

Agenda

Item #5



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

To: Commission Members and Counsel
From: Jonathan Wayne, Executive Director
Date: June 17, 2008
Re: Maine Clean Election Act Qualifications for Governor

On March 20, 2008, the Legal and Veterans Affairs Committee requested in the attached memo that I draft a report to the committee regarding the sufficiency of the current qualifying requirements for gubernatorial candidates seeking campaign funding under the Maine Clean Election Act (MCEA). The report is due by October 1, 2008. The committee recommended that the Ethics Commission hold a public hearing to receive comments from the public. On June 3, I mailed out a notice that the Commission would hold a public hearing to receive public comments at the June 27 meeting. To date, the only written comments received are from Sen. Peter Mills (attached).

History of Maine Clean Election Act in Gubernatorial Elections

The state has held two elections for Governor in which MCEA funding has been available. In the 2002 gubernatorial elections, two candidates received MCEA funding:

- Jonathan Carter
- Hon. James Libby (primary election only)

In 2006, four candidates for Governor qualified for public funding under the Maine Clean Election Act:

- Hon. Chandler E. Woodcock
- Hon. S. Peter Mills (primary election only);
- Pat LaMarche; and
- Hon. Barbara E. Merrill

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In addition, two other candidates in 2006, John Michael and David Jones, qualified for the ballot as gubernatorial candidates and collected a significant number of qualifying contributions. Both Mr. Michael and Mr. Jones came very close to qualifying for public funding, but did not collect the required number of valid qualifying contributions.

2007 Legislation

In 2007, a number of bills were submitted to the Legislature that would modify the qualifying procedures for gubernatorial or legislative candidates or both. Among these was a bill drafted by the Commission, which proposed requiring gubernatorial candidates to collect at least \$15,000 in seed money contributions from Maine residents as a way for the candidates to demonstrate in-depth support. The committee did not approve this proposal. Another bill was sponsored by Senator Peter Mills (L.D. 1670), which combined the required qualifying contributions and seed money into one qualifying system.

In 2007, the Legislature did make a number of changes to the Maine Clean Election Act that would affect the gubernatorial program:

- (1) The Legislature increased the number of qualifying contributions required for MCEA funding from 2,500 to 3,250, thereby making it 30% harder to qualify.
- (2) The Legislature changed the timing of the payments which candidates for Governor receive so that more funds are received in June of the election year.
- (3) The Legislature required the Commission to audit the campaigns of candidates for Governor who receive Maine Clean Election Act funding and to meet with them early in the campaign to discuss audit requirements.

Legislative Expressions of Concern About the Cost of the Gubernatorial Program

In the 2007 and 2008 legislative session, I testified before the Appropriations Committee on several occasions. I received concerned questions about the cost of the gubernatorial portion of the program. For example, in March 2007, Sen. Karl Turner requested that the Commission make a recommendation on whether the state should terminate the gubernatorial program. The Commission declined to make that recommendation.

Genesis of Committee's Request

On Sunday, March 16, 2008, I appeared before the Appropriations Committee and was asked again to provide certain information about savings to the state by eliminating the gubernatorial program. One or two days later, I met with Representative John Patrick, the House Chair of the Legal and Veterans Affairs Committee. I asked him whether it would be helpful for the committee if I were to write a report regarding the gubernatorial program, including the current qualifications and the cost of the program. He was quite positive, and invited me to discuss the proposal with the entire committee. On March 20, 2008, the committee requested that I write the report.

SENATE

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JOHANNAH OBERG, Committee Clerk

State of Maine
ONE HUNDRED AND TWENTY-THIRD LEGISLATURE
COMMITTEE ON LEGAL AND VETERANS AFFAIRS

MEMORANDUM

Date: March 20, 2008

To: Jonathan Wayne, Executive Director
Commission on Governmental Ethics and Election Practices

From: Senator Lisa Marrache, Representative John Patrick, Co-chairs
Joint Standing Committee on Legal and Veterans' Affairs

RE: Studying Qualifications for Maine Clean Election Act Gubernatorial Candidates

The Joint Standing Committee on Legal and Veterans' Affairs requests that as Executive Director of the Commission on Governmental Ethics and Election practices, you submit to the committee no later than October 1, 2008, a report regarding Maine Clean Election Act Gubernatorial Candidates. The report should consider the following:

- Sufficiency of current qualifying requirements for gubernatorial candidates seeking MCEA campaign funding;
- The financial demands on the Maine Clean Election Act Fund relative to the revenue received for the program;
- Qualifying requirements for gubernatorial candidates under MCEA compared to those of similar public financing programs in other states;
- The anticipated impact of permitting the collection of qualifying contributions via the internet; and
- Discussion of options for amending current requirements for MCEA gubernatorial candidates including eliminating funding of gubernatorial candidates from the program.

During the course of your study we recommend that you invite comments from the public to be received at an advertised public hearing.

Thank you for your time and consideration of this matter and we look forward to your report.

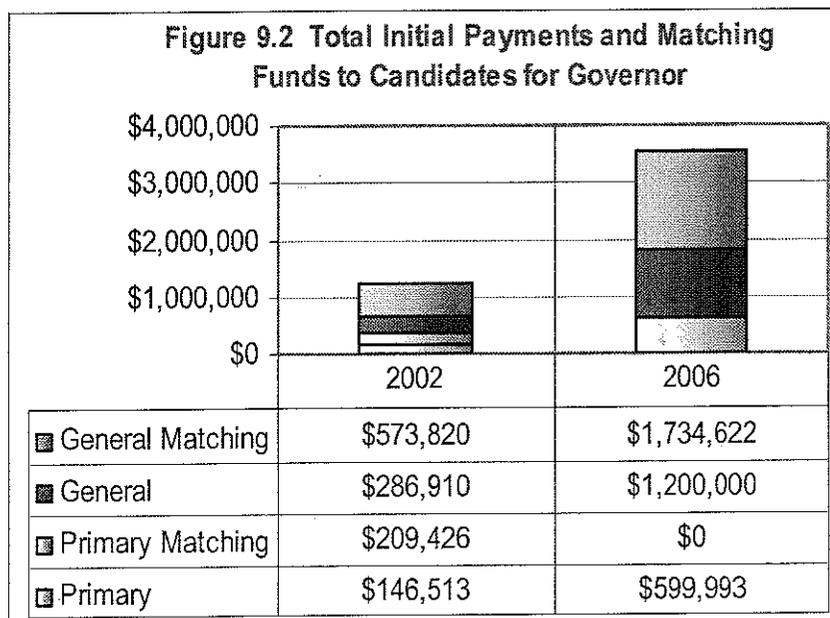
cc: Members, Joint Standing Committee on Appropriations and Financial Affairs
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Breakdown of Payments to Candidates for Governor

Table 9.C and Figure 9.2 show the breakdown of payments to candidates for Governor who qualified for MCEA funding in 2002 and 2006.

	James Libby (2002)	Jonathan Carter (2002)	Peter Mills (2006)	Chandler Woodcock (2006)	Pat LaMarche (2006)	Barbara Merrill (2006)	Total
Primary Election Initial Payments	\$104,641	\$41,872	\$200,000	\$199,999	\$199,993		\$746,505
Primary Matching Funds	\$209,426						\$209,426
Total for Primary Election	\$314,067	\$41,872	\$200,000	\$199,999	\$199,993		\$955,931
General Election Initial Payments		\$286,910		\$400,000	\$400,000	\$400,000	\$1,486,910
General Election Matching Funds		\$573,820		\$703,728	\$515,162	\$515,732	\$2,308,442
Total for General Election		\$860,730		\$1,103,728	\$915,162	\$915,732	\$3,795,352
Total Funds Paid	\$314,067	\$902,602	\$200,000	\$1,303,728	\$1,115,155	\$915,732	\$4,751,284

Figure 9.2 illustrates that matching funds make up a much larger proportion of the general election funds received by candidates for Governor compared to legislative candidates. That is the basis for recommendation 1.4 in Chapter 11 to increase the initial payment for the general election to \$600,000 and to decrease the maximum matching funds to \$600,000.



Chapter 9

Cost and Funding for the Program

Total Payments to Candidates

Total payments of Maine Clean Election Act funds to candidates have increased during each year in which the MCEA has been in operation (Table 9.A).

Election Year	2000	2002	2004	2006	Total
Legislative	\$964,467	\$2,089,538	\$2,799,617	\$3,348,469	\$9,202,091
Governor		\$1,216,669		\$3,534,615	\$4,751,284
Total	\$964,467	\$3,306,207	\$2,799,617	\$6,883,084	\$13,953,375

The growth in total payments has resulted from a few factors:

- As shown in Table 5.A, the initial payment amounts for legislative candidates have increased since 2000. Also, in 2003 the Legislature increased the amount of the initial payments for candidates for Governor.
- The number of legislative candidates participating in the MCEA has grown every election year (Figure 1.1). In 2006, four candidates for Governor participated in the MCEA, including one candidate for the primary election only.
- More candidates have received matching funds in greater amounts (Table 9.D, below).

A breakdown of total legislative payments provides a glimpse of when MCEA candidates received their campaign funds during the 2006 election cycle (Figure 9.1 and Table 9.B, next page). On average, 2006 candidates for the Legislature received only about 10% of their campaign funds before the primary elec-



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

To: Interested Persons
From: Ethics Commission Staff
Date: June 3, 2008
Re: Opportunity to Comment -- Qualifications for Maine Clean Election Act
Candidates for Governor

In the attached letter dated March 20, 2008, the Joint Standing Committee on Legal and Veterans Affairs ("LVA Committee") requested that the executive director of the Maine Ethics Commission draft a report regarding the sufficiency of current qualifying requirements for gubernatorial candidates seeking Maine Clean Election Act campaign funding. The Ethics Commission will hold a public hearing to receive comments from the public on this subject at 9:00 a.m. on Friday, June 27 in the Public Utilities Commission hearing room at 242 State Street in Augusta. You are invited to comment at the public hearing or to submit written comments.

**CURRENT MAINE CLEAN ELECTION ACT QUALIFYING REQUIREMENTS
FOR GUBERNATORIAL CANDIDATES**

Qualifying contributions. Currently, candidates for governor must collect 3,250 qualifying contributions from registered Maine voters during the applicable qualifying period for the candidate. Qualifying contributions are in the amount of \$5 and are made payable to the Maine Clean Election Fund. The contributions may be made by personal check, by credit card on a website established by the Commission, or by cash (provided that the contributor signs a \$5 money order payable to the Fund provided by the campaign).

Qualifying period. For gubernatorial candidates in the 2010 elections, the qualifying periods will be:

- 11/1/09 - 4/15/10 (for candidates who are enrolled in a political party).
- 11/1/09 - 6/2/10 (for independent candidates)

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Qualification for the ballot. In order to receive public funding under the Maine Clean Election Act, candidates must qualify to appear on the election ballot.

Seed money contributions (optional). Candidates for governor intending to qualify for public funding may collect up to \$50,000 in seed money contributions. These are contributions of up to \$100 made by individuals only. The contributors may reside outside Maine.

POSSIBLE TOPICS FOR PUBLIC COMMENT

Interested persons are welcome to comment on any issue within the scope of the report requested by the LVA Committee. In particular, the Commission staff would welcome comments on options for amending the current qualifying requirements for Maine Clean Election Act gubernatorial candidates. Some possible issues might include:¹

Requiring a Greater Number of \$5 Qualifying Contributions

In 2007, the Legislature increased the number of qualifying contributions required for a gubernatorial candidate from 2,500 to 3,250. The Legislature also permitted candidates to accept qualifying contributions over the internet on a website established by the Commission. Earlier this year, legislative candidates solicited their supporters by e-mail to make qualifying contributions electronically on the Commission's website. This feature was very successful and popular with candidates and contributors. The Commission staff anticipates that in 2010 its online contribution system will verify whether individuals making \$5 qualifying contributions are registered Maine voters, which could reduce a significant administrative burden from gubernatorial candidates. As an enhanced online contribution system will greatly facilitate the process of collecting contributions statewide for gubernatorial candidates, an additional increase in the number of required qualifying contributions may be a reasonable step to ensure that gubernatorial candidates have significant support from voters.

¹ The issues listed below are based on a number of sources including: a preliminary comparison of the Maine Clean Election Act to other public campaign financing programs, recent legislative proposals, and informal comments received by the Commission staff during and after the 2006 elections.

Requiring Contributions of More than \$5 for Gubernatorial Candidates

In the 2007 session, the Legislature received a number of bills (including one from the Commission) that required legislative and/or gubernatorial candidates to collect a minimum amount of seed money contributions in order to qualify for Maine Clean Election Act funding. The Commission's 2007 bill proposed requiring gubernatorial candidates to collect at least \$15,000 in seed money contributions from Maine residents as a way for the candidates to demonstrate more in-depth support. Some variation on these proposals may be worth considering.

Equalizing the Length of the Qualifying Period

Under current law, independent candidates for governor have a qualifying period of about 7 months in which to collect 3,250 qualifying contributions. Party candidates have a shorter qualifying period of 5½ months. The Commission staff has received informal comments that the periods should be equal in length by reducing the period for independent candidates.

Requiring Past Success in Previous Election

Public funding programs in other jurisdictions have required a candidate to demonstrate past electoral success for themselves or their political party to qualify to receive the full campaign funding. This feature appears designed to contain the cost of the program by not paying scarce public dollars to candidates with little chance of winning. In Connecticut's public campaign financing program, for example, candidates who have not received 20% of the vote in the last election for that office (or whose party nominee in the previous election received less than 20% of the vote) receive less than the full grant. Given the large amounts paid to gubernatorial candidates under the Maine Clean Election Act, this is an option that the Legislature may wish to consider provided that it meets constitutional requirements.

For More Information

For more information, please call Jonathan Wayne or Paul Lavin at 287-4179.

Wayne, Jonathan

From: Peter Mills [pmills@mainelegal.net]
Sent: Sunday, June 15, 2008 1:44 PM
To: Wayne, Jonathan; Lavin, Paul
Subject: Hearing on 6/27

Attachments: Summary SPM bill.doc



Summary SPM
bill.doc (23 KB)

In case I can't make the Commission hearing on June 27, attached is a summary of legislation I put in last year to improve and simplify the clean election system. I have modified it to provide that incumbents receive only 90% of the money that a challenger receives.

Peter Mills

Summary of LD 1680
An Act To Reform & Simplify the Clean Election Process
Senator Peter Mills

This amendment to the Clean Election Act combines seed money and qualifying checks into one composite qualifying system. Qualifying contributions, which may be made by either cash or check under this bill, are defined as any amount between \$5 and \$40 payable to the candidate or the campaign. To qualify, the candidate must raise contributions in numbers and amounts as follows:

	Minimum Number of Contributors	Total Sum Required
For House:	50	\$ 500
For Senate:	150	\$ 1,500
For Governor:	2500	\$ 25,000

The number of required contributors remains the same as in present law, but the minimum amount of money required is doubled from \$5 per check to what would be an average of \$10 if only the minimum number were obtained. Each \$5 contribution still counts and contributions up to \$40 are acceptable.

Instead of turning checks into the commission, candidates will submit only the acknowledgment signed by each contributor as evidence of the payment. Candidates will retain and use for campaign purposes all amounts collected. Because seed money is abolished and blended into the system for qualifying contributions, all financial support for the candidate must come from voters within the candidate's own district.

Distributions from the Fund are reduced by one-half of the qualifying contributions collected and by 101% of any contributions that do not meet qualifying criteria. Incumbents receive 90% of full financing.

The qualifying period is amended to start on November 1 of the year prior to election for everyone, and not just for gubernatorial candidates. The qualifying period for an unenrolled candidate continues to end on June 2 of each election year. The corresponding date for a party candidate remains at April 15. The bill repeals a provision that presently allows an unenrolled gubernatorial candidate to receive a distribution equal to a primary campaign distribution if the candidate qualifies before April 15.

For unenrolled candidates, distributions are set at 40% of those available to a party candidate unless the unenrolled candidate obtains a number of contributors equal to 160% of those required for a party candidate. The total dollar sum of required contributions remains the same for party and for unenrolled candidates.

A voter is prohibited from making a qualifying contribution to more than one candidate for the same office. Money orders are no longer mentioned in the law since cash transactions are authorized. The bill makes clear that no revenue from the Maine Clean election Fund may be pledged or applied to the collection of qualifying contributions.

The bill expands to 42 days the period before an election in which a paid communication is deemed to be an independent expenditure if it clearly

identifies a candidate on the ballot.

The bill also adds a private funding option for candidates. Before April 15 of an election year, a candidate whose campaign is supported by private contributions may elect to be covered by the matching fund protections of the Clean Election Act if the candidate agrees to limit, and does, in fact, limit campaign contributions and expenditures to the amount that would be authorized for distribution to the candidate if the candidate were qualified as a Clean Election candidate. A candidate making such an election shall be entitled to public matching funds in the same fashion as though the candidate had qualified as a Clean Election candidate.

June 27, 2008

Beth Edmonds**President of the Senate**

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June 27, 2008

Maine Commission on Governmental Ethics & Election Practices
135 State House Station
Augusta, Maine 04333

Dear Commission Members:

Thank you for providing the opportunity to comment on the Maine Clean Elections law and, in particular, the program for gubernatorial candidates.

I am proud to have been involved with this landmark citizen initiative from the very beginning. As someone who worked on the referendum in the early 1990s and subsequently ran as a Clean Elections candidate, I am committed to a strong, viable public financing system for both the legislative and gubernatorial elections in Maine. The Maine Clean Elections Act (MCEA) is a model for the nation and I would urge the Commission to avoid making any recommendations that would undermine the intent of the law and the will of the voters.

The qualifying process for gubernatorial candidates has already been the subject of much debate and analysis, and substantial changes were made by the 123rd Legislature. As you know, the qualifying bar for gubernatorial candidates was raised from 2,500 to 3,250 qualifying contributions -- a 30 percent increase over 2006. In addition, other policy changes were made last year to ensure the integrity and viability of the gubernatorial system. The Ethics Commission now has clear authority to decertify candidates, the distribution scheme for gubernatorial candidates puts more money up front and less in matching funds, new protections are in place to make sure qualifying contributions can be verified, it is illegal to assist an opponent in order to get more Clean Election funding, and all gubernatorial candidates will be audited and will start their campaigns with much clearer expectations for reporting.

Ethics Commission

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June 25, 2008

As part of the MCEA, voters approved a funding formula that would have been adequate to fund elections through 2010. The 2010 shortfall exists because successive governors and legislatures have borrowed from the Maine Clean Election Fund for other state programs. However, earlier this year, legislative language was approved that requires these monies to be restored.

Maine people want a strong public financing system and that system must be available to qualified candidates who seek Maine's most important office. I urge you to allow the changes the Legislature has already made to take affect and reject any attempt to weaken or eliminate this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth", with a long horizontal line extending to the right.

Beth Edmonds
President of the Senate



June 27th, 2008

TO: Maine Commission on Governmental Ethics and Election Practices
FROM: Jon Bartholomew, Common Cause Maine
RE: Gubernatorial Clean Elections system

Common Cause Maine first would like to thank the Commission for the opportunity to weigh in on the future of the gubernatorial element of Maine's Clean Election program. Common Cause Maine was one of the founding members of the Maine Citizens for Clean Elections coalition and remains to this day active on this issue. Indeed, we have been working around the country to establish similar laws based on Maine's success.

In general, we want to go on record strongly supporting a viable system for candidates for Governor to use public financing for their campaigns. The office of the Governor is the most powerful and influential position in state government, and is also the most likely to draw the influence of special interests. Therefore it is imperative that the system that has so effectively taken the influence of big money out of the legislature also be an option to remove big money from the race for Governor. Gubernatorial Clean Elections has worked very well in Arizona for two elections now, and there is a good chance our next Governor could be publicly financed – as long as the option exists for the candidates. This is indeed a good thing for Maine's democracy as it would truly be a race about issues, qualifications and leadership instead of who can raise the most money for TV ads.

There will be many proposals for ways to move forward on this issue. Many will be good ideas, some bad, and some with unknown results. We will work closely with the rest of the Maine Citizens for Clean Elections coalition on determining what we support and what we do not. But there has been one idea put on the table that we must emphatically oppose – that of defunding the Gubernatorial Clean Elections program. Even a one-time suspension of the program is something we will not tolerate. While some may say that we can not afford to fund this program, I say we can not afford to NOT fund it. In terms of the overall state budget, the savings would be minimal but what we gain by having publicly financed candidates for Governor is priceless.

Thank you for your consideration of our position on this matter.

Jon Bartholomew
Common Cause Maine

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