



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Commission Meeting 10/01/2015
Agenda Item #8

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: September 22, 2015
Re: Summary of 2015 Citizen Initiative

For your information, this agenda item contains a description of the citizen initiative scheduled for a vote on November 3, 2015. More details are available in the pages after this cover memo. The initiative changes campaign finance law in five ways:

Increased penalties for non-compliance. The advocates¹ are seeking an increase in penalties assessed by the Commission for non-compliance with campaign finance law:

- When candidates, PACs and others file campaign finance reports late, the preliminary penalties would be increased under the proposed law. For example, the preliminary penalties for a first late report would be doubled, because the percentage in the statutory formula would increase from 1% to 2% of financial activity per day.
- The maximum penalties for certain violations would be increased, and the Commission would have the discretion to double or triple penalties for violations in the weeks close to an election.

Maine Clean Election Act program. The initiative is intended by its advocates to strengthen the Maine Clean Election Act program for candidates by allowing them to qualify for increased levels of public campaign funding through collecting additional qualifying contributions of \$5 or more. The additional funding may be most useful to legislative candidates in the competitive districts to avoid being “sitting ducks” when the race is targeted by PACs and party committees making independent expenditures. The

¹ The initiative was organized by the Maine Citizens for Clean Elections.

proposal is, in part, a response to a 2011 court decision that removed the matching funds component of the original program, but also addresses the increased spending by PACs and party committees.

The initiative would increase public funding for candidates for Governor. The level of general election funding in current law is \$600,000, which is generally viewed as insufficient. The gubernatorial program was suspended by the Legislature for the 2014 elections.

Top three funders disclosed in communications. When an organization (*e.g.*, a PAC or party committee) makes an independent expenditure advocating for or against a candidate, the communication would have to identify the top three funders of the organization since the last general election, for example:

Paid for by the Committee for a Better Maine, 2 Oak Street, Bangor, Maine. The top 3 funders of the Committee for a Better Maine are Americans for a Fair Workplace, the National Business-Labor Council, and Get America Moving. Not authorized by any candidate.

Donations received for a transition or inauguration. Persons soliciting donations for a Governor's transition to office or for an inauguration would need to register with the Commission and file two campaign finance reports.

Presumption of electioneering after Labor Day. Under current law, a paid communication mentioning a candidate is presumed to be an independent expenditure if it is distributed to voters within 35 days before a general election. The organization making the expenditure must file an Independent Expenditure Report. Under the citizen initiative, the presumption period would be from Labor Day until the election day.

Please let me know if you have any questions.

OVERVIEW OF 2015 CITIZEN INITIATIVE
(AN ACT TO STRENGTHEN THE MAINE CLEAN ELECTION ACT, IMPROVE DISCLOSURE AND MAKE OTHER CHANGES TO THE CAMPAIGN FINANCE LAWS)

Changes to the Maine Clean Election Act Program
(Sections 14-28 of the initiative)

Participation in the Maine Clean Election Act Program

The Maine Clean Election Act (MCEA) program is a voluntary system of public campaign financing for candidates for the Legislature and for Governor, enacted by voters in 1996. Once a candidate qualifies for the program, the candidate may spend only MCEA funds and may not collect campaign contributions.

From 2004-2010, the rate of participation by legislative candidates was around 75% - 80%. Participation declined to 63% (2012) and 53% (2014).

The program has been available to gubernatorial candidates in three elections during 2002-2010. Participants have included candidates from all three political parties in Maine as well as an independent candidate. Because of the elimination of matching funds in 2011, the level of general election funding (\$600,000) is now insufficient to finance a gubernatorial campaign. The Legislature suspended the gubernatorial program for the 2014 election cycle.

Current qualifying procedures

Under current law, candidates qualify for MCEA funding by collecting qualifying contributions of \$5 or more from registered Maine voters through April of the election year (see chart below). Gubernatorial candidates are also required to collect \$40,000 in seed money (up to \$100 per individual); seed money is optional for legislative candidates.

Proposal in citizen initiative

Under the initiative, candidates could qualify to receive additional MCEA funds by collecting more qualifying contributions (QCs) through the summer and early fall. The range of funding is shown on the next page. To qualify for maximum funding, candidates would need to collect approximately three or four times the number of QCs required for the basic level of funding. The Commission staff assumes that, due to this increased workload, some legislative candidates will be satisfied with the lower levels of funding.

	Current Law	Citizen Initiative	
	To qualify for MCEA funds	Basic level of MCEA funding	Maximum MCEA funding
House	60 QCs	60 QCs	180 QCs
Senate	175 QCs	175 QCs	535 QCs
Governor	3,250 QCs, \$40,000 in seed money	3,200 QCs, No seed money req't	12,800 QCs, No seed money req't

Changes to the Maine Clean Election Act Program (continued)

Funding Available to General Election Candidates Under the Citizen Initiative			
	House	Senate	Governor
Seed money (optional)	\$1,000	\$3,000	\$200,000
Primary election payment*	\$500	\$2,000	\$400,000 - \$1,000,000
Initial general election payment	\$5,000	\$20,000	\$600,000
Basic level funding (including seed money)	\$6,500	\$25,000	\$1,200,000 - \$1,800,000
Additional funding available through collecting more QCs	\$1,250 - \$10,000	\$5,000 - \$40,000	\$175,000 - \$1,400,000
Maximum level funding (including seed money)	\$16,500	\$65,000	\$3,200,000

*The funding available to candidates varies depending on whether they have an opponent in an election. However, legislative candidates are not eligible for additional funding in the primary election, even if they are in a contested race. For purposes of this table, legislative candidates are assumed to be uncontested in the primary election, and gubernatorial candidates are assumed to be contested in the primary and general elections.

Top Three Funders Disclosed in Electioneering Communications (Sec. 3)

- When an organization makes an independent expenditure advocating for or against a candidate, the organization would be required to name its three largest funders in the communication (*e.g.*, a mailer or advertisement).
- A sample disclosure statement might be: “Paid for by Committee for a Better Maine, 2 Oak Street, Bangor, Maine. The top 3 funders of Committee for a Better Maine are Americans for a Fair Workplace, the National Business-Labor Council, and Get America Moving. Not authorized by any candidate.”
- The communication must state the top three funders of the organization since the last general election. The organization could exclude certain donations from the disclosure statement in the communication. For example, the organization may “disregard any funds that [it] can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that the funds were spent in the order received or were segregated in other accounts.”

Increased Penalties for Campaign Finance Violations

- Preliminary penalties for late-filed campaign finance reports would be increased by adjusting the statutory formula for calculating penalties. For example, the preliminary penalties for a first late report would be doubled, because the percentage in the formula would increase from 1% of financial activity per day to 2%. (Sec. 7 & 9)
- If more than \$50,000 in financial activity is reported late, the maximum penalty would be 100% of the amount reported late (the current maximum is 20%). (Sec. 8 & 10)
- The Commission would have the discretion to double or triple penalties in the last weeks before an election. (Sec. 2)
- If a PAC or ballot question committee does not file a campaign finance report, the current maximum penalty is \$10,000 per report. Under the citizen initiative, the Commission could assess a penalty of up to \$10,000, or the amount of financial activity not reported, whichever is greater. (Sec. 11)
- The penalty for a PAC that fails to keep internal records for three years after an election (*e.g.*, bank account statements or receipts for payments) would be increased from \$2,500 to \$10,000 per violation, or the amount of financial activity for which no records were kept, whichever is greater. (Sec. 12)

Presumption of Electioneering after Labor Day (Sec. 5)

- Under current law, certain campaign communications mentioning a candidate are presumed to be independent expenditures if distributed to voters within 35 days before a general election. The citizen initiative would make this presumption period in effect from Labor Day until the general election.

Financial Disclosure for a Gubernatorial Transition and Inauguration Committee (Sec. 1)

- In order to solicit and accept donations for a Governor's transition to office or for an inauguration, those involved in the fundraising would be required to form a committee, appoint a treasurer, deposit all funds in a separate bank account, and register with the Commission.
- The proposed law does not impose any limit on the amount that a donor could give to the transition and inaugural committee.
- Lobbyists and their clients could not donate during a legislative session.
- The committee would be required to file two financial disclosure statements by January 1st and February 15th. The reports must disclose donors' names, addresses and employment information for all donations greater than \$50 and all payments made by the committee.
- Prior to filing its last report, the committee would be required to dispose of any surplus funds.