



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: October 18, 2016
Re: Explanation of Proposed Rule Amendments

Introduction

The Commission staff proposes initiating a rulemaking to amend Chapter 3 of the Commission's Rules, relating to administration of the Maine Clean Election Act (MCEA) program. The proposed changes are indicated with underlining and strikeouts in the document directly following this memo. Several of the proposed changes reflect modifications to the MCEA program that voters approved in November 2015.

As discussed below, some of the changes in this proposal were provisionally adopted by the Commissioners in January 2016 and submitted to the Legislature for its approval. (Commissioners Matheson, Nass and Lee participated in this rulemaking.) The amendments were *not* approved by the Legislature during the Second Regular Session, due to insufficient time at the end of the session to resolve one change recommended by our oversight committee on March 30, 2016. Based on the overall favorable reaction to the amendments by our oversight committee, the Commission staff provisionally adopting them again (with minor changes) and submitting them to the Legislature for its approval.

In the attached proposal, the Commission staff has proposed some minor language changes to the Rule amendments that were provisionally adopted in January 2016. The new language is highlighted in gray. In case you wish to refer to the rule changes that were provisionally adopted in January 2016, they are attached at the end of the materials for this agenda item.

Chapter 3, Section 2(2) - Declaration of Intent Form

Factual and Policy Basis: Under the Maine Clean Election Act, candidates must file a Declaration of Intent form indicating that they will be seeking public campaign funds. Candidates are required to file this form with the Commission within five business days of beginning to collect \$5 qualifying contributions (under 21-A M.R.S.A. § 1125(1)). The Commission has developed a form for this purpose which sets out a number of program requirements for the candidates to acknowledge through their signature. To prevent fraud in the collection of qualifying contributions, the Commission staff proposes a change to the content of the form: candidates would need to affirm that they will provide adequate training to individuals that they have authorized to collect qualifying contributions for them. The proposed changes would also fix a cross-reference to the correct paragraph of Section 2(3) (changing a C to a D).

Chapter 3, Section 2(3) - Seed Money Contributions

Factual and Policy Basis: To be consistent with changes to the Maine Clean Election Act (MCEA) in the November 3, 2015 citizen initiative, the Commission staff proposes changes to its Rule relating to seed money contributions. These are contributions of up to \$100 from individuals that candidates may solicit and spend to start their campaigns while they are qualifying for MCEA funds. The citizen initiative doubled the total amount of seed money that legislative candidates may collect. The initiative also eliminated the requirement for gubernatorial candidates to collect \$40,000 in seed money. (This was an eligibility requirement that was in effect during the 2010 gubernatorial elections.)

The proposed changes also fix the headings for paragraphs 2(3)(G) & (H) to clarify the subject matter of those paragraphs.

The Commission staff proposes a new paragraph 2(3)(I) to formalize a longstanding policy of the Commission that MCEA candidates have relied upon during several elections. To facilitate opening a campaign bank account and to avoid minimum balance fees, the Commission staff has permitted candidates to deposit a limited amount of personal funds in

their campaign account – provided that they do not spend these funds for campaign purposes.

Chapter 3, Sections 2(4)(A) - (G) – Extending the Period of Time for Collecting Qualifying Contributions

Factual and Policy Basis: Under the citizen initiative, after qualifying for MCEA funding ("certification"), candidates may continue to collect additional qualifying contributions in order to receive up to eight supplemental payments of MCEA funds for the general election. Candidates may collect these additional contributions until three weeks before the general election. The Commission staff proposes a Rule amendment in Section 2(4) to reflect that candidates may collect qualifying contributions *after certification*. These amendments include changing the phrase "participating candidate" to "candidate," because the term "participating candidate" refers to a candidate who is seeking to qualify for MCEA funding (*i.e.*, prior to certification).

Chapter 3, Section 2(4)(E) - Signatures by Family Members on Commission Forms

Factual and Policy Basis: The Commission has an existing Rule setting out conditions under which family members and others living in a single household may make qualifying contributions in the form of a single check or money order. The Commission staff proposes an amendment clarifying that each individual must affirm on the Commission's Receipt & Acknowledgment form they have made a qualifying contribution from their personal funds in support of the candidate. The Commission seeks to formalize existing policy that a qualifying contribution is not valid if the person purportedly making the contribution has not made this written acknowledgement.

Chapter 3, Section 2(4)(H) - Online Qualifying Contribution Service

Factual and Policy Basis: The Commission has established an online qualifying contribution service for members of the public to use a credit card to make qualifying

contributions (www.maine.gov/cleanelections). This service can reduce the administrative burden for candidates, because candidates do not need to submit any paperwork to the Commission for these contributions. (The service attempts to verify through data from the Central Voter Registry that the donor is registered to vote in the legislative district of the candidate.) The Commission staff proposes section 2(4)(H) to acknowledge this service, which has been in operation since 2008.

The website requires the donor to enter information and make selections through a series of online forms:

1. select the contributor's municipality and enter the contributor's street address and name,
2. select the candidate(s) to be supported through checking an online box,
3. type the amount(s) of the qualifying contribution(s) (\$5 is the default),
4. affirm by typing the contributor's name that the donor made a contribution from their personal funds in support of the candidate and did not receive anything in exchange for the contribution,
5. enter the contributor's credit card number, name of account holder, and billing address, and
6. submit the payment.

(Screen shots illustrating these steps are attached.) If the website cannot verify the donor's registration status on the first try, the website offers the donor a second opportunity to type his or her name.

The website is designed for *use by the donor* who is making the contribution. The Commission staff proposes a Rule amendment which specifies that the donor may receive assistance in entering information in the online forms, but the donor must personally make the affirmation and submit the payment (steps 4 and 6 above). This Rule is intended to strengthen confidence that the donor personally supports the candidate and is using personal funds to make a qualifying contribution. The Rule prohibits collecting the information by phone and entering the contribution on behalf of the donor.

Chapter 3, Section 2(4)(I), (J) & (K) - Preventing Fraudulent Qualifying Contributions

Factual and Policy Basis: The overwhelming majority of candidates follow the correct procedures in collecting qualifying contributions. In the experience of the Commission, it is very rare that candidates submit forms falsely claiming the collection of qualifying contributions. Most contributions are made by check or by credit card, which confirms that the donor has made the contribution from his or her personal funds.

On occasions when the Commission staff has detected that a candidate or volunteer has falsely claimed to have collected qualifying contributions *by cash* from donors, the Commission staff has invalidated the contributions attributed to that candidate or volunteer. This has generally resulted in the denial of MCEA funds to the candidate by the Commission staff.

In the past several elections, the Commission staff has denied MCEA funding to five legislative candidates who falsely claimed the collection of qualifying contributions. None of them appealed the staff's decision to the Commission. Also, the Commission staff has denied MCEA funding to two candidates for Governor because some of their volunteers falsely claimed qualifying contributions. One of the two candidates filed an appeal and later withdrew the appeal. In some cases the Commission, or its staff, has referred these matters to the Attorney General's office for criminal prosecution.

The staff expects the rate of fraud in candidates' collection of qualifying contributions will continue to be low. Nevertheless, there could be an increased risk of fraud because of the greater amount of campaign funds available to candidates and because candidates can receive additional campaign funds in proportion to the number of qualifying contribution collected.

In Section 2(4)(I) & (J), the Commission staff proposes two paragraphs setting out procedures to be used in the future when fraudulent qualifying contributions are detected. Section 2(4)(I) defines "fraudulent qualifying contributions" and directs the Commission staff

to investigate further, when the staff reasonably believes fraud may be present. The Rule authorizes the staff to call upon the Attorney General's office for investigative assistance or to refer matters to that office for possible criminal investigation.

In Section 2(4)(J), the Commission staff proposes a Rule setting out standards for candidates to oversee other individuals that they have authorized to collect qualifying contributions on their behalf. The proposed rule requires the candidate to:

- ensure that these other individuals receive adequate training in the procedures for collecting qualifying contributions, and
- exercise due diligence to ensure that all qualifying contributions collected by these individuals and submitted to the Commission on the candidate's behalf are not fraudulent and otherwise comply with requirements of the Act and the Commission's Rules.

The proposed Rule states that if a candidate or the candidate's agents have submitted fraudulent qualifying contributions, the candidate is ineligible for MCEA funding unless the candidate demonstrates by a preponderance of evidence that the candidate exercised due diligence as described above, and had no knowledge of and did not participate in the collection of the fraudulent qualifying contributions. This is a variation on the rebuttable presumption approach provisionally adopted in January 2016.

Due to the very large amount of funds potentially available to gubernatorial candidates under the citizen initiative, in Section 2(4)(K) the Commission staff proposed additional procedures for candidates for governor seeking MCEA funding. Within three weeks of declaring an intention to qualify, a candidate for Governor would need to appoint a compliance officer and submit a compliance plan addressing topics set out in the Rule. These procedures would not apply to legislative candidates.

Chapter 3, Sections 2(4)(L) – Prohibition against Receiving Services Paid by Others

Factual and policy basis: The Commission staff proposes new section 2(4)(L) to clarify that under the current definition of “contribution” in Election Law, organizations may not compensate people to collect qualifying contributions for MCEA candidates – except that the state political parties may pay their employees to provide up to 40 hours of paid assistance to a candidate in any election.

Chapter 3, Sections 2(4)(M) — Candidates Compensating People to Collect Qualifying Contributions

Factual and policy basis: The Commission staff proposes a new section 2(4)(M), which permits MCEA candidates to use their campaign funds to compensate individuals to collect qualifying contributions, but with two restrictions:

- 1) Candidates must make the payments from currently available campaign funds, and may not promise to compensate individuals from future MCEA funding yet to be received.
- 2) Candidates could *not* compensate individuals for collecting qualifying contributions *based on the number of qualifying contributions collected by that individual*. This is the same restriction (with slightly different language) that the Commissioners provisionally adopted in January 2016 to prohibit a rate of payment that could incentivize mistakes or fraud in the collection of qualifying contributions. We recommend this same restriction again.

This was the issue that created problems for the Commission’s rulemaking in March-April 2016.

- The Joint Standing Committee on Veterans and Legal Affairs (VLA) held a public hearing and work session to consider the proposed rules on March 23 and

30, 2016. This reduced the amount of time available to the Legislature to consider the rulemaking.

- At the March 30 work session, the VLA Committee went one step farther than the provisionally adopted rule and recommended that no Maine Clean Election Act funds could be used to compensate people to collect qualifying contributions (even on an hourly or daily basis). The Committee recommended, however, that candidates be able to use seed money to collect qualifying contributions. I have attached the Committee's amendment, in case you wish to refer to it.
- The House Democratic leadership found this change recommended by the VLA Committee unacceptable, because of concerns that it would severely hurt the viability of the gubernatorial part of the Maine Clean Election Act program. In the redesigned Maine Clean Election Act program that was approved by Maine voters in November 2015, candidates for Governor would need to collect 16,000 qualifying contributions from registered voters in the state in order to receive maximum funding for the primary and general elections. As I understand it, the concern of the Democratic leadership was that there would be no way for a candidate for Governor to collect anywhere near 16,000 qualifying contributions through volunteer effort alone. Some use of the MCEA candidate's campaign funds would be necessary to pay people to collect qualifying contributions – analogous to the regular practice of traditionally financed gubernatorial candidates paying staff or consultants for fundraising costs.
- At the end of the 2016 session in April (when developments were happening hour-by-hour in a very compressed fashion), the House Democratic leaders decided that the only viable option was to indefinitely postpone action on the Commission's rule amendments.

Chapter 3, Section 3(1)(C) - Requirement for Gubernatorial Candidates to Obtain Special Documentation of Required Seed Money Contributions

Factual and policy basis: As a result of the citizen initiative, candidates for Governor are no longer required to collect \$40,000 in seed money to qualify for public campaign funds. This was an eligibility requirement the Legislature enacted and was in effect for the 2010

elections. Consequently, the Commission staff proposes an amendment deleting this section of the Rule.

Chapter 3, Section 4(2) & (3) - Financial Projections, Adjusting Payment Amounts for Inflation

Factual and policy basis: The Commission staff proposes a Rule change reflecting the new requirements in the citizen initiative to provide four-year financial projections to the Legislature and Governor and to adjust the payment amounts to candidates every two years based on inflation.

Chapter 3, Section 4(4)(B) & (F) - Authorizing Contributions Due to Shortfall in the Fund

Factual and policy basis: This subsection authorizes candidates to collect traditional campaign contributions if there is insufficient money in the Maine Clean Election Fund to make payments of public funds to candidates. These contributions would be capped by the same maximum that applies to traditionally financed candidates. Since these maximums are re-adjusted every two years for inflation, the Commission staff proposes an amendment deleting the specific dollar amounts in the Rule. The amendment also deletes a clause from paragraph F which refers to the deposit of matching funds in a separate bank account, since matching funds are no longer a component of the program.

Chapter 3, Section 6 – Distribution of Supplemental Funds

Factual and Policy basis: The Commission staff proposes a Rule amendment setting out the procedures for candidates submitting additional qualifying contributions to receive supplemental payments of MCEA funds. These procedures are generally similar to the existing procedures for legislative candidates to submit qualifying contributions by April 20 of the election year to qualify for MCEA funding. Because the amount of the public campaign funding available to candidates is directly proportional to the number of valid qualifying contributions, the Rule requires candidates to submit a list of qualifying contributions in an electronic format such as Microsoft Excel. This will greatly facilitate the

staff's timely evaluation of the qualifying contributions and ensure payment of public funds in the correct amount.

In order to position this proposed Rule in the most appropriate location within Chapter 3, this Rule was numbered Section 6, and that the existing Sections 6, 7, and 8 have been renumbered to 7, 8, and 9.

Chapter 3, Section 7 - Prohibiting Large Payments of Maine Clean Election Act funds in Cash [renumbered from Section 6]

Factual and Policy Basis: The Commission staff proposes a Rule amendment prohibiting candidates from spending more than \$50 of Maine Clean Election Act funds in cash. Under this proposal, expenditures of more than \$50 would be paid by check, debit or credit card, or wire transfer only. This would create a more reliable audit trail, in order to ensure the accountability of MCEA funds.

Thank you.

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

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. **ED** [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); and

I. an acknowledgement that the candidate is responsible to provide adequate training to individuals authorized by the candidate to collect qualifying contributions on the candidate's behalf and has a duty to exercise due diligence to ensure that all qualifying contributions collected by these individuals and submitted to the Commission comply with the Act and the Commission's rules.

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) ~~one thousand five hundred~~ three thousand dollars for a candidate for the State Senate; or

(c) ~~five hundred~~ 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.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least \$40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the \$40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].~~

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. **Other Seed money donors.** A seed money contributor may also make a qualifying contribution to the same participating 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.

4. Qualifying Contributions

- A. **General.** A ~~participating~~ candidate may collect qualifying contributions only during the relevant qualifying period for certification and the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)]. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement for any purpose. Qualifying contributions must be acknowledged by the person making the contribution and reported on forms provided by the Commission.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process. Contributions made through the Commission's online qualifying contribution service do not require a circulator's affirmation.

- B. **Required Number of Qualifying Contributions.** A participating candidate must obtain the number of qualifying contributions for certification during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. Exchanges for Qualifying Contributions Prohibited

- (1) A ~~participating~~ candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.

- (2) This provision does not prohibit a ~~participating~~ candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the ~~participating~~ candidate.
- (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. **Checks Drawn on Business Accounts.** Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. **Family Members.** Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

For a qualifying contribution to be considered valid, the contributor must affirm that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution. The affirmation may not be made by a family member, domestic partner or live-in caregiver of the contributor, unless the contributor is unable to sign the form due to a physical impairment or disability.

F. **Verification of Registered Voters**

- (1) Before submitting qualifying contributions to the Commission, a ~~participating~~ candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) For qualifying contributions made by check or by money order, a ~~participating~~ candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

- (3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the ~~participating~~ candidate must obtain written verification from the Registrar.
- (4) Upon request of a ~~participating~~ candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. Timing of Verification. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period for certification or the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)] to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate or before the additional qualifying contribution is submitted to the Commission. Proof of voter verification submitted after the qualifying period for certification will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

H. Online Qualifying Contribution Service. The Commission may establish an online service for members of the public to make qualifying contributions in support of candidates seeking Maine Clean Election Act funding. To make an online qualifying contribution, the contributor must use the Commission's-procedures to affirm that the contributor made a contribution from their personal funds in support of the candidate and that the contributor did not receive anything of value in exchange for his or her contribution. The affirmation and the payment must be made and submitted by the contributor and not by any other person. Assistance may be provided to a contributor in using the online service, as long as the assistance is provided in person and the contributor personally makes the affirmation and submits the online payment. A candidate and any person collecting qualifying contributions on behalf of a candidate may not collect the required information from the contributor by phone or any means other than in-person contact, and enter it into the online service on behalf of the contributor.

I. Fraudulent qualifying contributions. If the Commission staff reasonably believes that fraudulent qualifying contributions have been submitted to the Commission, the staff shall undertake an investigation to determine whether the qualifying contributions are fraudulent. The Commission staff may request investigative assistance from the Office of the Maine Attorney General or refer the matter for possible criminal prosecution. For purposes of this chapter, "fraudulent qualifying contributions" includes, but is not limited to, asking an individual to sign a Receipt and Acknowledgement form as a contributor when the individual did not make a qualifying contribution, giving money or something of value to someone in exchange for making a qualifying contribution, making false statements in the circulator section of a Receipt and Acknowledgement form, or signing the name of another person in the contributor section of the Receipt and Acknowledgment form unless the person signing the form does so

on behalf of a family member who authorizes the signature but is unable to sign due to a physical impairment or disability. Fraudulent qualifying contributions must be rejected.

J. Duty of oversight. If a candidate has authorized other individuals to collect qualifying contributions on the candidate's behalf, the candidate is responsible for ensuring that these individuals receive adequate training in the procedures for collecting qualifying contributions. The candidate must exercise due diligence to ensure that all qualifying contributions collected by these individuals are not fraudulent and otherwise comply with the requirements of the Act and the Commission's rules. If the Commission determines that fraudulent contributions have been submitted by the candidate or the candidate's agents, the candidate is ineligible for Maine Clean Election Act funding unless the candidate demonstrates by a preponderance of the evidence that he or she exercised the due diligence described above and had no knowledge of and did not participate in the collection of the fraudulent qualifying contributions.

K. Compliance by gubernatorial candidates. Within three weeks of declaring an intention to qualify for Maine Clean Election Act funding, candidates for Governor must appoint one or more compliance officers who will oversee the collection of qualifying contributions and must submit a compliance plan for training and oversight of persons collecting qualifying contributions. The compliance plan must describe the procedures for

- (1) training the circulators who will be collecting qualifying contributions,
- (2) minimizing the risk of error or fraud by communicating with circulators during the collection process to verify that each contributor listed in qualifying papers provided personal funds, nothing of value was provided to the contributor, and every contributor personally made the required acknowledgment by signing a paper form or completing the online procedure for making a qualifying contribution,
- (3) the compliance officer's personal verification with each circulator that he or she complied with required procedures before the campaign's acceptance of qualifying contributions from that circulator, and
- (4) responding appropriately when receipt and acknowledgement forms have been completed erroneously or fraudulent qualifying contributions have been collected through investigating the extent of the error or fraud and taking remedial action to avoid risk of future error or fraud.

L. Collection of qualifying contributions by paid staff. No person other than the candidate may compensate others for collecting qualifying contributions, except that paid staff of a party committee may provide limited assistance to a candidate pursuant to the exemption under Title 21-A M.R.S.A. § 1012(2)(B)(7)(A).

M. Compensating others to collect qualifying contributions. If a candidate compensates any person for collecting qualifying contributions, the compensation must be from funds currently available to the candidate's campaign. A candidate may not agree to make payment for collection of

qualifying contributions from funds not currently available but anticipated to become available upon submission of the qualifying contributions collected. A candidate may not compensate any person for collecting qualifying contributions based on the number of contributions collected by that person.

- N. Volunteer assistance with collecting qualifying contributions.** A candidate may receive volunteer assistance from an individual with the collection of qualifying contributions. Expenses incurred by the individual for vehicle travel or other purposes may be reimbursed only by the candidate.

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification.** A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:
 - A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
 - B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;
 - ~~C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;~~
 - D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
 - E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
 - F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A ~~or C~~.
2. **Order of Review.** The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
3. **Unspent Seed Money.** In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. **Certification.** The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§1125] and this chapter.

5. **Appeals.** Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. **Publication of Fund Revenue Estimates.** ~~By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year. The Commission will provide the Legislature and Governor with financial projections required under the Act [§1124(4)] and may submit legislation to request additional revenues to the Fund if the Commission determines that projected revenue will not be sufficient to meet demands.~~
3. **Computation of Disbursement Amounts.** ~~By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)]. Every two years, the Commission shall adjust the amounts of distributions made to candidates in accordance with the Act [§§ 1125(8-B) - (8-F)].~~
4. **Authorizing Contributions due to Shortfall in the Fund.**
 - A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].
 - B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds ~~\$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates~~ the applicable statutory contribution limit as adjusted for inflation. [§§ 1015(1) & (2)]. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
 - C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates.
 - D. **Campaign contributions to replace matching funds.** *[Repealed]*

- E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.
- F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, ~~except funds which must be deposited in a separate account under paragraph D.~~ The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.
- G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.
- H. **Effect of fundraising on matching funds calculation.** *[Repealed]*

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§§1125(7), (7)(B) & (8-B) - (8-F)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
- (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.
- C. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a

mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

SECTION 6. DISTRIBUTION OF SUPPLEMENTAL FUNDS

A certified candidate may be eligible to receive payments of supplemental funds in the amounts established in 21-A M.R.S.A. §§ 1125(8-C) – (8-D) and at the times established in 21-A M.R.S.A. §§ 1125(7-B) & (8-E). To receive a distribution of supplemental funds, a certified candidate must submit to the Commission additional qualifying contributions in compliance with the requirements of 21-A M.R.S.A. § 1125(8-E) and this section.

1. **Additional Qualifying Contributions.** Each submission of additional qualifying contributions must include the following documents:
 - A. the additional qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking and the receipt and acknowledgement forms for any additional qualifying contributions collected on the Commission’s online qualifying contribution service;
 - B. a list of the first and last names of all individuals making additional qualifying contributions, the individual’s town or city of residence, the date of the submission of the additional qualifying contribution to the Commission, and a notation indicating all additional qualifying contributions collected on the Commission’s online qualifying contribution service.
 - (1) The list must include all additional qualifying contributions being submitted and must be sorted alphabetically by last name.
 - (2) The list must be provided to the Commission in an electronic format specified by the Commission, such as Microsoft Excel. The Commission may develop online software for candidates to provide contributor names and for the Commission to notify candidates of numbers of qualifying contributions that count toward supplemental payments.
 - C. a completed submission form provided by the Commission.

A submission of additional qualifying contributions will not be considered complete and will not be reviewed by the Commission unless the submission includes all the required documents.

2. **Payment of Supplemental Funds.** Within three business days of certifying that a certified candidate has submitted the required number of valid additional qualifying contributions to be eligible to receive a payment of supplemental funds under the Act [§§ 1125(8-C) – (8-D)], the Commission will authorize a payment of supplemental funds in an amount based on number of valid additional qualifying contributions.

SECTION 67. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate ~~must~~ shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; ~~and~~

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; and
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in Maine Clean Election Act funds must be made by check, debit or credit card or wire transfer.

[Sections 7 and 8 would be renumbered to 8 and 9]

Maine Clean Election Act

Online Qualifying Contribution Service

Candidate Qualifying Contributions

Please select your town or city from the list and enter your street address. This information will be used to determine which candidates you can support with a qualifying contribution. **Required fields are indicated by an asterisk (*).**

Municipality

City or Town:*

Augusta

Residential Address

Street Number:*

45

Street Name:*

Memorial Circle

Unit/Apartment Number:

Voter Name

Please enter your full name. We will try to verify your voter registration based on the name and address on your voter registration card.

Voter First Name:*

Jill

Voter Middle Name/Middle Initial:

A

Voter Last Name:*

Smith

Voter Suffix:

Select

[Continue](#) | [Cancel](#)

Maine Clean Election Act

Online Qualifying Contribution Service

Please select the Maine Clean Election Act candidates whom you would like to support.

House District 57 Candidates		Qualifying Status
<input checked="" type="checkbox"/>	KATHERINE VER SLUIS, DEMOCRATIC	Accepting qualifying contributions Amount <input type="text" value="5.00"/>
<input type="checkbox"/>	STEPHEN WOOD, REPUBLICAN	Accepting qualifying contributions Amount <input type="text" value="5.00"/>
Senate District 24 Candidates		Qualifying Status
<input type="checkbox"/>	STANLEY GERZOFSKY, DEMOCRATIC	Accepting qualifying contributions Amount <input type="text" value="5.00"/>
<input checked="" type="checkbox"/>	K. FREDERICK HORCH, GREEN INDEPENDENT	Accepting qualifying contributions Amount <input type="text" value="5.00"/>
<input type="checkbox"/>	JENNIFER JOHNSON, REPUBLICAN	Accepting qualifying contributions Amount <input type="text" value="5.00"/>
Gubernatorial Candidates		Qualifying Status
<input type="checkbox"/>	Josh K, DEMOCRATIC	MCEA Qualified - Accepting additional qualifying contributions. Amount <input type="text" value="5.00"/>

[Continue](#) | [Cancel](#)

Maine Clean Election Act

Online Qualifying Contribution Service

Qualifying Contributions: Review

Are the qualifying contributions listed below correctly? If so, please make the acknowledgement on this screen. If not, click "Edit" to make changes.

Contribution Information

K. FREDERICK HORCH, SENATOR, GREEN INDEPENDENT: \$5.00
KATHERINE VER SLUIS, REPRESENTATIVE, DEMOCRATIC: \$5.00

Grant Total:

\$10.00

Acknowledgement

By entering my name below, I affirm that I am using my own personal funds to make the qualifying contribution(s) and that I received nothing of value in exchange for making the contribution(s).

Electronic Signature*:

Knowingly falsifying any piece of information submitted through this service is punishable by law.

[Continue to Payment](#) | [Edit](#) | [Cancel](#)

Maine Clean Election Act

Online Qualifying Contribution Service

Payment Information

Please provide your payment information below. Your credit card will be charged once you submit this page. This payment service uses the secure, CyberTrust certified Maine.gov payment engine. You must enter the 3-digit CVV number or security code located on the back of your card. **Required fields are indicated by an asterisk (*)**.

Please note: If spouses or domestic partners want to make individual qualifying contributions to a candidate using the same card, each person will have to make a separate contribution and acknowledgement.

Total Due: **\$10.00**

Credit Card Information

Credit Card Type*:

Visa

Credit/Debit Card Number*:

043300433004

CVV Number*:

135

Expiration Date*:

10 2017

Name on Card*:

Jill A. Smith

Billing Information

Billing Address*:

45 Memorial Circle

City/Town*:

Augusta

State/Province*:

Maine

ZIP/Postal Code*:

04330

Phone Number*:

2072874179

Email Address (for payment confirmation):

ethics@maine.gov

[Submit Payment](#)

[Cancel](#)



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1666

H.P. 1136

House of Representatives, March 22, 2016

**Resolve, Regarding Legislative Review of Portions of Chapter 3:
Maine Clean Election Act and Related Provisions, a Late-filed
Major Substantive Rule of the Commission on Governmental Ethics
and Election Practices**

(EMERGENCY)

Reported by Representative LUCHINI of Ellsworth for the Commission on Governmental Ethics and Election Practices pursuant to the Maine Revised Statutes, Title 5, section 8072 and approved for introduction by a majority of the Legislative Council.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed pursuant to Joint Rule 218.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Date: (Filing No. H-)

VETERANS AND LEGAL AFFAIRS

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1136, L.D. 1666, "Resolve, Regarding Legislative Review of Portions of Chapter 3: Maine Clean Election Act and Related Provisions, a Late-filed Major Substantive Rule of the Commission on Governmental Ethics and Election Practices"

Amend the resolve by striking out all of section 1 and inserting the following:

'Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 3: Maine Clean Election Act and Related Provisions, a provisionally adopted major substantive rule of the Commission on Governmental Ethics and Election Practices that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized only if the following changes are made.

1. The rule must be amended in Section 2, subsection 4, paragraph J to specify that the presumption that a candidate has confirmed that the individuals collecting qualifying contributions have actually received the contributions from personal funds of the contributors applies only with regard to certification as a Maine Clean Election Act candidate and authorizing distributions from the Maine Clean Election Fund and not with regard to findings of violations for which subsequent financial penalties may be applied.

2. The rule must be amended in Section 2, subsection 4, paragraph M to specify that any compensation paid to a person authorized by a candidate to collect qualifying contributions must be limited to funds received by the candidate as seed money contributions.'

SUMMARY

This amendment authorizes final adoption of portions of Chapter 3: Maine Clean Election Act and Related Provisions, a provisionally adopted major substantive rule of the Commission on Governmental Ethics and Election Practices filed after the deadline, as long as certain changes are made. The amendment requires the rules to be changed to clarify that the presumption that a candidate has confirmed that a person whom the

COMMITTEE AMENDMENT

1 candidate has authorized to collect qualifying contributions on the candidate’s behalf
2 applies only with regard to certification as a Maine Clean Election Act candidate and
3 Maine Clean Election Fund distributions and not with regard to findings of violations for
4 which subsequent financial penalties may be applied. The amendment also requires the
5 rules to be changed to state that payments to persons authorized to collect qualifying
6 contributions may be made using only seed money contributions received by the
7 candidate.

8 **FISCAL NOTE REQUIRED**

9 **(See attached)**

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

SECTION 1. APPLICABILITY

This chapter applies to candidates running for Governor, State Senator and State Representative who choose the alternative campaign financing option established by the Maine Clean Election Act for elections to be held beginning in the year 2000. Candidates participating in the Maine Clean Election Act must comply with these rules and all other applicable election and campaign laws and regulations. Some sections in this chapter also apply to and impose obligations on privately financed candidates and political committees that raise contributions and make expenditures in races involving Maine Clean Election Act candidates.

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.C [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) ~~one thousand five hundred~~ three thousand dollars for a candidate for the State Senate; or
- (c) ~~five hundred~~ 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.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least \$40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the \$40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].~~

- 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. 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. **Other.** A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. **Qualifying Contributions**

- A. **General.** A ~~participating~~ candidate may collect qualifying contributions only during the relevant qualifying period for certification and the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)]. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted ~~toward the eligibility requirement for~~ any purpose. Qualifying contributions must be acknowledged by the person making the contribution and reported on forms provided by the Commission.

The forms must include:

- (1) the name, residential address and signature of the contributor;
- (2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;
- (3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;
- (4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and
- (5) an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process. Contributions made through the Commission's online qualifying contribution service do not require a circulator's affirmation.

B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions for certification during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. Exchanges for Qualifying Contributions Prohibited

- (1) A ~~participating~~ candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.
- (2) This provision does not prohibit a ~~participating~~ candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the ~~participating~~ candidate.
- (3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the \$5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. Checks Drawn on Business Accounts. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the

account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. **Family Members.** Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than \$5 provided that:

- (1) all contributors sign the receipt and acknowledgement form;
- (2) all contributors are registered to vote at the address of the household; and
- (3) all contributions are made with the personal funds of the contributors.

For a qualifying contribution to be considered valid, the contributor must affirm that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution. The affirmation may not be made by a family member, domestic partner or live-in caregiver, unless the contributor is unable to sign the form due to a physical impairment.

F. **Verification of Registered Voters**

- (1) Before submitting qualifying contributions to the Commission, a ~~participating~~ candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.
- (2) For qualifying contributions made by check or by money order, a ~~participating~~ candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.
- (3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the ~~participating~~ candidate must obtain written verification from the Registrar.
- (4) Upon request of a ~~participating~~ candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. **Timing of Verification.** For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period for certification or the relevant period for additional qualifying contributions [§§ 1122(8) and 1125(8-E)] to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate or before the additional qualifying contribution is submitted to the Commission.

Proof of voter verification submitted after the qualifying period for certification will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

- H. Online Qualifying Contribution Service.** The Commission may establish an online service for members of the public to make qualifying contributions in support of candidates seeking Maine Clean Election Act funding. To make an online qualifying contribution, the contributor must use the Commission's procedures to affirm that the contributor made a contribution from their personal funds in support of the candidate and that the contributor did not receive anything of value in exchange for his or her contribution. The affirmation and the payment must be made and submitted by the contributor and not by any other person. Assistance may be provided to a contributor in using the online service, as long as the assistance is provided in person and the contributor personally makes the affirmation and submits the online payment. A candidate and any person collecting qualifying contributions on behalf of a candidate may not collect the required information from the contributor by phone or any other means, other than in-person contact, and enter it into the online service on behalf of the contributor.
- I. Fraudulent qualifying contributions.** If the Commission staff reasonably believes that fraudulent qualifying contributions have been submitted to the Commission, the staff shall undertake an investigation to determine whether the qualifying contributions are fraudulent. The Commission staff may request investigative assistance from the Office of the Maine Attorney General or refer the matter for possible criminal prosecution. For purposes of this chapter, "fraudulent qualifying contributions" includes, but is not limited to, asking an individual to sign a Receipt and Acknowledgement form as a contributor when the individual did not make a qualifying contribution, giving money or something of value to someone in exchange for making a qualifying contribution, making false statements in the circulator section of a Receipt and Acknowledgement form, or signing the name of another person in the contributor section of the Receipt and Acknowledgment form unless the person signing the form does so on behalf of a family member who authorizes the signature but is unable to sign due to a physical impairment. Fraudulent qualifying contributions must be rejected.
- J. Compliance; oversight.** If a candidate has authorized other individuals to collect qualifying contributions on the candidate's behalf, the candidate is responsible for ensuring that these individuals receive adequate training in the procedures for collecting qualifying contributions. The candidate must exercise due diligence to ensure that all qualifying contributions collected by these individuals and submitted to the Commission on the candidate's behalf comply with requirements of the Act and the Commission's rules. A candidate is presumed to have confirmed that the individuals collecting the qualifying contributions submitted by the candidate actually received the required contributions from the personal funds of the contributors. A candidate may rebut the presumption if the Commission determines by a preponderance of evidence that the candidate exercised due diligence as described above, and had no knowledge of and did not participate in the collection of the noncompliant qualifying contributions. If the candidate rebuts the presumption, the submission of the fraudulent qualifying contribution will not, by itself, disqualify the

candidate from receiving Maine Clean Election Act funding if the candidate otherwise qualifies for the funding. For the purpose of rebutting the presumption, the term “candidate” includes an agent of the candidate or the candidate’s committee, including a gubernatorial candidate’s compliance officer.

K. Compliance by gubernatorial candidates. Within three weeks of declaring an intention to qualify for Maine Clean Election Act funding, candidates for Governor must appoint one or more compliance officers who will oversee the collection of qualifying contributions and must submit a compliance plan for training and oversight of persons collecting qualifying contributions. The compliance plan must describe the procedures for

- (1) training the circulators who will be collecting qualifying contributions,
- (2) minimizing the risk of error or fraud by communicating with circulators during the collection process to verify that each contributor listed in qualifying papers provided personal funds, nothing of value was provided to the contributor, and every contributor personally made the required acknowledgment by signing a paper form or completing the online procedure for making a qualifying contribution,
- (3) the compliance officer’s personal verification with each circulator that he or she complied with required procedures before the campaign’s acceptance of qualifying contributions from that circulator, and
- (4) responding appropriately when receipt and acknowledgement forms have been completed erroneously or fraudulent qualifying contributions have been collected through investigating the extent of the error or fraud and taking remedial action to avoid risk of future error or fraud.

L. Collection of qualifying contributions by paid staff. No person other than the candidate may compensate others for collecting qualifying contributions, except that paid staff of a party committee may provide limited assistance to a candidate pursuant to the exemption under Title 21-A M.R.S.A. § 1012(2)(B)(7)(A).

M. Only currently available funds. If a candidate compensates any person for collecting qualifying contributions, the compensation must be from funds currently available to the candidate’s campaign. A candidate may not agree to make payment for collection of qualifying contributions from funds not currently available but anticipated to become available upon submission of the qualifying contributions collected. A candidate may not compensate any person, on a per signature basis, for collecting qualifying contributions.

N. Volunteer assistance with collecting qualifying contributions. A candidate may receive volunteer assistance with the collection of qualifying contributions provided that any person organizing the volunteers is also a volunteer or is entitled to the political party staff exemption in Title 21-A M.R.S.A. § 1012(2)(B)(7)(A).

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification.** A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:
 - A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;
 - B. a list of all individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;
 - C. ~~for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;~~
 - D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and
 - E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.
 - F. A candidate may request an extension of time to comply with paragraphs B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A or C.
2. **Order of Review.** The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.
3. **Unspent Seed Money.** In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.
4. **Certification.** The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§1125] and this chapter.

5. **Appeals.** Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.
2. **Publication of Fund Revenue Estimates.** ~~By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year. The Commission will provide the Legislature and Governor with financial projections required under the Act [§1124(4)] and may submit legislation to request additional revenues to the Fund if the Commission determines that projected revenue will not be sufficient to meet demands.~~
3. **Computation of Disbursement Amounts.** ~~By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)]. Every two years, the Commission shall adjust the amounts of distributions made to candidates in accordance with the Act [§§ 1125(8-B) - (8-F)].~~
4. **Authorizing Contributions due to Shortfall in the Fund.**
 - A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].
 - B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds ~~\$750 per election for gubernatorial candidates and \$350 per election for State Senate and State House candidates~~ the applicable statutory contribution limit as adjusted for inflation. [§§ 1015(1) & (2)]. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.
 - C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates.
 - D. **Campaign contributions to replace matching funds.** *[Repealed]*

- E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.
- F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, ~~except funds which must be deposited in a separate account under paragraph D.~~ The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.
- G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.
- H. **Effect of fundraising on matching funds calculation.** *[Repealed]*

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. Fund Distribution

- A. **Establishment of Account.** Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.
- B. **Manner of Distribution of Fund.** The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§§1125(7), (7)(B) & (8-B) - (8-F)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:
 - (1) checks payable to the certified candidate or the certified candidate's political committee; or
 - (2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.
- C. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a

mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

SECTION 6. DISTRIBUTION OF SUPPLEMENTAL FUNDS

A certified candidate may be eligible to receive payments of supplemental funds in the amounts established in 21-A M.R.S.A. §§ 1125(8-C) – (8-D) and at the times established in 21-A M.R.S.A. §§ 1125(7-B) & (8-E). To receive a distribution of supplemental funds, a certified candidate must submit to the Commission additional qualifying contributions in compliance with the requirements of 21-A M.R.S.A. § 1125(8-E) and this section.

1. **Additional Qualifying Contributions.** Each submission of additional qualifying contributions must include the following documents:
 - A. the additional qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking and the receipt and acknowledgement forms for any additional qualifying contributions collected on the Commission’s online qualifying contribution service;
 - B. a list of the first and last names of all individuals making additional qualifying contributions, the individual’s town or city, the date of the submission of the additional qualifying contribution to the Commission, and a notation indicating all additional qualifying contributions collected on the Commission’s online qualifying contribution service.
 - (1) The list must include all additional qualifying contributions being submitted and all qualifying contributions previously submitted and must be sorted alphabetically by last name.
 - (2) The list must be provided to the Commission in an electronic spreadsheet or table format. Acceptable formats are Microsoft Excel or Microsoft Word. Other formats that can be converted to a spreadsheet format (Excel or .csv) may be acceptable. Handwritten or scanned lists are not acceptable; and
 - C. a completed and signed submission form provided by the Commission.

A submission of additional qualifying contributions will not be considered complete and will not be reviewed by the Commission unless the submission includes all the required documents.

2. **Payment of Supplemental Funds.** Within three business days of certifying that a certified candidate has submitted the required number of valid additional qualifying contributions to be eligible to receive a payment of supplemental funds under the Act [§§ 1125(8-C) – (8-D)], the Commission will authorize a payment of supplemental funds in an amount based on number of valid additional qualifying contributions.

SECTION 67. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate ~~must~~ shall:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:
 - A. \$250 for a candidate for the State House of Representatives;
 - B. \$750 for a candidate for the State Senate; and
 - C. \$2,500 by a gubernatorial candidate.

The candidate may also use his or her personal funds for these purposes; ~~and~~

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission; and
7. not make any payment of more than \$50 in cash. Payments of more than \$50 in Maine Clean Election Act funds must be made by check, debit or credit card or wire transfer.

[Sections 7 and 8 would be renumbered to 8 and 9]