

# Agenda Item #9



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

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: August 7, 2007  
Re: Request for Funding for the Maine Clean Election Act

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The Maine Clean Election Fund will not have sufficient money to pay for the public financing of candidates in 2010 due to past legislative deappropriations. The staff recommends that in the 2008 session the Commission request that the Legislature make two transfers in fiscal years 2010 and 2011 totaling \$5,200,000. This represents the money which was transferred from the Fund plus a large portion of the interest which the deappropriated money would have earned.

### History and Design of the Maine Clean Election Fund

*Three offices covered.* When voters enacted the Maine Clean Election Act in 1996, they approved a voluntary public funding option for candidates seeking three offices:

- Governor
- Maine Senate
- Maine House of Representatives

A single state account, the Fund, was established to pay all three types of candidates.

*Insufficient funding.* If there is insufficient money in the Fund, the MCEA provides the Commission with only one recourse: authorizing candidates to accept private contributions up to the amount of public funding the candidate is authorized to receive. The law does not suggest that any of the three offices is more or less deserving of funding.<sup>1</sup>

*Revenue to the Fund.* The original law enacted by Maine voters was very clear about the cost of the program to the General Fund. The revenue to the Fund comes from:

- an annual transfer for \$2,000,000 from the General Fund
- the taxpayer check-off (about \$200,000 annually)
- \$5 qualifying contributions;
- interest earned, and penalties

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<sup>1</sup> A number of states have opted to publicly fund candidates for Governor, although the programs vary in their usefulness to candidates. Partial public financing of gubernatorial campaigns has existed in states such as New Jersey, Florida, Maryland, and Michigan since the 1970's and 1980s. The state of Arizona funds candidates for Governor under a "clean election" system of full public financing, which the current Governor, Janet Napolitano, has participated in twice. Since 1976, every major party nominee in the U.S. presidential elections has been financed with some public funding, including Presidents Carter, Reagan, George H.W. Bush, Clinton, and George W. Bush.

## **Legislative Deappropriations**

Since 2002, the Legislature has transferred about \$8 million from the Maine Clean Election Fund to balance budgets or to use for other priorities, including a reduction of \$1,200,000 in funding scheduled for 2009. (Please see attachment.) The Legislature has returned to the Fund a little less than one-half of the amounts that were transferred out. By 2010, a net amount of \$4,425,000 will have been deappropriated. Using a formula provided by the Office of Fiscal and Program Review, we estimate that if the funds had not been deappropriated, they would have earned approximately \$1.4 million in interest by 2010.

As the elected representatives of Maine voters, Legislators must balance competing priorities and make very difficult funding decisions. While they have relied on MCEA funds for other purposes, they have always returned the money when necessary to fund the program. Nevertheless, it is a matter of fact that the original revenue to the MCEA approved by Maine voters (the annual transfer of \$2,000,000, the taxpayer check-off, etc.) would have been sufficient to fund the MCEA at least through 2010 if the Legislature had not deappropriated cash from the Fund.

## **Presumptions for 2010 and Estimated Shortfall**

I have attached some current projections about the cost of the MCEA program in the 2008 and 2010 elections. Because the MCEA program is relatively new, it can be difficult to make projections about its cost – particularly because it is impossible to know three years in advance which candidates for Governor will seek public funding. The staff believes it is prudent to presume that four candidates for Governor in the 2010 general election will be publicly funded, and that two additional candidates would be publicly funded for the primary only.

Our presumptions for 2010 include that we will advance about 50% of the maximum matching funds to most legislative candidates who qualify for matching funds, and that we will advance 100% of the maximum matching funds to candidates in the most competitive districts. This will not lower the net cost of the program, but it will reduce the reserve of funds that we advance to candidates and that we ask them to return after the election.

It is important to note that the cost of the MCEA program in 2010 could be greater than the attached presumptions. For example, if a high-spending privately financed candidate were to run against a MCEA opponent in the Democratic or Republican primary elections, the MCEA opponent could receive as much as \$400,000 in matching funds. Also, the Commission's electronic filing and disclosure website uses technology that is outdated, and an upgrade in technology may be necessary. Because of these contingencies, it is possible that the Commission could have to ask for additional money in the 2009 or 2010 sessions.

## Recommended Actions

While the Legislature's job is to balance public priorities, Maine voters entrusted the Commission with the mandate of administering the MCEA. To fulfill that duty, the staff makes the following recommendations:

*Amount of request.* The Commission should request that \$2,800,000 be transferred from the General Fund to the Maine Clean Election Fund no later than June 1, 2010 (in fiscal year 2010) and that \$2,400,000 be transferred no later than August 1, 2010 (in fiscal year 2011). This represents the net \$4,425,000 deappropriated from the Fund plus a large portion of the \$1,400,000 in interest that the deappropriated money would have earned in the Fund. The staff asks your authorization to modify this request modestly in the coming weeks if we find we need to adjust one of our presumptions.

*Urgency for 2008 legislative session.* Even though the proposed transfers would not be deposited into the Fund until 2010, the staff recommends making the request in the 2008 legislative session. Potential candidates for Governor need to know in 2008 whether this voter-approved program will be available for them in 2010. Otherwise, they likely would not know whether public financing is a viable option until June 2009. That is only four months before candidates for Governor can begin qualifying for public funding on November 1, 2009.

*Ask the Governor to support funding.* The staff recommends asking the Governor to include unallocated language in the 2008 supplemental budget bill directing that the State Controller make the proposed transfers in 2010 and 2011. (I have attached similar language from the 2006 budget bill.) If the Governor includes the language in his budget bill, that would improve the chances that the Legislature will approve the funding.

*Commission legislation.* In addition, the Commission should introduce its own bill requesting the transfers from the General Fund, in case the Governor is not convinced to include the language.

## History of Transfers from Maine Clean Election Fund

<b>Transfers from Maine Clean Election Fund Totaling \$8,025,000</b>		
\$4.0 million to Maine Rainy Day Fund	P.L. 2001, Chapter 559, Part E-3 (May 2002)	Transferred on June 30, 2003
\$2.5 million to General Fund	P.L. 2001, Chapter 714, Part N-1 (Nov. 2002)	Transferred on June 30, 2003
\$225,000 to General Fund	P.L. 2003, Chapter 20, Part D-26 (June 2003)	Transferred on June 30, 2004
Reduction of \$1.3 million in FY 09 revenue	P.L. 2007, Chapter 240, Part F (June 2007)	Revenue would occur on January 1, 2009
<b>Returns to Maine Clean Election Fund Totaling \$3,600,000</b>		
\$2.4 million from General Fund	P.L. 2005, Chapter 3, Part P-1 (March 2005)	Returned on January 1, 2006
\$1.2 million from General Fund	P.L. 2005, Chapter 519, Part KK (April 2006)	Returned on September 30, 2006

**Net Transfer from Maine Clean Election Fund =  
\$4,425,000 plus roughly \$1,400,000 in interest earned by 2010**

### Shortfalls Caused by Transfers, and Legislative Remedies

<b>Legislative Session</b>	<b>Problem</b>	<b>Remedy by Legislature</b>
2004	Insufficient funding for 2004 elections	Advance of \$1,500,000 on 1/1/05 transfer of \$2 million
2005	Insufficient funding for 2006 elections	Transfer of \$2,400,000 from General Fund; advance of 1/1/07 transfer of \$2 million
2006	Insufficient funding for 2006 elections	Transfer of \$1,200,000 from General Fund
2007	Insufficient funding for 2008 elections	Advance of \$700,000 on 1/1/09 transfer of \$2 million
2008	Insufficient funding for 2010 elections	<i>Commission requests return of transferred amounts plus interest</i>

## PUBLIC LAW, c. 519

SECOND REGULAR SESSION - 2005

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)

## HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Bureau of Medical Services 0129

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(6,000)	(6,000)

## INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF

Maine Outdoor Heritage Fund 0829

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)

## LABOR, DEPARTMENT OF

Safety Education and Training Programs 0161

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(2,000)	(2,000)

## MARINE RESOURCES, DEPARTMENT OF

Division of Community Resource Development 0043

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)

## PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(2,000)	(2,000)

**Sec. JJ-6. Appropriations and allocations.**

The following appropriations and allocations are made to eliminate 2 vacant positions, resulting in elimination of .211 FTE headcount in fiscal years 2005-06 and 2006-07.

## TRANSPORTATION, DEPARTMENT OF

Island Ferry Services Fund 0326

ISLAND FERRY SERVICES FUND	2005-06	2006-07
POSITIONS - FTE COUNT	(0.211)	(0.211)

**Sec. JJ-7. Appropriations and allocations.**

The following appropriations and allocations are made to eliminate one vacant position, resulting in elimination of 1,000 legislative headcount in fiscal years 2005-06 and 2006-07.

## CORRECTIONS, DEPARTMENT OF

State Prison 0144

PRISON INDUSTRIES FUND	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)

**Sec. JJ-8. Appropriations and allocations.**

The following appropriations and allocations are made to eliminate one vacant position, resulting in elimination of .827 FTE headcount in fiscal years 2005-06 and 2006-07.

## AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Seed Potato Board 0397

SEED POTATO BOARD FUND	2005-06	2006-07
POSITIONS - FTE COUNT	(0.827)	(0.827)

**Sec. JJ-9. Appropriations and allocations.**

The following appropriations and allocations are made to eliminate one vacant position, resulting in elimination of 1,000 legislative headcount in fiscal years 2005-06 and 2006-07.

## ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Lottery Operations 0023

STATE LOTTERY FUND	2005-06	2006-07
POSITIONS - LEGISLATIVE COUNT	(1,000)	(1,000)

## \* PART KK

**Sec. KK-1. Transfer to Maine Clean Election Fund.** On or before September 30, 2006, the State Controller shall transfer an additional \$1,200,000 from undedicated General Fund revenue to the Maine Clean Election Fund in addition to the transfers authorized pursuant to the Maine Revised Statutes, Title 21-A, section 1124.

## PART LL

**Sec. LL-1. 20-A MRSA §15671, sub-§6,** as amended by PL 2005, c. 12, Pt. UU, §1 and affected by §§12 and 13 and Pt. WW, §18, is further amended to read:

**6. Targeted funds.** Funds for technology, ~~assessment~~ implementation of a standards-based system and the costs of additional investments in educating children in kindergarten to grade 2 as described in section 15681 must be provided as targeted allocations. School administrative units shall submit a plan for the use of these funds and shall receive funding based on approval of the plan by the commissioner.

**Sec. LL-2. 20-A MRSA §15681, sub-§2,** as enacted by PL 2003, c. 504, Pt. A, §6, is repealed.

**Maine Clean Election Fund  
Preliminary Projected Revenues and Expenditures for FY 08, 09  
(8/13/07)**

**Revenue for Fiscal Year 2008**

Cash Balance from FY 2007	\$4,306,216
Annual Transfer from General Fund (1/1/08)	\$2,000,000
Qualifying Contributions in 2008 (4/15/08)	\$128,000
Taxpayer Check-Off (6/30/2008)	\$199,812
Interest	\$308,084
Penalties	\$4,000
Other Income	\$0
<b>Total</b>	<b>\$6,946,112</b>

**Expenditures for Fiscal Year 2008**

Personnel	\$323,006
Other Administrative Costs (including technology)	\$281,296
Primary Election Initial Distributions	\$423,418
Primary Election Matching Funds	\$43,119
General Election Initial Distributions	\$2,703,972
<b>Total</b>	<b>\$3,774,811</b>

**Revenue for Fiscal Year 2009**

Cash Balance from FY 2008	\$3,171,301
Annual Transfer from General Fund (9/1/08 - reduced from \$2 million)	\$700,000
Taxpayer Check-Off (6/30/09)	\$199,812
Interest	\$177,027
Penalties	\$4,000
Other Income	\$0
<b>Total</b>	<b>\$4,252,140</b>

**Expenditures for Fiscal Year 2009**

Personnel	\$367,146
Other Administrative Costs (including technology)	\$154,546
<b>NET</b> General Election Matching Funds	\$1,085,736
<b>Total</b>	<b>\$1,607,428</b>

**Cash balance on 6/30/09**

**\$2,644,712**

**Table B**  
**Preliminary Projected MCEA Payments**  
**to 2008 Legislative Candidates (8/13/07)**

Primary Election Initial Distributions (Table C)	\$423,418
Primary Election Matching Funds (double 2006 total)	\$43,119
General Election Initial Distributions (Table C)	\$2,703,972
General Election Matching Funds (Table E)	\$2,714,340
<b>Total</b>	<b>\$5,884,849</b>

**Table C**  
**Presumed Initial MCEA Distributions to 2008 Legislative Candidates**  
**(8/13/07)**

	# of 2004 Participants in Category	# of 2006 Participants in Category	<u>Projected Payments for 2008</u>		
			Projected # for 2008	Amount of Initial Distribution	Total
<b>Primary Election Initial Distributions</b>					
House - Contested Candidates	41	32	42	\$1,504	\$63,168
House - Uncontested Candidates	207	212	213	\$512	\$109,056
<b>Total</b>	<b>248</b>	<b>244</b>	<b>255</b>		<b>\$172,224</b>
Senate - Contested Candidates	18	9	18	\$7,746	\$139,428
Senate - Uncontested Candidates	45	56	58	\$1,927	\$111,766
<b>Total</b>	<b>63</b>	<b>65</b>	<b>76</b>		<b>\$251,194</b>
<b>Total Primary Election Initial Distributions</b>					<b>\$423,418</b>
<b>General Election Initial Distributions</b>					
House - Contested - Democrats	127	136	142	\$4,362	\$619,404
House - Contested - Republicans	103	101	111	\$4,362	\$484,182
House - Contested - Greens	15	5	10	\$4,362	\$43,620
House - Contested - Unenrolleds	5	3	7	\$4,362	\$30,534
House - Uncontested	0	3	0		0
<b>Total</b>	<b>250</b>	<b>248</b>	<b>270</b>		<b>\$1,177,740</b>
Senate - Contested - Democrats	28	32	34	\$20,082	\$682,788
Senate - Contested - Republicans	26	31	34	\$20,082	\$682,788
Senate - Contested - Greens	1	2	4	\$20,082	\$80,328
Senate - Contested - Unenrolleds	2	2	4	\$20,082	\$80,328
Senate - Uncontested	1	0	0		0
<b>Total</b>	<b>58</b>	<b>67</b>	<b>76</b>		<b>\$1,526,232</b>
<b>Total General Election Initial Distributions</b>					<b>\$2,703,972</b>

**Table D**  
**Actual Matching Funds Paid in the 2006 General Election**

	# of Candidates Receiving Matching Funds	Amount of Matching Funds Paid Each Candidate	Total Paid	Total Authorized	Total Unauthorized	Percentage Authorized	Average Amount Authorized
House Democrats	77	\$8,724	\$671,748	\$260,683	\$411,065	38.81%	\$3,385.50
House Republicans	46	\$8,724	\$401,304	\$100,282	\$301,022	24.99%	\$2,180.04
House Greens	4	\$8,724	\$34,896	\$16,255	\$18,641	46.58%	\$4,063.68
House Unenrolled	1	\$8,724	\$8,724	\$4,697	\$4,027	53.84%	\$4,696.68
<b>Total for House</b>	<b>128</b>		<b>\$1,116,672</b>	<b>\$381,917</b>	<b>\$734,755</b>	<b>34.20%</b>	<b>\$2,983.72</b>
Senate Democrats	11	\$40,164	\$441,804	\$123,735	\$318,069	28.01%	\$11,248.66
Senate Republicans	9	\$40,164	\$361,476	\$90,999	\$270,477	25.17%	\$10,110.98
Senate Greens	1	\$40,164	\$40,164	\$20,209	\$19,955	50.32%	\$20,208.69
Senate Unenrolled	1	\$40,164	\$40,164	\$2,045	\$38,119	5.09%	\$2,045.02
<b>Total for Senate</b>	<b>22</b>		<b>\$883,608</b>	<b>\$236,988</b>	<b>\$646,620</b>	<b>26.82%</b>	<b>\$10,772.17</b>
<b>Legislative Total</b>	<b>150</b>		<b>\$2,000,280</b>	<b>\$618,904</b>	<b>\$1,381,376</b>	<b>0.31</b>	

**Table E**  
**Projected Matching Funds for 2008 Legislative Candidates**  
**(8/13/06)**

	Projected # of Candidates Receiving Matching Funds	Amount of Matching Funds Paid Each Candidate	Total Projected Payments	Projected Amount Authorized to Spend	Projected Unauthorized Funds to be Returned
House Candidates	150	\$8,724	\$1,308,600	\$523,440	\$785,160
Senate Candidates	35	\$40,164	\$1,405,740	\$562,296	\$843,444
<b>Legislative Total</b>	<b>185</b>		<b>\$2,714,340</b>	<b>\$1,085,736</b>	<b>\$1,628,604</b>

**Maine Clean Election Fund  
Preliminary Projected Revenues and Expenditures for FY 10, 11  
(8/13/07)**

**Revenue for Fiscal Year 2010**

Cash Balance from FY 2009	\$2,644,712
Annual Transfer from General Fund (1/1/10)	\$2,000,000
Qualifying Contributions in 2010 (4/15/10)	\$225,500
Additional Transfer Requested (by 6/1/10)	\$2,800,000
Taxpayer Check-Off (6/30/10)	\$199,812
Interest	\$209,392
Penalties	\$4,000
Other Income	\$0
<b>Total</b>	<b>\$8,083,416</b>

**Expenditures for Fiscal Year 2010**

Personnel	\$355,307
Other Administrative Costs	\$156,290
Legislative - Primary Election Initial Distributions	\$486,931
Legislative - Primary Election Matching Funds	\$49,587
Legislative - General Election Initial Distributions	\$3,109,568
Gubernatorial - Primary Election Initial Distributions	\$1,000,000
Gubernatorial - Primary Election Matching Funds	\$0
Gubernatorial - General Election Initial Distributions	\$2,400,000
<b>Total</b>	<b>\$7,557,682</b>

**Revenue for Fiscal Year 2011**

Cash Balance from FY 2010	\$525,734
Additional Transfer Requested (by 8/1/10)	\$2,400,000
Annual Transfer from General Fund (by 9/1/10)	\$2,000,000
Taxpayer Check-Off (6/30/11)	\$199,812
Interest	\$111,190
Penalties	\$4,000
Other Income	\$0
<b>Total</b>	<b>\$5,240,736</b>

**Expenditures for Fiscal Year 2011**

Personnel	\$403,861
Other Administrative Costs	\$161,803
Legislative - General Election Matching Funds (NET - see notes)	\$1,248,596
Gubernatorial - General Election Matching Funds	\$2,400,000
<b>Total</b>	<b>\$4,214,260</b>

<b>Projected Balance on 11/2/10 General Election</b>	<b>\$405,753</b>
<b>Projected Balance on 6/30/11</b>	<b>\$1,026,476</b>

## Presumed Payments to Gubernatorial Candidates in 2010

Primary Election Initial Distribution	Primary Election Matching Funds	General Election Initial Distribution	General Election Matching Funds	Total for Candidate
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### Scenario 1 - presumed for 8/13/07 proposal

Democrat 1 (nominee)	\$200,000	\$0	\$600,000	\$600,000	\$1,400,000
Democrat 2	\$200,000	\$0	\$0	\$0	\$200,000
Republican 1 (nominee)	\$200,000	\$0	\$600,000	\$600,000	\$1,400,000
Republican 2	\$200,000	\$0	\$0	\$0	\$200,000
Green-Independent	\$200,000	\$0	\$600,000	\$600,000	\$1,400,000
Independent	\$0	\$0	\$600,000	\$600,000	\$1,200,000
<b>Total</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$2,400,000</b>	<b>\$2,400,000</b>	<b>\$5,800,000</b>

### Scenario 2 - additional costs are shaded

Democrat 1 (nominee)	\$200,000	\$400,000	\$600,000	\$600,000	\$1,800,000
Democrat 2	\$200,000	\$400,000	\$0	\$0	\$600,000
Republican 1 (nominee)	\$200,000	\$400,000	\$600,000	\$600,000	\$1,800,000
Republican 2	\$200,000	\$400,000	\$0	\$0	\$600,000
Green-Independent	\$200,000	\$0	\$600,000	\$600,000	\$1,400,000
Independent	\$200,000	\$0	\$600,000	\$600,000	\$1,400,000
<b>Total</b>	<b>\$1,200,000</b>	<b>\$1,600,000</b>	<b>\$2,400,000</b>	<b>\$2,400,000</b>	<b>\$7,600,000</b>

**NOTES**

For the 8/13/07 proposal, the staff presumes that the total cost of the 2010 legislative payments will be 15% greater than in 2008 to account for increases in candidate participation, initial payment amounts, and matching funds triggered.

<b>April 2008 MCEA Payments</b>	Leg - Primary Initial Distributions	\$486,931		
	Leg - Primary Matching Funds	\$49,587		
	Gov - Primary Initial Distributions	\$1,000,000		
	<b>Total for April</b>	<b>\$1,536,518</b>		
<b>June 2008 MCEA Payments</b>	Leg - General Initial Distributions	\$3,109,568		
	Gov - General Initial Distributions	\$2,400,000		
	<b>Total for June</b>	<b>\$5,509,568</b>		
<b>Oct 2008 MCEA Payments</b>	Leg - General Matching Funds	\$1,248,596 (NET - see below)		
	Gov - General Matching Funds	\$2,400,000		
	<b>Total for Oct</b>	<b>\$3,648,596</b>		
<b>Leg Matching Funds (increased from 2008 by 15%)</b>				
	Total Projected Payments		Projected Amount Authorized to Spend	Projected Unauthorized Funds to be Returned
2008	\$2,714,340		\$1,085,736	\$1,628,604
2010	\$2,000,000		\$1,248,596	\$751,404

Staff proposes to advance 50% of the maximum matching funds in 2010 to legislative candidates except those in the most competitive districts.