



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

To: Administrative Procedure Officer  
Office of the Secretary of State of Maine

From: Paul Lavin, Assistant Director

Date: March 29, 2007

Re: Amendments to Major Substantive Rules in Chapter 3 of the Commission's Rules  
(94-270 C.M.R. Chapter 3)

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STATEMENT OF FACTUAL AND POLICY BASIS FOR AMENDMENTS  
AND SUMMARY OF AND RESPONSE TO COMMENTS

**Chapter 3, Sections 2.1 and 2.2**

*Factual and Policy Basis:* The adopted rule clarifies that any qualifying contributions received more than 5 days before a candidate files a Declaration of Intent with the Commission will not count towards the required minimum. This prohibition is expressed in the statute but the existing rule did not contain a reference to it. The requirement that the candidate identify the treasurer and political committee on the Declaration of Intent is removed because that information is required on the candidate registration form. The requirement that information about the campaign's financial institution and the candidate's social security or tax identification number be disclosed on the Declaration of Intent is removed for security purposes. That information must be provided to the Commission on other forms in order for the candidate to be set up as a vendor in the State's system. Under the adopted rule, the Declaration of Intent will also include an affirmation that the candidate has read and will comply with the guidelines on using public funds.

*Comments:* The Commission received no comments on the adopted rule.

**Chapter 3, Section 2.4**

*Paragraph A*

*Factual and Policy Basis:* The adopted rule changes the content of the receipt and acknowledgement form that candidates use in collecting qualifying contributions and signatures. The form will contain a clear and conspicuous statement that the candidate is seeking public funding for his or her campaign. If anyone other than the candidate collects the contributions and signatures, that person's name, address, and telephone number must be disclosed on the form as well as signed affirmation that the contributions were collected by valid means. Candidates will no longer be required to sign each form, but will affirm that he or she complied with all qualifying contribution requirements on the new certification request form. These

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measures will provide greater assurance that the qualifying contributions were collected by valid means, especially if the candidate uses circulators to collect contributions and signatures, and will assist Commission staff in verifying contributions.

*Comments:* Daniel Billings, Esq., commented that he thought the proposed changes were very important and should be made before the next election. As counsel for the Woodcock for Governor campaign, he was alarmed that the candidate was required to sign off on all the contributions even though the candidate was not present when the contributions were solicited and received. The proposed change brings the forms more in the line with the nominating petitions by requiring the person who collected the contribution to sign the form attesting to the validity of the contribution. If there is a problem, the Commission staff will be able to contact the person who collected the contribution. Mr. Billing commented further that he thought this was a major improvement to protect the integrity of the system.

*Changes to the adopted rule:* The adopted rule contained a provision that required contributors to provide their phone numbers on the receipt and acknowledgement form. The Commission staff reconsidered this requirement and concluded that this requirement could be an obstacle in collecting qualifying contributions. The requirement has been removed from the adopted rule.

#### Paragraph G

*Factual and Policy Basis:* The adopted rule clarifies that the proof of the contributor's voter registration, *i.e.*, the signature of the municipal registrar or clerk on the receipt and acknowledgement form, will not be accepted by the Commission after the deadline of the qualifying period. This consistent with the statute and provides a clear deadline for candidates.

*Comments:* The Commission received no comments on the adopted rule.

#### Paragraph H

*Factual and Policy Basis:* The adopted rule eliminates the option that candidates could submit photocopies of receipt and acknowledgement forms prior to the deadline of the qualifying period as long as the verified original forms were submitted to the Commission within 10 days after the photocopies were delivered to the Commission. The Commission believes that a clear deadline for the submission of qualifying contributions and verified receipt and acknowledgement forms is preferable to the floating deadlines that this provision creates.

*Comments:* The Commission received no comments on the adopted rule.

### **Chapter 3, Section 3**

*Factual and Policy Basis:* The adopted rule clarifies the procedures for requesting certification as a Maine Clean Election Act candidate. The request will be deemed complete if the candidate submits the qualifying contributions and verified receipt and acknowledgement forms, an alphabetical list of contributors, a seed money report, and a signed request for certification form to the Commission no later than 5:00 p.m. on the last day of the qualifying period. Candidates who cannot submit the alphabetical list, the seed money report, or the written request may

request an extension to do so. However, the Commission and the Commission staff would not be able to grant an extension for submitting the qualifying contributions and receipt and acknowledgment forms.

### **Chapter 3, Section 5.3**

*Factual and Policy Basis:* The adopted rule clarifies the process by which matching funds are calculated. It does not make any substantive changes about the process.

*Comments:* The Commission received no comments on the adopted rule.

*Changes to the adopted rule:* The Commission staff added a provision that specifically addresses how seed money raised by replacement candidates would be handled. This had inadvertently been omitted in the adopted rule.

### **Chapter 3, Section 5.4**

*Factual and Policy Basis:* The adopted rule is a rewording of the existing rule and does not change the substance of the rule.

*Comments:* The Commission received no comments on the adopted rule.

### **Chapter 3, Section 7.1**

*Factual and Policy Basis:* The adopted rule is consistent with 2005 statutory changes which require a campaign treasurer to keep bank account records and vendor invoices. The Commission would have the ability to require the return of funds if a candidate or treasurer cannot produce supporting documentation for an expenditure or for the failure to keep records. The candidate would have an opportunity for a hearing prior to any determination requiring the return of funds. The adopted rule is necessary to assist the Commission in ensuring that public funds are spent on campaign-related purposes.

*Comments:* The Commission received no comments on the adopted rule.

#### *Paragraph A*

*Factual and Policy Basis:* The adopted rule clarifies that MCEA funds can be commingled with unspent seed money and that matching funds can only be spent after the candidate receives authorization.

*Comments:* The Commission received no comments on the adopted rule.

#### *Paragraph C*

*Factual and Policy Basis:* The adopted rule eliminates the *pro rata* reimbursement for vehicle travel expenses based on actual expenses. The change would simplify travel reimbursement by requiring that all reimbursements be based on the standard mileage rate prescribed for employees

of the State of Maine. The change also allows the Commission to disallow travel reimbursements that lack supporting documentation. Under the proposed change, candidates can choose to reimburse themselves and volunteers at a rate lower than the standard.

*Comments:* Daniel Walker, Esq., commented that he agreed with the adopted rule. He said that candidates need to keep receipts, document travel expenditures and keep a travel log.

### **Chapter 3, Section 7.2**

#### *Paragraph B*

*Factual and Policy Basis:* The Commission conducts audits of all MCEA gubernatorial candidates. The adopted rule allows primary and general election candidates to reserve \$1,000 and \$2,500, respectively, to defray the costs associated with an audit.

*Comments:* The Commission received no comments on the adopted rule.

*Changes to the adopted rule:* At the time of the drafting of the proposed rules, the Commission had not yet conducted an audit of any gubernatorial candidates. After conducting one complete audit and being in the process of auditing two other gubernatorial campaigns, the Commission staff believes that the reserve amounts in the adopted rule are too low and proposes to increase the reserves amounts to \$2,000 for an unsuccessful gubernatorial candidate in the primary election and \$3,500 for a gubernatorial candidate in the general election.

#### **Other Comments**

Senator Plowman requested that the Commission clarify the requirement that MCEA candidates are required to file 24 Hour Reports. She reported that there was a substantial expenditure made by one of her opponents in the last three days before the general election which was not reported in a 24 Hour Report. Sen. Plowman said that there was considerable confusion about whether the requirement applied to MCEA candidates.

*Response to Comments:* Jonathan Wayne commented to Sen. Plowman that the Commission's bill proposes changes to the 24 hour reporting requirements which would make the requirement the same for all candidates. He said that MCEA candidates do have an obligation to report certain expenditures within 24 hours in the final twelve days before an election but that some candidates may not understand that.

Nancy Oden of Jonesboro, a candidate for Governor and Senate District 29, submitted the following comments in writing:

1. Require all candidates to qualify for the ballot equally (do not make independents get twice as many signatures, for example), and do not make this too difficult. The 4,000-signature requirement now in place for governor and U.S. Senate are quite sufficient to quell any but serious people.

2. Once a candidate has qualified by getting the required number of signatures verified, then that candidate and all other candidates for that office should receive the same amount of money and not be allowed to spend a penny more than their allotment.
3. Regular financial reports - more frequent than now - should be carefully monitored to ensure candidates are not spending more than their allotment.
4. No other spending should be allowed for any campaign other than the candidates' allotments.
5. Extant political parties should not be allowed loopholes to help their candidates, *e.g.*, printing campaign materials, etc.

*Response to comments:* The subject matter of the comment in item #1 is not within jurisdiction of the Ethics Commission. The other comments would require statutory change and could not be accomplished through rule-making.

## 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 ~~traditionally~~ 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 ~~before~~ 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 ~~has not collected~~ any qualifying contributions collected more than five days before signing 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. ~~information identifying the candidate's treasurer, political committee, campaign finance account, social security number, and/or federal tax identification number;~~ 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) fifty thousand dollars for a gubernatorial candidate;
      - (b) one thousand five hundred dollars for a candidate for the State Senate; or
      - (c) five hundred 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. 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.

- D. **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.
- E. **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.
- F. After becoming a candidate and prior to certification, A ~~Accepting a loan from any source including a financial institution prior to certification, or and spending money received in the form of a loan, is ~~are~~ violations of the seed money restrictions of the Act.~~

- G. 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. Qualifying contributions collected more than five days before and only after filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on using forms provided by the Commission. The forms will include an affirmation by the contributor that the contributor received nothing of value in exchange for the signature and contribution.

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) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's

campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

- B. Required Number of Qualifying Contributions. A participating candidate must obtain the number of qualifying contributions 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.

- 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) 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) 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 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. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.
- ~~H. Submission of Verified Qualifying Contributions. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period. The request will be deemed complete and the candidate will be certified only if:~~
- ~~(1) the request is accompanied by the original signed qualifying contributions forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking; or~~
  - ~~(2) the candidate submits to the Commission during the qualifying period a statement that such signature forms have been submitted to the Registrar(s) for verification on a specific date and the verified signature forms will be received by the Commission within 10 business days thereafter, and submits to the Commission during the qualifying period photocopies of the signature forms.~~

### 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. After final submission of qualifying contributions, but not later than 5:00 p.m. on the last day of the relevant qualifying period, a participating candidate may request certification as a Maine Clean Election Act candidate. 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. All participating candidates must submit the qualifying contributions in alphabetical order to the Commission along with qualifying contribution forms and an alphabetical list of all contributors and their town or city of residence, sorted alphabetically by the contributor's last name; of qualifying contributions when applying for certification as a Maine Clean Election Act candidate. Candidates who do not submit the required number of original qualifying contributions within the qualifying period will not be certified.
- C. The Commission will review candidate applications 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. 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
- D. 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.
- E. A candidate may request an extension of time to comply with paragraphs B, C and D. 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.

2. ~~Reporting. Together with the request for certification, a participating candidate must report all seed money contributions received, any other contributions received, and expenditures and obligations made after becoming a candidate.~~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. Together with the request for certification, a participating candidate must report any 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 Bureau of Accounts and Control~~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.
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)].
4. Distributions Not to Exceed Amount in Fund. If the Commission determines that the revenues in the Fund are insufficient to meet distributions under this chapter, the Commission will permit certified candidates to accept and spend contributions in accordance with the Act [§ 1125(13)]. The Commission will notify participating and certified candidates in writing of any projected shortfall in the

Fund and will specify timelines and procedures for compliance with this chapter in the event of any such shortfall.

## 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 ~~Bureau of Accounts and Control~~ 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 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.

### 2. Timing of Fund Distributions.

- A. Distribution of Applicable Amounts. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] and this Chapter ~~[sec. 3.4]~~.

~~INFORMATIONAL NOTE: An initial distribution from the Fund will not be made to a candidate until the Commission has certified that candidate in accordance with the provisions of the Act and this chapter. The initial distribution may be delayed if a candidate submits a list of qualifying contributors to the Registrar for verification during the last 10 business days of the qualifying period.~~

- B. Matching Fund Allocations. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. Advances.

- (1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.
- (2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a ~~M~~atching ~~F~~und allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. Matching Fund Provision.

- A. General. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§ 1125(9)].
- ~~B. Computation and Distribution. The Commission will determine a certified candidate's allocation of matching funds, if any, in the following manner:~~
  - ~~(1) The Commission first will add —~~
    - ~~(a) the sum of an opposing candidate's expenditures and obligations, or funds raised and borrowed, whichever is greater, including surplus or unspent funds carried forward from a previous primary, general, or special election to the current election; and~~
    - ~~(b) the sum of the independent expenditures made expressly advocating the defeat of the certified candidate or the election of the same opposing candidate.~~
  - ~~(2) The Commission then will subtract —~~
    - ~~(a) the sum of the independent expenditures made expressly advocating the defeat of the same opposing candidate; and~~

- ~~(b) — the sum of the independent expenditures made expressly advocating the election of the certified candidate; and~~
- ~~(c) — the sum of any matching funds already provided to the certified candidate; and~~
- ~~(d) — the sum of any seed money raised in computing matching fund eligibility for a primary, general, or special election, as applicable; or any surplus or unspent funds carried forward from a previous primary election to the subsequent general election in computing matching fund eligibility for a general election.~~
- ~~(3) — If the final computed amount is greater than the applicable distribution amount for the certified candidate, then the Commission will immediately authorize the distribution of a Matching Fund allocation to the certified candidate equal to that excess.~~
- ~~(4) — The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~
- ~~(5) — To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, “Vote for John Doe — he’s incompetent and inexperienced,” will not be considered a communication in support of John Doe in the calculation of matching funds.~~

B. Matching Fund Computation Involving Only Certified Candidates.

- (1) For each certified candidate, the Commission will
  - (a) add to the initial distribution amount for that election:
    - (i) the sum of any matching funds previously provided for that election, and
    - (ii) the sum of independent expenditures made in support of each certified candidate; and
  - (b) subtract the sum of independent expenditures made in opposition to each certified candidate.

(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

(1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and

(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.

(2) The Commission then will determine the applicable amount for the certified candidate

(a) by adding:

(i) the amount of the initial distribution for that election;

(ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. Matching Fund Computation Not Involving a Nonparticipating Candidate. In races in which there are two or more certified candidates and at least one nonparticipating candidate,

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

- F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.
- EG. Matching Fund Cap. Matching funds are limited to 2 times the amount originally distributed to a certified candidate from the Fund for that election. Certified candidates are not entitled to cumulative matching funds for multiple opponents.
- DH. Other. Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.
- EI. Coordination with Other State Agencies. The Commission will coordinate with the ~~Bureau of Accounts and Control~~ 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.
- FJ. Disbursements With No Campaign Value. If a ~~traditionally~~ privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.
4. Advance Purchases of Goods and Services for the General Election.
- A. If, prior to the primary election, a candidate purchases or receives in-kind contributions a preponderance of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, purchased prior to the primary election by an opponent of a certified Maine Clean Election Act candidate prior to the primary are used but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for the any certified Maine Clean Election Act candidate in the same race.

- B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.
- C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

## SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES.

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts plus any authorized ~~M~~matching ~~F~~fund allocations;
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.

## SECTION 7. RECORD KEEPING AND REPORTING

1. Record Keeping by Participating and Certified Candidates. Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.
  - A. Fiduciary Responsibility for Funds. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account financial institution until the candidate receives and may not be used until the candidate receives authorization to spend those funds.
  - B. Meal Expenses. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than \$50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.
  - C. Vehicle Travel Expenses. A candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made from campaign funds. Reimbursement may must be based on the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs, using either the standard mileage rate or actual expenses. The candidate must use one method exclusively during an election campaign. For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement. A candidate may be reimbursed for vehicle travel expenses at a rate

less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed \$100 per volunteer per election. The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce an accurate record.

- ~~(1) — Standard Mileage Rate. The standard mileage rate is a set rate per mile that a candidate may use to compute reimbursable vehicle travel expenses. Reimbursement should be calculated using the standard mileage rate currently prescribed for employees of the State of Maine. For each trip for which reimbursement is made, a record should be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~
- ~~(2) — Actual Expenses. Actual expenses include the pro rata, campaign-related share of vehicle depreciation or lease payments, maintenance and repairs, gasoline (including gasoline taxes), oil, insurance, and vehicle registration fees, etc. For reimbursement using this method, the candidate must maintain detailed records reflecting use of the vehicle for campaign-related purposes. The records must include the dates the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for campaign-related purposes, the total mileage the vehicle was used for all purposes during the period for which reimbursement is made, and the percentage of total vehicle usage that the vehicle was used for campaign-related purposes.~~

2. Reporting by Participating and Certified Candidates.

- A. General. Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§ 1017].
- B. Return of Matching Fund Advances and Unspent Fund Revenues. Matching Fund advance revenues that have not been authorized for spending and unspent Fund revenues shall be returned to the Fund as follows:
- (1) Unauthorized Matching Funds. Candidates must return all ~~M~~atching ~~F~~und advance revenues for which no spending authorization was issued prior to an election to the Commission by

check or money order payable to the Fund within 2 weeks following the date of the election.

- (2) Unspent Fund Revenues for Unsuccessful Primary Election Candidates. Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$2,000 in order to defray expenses associated with an audit by the Commission.
- (3) Unspent Fund Revenues for All General and Special Election Candidates. Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to \$3,500 in order to defray expenses associated with an audit by the Commission.

C. Liquidation of Property and Equipment. Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above.

- (1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.
- (2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value.

## SECTION 8. RECOUNTS, VACANCIES, WRITE-IN CANDIDATES, SPECIAL ELECTIONS

1. Recounts. After a primary election, if there is a recount governed by Title 21- A, chapter 9, subchapter III, article III [§ 737-A], and either the leading candidate or the 2nd-place candidate is a certified candidate, the following provisions will apply:

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- A. If the margin between the leading candidate and the 2nd-place candidate is less than 1% of the total number of votes cast in that race and a recount is presumed necessary, the certified candidate immediately must halt the expenditure of revenues disbursed to the candidate from the Fund upon receiving notice of the recount until the recount is complete.
  - B. If the recount results in a changed winner, the certified candidate who originally received the disbursement must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
  - C. If the margin between the leading candidate and 2nd-place candidate is 1% or greater of the total number of votes cast in that race and the 2nd-place candidate requests a recount, the leading candidate, if a certified candidate, is not required to freeze expenditures of the disbursement.
  - D. If the recount results in a changed winner, the certified candidate must return any unspent distributions from the Fund to the Commission, payable to the Fund. If the new winner is a certified candidate, the Commission will distribute the applicable disbursement amount to the candidate.
2. Death, Withdrawal, or Disqualification of a Candidate During Campaign.
    - A. Death, Withdrawal, or Disqualification Before Primary Election. If a candidate dies, withdraws, or is disqualified before the primary election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
    - B. Death, Withdrawal, or Disqualification After the Primary Election and before 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified before 5:00 p.m. on the 2nd Monday in July preceding the general election, any replacement candidate will have a qualifying period from the time of the candidate's nomination until 30 days after the 4th Monday in July as a participating candidate to collect qualifying contributions and request certification.
    - C. Death, Withdrawal, or Disqualification after 5:00 p.m. on the 2nd Monday in July Preceding the General Election. If a candidate dies, withdraws, or is disqualified after 5:00 p.m. on the 2nd Monday in July preceding the general election, the Commission will establish a qualifying period during which any replacement candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.

- D. Replacement Candidates Who Are Participating Candidates. Any replacement candidate choosing to become a participating candidate must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any replacement candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
3. Write-In Candidates.
    - A. Write-in candidates are subject to the registration requirements of Title 21-A M.R.S.A. Section 1013-A and the campaign finance reporting requirements of Section 1017, as soon as they qualify as a nominee pursuant to 21-A M.R.S.A. Section 723, file a declaration of write-on candidacy with the Secretary of State pursuant to 21-A M.R.S.A. Section 722-A, or receive contributions or make expenditures with the intent of qualifying as a candidate in the primary or general election, whichever first occurs.
    - B. Write-in candidates may not participate in the Maine Clean Election Act, except as provided in paragraph C.
    - C. A write-in candidate in a primary election who becomes a party's nominee may participate in the Maine Clean Election Act for the general election. The Commission will establish a qualifying period during which the candidate may become a participating candidate, collect qualifying contributions, and apply to become a certified candidate.
    - D. A candidate who is participating in the Maine Clean Election Act and who has no opponent listed on the ballot will be presumed to be in an uncontested election even if there are one or more individuals running as write-in candidates. The participating candidate may rebut this presumption by presenting evidence to the Commission that the write-in opponent(s) received or spent substantial campaign funds. Based upon the evidence presented, the Commission may make a determination that it is a "contested election" and make a distribution of public funds to the participating candidate on that basis.
  4. Special Election When One or More Candidates Desire to Become Certified Candidates. If a vacancy occurs in the office of Governor, Senator, or Representative because an incumbent dies, resigns, becomes disqualified, or changes residence to another electoral division, and a special election will be held to fill the vacant office, the following provisions apply:

- A. The Commission, in consultation with the Secretary of State, will establish a qualifying period during which any candidate in a special election may decide to become a participating candidate, collect qualifying contributions, and apply to become a certified candidate; and
  - B. Any candidate in a special election must otherwise comply with the requirements of this chapter and the Act including, but not limited to, seed money limits and qualifying contribution requirements. The Commission will notify any candidates of the opportunity to participate in the Act and the procedures for compliance with this chapter during a special election.
5. Return of Unspent Fund Revenues. Any time a certified candidate withdraws, is disqualified, or dies before an election, the candidate or the candidate's agent must return to the Commission all unspent amounts distributed to the candidate by check or money order payable to the fund, within 2 weeks of the termination of the candidacy.

**STATUTORY AUTHORITY:**

1 M.R.S.A. § 1003(1); 21-A M.R.S.A. § 1126.

**EFFECTIVE DATE:**

November 1, 1998

**NON-SUBSTANTIVE CHANGES:**

December 3, 1998 - minor spelling and formatting.

**2002 MAJOR SUBSTANTIVE RULE-MAKING****AMENDMENTS PROVISIONALLY ADOPTED:**

February 13, 2002

**COMMISSION ADOPTION OF FINAL RULE:**

May 1, 2002

**EFFECTIVE DATE:**

July 31, 2002

**2005 MAJOR SUBSTANTIVE RULE-MAKING****DATE OF PROVISIONAL ADOPTION OF AMENDMENTS:**

April 8, 2005

**COMMISSION ADOPTION OF FINAL AMENDMENTS:**

July 13, 2005