

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

AN ACT TO MODIFY THE MAINE CLEAN ELECTION ACT
PURSUANT TO RESOLVE 2011, CHAPTER 103

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation needs to take effect before the expiration of the 90-day period because it amends certain provisions of the campaign finance laws that pertain to the administration of the Maine Clean Election Act during the election cycle for 2012 that is now underway; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

21-A § 1017. Reports by candidates

...

~~**3-B. Accelerated reporting schedule.** Additional reports are required from nonparticipating candidates as defined in section 1122, subsection 5, pursuant to this subsection.~~

~~A. In addition to other reports required by law, any candidate for Governor, State Senate or State House of Representatives who is not certified as a Maine Clean Election Act candidate under Chapter 14 and who receives, spends or obligates more than the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race shall file by any means acceptable to the commission, within 48 hours of that event, a report with the commission detailing the candidate's total campaign contributions, including any campaign balance from a previous election, obligations and expenditures to date.~~

~~B. A nonparticipating candidate who is required to file a report under paragraph A shall file no later than 5:00 p.m.:~~

~~(1) For legislative candidates in a primary election only, a report on the 42nd day before the date on which a primary election is held that is complete as of the 44th day before that date;~~

~~(2) For gubernatorial candidates only, a report on the 25th day before the date on which an election is held that is complete as of the 27th day before that date;~~

~~(3) A report on the 18th day before the date on which an election is held that is complete as of the 20th day before that date; and~~

~~(4) A report on the 6th day before the date on which an election is held that is complete as of the 8th day before that date.~~

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

~~The reports must contain the candidate's total campaign contributions, including any campaign balance from a previous election, obligations and expenditures as of the end date of the reporting period.~~

~~The nonparticipating candidate shall file only those reports that are due after the date on which the candidate filed the report required under paragraph A.~~

~~C. A candidate who is required to file a report under paragraph A must file with the commission an updated report that reports single expenditures in the following amounts that are made after the 14th day before an election and more than 24 hours before 11:59 p.m. on the date of that election:~~

- ~~(1) For a candidate for Governor, a single expenditure of \$1,000;~~
- ~~(2) For a candidate for the state Senate, a single expenditure of \$750; and~~
- ~~(3) For a candidate for the state House of Representatives, a single expenditure of \$500.~~

~~A report filed pursuant to this paragraph must be filed within 24 hours of the expenditure.~~

~~The commission shall provide forms to facilitate compliance with this subsection. The commission shall notify a candidate within 48 hours if an amount reported on any report under paragraph B exceeds the primary or general election distribution amounts for a Maine Clean Election Act candidate in the same race and no report has been received under paragraph A. If all Maine Clean Election Act candidates in the same race have received authorization to spend the maximum matching funds under section 1125, section 9, the commission may waive the reports required by this section.~~

...

21-A § 1019-B. Reports of independent expenditures

...

4. Report required; content; rules. A person, party committee, political committee or political action committee that makes independent expenditures aggregating in excess of \$100 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

A. A report required by this subsection must be filed with the commission according to a reporting schedule that the commission shall establish by rule that takes into consideration existing campaign finance reporting requirements ~~and matching fund provisions under chapter 14~~. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

B. A report required by this subsection must contain an itemized account of each expenditure aggregating in excess of \$100 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate.

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form.

...

21-A § 1020-A. Failure to file on time

...

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, ~~except for accelerated campaign finance reports required pursuant to section 1017, subsection 3-B,~~ is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

- A. For the first violation, 1%;
- B. For the 2nd violation, 3%; and
- C. For the 3rd and subsequent violations, 5%.

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a two-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A registration or report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as the facsimile copy is filed by the applicable deadline and an original of the same report is received by the commission within 5 calendar days thereafter.

~~The penalty for late filing of an accelerated campaign finance report as required in section 1017, subsection 3-B may be up to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation. The commission shall make a finding of fact establishing when the report was due prior to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.~~

...

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

5-A. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraph B, C, D, E or H; section 1017, subsection 3-A, paragraph B, C, D, D-1 or F; and section 1017, subsection 4;

A-1. Five thousand dollars for reports required under section 1019-B, subsection 4, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4-A, paragraphs A, B, C and E, except that if the financial activity reported late exceeds \$50,000, the maximum penalty is 1/5 of the amount reported late;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; and

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4-B;~~;~~ ~~or~~

~~E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.~~

...

21-A § 1124. The Maine Clean Election Fund established; sources of funding

...

2. Sources of funding. The following must be deposited in the fund:

A. The qualifying contributions required under section 1125 when those contributions are submitted to the commission;

B. Two million dollars of the revenues from the taxes imposed under Title 36, Parts 3 and 8 and credited to the General Fund, transferred to the fund by the Treasurer of State on or before January 1st of each year, beginning January 1, 1999. These revenues must be offset in an equitable manner by an equivalent reduction within the administrative divisions of the legislative branch and executive branch agencies. This section may not affect the funds distributed to the Local Government Fund under Title 30-A, section 5681.

C. Revenue from a tax check off program allowing a resident of the State who files a tax return with the State Tax Assessor to designate that \$3 be paid into the fund. If a husband and wife file a joint return, each spouse may designate that \$3 be paid. The State Tax Assessor shall report annually the amounts designated for the fund to the State Controller, who shall transfer that amount to the fund;

~~D. Seed money contributions remaining unspent after a candidate has been certified as a Maine Clean Election Act candidate;~~

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

- E. Fund revenues that were distributed to a Maine Clean Election Act candidate and that remain unspent after the candidate has lost a primary election or after all general elections;
- F. Other unspent fund revenues distributed to any Maine Clean Election Act candidate who does not remain a candidate throughout a primary or general election cycle;
- G. Voluntary donations made directly to the fund; and
- H. Fines collected under section 1020-A, subsection 4-A and section 1127.

...

21-A § 1125. Terms of participation

...

2. Contribution limits for participating candidates. Subsequent to becoming a candidate as defined by section 1, subsection 5 and prior to certification, a participating candidate may not accept contributions, except for seed money contributions. 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.

The commission may, by rule, revise these amounts to ensure the effective implementation of this chapter.

2-A. Seed money restrictions. To be eligible for certification, a participating candidate may collect and spend only seed money contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect seed money contributions after certification as a Maine Clean Election Act candidate.

- A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification.
- B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. ~~If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 8-A.~~

...

4. ~~Filing with commission~~ required documents for certification. To be certified as a Maine Clean Election Act candidate, ~~a~~ participating candidate must submit qualifying contributions, receipts and acknowledgment forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11.

5. Certification of Maine Clean Election Act candidates. Upon receipt of a ~~final complete~~ complete submittal of ~~qualifying contributions~~ the documents required for certification under subsection 4 by a participating candidate, the executive director of the commission shall determine whether the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted the appropriate number of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means no later than 5 business days after the end of the qualifying period;
 - C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money contributions from registered voters in the State;
- D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;
 - D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year;
 - D-2. Not been found to have made a material false statement in a report or other document submitted to the commission;
 - D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13;
 - D-4. Not failed to pay any civil penalty assessed by the commission under this Title, except that a candidate has 3 business days from the date of the request for certification to pay the outstanding penalty and remain eligible for certification;
 - D-5. Not submitted any fraudulent qualifying contributions or any falsified acknowledgement forms for qualifying contributions or seed money contributions; and
- E. Otherwise met the requirements for participation in this Act.

The executive director shall certify a candidate complying with the requirements of this section as a Maine Clean Election Act candidate as soon as possible after ~~final-receiving the complete~~ complete submittal of qualifying contributions and other supporting documents required under subsection 4 but no later than 3 business days for legislative candidates and 5 business days for gubernatorial candidates. The executive director may take additional time if further

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

investigation is necessary to verify compliance with this Act as long as the commission notifies the candidate regarding the anticipated schedule for conclusion of the investigation. A candidate or other interested person may appeal the decision of the executive director to the members of the commission in accordance with subsection 14.

A certified candidate must comply with all requirements of this Act after certification and throughout the primary and general election periods. Failure to do so is a violation of this chapter.

...

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection 8-A in the following manner.

A. Within 3 days after certification, for candidates certified prior to March 15 of the election year, revenues from the fund must be distributed as if the candidates are in an uncontested primary election.

B. Within 3 days after certification, for all candidates certified between March 15 and the end of the qualifying period of the election year, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested primary election.

B-1. For candidates in contested primary elections receiving a distribution under paragraph A, additional revenues from the fund must be distributed within 3 days of March 15 of the election year.

C. No later than 3 days after the primary election results are certified, for general election certified candidates, revenues from the fund must be distributed according to whether the candidate is in a contested or uncontested general election. Payments to legislative candidates in a contested general election must be made in the manner set forth in subsection 9-A.

Funds may be distributed to certified candidates under this section by any mechanism that is expeditious, ensures accountability and safeguards the integrity of the fund.

...

8-A. Amount of fund distribution. By September 1, 2011, and at least every 2 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates in legislative elections based on the type of election and office. Candidates who do not have an opponent in an election shall receive a smaller payment for that election. In making this determination, the commission may take into consideration any relevant information, including but not limited to:

A. The range of campaign spending by candidates for that office in the 2 preceding elections; and

B. The Consumer Price Index published monthly by the United States Department of Labor, Bureau of Labor Statistics and any other significant changes in the costs of campaigning such as postage or fuel; ~~and~~.

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

~~C. The impact of independent expenditures on the payment of matching funds.~~

For legislative candidates in a contested general election, the amount of funds to be distributed must be made in two payments. The commission shall determine the amounts of initial payment and the supplemental payment. The initial payment must be the larger of the two payments.

Before making any determination, the commission shall provide notice of the determination and an opportunity to comment to the President of the Senate, the Speaker of the House of Representatives, all floor leaders, the members of the joint standing committee of the Legislature having jurisdiction over legal affairs and persons who have expressed interest in receiving notices of opportunities to comment on the commission's rules and policies. The commission shall present at a public meeting the basis for the commission's final determination.

For contested gubernatorial primary elections, the amount of revenues distributed is \$400,000 per candidate in a primary election. For uncontested gubernatorial primary elections the amount of revenues distributed is \$200,000. For contested and uncontested gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.

~~**9. Matching funds.** When any report required under this chapter or chapter 13 shows that the sum of a candidate's expenditures or obligations, contributions and loans, or fund revenues received, whichever is greater, in conjunction with independent expenditures reported under section 1019-B, exceeds the sum of an opposing certified candidate's fund revenues, in conjunction with independent expenditures, the commission shall issue immediately to the opposing certified candidate an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to two times the amount originally distributed under subsection 8-A. Matching funds for certified gubernatorial candidates in a primary election are limited to half the amount originally distributed under subsection 8-A for contested candidates and subsection 8-A. Matching funds for certified gubernatorial candidates in a general election are limited to the amount originally distributed under subsection 8-A.~~

9-A. Payments to legislative candidates in a contested general election. The commission shall make the initial payment to legislative candidates in a contested general election no later than 3 days after the primary election results are certified. The Commission shall make the supplemental payment on or after September 1 of the election year upon the request of the candidate. The candidate may request the supplemental payment in writing in a manner established by the Commission on or before the 8th day before the general election. Legislative candidates who are unopposed in the general election are not eligible to receive supplemental payments.

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 20 preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

subsections 7, ~~and 8-A and 9-A~~. ~~Revenues for the general election must be distributed to the candidate no later than 3 days after certification.~~ An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1 preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

13-A. Distributions not to exceed amount in fund. The Commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 8-A or ~~9 9-A~~, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015, up to the applicable amounts set forth in subsections 8-A and ~~9 9-A~~ according to rules adopted by the commission.

...

21-A § 1127. Violations

1. Civil fine. In addition to any other penalties that may be applicable, a person who violates any provision of this chapter or rules of the commission adopted pursuant to section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund. ~~The commission may assess a fine of up to \$10,000 for a violation of the reporting requirements of sections 1017 and 1019-B if it determines that the failure to file a timely and accurate report resulted in the late payment of matching funds.~~ In addition to any fine, for good cause shown, a candidate, treasurer, consultant or other agent of the candidate or the political committee authorized by the candidate pursuant to section 1013-A, subsection 1, found in violation of this chapter or rules of the commission may be required to return to the fund all amounts distributed to the candidate from the fund or any funds not used for campaign-related purposes. If the commission makes a determination that a violation of this chapter or rules of the commission has occurred, the commission shall assess a fine or transmit the finding to the Attorney General for prosecution. A final determination by the commission may be appealed to Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the commission pursuant to this subsection that are not paid in full within 30 days after issuance of a notice of the final determination may be enforced in accordance with section 1004-B. Fines paid under this section must be deposited in the fund. In determining whether or not a candidate is in violation of the expenditure limits of this chapter, the commission may consider as a mitigating factor any circumstances out of the candidate's control.

...

DRAFT LEGISLATION TO IMPLEMENT PROPOSAL #1
(FIXED PAYMENT OPTION)

Sec. xx. Amounts of payments for the primary and general elections in the 2012 election cycle. Notwithstanding Resolve Chapter 89 of the 125th Legislature and section XX of this act, the amounts distributed to certified candidates during the 2012 election cycle shall be as follows:

A. For candidates for State House of Representatives:

1. \$500 for uncontested candidates in the primary election;
2. \$1,500 for contested candidates in the primary election;
3. \$1,368 for uncontested candidates in the general election;
4. \$6,216 for contested candidates in the general election, which shall consist of an initial payment of \$5,000 and a supplemental payment of \$1,216.

B. For candidates for State Senate:

1. \$2,000 for uncontested candidates in the primary election;
2. \$6,000 for contested candidates in the primary election;
3. \$6,296 for uncontested candidates in the general election;
4. \$28,617 for contested candidates in the general election, which shall consist of an initial payment of \$21,000 and a supplemental payment of \$7,617.

Sec. xx. Rules. The commission shall adopt amendments to its rules to implement this act no later than 45 days after the enactment of this act. The amendments adopted in accordance with this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The commission shall publish the adopted rules on its publicly accessible website and shall summarize the adopted rules in a guidebook distributed to certified candidates.