

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 936

H.P. 685

House of Representatives, March 21, 1995

**An Act to Clarify the Discretion of the Commission on Governmental
Ethics and Election Practices in Assessing Penalties.**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative JACQUES of Waterville.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, it is not currently clear whether the Commission on
6 Governmental Ethics and Election Practices has the authority to
waive penalties; and

8 Whereas, the purpose of this legislation is to clarify the
10 commission's discretion in this area; and

12 Whereas, it is essential to resolve this issue for the
commission to carry out its duties and responsibilities in an
14 effective and expeditious fashion; and

16 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
18 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
20 safety; now, therefore,

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

24 **Sec. 1. 21-A MRSA §1017-A, sub-§5,** as enacted by PL 1991, c.
839, §23 and affected by §33, is amended to read:

26 5. **Penalties.** A party committee is subject to the
28 penalties in section 1020, subsection 2, ~~except that the~~
~~commission may waive the penalties until January 1994.~~

30 **Sec. 2. 21-A MRSA §1020,** as amended by PL 1991, c. 839, §§24
32 and 25, is further amended to read:

34 **§1020. Failure to file on time**

36 1. **Registration.** A candidate or political committee that
fails to register the name of a candidate, treasurer or political
38 committee with the commission within the time allowed by section
1013-A, subsection 1 ~~must~~ may be assessed a forfeiture of \$50.
40 The commission shall determine whether a registration satisfies
the requirements for timely filing under section 1013-A,
42 subsection 1.

44 2. **Campaign finance reports.** A campaign finance report is
not timely filed unless a properly signed copy of the report,
46 substantially conforming to the disclosure requirements of this
subchapter, is received by the commission before 5 p.m. on the
48 date it is due. The commission shall determine whether a
required report satisfies these ~~the~~ requirements for timely
50 filing ~~and, if determined to be late, the number of days of~~

lateness under this subchapter. The commission may waive a penalty under this subsection in whole or in part if the commission determines the failure to report was due to mitigating circumstances or if it determines the penalty is disproportionate to the offense. If the reason for the late filing is that forms required to be sent by the commission were not postmarked at least 7 days before the filing date, the period for filing shall ~~must~~ be increased by the deficiency without penalty.

A. Except as provided in paragraph B, ~~there is~~ a penalty of \$10 ~~may be assessed~~ for each business day a report required to be filed under this subchapter is late.

B. A forfeiture of \$50 ~~must~~ ~~may~~ be adjudged for each business day that reports required under section 1017, subsection 2, paragraph C or D; section 1017, subsection 3-A, paragraph B or C; section 1018, subsection 2, paragraph A; or section 1019, subsection 1 are late.

C. The maximum penalty under this subsection is \$500, except in the case of penalties assessed under paragraph B, in which case the maximum penalty is \$1,000.

D. A notice of lateness ~~shall~~ ~~must~~ be sent to candidates and treasurers registered with the commission whose campaign finance reports are not received within 2 days of the filing deadline. That notice ~~shall~~ ~~must~~ be sent on the 3rd day following the deadline.

E. A late report required under section 1017, subsection 2, paragraph A, B, E or F, or section 1017, subsection 3-A, paragraph A, D or E, that is filed within 10 days of the due date is not subject to penalty.

F. A report required to be filed 6 days before an election ~~which~~ ~~that~~ is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty. Any 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~~ ~~after the transmission~~. Reports filed after the applicable grace period are subject to penalties from the original filing deadline.

G. The commission, upon ~~determining that a report is late~~ ~~assessing a penalty~~, shall notify the Secretary of State ~~of the--lateness~~. The Secretary of State has the initial responsibility for collecting the full amount of any penalty within 30 days after receiving notice ~~of a late report~~ from

2 the commission. The Secretary of State ~~shall have~~ has all
necessary powers to carry out this responsibility.

4 H. The commission shall prepare a list of the names of
6 candidates who are late in filing a report required under
8 section 1017, subsection 2, paragraph C or D, or section
10 1017, subsection 3-A, paragraph B or C, within 30 days of
the date of the election and shall make that list available
for public inspection.

12 **3. Enforcement.** Failure to pay the full amount of any
penalty levied under this section is a civil violation by the
14 candidate, political party or other person whose campaign finance
activities are required by this subchapter to be reported.
16 Thirty days after receiving notice of the ~~lateness of any report~~
assessment of a penalty, the Secretary of State shall report to
18 the Attorney General the name of any person who has failed to pay
the full amount of any penalty. The Attorney General shall
20 enforce the violation in a civil action to collect the full
outstanding amount of the penalty. This action ~~shall~~ must be
22 brought in the Superior Court for the County of Kennebec or the
District Court, 7th District, Division of Southern Kennebec.

24 **Sec. 3. 21-A MRSA §1062**, as amended by PL 1991, c. 839, §32,
is further amended to read:

26 **§1062. Failure to file on time**

28 **1. Registration.** A political action committee required to
30 register under section 1053 that fails to do so in accordance
with section 1053 or that fails to provide the information
32 required by the commission for registration ~~must~~ may be assessed
a forfeiture of \$250.

34 **2. Campaign finance reports.** A campaign finance report is
36 not timely filed unless a properly signed copy of the report,
substantially conforming to the disclosure requirements of this
38 subchapter, is received by the commission before 5 p.m. on the
date it is due. The commission shall determine whether a
40 required report satisfies ~~these~~ the requirements for timely
filing ~~and, if determined to be late, the number of days of~~
42 lateness under this subchapter. The commission may waive a
penalty under this subsection in whole or in part if the
44 commission determines the failure to report was due to mitigating
circumstances or if it determines the penalty is disproportionate
46 to the offense.

48 A. Except as provided in paragraph B, ~~there is~~ a penalty of
50 \$250 may be assessed, plus an additional penalty of \$50 for
each business day beginning with the 2nd such day that a

2 campaign finance report required to be filed under this
subchapter is late, up to a maximum of \$1,000.

4 B. ~~There-is-a~~ A penalty of \$250 may be assessed for each
6 business day that a report required to be filed under
section 1059, subsection 2, paragraph B, subparagraph (1);
8 section 1059, subsection 2, paragraph C, subparagraph (1);
or section 1059, subsection 2, paragraph E is late, up to a
maximum of \$2,000.

10 C. A notice of lateness shall must be sent to political
12 action committees and treasurers registered with the
commission whose campaign finance reports are not received
14 by 2 days after the filing deadline. That notice shall must
be sent on the 3rd day following the deadline.

16 D. A late report required to be filed under section 1059,
18 subsection 2, paragraph A; section 1059, subsection 2,
paragraph B, subparagraph (2); or section 1059, subsection
20 2, paragraph C, subparagraph (2), filed within 10 days of
any deadline is not subject to penalty. Reports filed after
22 the applicable grace period are subject to penalties from
the original filing deadline.

24 E. A report required to be filed within 6 days before an
26 election ~~which~~ that is sent by certified or registered
United States mail and postmarked at least 2 days before the
28 deadline is not subject to penalty. Any required report may
be provisionally filed by transmission of a facsimile copy
30 of the duly executed report to the commission, as long as an
original of the same report is received by the commission
32 within 5 calendar days ~~thereafter~~ after the transmission.

34 F. The commission, upon ~~determining that a report is late~~
assessing a penalty, shall notify the Secretary of State of
36 ~~the lateness~~. The Secretary of State has the initial
responsibility for collecting the full amount of any penalty
38 within 30 days after receiving notice ~~of a late report~~ from
the commission. The Secretary of State shall ~~have~~ has all
40 necessary powers to carry out this responsibility.

42 G. The commission shall prepare a list of the names of
44 committees that are late in filing a report required under
section 1059, subsection 2, paragraph B, subparagraph (1);
46 section 1059, subsection 2, paragraph C, subparagraph (1);
or section 1059, subsection 2, paragraph E, within 30 days
of the date of the election and shall make that list
48 available for public inspection.

2 **3. Enforcement.** Failure to pay the full amount of any
3 penalty levied under this section is a civil violation by the
4 political action committee and its treasurer. Thirty days after
5 receiving notice of the ~~lateness-of-any-report~~ assessment of a
6 penalty, the Secretary of State shall report to the Attorney
7 General the name of any political action committee and treasurer
8 that failed to pay the full amount of any penalty. The Attorney
9 General shall enforce this violation in a civil action to collect
10 the full outstanding amount of the penalty. The action shall
11 must be brought in the Superior Court for the County of Kennebec
12 or the District Court, 7th District, Division of Southern
13 Kennebec.

14 **Emergency clause.** In view of the emergency cited in the
15 preamble, this Act takes effect when approved.

18 **STATEMENT OF FACT**

19 **20** This bill explicitly provides that the Commission on
20 Governmental Ethics and Election Practices has discretion to
21 assess penalties.
22