OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 5, 2021

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 59 **An Act To Define the Term "Unenrolled Political Action Committee"**
(*Rep. Pluecker*)

SUMMARY

This bill defines the new term "unenrolled political action committee" for both the general campaign finance laws in Title 21-A, Chapter 13 and the Maine Clean Election Act in Title 21-A, Chapter 14.

1. The bill defines an unenrolled PAC as (2-part test):
   - A "political action committee (PAC);"
   - That is designated in a letter written to the Ethics Commission by either the "Senate unenrolled leader" or the "House unenrolled leader" to promote the election of unrolled candidates to the body of the Legislature of which the leader is a member; each unenrolled leaders may designate one unenrolled PAC. The Senate unenrolled leader and the House unenrolled leader are each defined by the bill as the unenrolled member of the respective chamber who has been elected the leader of the unenrolled members of that chamber.
2. The bill also amends the following laws:
   - *Recounts*: Under §1018-B(2), as amended by the bill, an unenrolled PAC may make unlimited donations to a candidate for purposes of an election recount.
   - *Fundraising by an MCEA Candidate*: Under §1125(6-F), a Maine Clean Election Act (MCEA) candidate may not serve as the treasurer, principal officer, primary fund-raiser or decision maker for a PAC from April 1st of the election year through the date the candidate withdraws or loses the the primary or general election or through the beginning of the next election year if the candidate wins the general election. Ab MCEA candidate is authorized, however, to serve as a fund-raiser or decision maker for a ballot question committee, a PAC formed to promote or oppose a ballot question or a caucus PAC. Section 8 of the bill would add an unenrolled PAC to the list of PACs for whom an MCEA candidate may raise funds or make decisions.

ADDITIONAL INFORMATION

A. Current restrictions on raising funds for recounts. MCEA candidates involved in a recount may not use MCEA funds to pay recount expenses; instead, §1018-B(2) permits both traditionally financed and MCEA candidates to fund recounts through the following means:

(1) By receiving additional contributions—up to the campaign-contribution limits in §1015. The current contribution limits are $1,725 for gubernatorial candidates; $425 for legislative candidates; $850 for county candidates; and $500 for municipal candidates.

(2) By receiving unlimited *pro bono* donations of services from attorneys and consultants.

(3) By receiving unlimited donations from party committees and caucus PACs.

B. Legislative History.

1. Since its enactment in 2005, the campaign finance law governing recounts has permitted unlimited donations from "caucus campaign committees" to candidates for recount purposes. *See* P.L. 2005, ch. 301, §21. By contrast, the prohibition against MCEA candidates holding PAC leadership positions was enacted in 2015 and contained an exception allowing MCEA candidates to raise funds or to make decisions for "a party caucus political action committee." *See* P.L. 2015, ch. 116 (effective Jan. 1, 2016). Neither of the quoted phrases was defined in the law, however.
2. In 2020, the Legislature enacted legislation replacing the phrases quoted above with the newly defined term "caucus political action committee." Under that legisation, each caucus PAC is a PAC designated by the elected leader of each party caucus in the House and in the Senate "to promote the election of nominees" of the caucus leader's "political party to the Senate or the House of Representatives. *See* P.L. 2019, ch. 635 (from LD 1902). A minority (2-member report) VLA Committee amendment to LD 1902 would have added the "unenrolled political action committee" provisions that are currently contained in LD 59, but was not adopted.

TECHNICAL ISSUES

Conflicting legislation

1. **LD 1125**, the Ethics Commission's "leadership PAC" bill, defines a "leadership PAC" as a PAC that is directly or indirectly established, maintained or controlled by a member of the Legislature *but that is not a caucus PAC*. If both LD 1125 and LD 59 are enacted, it may make sense to exempt an "unenrolled PAC" from the leadership PAC definition in LD 1125. In addition, LD 1125 amends the MCEA in §1125(6-F) to specify that an MCEA candidate may not establish a "leadership PAC" during the candidate's candidacy or through the next election year if the candidate is elected. Thus, LD 1125, if enacted would create a technical conflict with §8 of LD 59—because each bill would amend the same subsection of law in slightly different ways.

2. **LD 1417**, Senator Luchini's campaign finance bill, also defines a "leadership PAC" as a PAC *other than a caucus PAC* for which a Legislator serves as a principal officer or treasurer. If both LD 59 and LD 1417 are enacted, it may make sense to exempt an "unenrolled PAC" from LD 1417's leadership PAC definition. In addition, LD 1417 restricts contributions made by caucus PACs. If both bills are enacted, should the caucus PAC restrictions be extended to unenrolled PACs?

3. **LD 1485,** the Ethics Commission's bill to redefine PACs and BQCs, does not directly conflict with LD 59. Nevertheless, OPLA is proposing a technical amendment to LD 1485 that would amend §1125(6-F) of the MCEA, to remove language from the provision that would be rendered unnecessary based on LD 1485's new definition of PAC. That amendment, if adopted, would create a technical conflict with §8 of LD 59—because each bill would amend the same subsection of law in slightly different ways.

FISCAL IMPACT

Not yet determined; however, the minority committee amendment to LD 1902 in the 129th Legislature, which contained identical provisions regarding unenrolled PACs, had "no fiscal impact."