



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

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: June 26, 2018
Re: Agenda Item #2: Inability to Make MCEA Payments after July 1, 2018

As I mentioned in my memo for item #1, the State of Maine is on the verge of significant mismanagement of the 2018 candidate elections. This memo is to update you on the continuing problem that the Ethics Commission may not make payments to Maine Clean Election Act (MCEA) candidates after July 1, 2018. Today is the last day of the Special Session and I have not heard of any progress toward a legislative fix.

The Maine Clean Election Fund has sufficient cash to make payments to approximately 200 general election candidates who are participating in the MCEA program, but the Maine Legislature has not remedied a confusing 2017 budget law which advanced \$3,000,000 in revenue seven months early to make the MCEA program functional this year, but unintentionally eliminated the Commission's ability to release those funds to MCEA candidates after July 1, 2018.

Potential Impact

If there is no legislative fix today, the potential impact on MCEA candidates could be very serious and unfair. No candidate – regardless how they are financing their campaigns – deserves to have their sources of campaign funding cut off midway through the election year (interfering with their First Amendment activities). This would be analogous to the State of Maine prohibiting traditionally financed candidates from accepting campaign contributions beginning in July of an election year, due to a legislative drafting error.

I have had a preliminary discussion with the Commission's Counsel concerning whether MCEA candidates could accept traditional campaign contributions to make up for the potential unavailability of public campaign funds. The Maine Clean Election Act authorizes the Commission to permit certified candidates to accept and spend private contributions, in the same manner as traditionally financed candidates, "if the commission determines that the *revenues in the fund* are insufficient to meet distributions under subsection 8-F." 21-A M.R.S.A. § 1125(13-A) (attached, emphasis added). The difficulty expressed to me by the Commission's Counsel is that the Commission cannot make this factual finding because there *are* sufficient revenues in the Fund to make the distributions – the problem is simply that those funds have not been "allocated" by the Legislature to the Commission, and that allocation is necessary to give the Commission legal authority to distribute the funds to MCEA candidates.

What that would mean, practically speaking, is that after July 1st, *the only money that MCEA candidates could spend to promote their election* is public campaign funds that they received through June 30th. This would include the general election payments made last week (\$5,075 for House candidates, \$20,275 for Senate candidates, and \$600,000 for gubernatorial candidates), plus any supplemental payments made this week (which would be reduced, due to the fourth quarter allotment).

Legislative candidates. Legislative candidates in all four caucuses (and independents) decided to run as MCEA candidates premised on the availability of supplemental payments – either because they are concerned about independent expenditures by outside groups (PACs and parties) or spending by their opponents. (*see* attached charts setting out the supplemental payments available) It would be unfair to change the rules in the middle of an election year and freeze their campaign revenues, due to an unintended consequence of the 2017 budget legislation.

Terry Hayes. This would be particularly unfair to State Treasurer Terry Hayes, the candidate for Governor who chose to finance her campaign through the MCEA program. She has received \$200,000 for the primary election period and \$600,000 for the general

election, and may receive a portion of the supplemental payments this week, but that is not enough to run a conventional statewide general election campaign for Governor (typically costing \$2 - \$3 million). She chose to join the MCEA program under the premise that she could qualify for up to eight supplemental payments of \$175,000 – for a total of \$2 million for the general election (\$600,000 + (8 x \$175,000)). To deprive her of sufficient campaign funding to deliver her campaign messages to voters through paid media would be fundamentally unfair – and not what the Legislature intended in 2017.

Administrative expenses. Without a fix, the Commission will be unable to make any payments from the Maine Clean Election Fund to reimburse DAFS for our rent or accounting or budget services, or to pay outside vendors for our efilings system or for auditing services.

Source of the Problem

Near the end of the 2017 legislative session, in order to avoid a shortfall in the Maine Clean Election Fund that would affect both legislative and gubernatorial candidates, the Legislature adjusted the timing of the annual transfer of \$3,000,000 from the General Fund to the Maine Clean Election Fund. (P.L. 2017, Chapter 284, relevant pages attached) Section NNNNNN-1 (the result of a Committee of Conference amendment) moved the annual transfer that would have occurred by 1/1/2019 (FY 2019) seven months earlier to occur by 6/1/2018 (FY 2018), so that the Commission could make payments to general election candidates in June - October 2018. This was a positive action taken by the Legislature to make sure that the Maine Clean Election Fund had sufficient cash to make payments to candidates on time.

Section ZZZZZZ-19 was included in the committee amendment at the suggestion of the fiscal staff of the Legislature. It increased the FY 2018 allocation (legislative authority to spend) by \$3,000,000 and decreased the FY 2019 allocation by \$3,000,000. This had the effect of reducing our All Other (non-personnel) allocation to -\$1,034,176.

The intention of Sections NNNNNN-1 and ZZZZZZ-19 was to allow the Maine Clean Election Act program to operate within existing revenues. There is absolutely no evidence available indicating that the Committee of Conference intended to freeze the Commission's payments to Maine Clean Election Act candidates in the middle of the election year. This would make no sense: why advance \$3,000,000 to the Commission by June 1, 2018 and cut off its ability to release the funds to candidates as of July 1?

Next Steps

My suggestion is that you schedule a discussion concerning whether the Commission could authorize MCEA candidates to solicit traditional campaign contributions and spend those contributions, given the language of 21-A M.R.S.A. §§ 1125(6) & (13-A). Please be aware of the likelihood that MCEA candidates may bring a court proceeding against the State or its officers, because the State has broken its agreement with the candidates to pay them MCEA funding if they collected sufficient numbers of additional qualifying contributions.

Thank you for your consideration of this item.

**21-A MRSA §§ 1125(6) & (13-A). TERMS OF PARTICIPATION
(underlining added)**

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6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for post-election parties. This section does not prohibit a candidate from using personal funds for post-election parties as governed by rules of the commission. The commission shall publish guidelines outlining permissible campaign-related expenditures.

...

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 subsection 8-F, 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 subsection 8-F according to rules adopted by the commission.

...

Legislative Primary			
House Candidates		Senate Candidates	
60 QCs	Uncontested - \$500	175 QCs	Uncontested - \$2,025
	Contested - \$2,525		Contested - \$10,125
Legislative General			
QCs	Payment	QCs	Payment
Certification	Uncontested - \$1,525	Certification	Uncontested - \$6,075
	Contested - \$5,075		Contested - \$20,275
15 QCs	\$1,275	45 QCs	\$5,075
30 QCs	\$2,550	90 QCs	\$10,150
45 QCs	\$3,825	135 QCs	\$15,225
60 QCs	\$5,100	180 QCs	\$20,300
75 QCs	\$6,375	225 QCs	\$25,375
90 QCs	\$7,650	270 QCs	\$30,450
105 QCs	\$8,925	315 QCs	\$35,525
120 QCs	\$10,200	360 QCs	\$40,600
180 QCs for maximum	\$15,275 for maximum	535 QCs for maximum	\$60,675 for maximum

Legislative

Gubernatorial Primary	
3,200 QCs	Uncontested - \$200,000
	Contested - \$400,000
800 QCs	\$150,000
1,600 QCs	\$300,000
2,400 QCs	\$450,000
3,200 QCs	\$600,000
6,400 QCs for maximum	\$1,000,000 maximum
Gubernatorial General	
Certification	\$600,000
1,200 QCs	\$175,000
2,400 QCs	\$350,000
3,600 QCs	\$525,000
4,800 QCs	\$700,000
6,000 QCs	\$875,000
7,200 QCs	\$1,050,000
8,400 QCs	\$1,225,000
9,600 QCs	\$1,400,000
9,600 QCs for maximum	\$2,000,000 maximum

Gubernatorial

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND SEVENTEEN

—
 H.P. 281 - L.D. 390

An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2018 and June 30, 2019

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

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; 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,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Accident - Sickness - Health Insurance 0455

Initiative: BASELINE BUDGET

ENVIRONMENTAL PROTECTION, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$7,811,573	\$9,457,254
FEDERAL EXPENDITURES FUND	\$14,431,705	\$14,576,077
OTHER SPECIAL REVENUE FUNDS	\$48,138,525	\$47,842,942
DEPARTMENT TOTAL - ALL FUNDS	\$70,381,803	\$71,876,273

Sec. A-26. Appropriations and allocations. The following appropriations and allocations are made.

**ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL
Governmental Ethics and Election Practices - Commission on 0414**

Initiative: BASELINE BUDGET

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	2.000	2.000
Personal Services	\$141,628	\$146,525
All Other	\$8,897	\$8,897
GENERAL FUND TOTAL	\$150,525	\$155,422

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	4.000	4.000
Personal Services	\$427,467	\$436,866
All Other	\$1,955,899	\$1,955,899
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,383,366	\$2,392,765

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Establishes one project Planning and Research Assistant position needed to administer the 2018 election. This position begins on January 1, 2018 and ends on December 31, 2018 and provides funding for related All Other costs.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$33,561	\$38,675
All Other	\$578	\$587
OTHER SPECIAL REVENUE FUNDS TOTAL	\$34,139	\$39,262

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Establishes one project Planning and Research Assistant position needed to administer the 2018 election. This position begins on March 1, 2018 and ends on October 31, 2018 and provides funding for related All Other costs.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
Personal Services	\$22,243	\$24,364
All Other	\$383	\$389
OTHER SPECIAL REVENUE FUNDS TOTAL	\$22,626	\$24,753

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Provides funding to Quest Information Systems for contracted support and technology services.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$16,754	\$16,754
OTHER SPECIAL REVENUE FUNDS TOTAL	\$16,754	\$16,754

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Provides funding for yearly hosting services to the Maine Information Network.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$2,034	\$2,034
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,034	\$2,034

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Provides funding for STA-CAP costs.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$11,382	\$13,672
OTHER SPECIAL REVENUE FUNDS TOTAL	\$11,382	\$13,672

GOVERNMENTAL ETHICS AND ELECTION PRACTICES - COMMISSION ON 0414

PROGRAM SUMMARY

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	2.000	2.000
Personal Services	\$141,628	\$146,525
All Other	\$8,897	\$8,897
GENERAL FUND TOTAL	\$150,525	\$155,422

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	4.000	4.000
Personal Services	\$483,271	\$499,905
All Other	\$1,987,030	\$1,989,335
OTHER SPECIAL REVENUE FUNDS TOTAL	\$2,470,301	\$2,489,240

ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$150,525	\$155,422
OTHER SPECIAL REVENUE FUNDS	\$2,470,301	\$2,489,240
DEPARTMENT TOTAL - ALL FUNDS	\$2,620,826	\$2,644,662

Sec. A-27. Appropriations and allocations. The following appropriations and allocations are made.

EXECUTIVE DEPARTMENT

Administration - Executive - Governor's Office 0165

Initiative: BASELINE BUDGET

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	21.500	21.500
Personal Services	\$2,513,697	\$2,623,622
All Other	\$425,794	\$425,794
GENERAL FUND TOTAL	\$2,939,491	\$3,049,416

FEDERAL EXPENDITURES FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$89,857	\$94,051

PART MMMMMM

This Part left blank intentionally.

PART NNNNNN

Sec. NNNNNN-1. Transfer to Maine Clean Election Fund. Notwithstanding the Maine Revised Statutes, Title 21-A, section 1124, subsection 2, paragraph B, the State Controller shall transfer \$3,000,000, currently authorized to be transferred on or before January 1, 2019, from the General Fund to the Maine Clean Election Fund on or before June 1, 2018.

PART OOOOOO

This Part left blank intentionally.

PART PPPPPP

Sec. PPPPPP-1. 12 MRSA §1802, as amended by PL 2007, c. 240, Pt. NN, §1; PL 2011, c. 657, Pt. W, §§5 and 7; and PL 2013, c. 405, Pt. A, §24, is further amended to read:

§1802. Bureau of Parks and Lands established

There is established within the Department of Agriculture, Conservation and Forestry the Bureau of Parks and Lands, which shall carry out the responsibilities of State Government relating to parks, historic sites, submerged and intertidal lands, public reserved lands and nonreserved public lands. ~~The bureau shall also carry out all the duties relating to recreation, the Allagash Wilderness Waterway, the Snowmobile Trail Fund, public facilities for boats, the ATV Recreational Management Fund, the Maine Trails System, the Maine Conservation Corps, the State Environmental Resource Volunteer Effort Program and any other responsibilities of the former Bureau of Parks and Recreation, Bureau of Public Lands and Maine State Park and Recreation Commission.~~

~~The executive head of the bureau is the director. The director is assisted in executive duties by a deputy director. The director and the deputy director shall attend personally to the duties of their offices as far as practicable. The director and the deputy director are appointed by and serve at the pleasure of the commissioner.~~

1. Director. The executive head of the bureau is the director.

A. The powers and duties of the position of director may not be combined with any other position within the bureau or department.

B. The position of director may not be filled in an acting capacity; the appointee must be a permanent full-time employee.

2. Deputy director. The director is assisted in executive duties by a deputy director.

Other Special Revenue Funds and 15% General Fund within the same program to provide funding for Maine's Geographic Information Services and GeoLibrary.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	(4,000)	(4,000)
Personal Services	(\$442,039)	(\$447,750)
All Other	(\$631,403)	(\$631,403)
GENERAL FUND TOTAL	<u>(\$1,073,442)</u>	<u>(\$1,079,153)</u>

OFFICE OF INFORMATION SERVICES FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	4,000	4,000
Personal Services	\$442,039	\$447,750
OFFICE OF INFORMATION SERVICES FUND TOTAL	<u>\$442,039</u>	<u>\$447,750</u>

Technology Services Z242

Initiative: Deappropriates funds to offset appropriations contained in Part A of this Act related to funding for annual principal and interest payments on funds borrowed in support of state technology infrastructure improvements and system purchases and enhancements.

GENERAL FUND	2017-18	2018-19
All Other	(\$220,000)	(\$4,700,000)
GENERAL FUND TOTAL	<u>(\$220,000)</u>	<u>(\$4,700,000)</u>

TECHNOLOGY SERVICES, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	(\$7,992,593)	(\$12,478,304)
FEDERAL EXPENDITURES FUND	(\$500)	(\$500)
OTHER SPECIAL REVENUE FUNDS	(\$500)	(\$500)
OFFICE OF INFORMATION SERVICES FUND	(\$54,833,092)	(\$55,892,230)
STATEWIDE RADIO AND NETWORK SYSTEM RESERVE FUND	(\$5,000)	(\$5,000)
DEPARTMENT TOTAL - ALL FUNDS	<u>(\$62,831,685)</u>	<u>(\$68,376,534)</u>

Sec. ZZZZZZ-19. Appropriations and allocations. The following appropriations and allocations are made.

**ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL
Governmental Ethics and Election Practices - Commission on 0414**

Initiative: Adjusts allocations for the Maine Clean Election Fund to reflect amounts transferred to the fund.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$3,000,000	(\$3,000,000)
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$3,000,000</u>	<u>(\$3,000,000)</u>

PART AAAAAAA

Sec. AAAAAAA-1. 36 MRSA §4641-B, sub-§4-B, ¶E, as amended by PL 2015, c. 267, Pt. N, §1, is further amended to read:

E. In fiscal year 2015-16 and each fiscal year thereafter, the Treasurer of State shall credit the revenues derived from the tax imposed pursuant to section 4641-A, subsection 1 in accordance with this paragraph.

(1) At the beginning of the fiscal year, the Maine State Housing Authority shall certify to the Treasurer of State the amount that is necessary and sufficient to meet the authority's obligations relating to bonds issued or planned to be issued by the authority under Title 30-A, section 4864.

(2) On a monthly basis the Treasurer of State shall apply 50% of the revenues in accordance with this subparagraph. The Treasurer of State shall first pay revenues available under this subparagraph to the Maine State Housing Authority, which shall deposit the funds in the Maine Energy, Housing and Economic Recovery Fund established in Title 30-A, section 4863, until the amount paid equals the amount certified by the Maine State Housing Authority under subparagraph (1), after which the Treasurer of State shall credit any remaining revenues available under this subparagraph to the General Fund.

(3) On a monthly basis, the Treasurer of State shall credit 50% of the revenues to the Maine State Housing Authority, except that, notwithstanding paragraph F, in fiscal year 2015-16, the Treasurer of State shall first credit \$6,291,740 of the revenues available under this subparagraph to the General Fund and except that, notwithstanding paragraph F, in fiscal year 2016-17, the Treasurer of State shall first credit \$6,090,367 of the revenues available under this subparagraph to the General Fund and except that, notwithstanding paragraph F, in fiscal years 2017-18 and 2018-19, the Treasurer of State shall first credit \$2,500,000 of the revenues available under this subparagraph to the General Fund. The Maine State Housing Authority shall deposit the funds received pursuant to this subparagraph in the Housing Opportunities for Maine Fund created in Title 30-A, section 4853.