



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

## MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: November 14, 2016

Subject: Invitation to Comment on Proposed Maine Clean Election Act Rule Changes

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The Ethics Commission is inviting comments on proposed amendments to Chapter 3 of the Commission Rules, relating to the Maine Clean Election Act (MCEA) program. Some of these rule changes were provisionally adopted by the Commission in January 2016, but not approved during the Second Regular Session of the 127<sup>th</sup> Legislature. Several of the amendments reflect changes to the MCEA program in the 2015 citizen initiative:

- doubling the seed money allowable for legislative candidates and eliminating the requirement for gubernatorial candidates to collect seed money, and
- provide for candidates to collect additional qualifying contributions and submit requests for supplemental payments of MCEA funds.

The proposed amendments would also make these changes:

- Candidates could not make payments of more than \$50 of MCEA funds in cash. Payments of this size could be made by check, debit or credit card, or wire transfer.
- The phrase “fraudulent qualifying contributions” would be defined to cover situations such as asking someone to sign a Receipt and Acknowledgement form as a contributor when that person did not make a qualifying contribution (QC); providing \$5 in cash or something of value to someone in exchange for making a QC; or forging the signature of a contributor on a Receipt and Acknowledgement form.
- If a candidate has authorized others to collect QCs, the candidate is responsible for ensuring that these individuals receive adequate training in how to collect QCs. The candidate must exercise due diligence to ensure that QCs collected by these individuals are not fraudulent. If the Commission determines that fraudulent contributions have been submitted by the candidate, the candidate is ineligible for MCEA funding unless the candidate demonstrates that he or she exercised due diligence to avoid fraud and had no knowledge of or participation in the collection of the fraudulent QCs.

- Candidates could not compensate individuals collecting QCs based on the number of QCs they had collected, in order to avoid a rate of compensation that might create an incentive for fraud or mistake.
- Gubernatorial candidates seeking to qualify for MCEA funding would need to designate one or more compliance officers to oversee the collection of QCs and submit a written compliance plan to the Commission.
- Only the candidate could compensate individuals for collecting QCs, except for the limited exception already provided in Election Law for the paid employees of a political party.

For your reference, I have enclosed the proposed insertions and deletions. A longer summary of the proposed rule amendments is available on the home page of the Commission ([www.maine.gov/ethics](http://www.maine.gov/ethics)).

**The Commission will hold a hearing to receive comments on Wednesday, December 8 at 9:00 a.m.** at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Written and e-mailed comments are also welcome. Please email comments to [Lorrie.Brann@maine.gov](mailto:Lorrie.Brann@maine.gov). The deadline for written and e-mailed comments is 5:00 p.m. on Monday, December 19, 2016.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

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

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**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]**



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 Maine Secretary of State  
From: Jonathan Wayne, Executive Director  
Date: November 8, 2016  
Re: Statement of Factual and Policy Basis for Draft Rule Amendments Proposed for  
Public Comment

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### **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 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 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

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

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 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 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 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](http://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 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 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 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 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 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 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*. The Commission seeks to prohibit a rate of payment that could incentivize mistakes or fraud in the collection of qualifying contributions.

**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 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 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 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 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 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.