

Agenda

Item #2



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: March 19, 2009
Re: Statutory Proposal by Sen. Peter Mills

State Senator Peter Mills asked for an opportunity to speak to you on March 26th to discuss his proposal for amending the Maine Clean Election Act program. I have attached a draft of his bill that he provided me in January. This memo highlights a few of the changes in the bill.

Change in Qualifying Contributions and Seed Money

Under current law, during the qualifying period candidates seeking Maine Clean Election Act funding can collect two kinds of contributions:

- *Qualifying Contributions.* Candidates must collect a minimum number of qualifying contributions which are donations of \$5 made by registered Maine voters payable to the Maine Clean Election Fund. This is the primary eligibility requirement for candidates to receive public financing.

The required numbers of qualifying contributions are: 50 for House candidates, 150 for Senate candidates, and 3,250 for Governor. Candidates submit the contributions to the Ethics Commission by the end of the qualifying period, and the Commission deposits them into the Maine Clean Election Fund.

- *Seed money contributions.* If they wish, candidates may collect limited seed money contributions to fund their campaigns before receiving public funding. The candidates may collect up to \$100 per contributor from individuals only. Candidates may collect up to at total of \$500 for House candidates, \$1,500 for Senate candidates, and \$50,000 for Governor (proposed by you to increase to \$150,000).

Senator Mills proposes to combine qualifying contributions and seed money contributions into a single qualifying system. Under his proposal, the definition of qualifying contributions would be changed to become a donation between \$5 and \$100 from a registered Maine voter. Candidates could raise, deposit, and spend these qualifying contributions – similar to the role that seed money contributions play now. In order to qualify for Maine Clean Election Act funding, candidates would be required to collect both a minimum number of qualifying contributions and a minimum total amount:

	Minimum number of qualifying contributions	Total sum required to qualify
House candidates	50	\$500
Senate candidates	150	\$1,500
Gubernatorial candidates	3,250	\$32,500

Qualifying Period

Under current law, the qualifying periods for party candidates are:

- January 1, 2010 – April 15, 2010 (for House and Senate candidates)
- November 1, 2009 – April 15, 2010 (for candidates for Governor)

Independent candidates for all offices have a longer period to qualify (until June 2, 2010).

Under Sen. Mills' proposal, the qualifying period would begin as early as the candidate registers and files a declaration of intent to qualify for Maine Clean Election Act funding, which could be a full year or more before the end of the qualifying period.

Reduced Payment for Gubernatorial Candidates without a Primary Opponent

Under current law, candidates for Governor who qualify for MCEA funding receive an initial payment of \$200,000 for the primary election – regardless whether the candidate has an opponent in the primary election. Senator Mills proposes that a candidate who is unopposed in the primary election would receive a smaller amount (\$80,000).

Staff Concerns

- *Matching funds for traditional candidates.* Sen. Mills' bill contains a proposal that if a traditionally financed candidate were to agree to a particular spending limit (the amount of the initial payment received by MCEA candidates seeking the same office), the traditionally financed candidate could qualify to receiving matching funds. The Commission staff needs to consider the consequences of this proposal further.
- *Documentation requirements.* I believe that one goal of the legislation – along with simplifying the program and controlling its overall cost – is to reduce paperwork for candidates and to reduce the paperwork that the Commission receives. The Commission staff is grateful for this concern, but if the legislation moves forward we may see the need to suggest an amendment to the documentation requirements for gubernatorial candidates to ensure that the Commission staff can verify that candidates have qualified correctly.

Thank you for your consideration.

An Act To Simplify and Improve the Maine Clean Election Law -- 2009
LR 1529

21A § 1122. Definitions

3. Contribution. "Contribution" has the same meaning as in section 1012, subsection 2.

7. Qualifying contribution. "Qualifying contribution" means a donation:

A. ~~Of \$5 in the form of a check or a money order payable to the fund, between \$5 and \$100 signed by the contributor and made in support of a candidate;~~

B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified by the municipal registrar;

C. Made during the designated qualifying period; and

D. That the contributor acknowledges was made with the contributor's personal funds and in support of the candidate and was not given in exchange for anything of value and that the candidate acknowledges was obtained with the candidate's knowledge and approval and that nothing of value was given in exchange for the contribution, on forms provided by the commission.

8. Qualifying period. ~~The "Qualifying period" means the following: begins~~

A. ~~For a gubernatorial participating candidate, the qualifying period begins when the candidate files a declaration of intent with the commission in accordance with section 1125 immediately preceding the election year and ends at 5:00 p.m. on April 15th of the election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year.~~

B. ~~For State Senate or State House of Representatives participating candidates, the qualifying period begins January 1st of the election year and ends at 5:00 p.m. on April 15th of that election year unless the candidate is unenrolled, in which case the period ends at 5:00 p.m. on June 2nd of the election year.~~

Repeal sub-section 9 which reads as follows:

~~9.—Seed money contribution. "Seed money contribution" means a contribution of no more than \$100 per individual made to a participating candidate, including the candidate or the candidate's spouse or domestic partner.~~

21A § 1125. Terms of participation

1. Declaration of intent. A participating candidate must file a declaration of intent to seek certification as a Maine Clean Election Act candidate and to comply with the requirements of this chapter. The declaration of intent must be filed with the commission ~~prior to or during to start~~ the qualifying period, except as provided in subsection 11, according to forms and procedures developed by the commission. ~~A participating candidate must submit a declaration of intent within 5-business days of collecting qualifying contributions under this chapter. Qualifying contributions~~ Contributions collected before the declaration of intent has been filed are prohibited and will not be counted toward the eligibility requirement in subsection 3.

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 no funds contributions; other than except for seed money contributions qualifying contributions. No revenue from the Maine Clean Election Fund may be used, promised, pledged or applied toward the collection of qualifying contributions. A candidate may not collect or spend contributions after certification as a Maine Clean Election Act candidate except as authorized by the commission under sub-section 13. All contributions must be reported according to procedures developed by the commission. A participating candidate must limit the candidate's seed money contributions to the following amounts:~~

A. ~~Fifty thousand dollars for a gubernatorial candidate;~~

B. ~~One thousand five hundred dollars for a candidate for the State Senate; or~~

C. Five hundred 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.~~ **Restrictions on qualifying contributions.** To be eligible for certification, a participating candidate may collect and spend only ~~seed money~~ qualifying contributions subsequent to becoming a candidate and prior to certification. A participating candidate may not solicit, accept or collect ~~seed money~~ qualifying 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~~ qualifying 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~~ qualifying contributions collected, but may only receive that portion of goods and services that has been paid for or will be paid for with ~~seed money~~ qualifying contributions. 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.

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

3. Qualifying contributions. Participating candidates must obtain qualifying contributions during the qualifying period as follows:

	<u>Minimum</u> <u>Number of</u> <u>Contributors</u>	<u>Total Sum</u> <u>Required</u> <u>To Qualify</u>
For State House of Representatives	50	\$ 500
For State Senate	150	\$ 1,500
For Governor	3250	\$ 32,500

The candidate may retain for use as campaign funds all sums received as qualifying contributions during the qualifying period.

~~A. For a gubernatorial candidate, at least 2,500 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;~~

~~B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or~~

~~C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.~~

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with ~~seed money~~ qualifying contributions and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for

the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

4. Filing with commission. A participating candidate must submit ~~qualifying contributions~~, receipt and acknowledgement forms, ~~and~~ 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. Candidates for Governor shall also submit photocopies of all ~~seed money~~ contributions received by check or money order, bank or merchant account statements of contributions received by credit or debit card and bank or other account statements for the campaign account.

5. Certification of Maine Clean Election Act candidates. Upon receipt of a final submittal of reports of qualifying contributions by a participating candidate, the commission shall determine whether or not the candidate has:

- A. Signed and filed a declaration of intent to participate in this Act;
- B. Submitted Collected the appropriate number and amount of valid qualifying contributions;
- C. Qualified as a candidate by petition or other means;
- D. ~~Not accepted contributions~~ Accepted no money or contributions, except for ~~seed money~~ qualifying contributions, and otherwise complied with ~~seed money~~ clean election 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 had prior requests for certification denied on the basis of substantial violations of this chapter or chapter 13 or certification revoked under subsection 5-A, paragraphs C to G;
- 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; and
- E. Otherwise met the requirements for participation in this Act.

The commission or its 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 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 commission and its executive director may take additional time if further 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 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.

5-A. Revocation of certification. The certification of a participating candidate may be revoked at any time if the commission determines that the candidate or an agent of the candidate:

- A. Did not submit the required number of valid qualifying contributions;
- B. Failed to qualify as a candidate by petition or other means;
- C. Submitted any fraudulent qualifying contributions or qualifying contributions that were not made by the named contributor;
- D. Misrepresented to a contributor the purpose of the qualifying contribution or obtaining the contributor's signature on the receipt and acknowledgement form;
- E. ~~Failed to fully comply with the seed money restrictions;~~

- F. Knowingly accepted any contributions, including any in-kind contributions, or used funds other than fund revenues distributed under this chapter to make campaign-related expenditures without the permission of the commission;
- G. Knowingly made a false statement or material misrepresentation in any report or other document required to be filed under this chapter or chapter 13; or
- H. Otherwise substantially violated the provisions of this chapter or chapter 13.

The determination to revoke the certification of a candidate must be made by a vote of the members of the commission after an opportunity for a hearing. A candidate whose certification is revoked shall return all unspent funds to the commission within 3 days of the commission's decision and may be required to return all funds distributed to the candidate. In addition to the requirement to return funds, the candidate may be subject to a civil penalty under section 1127. The candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

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 remaining qualifying contributions and 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 bank accounts. All revenues contributed and distributed to certified candidates from the fund must be used for campaign-related purposes, as defined by the ~~The commission guidelines outlining permissible campaign-related expenditures.~~

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

- A. Within 3 days after certification, for candidates certified prior to March 15th 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 15th and April 15th 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 15th 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.

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. Amount of fund distribution. By July 1, 1999 of the effective date of this Act, and at least every 4 years after that date, the commission shall determine the amount of funds to be distributed to participating candidates based on the type of election and office as follows.

- A. For contested legislative primary elections, the amount of revenues to be distributed is the average amount of campaign expenditures made by each candidate during all contested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.
- B. For uncontested legislative primary elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all uncontested primary election races for the immediately preceding 2 primary elections, as reported in the initial filing period subsequent to the primary election, for the respective offices of State Senate and State House of Representatives.
- C. For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately

preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives.

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election.

E. For contested gubernatorial primary elections, the amount of revenues distributed is \$200,000 per candidate in the primary election and \$80,000 for the candidate in an uncontested primary election.

F. For gubernatorial general elections, the amount of revenues distributed is \$600,000 per candidate in the general election.

If the immediately preceding election cycles do not contain sufficient electoral data, the commission shall use information from the most recent applicable elections.

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 or privately supported candidate who meets the requirements of subsection 9-A an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to 2 times the amount originally distributed under subsection 8, paragraph A or C, whichever is applicable. Matching funds for certified gubernatorial candidates in a primary election are limited to 2 times the amount originally distributed under subsection 8, paragraph E. Matching funds for certified gubernatorial candidates in a general election are limited to the amount originally distributed under subsection 8, paragraph F.

9-A. Private Funding Option. 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 under subsection 8 if the candidate were qualified as a Clean Election candidate. A candidate making such an election shall be entitled to public matching funds under sub-section 9 in the same fashion as though the candidate had qualified as a Clean Election candidate.

10. Candidate not enrolled in a party. An unenrolled candidate who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 15th 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 subsections 7 and 8. Otherwise, an unenrolled candidate must submit the required number of qualifying contributions and the other required documents under subsection 4 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsection 8. Revenues for the general election must be distributed to the candidate no later than 3 days after certification.

11. Other procedures. The commission shall establish by rule procedures for qualification, certification, disbursement of fund revenues and return of unspent fund revenues for races involving special elections, recounts, vacancies, withdrawals or replacement candidates.

12. Reporting; unspent revenue. Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.

12-A. Required records. The treasurer shall obtain and keep:

A. Bank or other account statements for the campaign account covering the duration of the campaign;
 B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and
 C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee.
 The treasurer shall preserve the records for 2 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.

12-B. Audit requirements for candidates for Governor. The commission shall audit the campaigns of candidates for Governor who receive funds under this chapter to verify compliance with election and campaign laws and rules. Within one month of declaring an intention to qualify for public financing, a candidate for Governor, the campaign's treasurer and any other relevant campaign staff shall meet with the staff of the commission to discuss audit standards, expenditure guidelines and record-keeping requirements.

13. 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 or 9, the commission may permit certified candidates to accept and spend contributions, ~~reduced by any seed money contributions~~, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the ~~applicable amounts~~ distribution limits set by forth in subsections 3, 8 and 9 according to rules adopted by the commission.

14. Appeals. A participating candidate who has accepted contributions or made expenditures that do not comply with the 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. A candidate who has been denied certification as a Maine Clean Election Act candidate, the opponent of a candidate who has been granted certification as a Maine Clean Election Act candidate or other interested persons may challenge a certification decision by the commission or its executive director as follows.

A. A challenger may appeal . . .

Summary

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 \$100 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:	3,250	\$ 32,500

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 \$100 are acceptable.

Instead of turning checks into the commission, candidates will submit only the acknowledgment signed by each contributor as evidence of the payment and support. 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 private financial support must come in the form of qualifying contributions from voters within the candidate's own district. Distributions from the Clean Election Fund are reduced by one-half of the qualifying contributions collected.

The qualifying period for any candidate is amended to start whenever the candidate files a declaration of intent. 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 makes clear that no revenue from the Maine Clean election Fund may be pledged or applied to the collection of qualifying contributions.

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.