



## MEMORANDUM

To: Commissioners  
From: Jonathan Wayne, Executive Director  
Date: January 6, 2021  
Subject: Proposed Withdrawal of Rulemaking

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### Proposed Amendment

At its November 18, 2020 meeting, the Commission proposed adding a new provision to its rules, Chapter 3, § 2(J), that would address whether a candidate who has accepted traditional campaign contributions that do not comply with seed money restrictions is eligible to participate in the Maine Clean Election Act (MCEA) program. Under the proposed amendment, if the candidate is continuing to run for the same office, they could not participate in the MCEA program. If, however, the candidate had decided to run for a different office, the candidate could petition the Commission to qualify for MCEA funding on two conditions. The staff's reasoning in proposing the distinction was that a candidate who has decided to run for a different office (*e.g.*, a House candidate who has decided to run for State Senate or Governor) may have valid reasons to seek MCEA funding that were not apparent when they chose to run for the first office.

### Comments Received

The Commission staff distributed an invitation to comment by U.S. mail and electronic mail to lists of interested persons and scheduled a public hearing as part of the Commission's December 18, 2020 meeting. The deadline for comment was yesterday, January 5<sup>th</sup>. The Commission received no comments in connection with the proposed rule amendment.

### Revised Recommendation by Commission Staff

The Commission staff appreciates your investment of time in thinking through the rationale and consequences of the proposed rule amendment proposed in November. After reflecting on the lack of any support in comments from the public, the considerations raised by Commission members during the rule-making, and the existing statutory scheme of the MCEA, *we recommend withdrawing the proposed rule amendment.* We are no longer convinced that creating a pathway for a traditionally financed candidate to participate in the MCEA program when switching offices is worth the complexity of the proposed procedures and creating a deviation from the design of the program. Instead, we propose a bright line restriction stating that candidates who have accepted traditionally financed contributions that did not comply with seed money restrictions would be ineligible to participate in the MCEA program during the same election year. This is proposed in the form of a statutory provision in the “miscellaneous bill” included in the next agenda item.

The MCEA program is designed to be a voluntary system of full public financing. One of its goals is to reduce the role of traditional campaign contributions in candidate campaigns. During the rule-making, the Commission members made a number of observations that raise valid concerns with the proposal presented by the staff on November 18, 2020:

- Candidates need to make choices. They should select a method of financing for their campaigns that is consistent with why they are running.
- It would be simpler (and probably more in keeping with the original scheme of the MCEA) to prohibit a traditionally financed candidate from participating in the MCEA program when switching offices in the same election.
- A donor who has made a traditional campaign contribution to a candidate may not approve of the candidate converting the contribution to a seed money contribution so that the candidate may run for a different office as a MCEA candidate.

After considering these concerns and lack of support for the proposed amendment during the comment period, the staff has come to believe the better course of action is to withdraw the rulemaking.

*Alternative – Provisional Adoption of Rule Amendment*

In the alternative, if you would like to proceed with the rule-making, you have the option of provisionally adopting a rule amendment. If you wish to go in that direction, the staff would suggest the attached version of the amendment, which is slightly different than the language we proposed on November 18, 2020. New phrases (inserted since Nov. 18) are indicated with shading and **bold underlining**, and language which we would suggest replacing is shaded and ~~struck through~~. The Commission staff would submit the provisionally adopted amendment to the Legislature for its consideration. If the Legislature authorized the Commission to finally adopt the amendment, the staff has drafted some proposed guidance language that we would insert in the 2022 Candidate Guidebooks (next page).

Thank you for your consideration of this issue. It is rare that the Commission staff rethinks a policy proposal to you after initial presentation. We appreciate the time you have devoted to this agenda item.

## **Proposed Written Guidance**

### Converting from a Traditionally Financed Candidate to a MCEA Candidate

A candidate who has collected contributions as a traditionally financed candidate for the Maine Legislature or for Governor that do not comply with the restrictions on seed money may not participate in the MCEA program for that same office in the same election.

A candidate who has collected contributions as a traditionally financed candidate that do not comply the restrictions on seed money may participate in the MCEA program if they decide to run for a different office in that same election, provided that they meet the conditions described below. This could apply, for example, to a traditionally candidate for the Maine House of Representatives who subsequently decided they wished to run for the State Senate as a MCEA candidate. The candidate would need to petition the Commission in writing no later than 30 days before the end of the applicable qualifying period and demonstrate that they met the following conditions:

- The candidate has not spent more than the maximum seed money limit for the office the candidate is seeking. In the example of a House candidate wishing to run for the State Senate as a MCEA candidate, the candidate could not have spent more than \$3,000.
- The candidate has received an amount of contributions from individuals that comply with seed money restrictions that equals or exceeds the amount of all expenditures made by the candidate prior to submitting their petition.

If the Commission grants the candidate's petition to participate in the MCEA program, the candidate would have seven days from the date of the Commission's decision to return all contributions that do not comply with seed money restrictions to the original contributors, provided that no contributor receives more than the amount of their original contribution. For example, if the candidate had accepted contributions from any political action committees, party committees, or trade or labor associations, the candidate would need to return those contributions. If the candidate had accepted contributions in excess of \$100 from an individual, the candidate could retain \$100 of the contribution but would need to return the remaining portion of the contribution.

**Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS**

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**SECTION 2. PROCEDURES FOR PARTICIPATION**

1. **Declaration of Intent.** A participating candidate must file a Declaration of Intent within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.
2. **Content.** The Declaration of Intent must include the following information:
  - A. an affirmation that the candidate is seeking certification as a *Maine Clean Election Act* candidate;
  - B. an affirmation that the candidate understands that any qualifying contributions collected more than five days before filing the Declaration of Intent will not be counted toward the eligibility requirement;
  - C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;
  - D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3 (D) [Campaign Surplus] of this section;
  - E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;
  - F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;
  - G. an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and
  - H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).
3. **Seed Money Restrictions**
  - A. **General.** After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.

**B. Total Amount**

- (1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:
  - (a) two hundred thousand dollars for a gubernatorial candidate;
  - (b) three thousand dollars for a candidate for the State Senate; or
  - (c) one thousand dollars for a candidate for the State House of Representatives.
- (2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].
- (3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

**C. Required seed money for gubernatorial candidates. [Repealed.]**

- D. Campaign surplus.** A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a *Maine Clean Election Act* candidate.

- E. Return of Contributions Not in Compliance with Seed Money Restrictions.** A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.
- F. Case-by-Case Exception.** A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a *Maine Clean Election Act* candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:

- (1) the failure to comply was the result of an unintentional error;

- (2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;
- (3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and
- (4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.

- G. **Loans during qualifying period.** After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.
- H. **Seed money donors.** A seed money contributor may also make a qualifying contribution to the same candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.
- I. **Personal funds to open bank account.** A candidate may deposit personal funds of the candidate in a campaign account in order to meet the opening deposit requirements of the financial institution. If a financial institution requires a minimum balance to keep an account open or to avoid fees, the candidate may maintain personal funds in the account for that sole purpose at the minimum amount necessary to satisfy the terms of the financial institution. These funds will not be considered an in-kind contribution to the candidate's campaign or commingling of personal and campaign funds, provided that the candidate does not spend these funds for purposes of promoting the candidate's nomination or election.
- J. **Accepting traditional campaign contributions before seeking Maine Clean Election Act funding.** If a candidate has accepted contributions as a traditionally financed candidate that do not comply with seed money restrictions:
- (1) The candidate is ineligible to qualify for Maine Clean Election Act funding for the same office.
  - (2) The candidate may petition the Commission to qualify for Maine Clean Election Act funding for a different office at least one month before the certification deadline if the candidate disposes of non-compliant contributions in accordance with written guidance from the Commission and the candidate has received sufficient contributions, or portions thereof, that comply with seed money restrictions to pay for all expenditures made prior to petitioning the Commission.
- J. **Accepting traditional campaign contributions before seeking Maine Clean Election Act funding.** If a candidate has accepted contributions as a traditionally financed candidate that do not comply with seed money restrictions:
- (1) The candidate is ineligible to qualify for Maine Clean Election Act funding for the same office **in the same election.**

(2) The candidate may petition the Commission to qualify for Maine Clean Election Act funding for a different office at least no later than one month before the certification deadline last day of the relevant qualifying period if the candidate:

(a) disposes of non-compliant contributions in accordance with written guidance from the Commission;

(b) has received sufficient contributions, or portions thereof, that comply with seed money restrictions to pay for all expenditures made prior to petitioning the Commission; and

(c) has not spent more than the maximum seed money limit for the office the candidate is seeking.

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