports required under section 1019-B, subsection 3 except that the penalty may not exceed the total amount of the total expenditures in the late report; 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.

Sec. 5. 21-A MRSA §1062-A, sub-§3, as amended by PL 2007, c. 443, Pt. A, §39, is further amended to read:

3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, ~~1%~~5%;
- B. For the 2nd violation, ~~3%~~10%; and
- C. For the 3rd and subsequent violations, ~~5%~~15%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

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

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

Sec. 6. 21-A MRSA §1062-A, sub-§4, as amended by PL 2009, c. 190, Pt. A, §30, is further amended to read:

4. Maximum penalties. The maximum penalty under this subchapter is ~~\$10,000~~\$100,000 for reports required under section 1056-B or section 1059.

Sec. 7. 21-A MRSA §1127, sub-§1, as amended by PL 2009, c. 302, §23, is further amended to read:

1. Civil fine. In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. The commission may assess a fine of

up to ~~\$10,000~~\$100,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds. In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

SUMMARY

This bill sets the basic penalties for filing a late report by a party committee and a political action committee to 5% of the committee's total contributions or expenditures for the relevant filing period multiplied by the number of calendar days late for a first violation, 10% for a 2nd violation and 15% for a 3rd and subsequent violation. The bill also changes the law setting out the maximum penalties to provide for a \$100,000 penalty for late reports required under the Maine Revised Statutes, Title 21-A, section 1019-B, subsection 3 and Title 21-A, sections 1056-B and 1059; a \$100,000 penalty for late state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E; a \$5,000 penalty for reports required under Title 21-A, section 1017, subsection 2, paragraph A; and a \$1,000 penalty for late reports by municipal, district and county committees required under Title 21-A, section 1017-A, subsection 4-B. The bill eliminates the cap on the penalty for reports required under Title 21-A, section 1017, subsection 3-A, paragraph A.

The bill also allows the Commission on Governmental Ethics and Election Practices to assess a fine up to \$100,000 for a violation of the reporting requirements of Title 21-A, sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds.

The bill also corrects a cross-reference.