

OFFICE OF POLICY AND LEGAL ANALYSIS

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To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 1125 **An Act To Define “Leadership Political Action Committee”** (*Ethics Commission*)

SUMMARY

This bill was submitted by the Commission on Governmental Ethics and Election Practices (Ethics Commission) in response to a request by this committee in February 2020 for more public transparency and accountability regarding which political action committees (PACs) in the State are organized or directed by Legislators, *see letter attached to Ethics Commission testimony*.

1. **Definition of “leadership PAC.”** Section 1 of the bill defines a “leadership political action committee” as a PAC that is not a caucus PAC but “that is directly or indirectly established, maintained or controlled by a member of the Legislature.”
2. **Disclosure / Designation.** Section 2 of the bill requires a leadership PAC to disclose the relevant Legislator’s position in the PAC when it registers with the Ethics Commission under [21-A M.R.S. §1052-A\(2\)](#). This statute requires disclosure of the following individuals in the registration statement of each PAC:
 - The PAC’s treasurer and principal officer;
 - Individuals primarily responsible for fund-raising or decision-making for the PAC; and
 - The names of any other candidates or Legislators with “a significant role” in fund-raising or decision-making for the PAC.

Section 2 of the bill also directs the Ethics Commission to remove the leadership PAC designation from a registered PAC “[o]nce the Legislator leaves office for any reason.”

3. **MCEA candidates may not establish a leadership PAC.** Under current law, [21-A M.R.S. §1125\(6-F\)](#), a candidate who wishes to participate in the Maine Clean Election Act (MCEA) or who is certified as an MCEA candidate may not establish a PAC and serve as a treasurer, principal officer, primary fundraiser or primary decision maker for the PAC between April 1 of the election year and the date on which the candidate withdraws from the race, the date that the candidate loses a primary or general election, or January 1st of the next general election year if the candidate wins the election. Section 3 of the bill amends §1125(6-F) to provide instead that a certified (or hopeful) MCEA candidate may not establish a “leadership PAC” during this time period.

ADDITIONAL INFORMATION:

1. **Definition of “caucus political action committee.”** A “caucus political action committee” is the single PAC designated by each Senate or House caucus leader (of a qualified party) “to promote the election of nominees of the caucus leader’s political party to the body of the Legislature of which the caucus leader is a member.” See [§1001\(1-A\)](#); [§1053-C\(2\)](#). These designated caucus PACs are exempted from LD 1125’s definition of leadership PAC; thus, LD 1125 would not prohibit a caucus leader who is also an MCEA candidate from establishing or designating a caucus PAC.

2. **Current restrictions on legislator-led PACs.** [Note, party committees are not PACs.]
 - [21-A M.R.S. §1054-B](#) prohibits a Legislator and the Legislator’s business from receiving compensation for services provided to a PAC if the Legislator is a (1) a principal officer; (2) treasurer; (3) primary fundraiser or (4) primary decision maker for the PAC. Such PACs may, however, compensate Legislators for their legislative expenses and certain travel expenses. Note: [LD 1621](#), currently pending before VLA, would expand the prohibitions in §1054-B.
 - [21-A M.R.S. §1125\(6-F\)](#), amended in section 3 of the bill, prohibits an MCEA candidate from establishing a PAC between April 1 and the end of the candidate’s campaign (or through Jan. 1 of the next election year of the candidate wins the election) if the candidate is (1) a principal officer; (2) treasurer; (3) primary fundraiser or (4) primary decision maker for the PAC.
3. **Alternative proposal to define “leadership PACs.”** [LD 1417](#) would define a leadership PAC as a PAC for which a Legislator serves as a (1) principal officer or (2) treasurer. LD 1417 would further impose the following additional restrictions on such leadership PACS:
 - A leadership PAC could not receive contributions from individuals, SSFs, other leadership PACs, or labor organizations in excess of the contributions that may be received by a legislative candidate. A leadership PAC also could not receive contributions from business entities, party committees, PACs (including caucus PACs) and campaign committees; and
 - A leadership PAC could not make contributions to a candidate or other leadership PAC in excess of the amounts an individual may contribute to a candidate, although it can make unlimited contributions to other, non-leadership PACs.
4. **Federal definition of leadership PAC.** The Ethics Commission testified that the definition of leadership PAC in the bill is intended to align closely with the federal definition:

The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party. [52 U.S.C. §30104\(i\)\(8\)](#).

REQUESTS FOR INFORMATION

1. **Other states’ definitions of “leadership PAC.”** NCSL does not compile information regarding which states define “leadership PACs.” A memo outlining the laws governing legislative leadership (political) committees in Connecticut and Vermont, prepared by OPLA Legislative Researcher Kristin Brawn, has been uploaded to the Electronic Committee LD files for [LD 1215](#) and [LD 1417](#).

TECHNICAL ISSUES

1. **Designation of leadership PACs.** The first sentence in §2 of the bill does not clearly require the Ethics Commission to designate leadership PACs based on the contents of a PAC’s registration statement. Yet, the second sentence requires the Ethics Commission to remove the leadership PAC

“designation” “[o]nce a Legislator leaves office for any reason.” If the intent is to require the Ethics Commission to make a designation in the first instance, this should be affirmatively stated in the bill.

A designation would provides notice to the public that the Legislator or Legislators involved may not be certified as MCEA candidates, given the prohibition in §1125(6-F). But, if the Ethics Commission is required to designate each “leadership PAC” on its publicly accessible website, how should the Ethics Commission determine whether a Legislator has “indirectly” established, maintained or controlled the PAC?

The Ethics Commission has explained that PACs currently self-identify as leadership PACs when submitting registration statements. If this self-designation is sufficient for purposes of public notice (although it would no control the legal question of whether a PAC is a “leadership PAC”), then it may make sense to strike section 2 of the bill.

2. **Former legislators.** Under the plain language of the bill’s definition of “leadership PAC,” a PAC that was originally directly or indirectly “established” by a Legislator during the Legislator’s term of office would qualify as a leadership PAC, even after that Legislator’s term ends. Yet, under §2 of the bill, the Ethics Commission is directed to remove the PAC’s designation as a leadership PAC once the Legislator leaves office. If §2 of the bill more accurately capture’s the bill’s intent, it may be appropriate to add a second sentence to the “leadership PAC” definition indicating that a PAC established by a Legislator no longer qualifies as a leadership PAC once the Legislator leaves office.

3. **PACs established to influence ballot questions.** Under current law, certain organizations whose campaign activities involve ballot questions rather than candidate elections are nevertheless considered PACs. *See* the 2 *s in the chart below. These PACs would qualify under LD 1125 as leadership PACs if they are directly or indirectly established, maintained or controlled by a member of the legislature, even though they do not attempt to influence candidate elections. By contrast, if [LD 1485](#) is enacted, all committees that seek to influence ballot question campaigns would be considered ballot question committees rather than PACs. Accordingly, if both LD 1485 and LD 1125 are enacted, Legislator-led organizations would be “leadership PACs” only if they seek to influence candidate elections. Does the committee wish to include only candidate-influencing organizations or also ballot-question-influencing organizations as “leadership PACs” in LD 1125?

Current law §1052(5)	LD 1485
<ul style="list-style-type: none"> • A separate segregated fund of an entity <i>whose purpose is to initiate or influence a candidate or ballot-question campaign</i> and receives contributions or makes expenditures > \$1,500; * • Any person other than an individual whose <i>major purposes is to initiate or influence a candidate or ballot-question campaign</i> and receives contributions or makes expenditures > \$1,500 in a calendar year for that purpose; * • Any person other than an individual whose major purpose <i>is not</i> influencing campaigns but who receives contributions or makes expenditures > \$5,000 in a calendar year to influence <i>a candidate campaign</i> 	<p data-bbox="902 1413 1446 1539"><i>NOTE: Committees that make contributions or expenditures to influence ballot question campaigns and not candidate campaigns would be renamed ballot question committees under LD 1485</i></p> <ul style="list-style-type: none"> • Any person other than an individual, regardless of its major purpose, that receives contributions or makes expenditures > \$2,500 in a calendar year to influence <i>a candidate campaign</i>

<u>Exceptions:</u> a candidate; a candidate’s authorized political committee; or a party committee.	Same.
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4. MCEA Prohibition.

- The bill replaces the prohibition in §1125(6-F) against MCEA candidates serving as the treasurer, principal officer, or primary fund-raiser or decision-maker with a prohibition against MCEA candidates establishing leadership PACs—which only involve current Legislators and not legislative candidates. Therefore, the bill will allow MCEA candidates who are not incumbents to serve in PAC leadership roles but prohibit incumbent MCEA candidates from serving in PAC leadership roles. Is this the intent?
- It may make sense to amend §8 of the bill to remove unnecessary language from the existing statute—for example, the existing law explains that an MCEA candidate is authorized to engage in fund-raising or decision-making for a “caucus PAC.” (p.1, line 30). But, because a caucus PAC is specifically excluded from the definition of “leadership PAC,” this language will no longer be necessary.

5. Conflicting legislation.

- [LD 59](#), currently pending before VLA, would provide for “unenrolled PACs,” which are formed by unenrolled Legislators to promote the election of unenrolled candidates to the House and the Senate. If both LD 29 and LD 1125 are enacted, should an “unenrolled PAC” be exempted from the definition of a “leadership PAC.”
- [LD 59](#) also amends the MCEA in §1125(6-F) to specify that an MCEA candidate may serve as the primary fund-raiser or decision-maker for an unenrolled PAC. If both bills are enacted, they will create a conflict because each amends §1125(6-F) in a different way.
- [LD 1417](#), discussed above, proposes a competing definition of “leadership PAC.”

FISCAL IMPACT

Not yet determined.