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S.P. 383

In Senate, March 22, 2011

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

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator BLISS of Cumberland.

Cosponsored by Senators: BARTLETT of Cumberland, BRANNIGAN of Cumberland, HILL of York, PATRICK of Oxford, Representatives: CAREY of Lewiston, LONGSTAFF of Waterville, PRIEST of Brunswick, RUSSELL of Portland.

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

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

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

6 **Sec. 2. 21-A MRSA §1020-A, sub-§4-A**, as amended by PL 2007, c. 443, Pt. A,
7 §22, is further amended to read:

8 **4-A. Basis for penalties; candidates.** The penalty for late filing of a report by a
9 candidate required under this subchapter, except for accelerated campaign finance reports
10 required pursuant to section 1017, subsection 3-B, is a percentage of the total
11 contributions or expenditures for the filing period, whichever is greater, multiplied by the
12 number of calendar days late, as follows:

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

16 Any penalty of less than \$10 is waived.

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

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

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

27 The penalty for late filing of an accelerated campaign finance report as required in section
28 1017, subsection 3-B may be up to but no more than 3 times the amount by which the
29 contributions received or expenditures obligated or made by the candidate exceed the
30 applicable Maine Clean Election Fund disbursement amount, per day of violation. The
31 commission shall make a finding of fact establishing when the report was due prior to
32 imposing a penalty under this subsection. A penalty for failure to file an accelerated
33 campaign finance report must be made payable to the Maine Clean Election Fund. In
34 assessing a penalty for failure to file an accelerated campaign finance report, the
35 commission shall consider the existence of mitigating circumstances. For the purposes of
36 this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

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

1 **4-B. Basis for penalties; party committees.** The penalty for late filing of a report
2 by a party committee required under this subchapter is a percentage of the total
3 contributions or expenditures for the filing period, whichever is greater, multiplied by the
4 number of calendar days late, as follows:

5 A. For the first violation, 5%;

6 B. For the 2nd violation, 10%; and

7 C. For the 3rd and subsequent violations, 15%.

8 Any penalty of less than \$10 is waived.

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

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

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

19 **Sec. 4. 21-A MRSA §1020-A, sub-§5-A,** as amended by PL 2009, c. 190, Pt. A,
20 §14, is further amended to read:

21 **5-A. Maximum penalties.** Penalties assessed under this subchapter may not exceed:

22 A. Five thousand dollars for reports required under section 1017, subsection 2,
23 paragraph ~~A~~, B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1
24 or F; ~~section 1017, subsection 4; and section 1019-B, subsection 3;~~

25 B. ~~Five~~ One hundred thousand dollars for state party committee reports required
26 under section 1017-A, subsection 4-A, paragraphs A, B, C and E;

27 C. One thousand dollars for reports required under section 1017, subsection 2,
28 ~~paragraphs A and paragraph~~ F and section 1017, subsection 3-A, ~~paragraphs A and~~
29 ~~paragraph~~ E;

30 D. ~~Five hundred~~ One thousand dollars for municipal, district and county committees
31 for reports required under section 1017-A, subsection 4-B; ~~or~~

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

35 E. Three times the unreported amount for reports required under section 1017,
36 subsection 3-B, if the unreported amount is less than \$5,000 and the commission
37 finds that the candidate in violation has established, by a preponderance of the
38 evidence, that a bona fide effort was made to file an accurate and timely report.

1 **Sec. 5. 21-A MRSA §1062-A, sub-§3**, as amended by PL 2007, c. 443, Pt. A,
2 §39, is further amended to read:

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

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

9 Any penalty of less than \$10 is waived.

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

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

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

19 **Sec. 6. 21-A MRSA §1062-A, sub-§4**, as amended by PL 2009, c. 190, Pt. A,
20 §30, is further amended to read:

21 **4. Maximum penalties.** The maximum penalty under this subchapter is ~~\$10,000~~
22 \$100,000 for reports required under section 1056-B or section 1059.

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

25 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who
26 violates any provision of this chapter or rules of the commission adopted pursuant to
27 section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund.
28 The commission may assess a fine of up to ~~\$10,000~~ \$100,000 for a violation of the
29 reporting requirements of sections 1017 and 1019-B if it determines that the failure to file
30 a timely and accurate report resulted in the late payment of matching funds. In addition
31 to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the
32 candidate or the political committee authorized by the candidate pursuant to section
33 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be
34 required to return to the fund all amounts distributed to the candidate from the fund or
35 any funds not used for campaign-related purposes. If the commission makes a
36 determination that a violation of this chapter or rules of the commission has occurred, the
37 commission shall assess a fine or transmit the finding to the Attorney General for
38 prosecution. A final determination by the commission may be appealed to Superior Court
39 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
40 Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the

1 commission pursuant to this subsection that are not paid in full within 30 days after
2 issuance of a notice of the final determination may be enforced in accordance with
3 section 1004-B. Fines paid under this section must be deposited in the fund. In
4 determining whether or not a candidate is in violation of the expenditure limits of this
5 chapter, the commission may consider as a mitigating factor any circumstances out of the
6 candidate's control.

7 **SUMMARY**

8 This bill sets the basic penalties for filing a late report by a party committee and a
9 political action committee to 5% of the committee's total contributions or expenditures for
10 the relevant filing period multiplied by the number of calendar days late for a first
11 violation, 10% for a 2nd violation and 15% for a 3rd and subsequent violation. The bill
12 also changes the law setting out the maximum penalties to provide for a \$100,000 penalty
13 for late reports required under the Maine Revised Statutes, Title 21-A, section 1019-B,
14 subsection 3 and Title 21-A, sections 1056-B and 1059; a \$100,000 penalty for late state
15 party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B,
16 C and E; a \$5,000 penalty for reports required under Title 21-A, section 1017, subsection
17 2, paragraph A; and a \$1,000 penalty for late reports by municipal, district and county
18 committees required under Title 21-A, section 1017-A, subsection 4-B. The bill
19 eliminates the cap on the penalty for reports required under Title 21-A, section 1017,
20 subsection 3-A, paragraph A.

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

25 The bill also corrects a cross-reference.