Agenda Item #1

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 27, 2009

Re: Proposed Rules for Final Adoption

Initiation of Rule-Making

In the 2009 session, the Legislature made some changes to the Maine Clean Election Act (MCEA) and campaign finance laws that required changes to the Commission's rules. Because the changes affected gubernatorial candidates who would be starting their campaigns this summer, the Commission staff thought it would be advisable to begin the rule-making process within a few weeks of the Legislature's adjournment. In addition, Commissioner Francis Marsano suggested some changes to Chapter 1, Section 3 regarding meeting procedures.

At a special meeting on June 15, 2009, the Commission agreed to accept public comment on the proposed changes. The relevant chapter laws are attached for your reference, but I included them with the materials for the June 15 meeting, so it may be unnecessary for you to review them a second time.

Under usual circumstances, changes to the Chapter 3 rules concerning the administration of the MCEA program would be considered "major substantive," so the changes would

need to be reviewed by the Legislature. In this case, however, the Legislature included language in the 2009 chapter laws specifying that changes to the Commission rules to implement the 2009 legislation would be routine technical. Therefore, you may finally adopt the rule changes at your September 8 meeting, and they will not be reviewed by the Legislature.

Comments from the Public

You held a public hearing on the proposed rule changes as part of your regular meeting on July 30, 2009. You received oral comments from Alison Smith of the Maine Citizens for Clean Elections, attorney Daniel I. Billings, and Joseph Greenier. I have attached a summary of the oral comments prepared by Cyndi Phillips. The deadline for written comment was August 14, 2009. The Maine Citizens for Clean Elections submitted written comments (attached).

Staff's Recommendations in Response to Comments Received

In response to the comments received from the public and some remarks made by Commission members on July 30, 2009, the Commission staff makes the following recommendations:

- For reasons expressed below, the Commission staff suggests <u>not</u> adopting the proposed Section 5(8) of Chapter 1 concerning standards for candidates' receipt of contributions from minors.

- As explained below, the staff has substantially revised the proposed rule (Chapter 3, Section 4(4)) regarding the Commission authorizing MCEA candidates to accept contributions if the Maine Clean Election Fund is short. To consider this revised rule, the staff recommends beginning a new rule-making (Agenda Item #3).

- As noted in the left margin, we have made some changes to the originally proposed Chapter 3 rules in response to the comments received from the Maine Citizens for Clean Elections.

Chapter 1, Section 5(8) – Contributions by Minors

The rationale for the proposed rule was that we occasionally receive questions from candidates regarding whether they may accept a particular contribution that has been received from a minor or that was made in the name of a minor. In addition, the Commission staff has come across instances when MCEA candidates reported receiving seed money contributions from individuals whom we suspect might be minors, and the staff has considered whether it would be appropriate to follow up with the candidate concerning the accuracy of the reported contributor.

In both sets of circumstances, the staff believed that the Commission would be in a stronger position if it had a written standard that specifically set forth what circumstances must be present for a candidate to report having received a contribution from a minor. While the standards in the proposed rule indeed could be applied to any contributor (whether minor or adult), we believed that the proposed rule had special relevance for minors because in some instances minors lack independent personal funds to make a contribution or could be influenced by their parents to contribute.

Nevertheless, because you expressed on July 30th concern that the rule could be an unnecessary regulation or could discourage political activity by minors, we recommend <u>not</u> adopting the proposed Chapter 1, Section 5(8).

Chapter 3, Section 2(3)(C) – Required $40,000 in Seed Money Contributions

In the 2009 legislative session, the Legislature adopted a new requirement for gubernatorial candidates seeking MCEA funding: collecting $40,000 in seed money contributions. The legislation was sponsored by the Speaker of the House. The intent of the bill was to introduce a new fundraising requirement that would increase the qualifications a gubernatorial candidate would have to meet to receive public campaign funding. Candidates collecting these required contributions would need to obtain written acknowledgements from each contributor affirming "that the contribution was made with the person's personal funds ...." 21-A M.R.S.A. § 1125(2-B) (underlining added)

The Commission staff closely followed this bill in committee, and had multiple conversations with the staff of the Speaker about the bill. We believe that the intention of the Legislature was that this would be a new fundraising requirement, and that the Legislature did not intend that in-kind contributions would count toward the $40,000 requirement. In addition to the legislative intent, the staff believes that counting in-kind contributions would create difficult valuation problems in which the Commission might be called upon to decide on whether the reported value of an in-kind contribution was accurate.

For these reasons, the staff recommends amending the rule to clarify that only contributions of cash would count toward the $40,000 requirement. The staff has consulted with the Commission's counsel regarding this change. She believes this interpretive amendment is within the Commission's purview as the agency administering

the Maine Clean Election Act program. She also believes that the current language of the proposed rule is not substantially different than the language originally proposed on June 15, 2009.

Chapter 3, Section 4(4) – Permitting MCEA Candidates to Accept Campaign Contributions Due to Budget Shortfall

We recommend not adopting the originally proposed Chapter 3, Section 4(4), which would authorize the Commission to permit MCEA candidates to accept contributions if there were insufficient money in the Maine Clean Election Fund. On July 30th, the Commission received persuasive comments that the rule should address additional issues.

The staff has revised the rule to be more comprehensive. Unfortunately, under the Maine Administrative Procedure Act (5 M.R.S.A. § 8052(5)(B)), you cannot finally adopt the revised rule on September 8, because it is substantially different from the originally proposed rule. The staff therefore suggests initiating a new rule-making under which the Commission would invite comments on the revised Chapter 3, Section 4(4). This suggestion is discussed in Agenda Item #3.

Proposed for final adoption at 9/8/09 meeting

94-270 COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

Chapter 1: PROCEDURES

SECTION 2. ORGANIZATION

1. **Commission**. The Commission on Governmental Ethics and Election Practices is an independent agency of the State, consisting of five (5) members appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature in accordance with Title 1, §1002, subsection 1. The Commission members will elect one member to serve as Chair. Except for the Chair, the members of the Commission have no individual authority.

2. **Office**

   A. The Commission employs such staff as may be authorized by the Legislature. A Director supervises the staff and is responsible for all day-to-day operations. In the interim between Commission meetings, the Director reports to the Chair, who acts on behalf of the Commission on certain administrative matters. The Commission's offices are located ~~in the Public Utilities Commission Building at 242 State Street~~ at 45 Memorial Circle in Augusta, where any filing or written submission may be made between the hours of 8 a.m. and 5 p.m. on any day when state government offices are open, except that filings by facsimile or electronic means, where otherwise permitted by statute or rule, may be transmitted at any time. The office has a mailing address of 135 State House Station, Augusta, Maine 04333.

   B. All records of the Commission are maintained in these offices, where they are available for inspection or copying, except as particular records are made confidential by law. The cost of copying Commission documents is set by the Director of the Commission, subject to reasonable limitations and approval of the Commission.

   C. During any period when the position of Director is vacant, the Chair of the Commission will appoint an acting Director.

SECTION 3. MEETINGS

1. **Regular Meetings**. ~~The Commission shall meet at least once per month in any year in which primary and general elections are held.~~ The Commission shall meet at least once each month in any year in which primary and general elections are held. The Commission Chair, or if a Chair has not yet been selected, the Senior Commissioner in terms of service on the Commission, shall set a date for a meeting in January of the year of required monthly meetings. The dates of monthly meetings for each month of the year shall be selected at that meeting and shall be adhered to unless changed at a properly called meeting. In years not meeting the foregoing requirements, the Chair shall call for an organization meeting to set monthly meeting dates which best appear to meet the needs of the Commission.

2. **Special Meetings**. The Commission may meet at any time at the call of the Secretary of State, the President of the Senate, the Speaker of the House of Representatives, the Chairman of the Commission, or a majority of its members. ~~Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting. If written notice is not feasible, telephone notice satisfies the foregoing requirement.~~ Each member of the Commission must have at least 24 hours notice of the time, place and purpose of the meeting in writing unless written notice is not possible. In such case, notice must be given by the staff by phone, fax, e-mail or other means available. Each Commissioner may notify the staff of his or her preference for notification and the staff shall prepare a log of its actions in notifying Commissioners.

3. **Agenda**. The Director will prepare a written agenda for each meeting of the Commission. The agenda will contain items of business to be considered, staff findings and recommendations, and will include the date, time and location of the meeting. ~~When possible, the agenda will be mailed to each Commission member at least 7 days before the meeting.~~ The agenda must be mailed to each Commissioner at least 7 days before the meeting unless a different schedule is approved by the Chair who shall provide notice to the Commissioners of the change and the reasons therefore.

4. **Notice**. In addition to the public notice required by the public meetings law, 1 M.R.S.A. §406, notice of Commission meetings shall be given to those directly involved in a matter pending before the Commission, as follows:

   A. **Legislative Ethics**. When a properly filed request or referral is made for an advisory opinion on a question of legislative ethics, notice that the matter has been placed on the agenda for a Commission meeting will be given by mail to the Legislator whose circumstances or conduct is at issue, or to the Presiding Officer of either House referring the inquiry. When a complaint alleging a violation of the laws on legislative ethics is filed, the Legislator will be informed promptly of the nature of the allegations and the existence of any investigation by the Commission. Notice that the matter has been placed on the agenda for a Commission hearing will be given by certified mail to both the Legislator and the complainant not less than 10 days before the date set for a hearing.

   B. **Campaign Reports and Finances Law; Lobbyist Disclosure Law**. Notice of the Commission's consideration of any noncompliance with the requirements of the Campaign Reports and Finances Law, the Maine Clean Election Act, or Lobbyist Disclosure Law will be provided to any person or organization alleged to have committed a violation and to any person who has officially requested a Commission investigation or determination, except that notice of the Commission's consideration of issuing subpoenas to conduct an investigation need not be given.

   C. **Contents of Notice**

      (1) The notice will include the date, time, and location of the Commission meeting. If mail notice of a meeting is not feasible, the staff will make best efforts to give oral notice to Commission members or to those entitled to notice under this provision.

5. **Public Meetings**. All meetings, hearings or sessions of the Commission will be open to the general public unless, by an affirmative vote of at least 3 members, the Commission requires the exclusion of the public, pursuant to 1 M.R.S.A. §1005 or 1 M.R.S.A. §1013(3).

6. **Quorum**. Every decision of the Commission must be made at a meeting at which at least 3 members of the Commission are present and voting. When it is impossible or impractical for a member of the Commission to travel to Augusta to attend a meeting in person, the member may participate in the meeting by telephone. That member will be considered present at the meeting and part of the quorum.

   At least 2 members must be present in person for the conduct of a meeting or public hearing before the Commission. If fewer than 3 members are present in person for a hearing, however, objections to rulings of the presiding officer concerning the conduct of the hearing must be preserved until a meeting of the Commission at which a quorum is present in person. The presiding officer at a meeting or public hearing must be present in person.

7. **Minutes**

   A. The Director will prepare minutes of each business meeting of the Commission. These minutes will be the official record of Commission meetings, and will accurately record all matters considered.

   B. The minutes will record any executive session of the Commission and its subject matter, but will not report the proceedings of the executive session. Likewise, minutes will not be taken of any public hearing held by the Commission, since hearings are separately recorded.

SECTION 6. CONTRIBUTIONS AND OTHER RECEIPTS

1. The date of a contribution is the date it is received by a candidate, an agent of the candidate, a candidate's committee, a party committee and its agents, or a political action committee and its agents.

2. A loan is a contribution at the time it is made unless the loan was made by a financial institution in the State of Maine in the ordinary course of business. Loans continue to be contributions until they are repaid. Loans are subject to the candidate contribution limitations, except for loans made by the candidate, the candidate's spouse, or a financial institution in the State of Maine in the ordinary course of business. The Commission may consider any reported loan to be a cash contribution if it remains unpaid four years after the election in which it was incurred.

3. Candidates and political action committees must report the name, address, occupation and employer of each individual contributor who gives, in the aggregate, more than $50 for the reporting period. The reporting is required for private contributions raised by privately financed candidates and for seed money contributions to candidates participating in the Maine Clean Election Act. Candidates, political action committees, and party committees must make a reasonable effort to obtain the employment information of the contributor. If a candidate or committee is unable to obtain the information from the contributor in response to a request, the candidate or committee

shall indicate "information requested" in the occupation and employer sections of the campaign finance report.

4. Unless specifically exempted under Title 21-A M.R.S.A. §§ 1012 and 1052 or this section, the provision of any goods or services without charge or at a charge that is less than the usual and customary charge for such goods or services is an in-kind contribution. Examples of such goods and services include, but are not limited to: equipment, facilities, supplies, personnel, advertising, and campaign literature. If goods or services are provided at less than the usual and customary charge, the amount of the in-kind contribution is the difference between the usual and customary charge and the amount charged the candidate or political committee.

5. An employer that has authorized an employee to provide services without charge to a candidate or political committee during the employee's paid work-time has made an in-kind contribution to the candidate or political committee. No contribution has been made if the employee is providing services as a volunteer outside of the employee's paid work-time.

6. A commercial vendor that has extended credit to a candidate or political committee has not made a contribution if the credit is extended in the ordinary course of the vendor's business and the terms are substantially similar to extensions of credit made to nonpolitical customers that are of similar risk and size of obligation. The Commission shall presume any debt that remains unpaid more than six months after the election in which the debt was incurred to be a contribution to the candidate or political committee unless the candidate or committee provides clear and convincing evidence to the Commission that they intend to raise funds or take other measures to satisfy the debt. The Commission shall determine whether any debt that remains unpaid for more than four years after the election should be deemed a contribution to the candidate or committee. The Commission may take into consideration any evidence it believes is relevant, including evidence that the creditor did not intend to make a contribution to the candidate or committee or that the candidate or committee is unable to pay the debt.

7. For the purposes of the limitations imposed by 21-A M.R.S.A. §1015(1), 21-A M.R.S.A. §1015(2), 21-A M.R.S.A. §1015(3), and 21-A M.R.S.A. §1056, the following guidelines shall apply:

Ch. 286, § 10

A. ~~All contributions made to a candidate through the day of the primary election for which the candidate seeks office are deemed to be made in the primary election.~~For all contributions received through the day of the primary election by candidates enrolled in a political party, the candidate shall designate on the applicable campaign finance report whether the candidate received the contribution for purposes of influencing the primary or the general election. If a candidate receives a contribution before the primary election and designates it for the general election, the candidate must deposit the contribution in an account that is separate from all funds received for the primary election and may not use the contribution in any way to promote the candidate's nomination in the primary election.

B. Notwithstanding division (c) below, if a candidate loses in the primary, all contributions made to that candidate for the purpose of liquidating debts and liabilities associated with the candidate's candidacy are deemed to be made in the primary election.

C. All contributions made to a general election candidate from the day after the primary election through the date of the general election ~~for which the candidate seeks office~~ are deemed to be made for~~in~~ the general election.

D. Notwithstanding division (e) below, all contributions made after the general election to a general election candidate for the purpose of reducing debts and liabilities associated with the candidate's candidacy are deemed to be made in the general election.

E. All contributions made after the day of the general election to a candidate who has liquidated all debts and liabilities associated with that election are deemed to be made in support of the candidate's candidacy for a subsequent election.

F. Subparagraphs A through E above shall apply to any write-in candidate who has qualified under 21-A M.R.S.A. §723, or who has received contributions or made expenditures with the intent of qualifying as a candidate.

8. An individual who is 17 years old or younger (a minor) may make contributions to a candidate if

A. the decision to contribute is made knowingly and voluntarily by the minor;

The staff recommends not adopting the proposed rule.

B. the funds, goods, or services contributed are owned or controlled by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, funds withdrawn by the minor from a financial account opened and maintained in the minor's name, or a gift not excluded by paragraph C; and

C. the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed to a candidate, or is not in any other way controlled by another individual.

~~SECTION 11. REPORTS OF BALLOT QUESTION CAMPAIGN ACTIVITY BY PERSONS AND ORGANIZATIONS OTHER THAN POLITICAL ACTION COMMITTEES~~

Ch. 190, § A-20

~~When a person or organization is required under 21-A M.R.S.A. §1056-B to file reports because of contributions or expenditures of more than $1,500 made in support of or in opposition to a ballot question, the reports must be filed according to the following schedule:~~

~~1. **Quarterly Reports.** Reports must be filed by 11:59 p.m. on the following deadlines until the date of the election on which the question is on the ballot:~~

~~A. A report must be filed on January 15th and be complete as of January 5th;~~

~~B. A report must be filed on April 10th and be complete as of March 31st;~~

~~C. A report must be filed on July 15th and be complete as of July 5th; and~~

~~D. A report must be filed on October 10th and be complete as of September 30th.~~

~~2. **Pre- and Post-Election Reports**. The person or organization must also file the following reports by 11:59 p.m. on the following deadlines:~~

~~A. A report must be filed on the 11th day before the election is held and be complete as of the 14th day before the election.~~

~~B. A report must be filed on the 42nd day after the election is held and be complete as of the 35th day after the election.~~

~~3. **24-Hour Reports**. Any contribution or expenditure in excess of $500 made after the 14th day before the election and more than 24 hours before the election must be reported within 24 hours of that contribution or expenditure or by noon of the first business day after the contribution or expenditure, whichever is later.~~

SECTION 12. CAMPAIGN CONTRIBUTIONS DURING LEGISLATIVE SESSION

1. **Seed Money Contributions**. Legislators and other individuals covered by Title 1 M.R.S.A. §1015(3)(B) may not intentionally solicit or accept a seed money contribution from a lobbyist or lobbyist associate during any period of time in which the Legislature is convened until final adjournment.

Ch. 286, § 1

2. **Acceptance of Contributions through Political ~~Action~~ Committees**. ~~During a legislative session, political action committees that are closely associated with a Legislator, such as committees organized to elect a candidate or Legislator to a leadership position or committees organized to elect the candidates of a legislative caucus, may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate, or employer. During the legislative session, these political action committees may accept contributions from individuals and organizations that are not lobbyists, lobbyist associates, and their employers. Lobbyists, lobbyist associates, and employers may not contribute to political action committees closely associated with a Legislator during a legislative session, unless their contributions are segregated in a fund that is not used to influence the election or defeat of any incumbent Legislators.~~ During a legislative session, lobbyists, lobbyist associates, and their employers may not give, offer or promise a contribution to a political action committee, ballot question committee, or party committee of which the Governor, a member of the Legislature, a constitutional officer, or staff or agent of these officials is a treasurer, officer, or primary fund-raiser or decision maker. During the session, these political committees may not solicit or accept a contribution from lobbyists, lobbyist associates, or their employers, but they may accept contributions from other individuals and organizations.

3. **Making a Contribution through a Political Action Committee**. During a legislative session, an organization that employs a lobbyist may not make a contribution through a political action committee with which the organization is affiliated or direct that the affiliated political action committee make a contribution to a Legislator.

SECTION 2. PROCEDURES FOR PARTICIPATION

1. **Declaration of Intent**. A participating candidate must file a Declaration of Intent within five days of collecting qualifying contributions. The Commission will provide a form for this purpose.

2. **Content**. The Declaration of Intent must include the following information:

   A. an affirmation that the candidate is seeking certification as a Maine Clean Election Act candidate;

   B. an affirmation that the candidate understands that any qualifying contributions collected more than five days before filing the Declaration of Intent will not be counted toward the eligibility requirement;

   C. an affirmation that the candidate has not accepted any contributions, except for seed money contributions, after becoming a candidate;

   D. an affirmation that the candidate has disposed of any campaign surplus before becoming a candidate for the new election, as required by paragraph 3.C [Campaign Surplus] of this section;

   E. an affirmation that if the candidate has any campaign deficit, that the candidate will not accept contributions to repay that deficit as a participating candidate or certified candidate, except that the candidate may forgive any campaign loans to himself or herself made during any previous campaigns;

   F. an affirmation that the candidate will continue to comply with applicable seed money restrictions and other requirements of the Act including, but not limited to, procedures for collecting qualifying contributions;

   G. an affirmation that the candidate has read and will comply with the Commission's guidelines on permissible expenditures; and

   H. authorization by the candidate for the Commission, its agents or representatives to conduct financial audits of the candidate's campaign financial records and account(s).

3. **Seed Money Restrictions**

   A. **General**. After becoming a candidate and before certification, a participating candidate may collect and spend only seed money contributions. The restrictions on seed money contributions apply to both cash and in-kind contributions.

B. **Total Amount**

(1) A participating candidate must limit the candidate's total seed money contributions to the following amounts:

Ch. 363, § 2

(a) ~~fifty~~ two hundred 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.

(2) Notwithstanding any other provision of this chapter, a candidate may carry forward to a new candidacy of that candidate campaign equipment or property, subject to the reporting requirements of Title 21-A, chapter 13 [Campaign Reports and Finances].

Ch. 363, § 5

(3) The Commission periodically will review these limitations and, through rulemaking, revise these amounts to ensure effective implementation of the Act.

Notes: staff has deleted "during the qualifying period" in response to comments received.

Also, staff recommends inserting language to address an issue raised by comments. The insertions would clarify that only cash contributions would count toward the required $40,000 in seed money contributions. In-kind contributions would not count (e.g., labor, office equipment).

C. **Required seed money for gubernatorial candidates.** In addition to the other requirements for certification, a candidate for Governor seeking to qualify for Maine Clean Election Act funding shall collect at least $40,000 in seed money contributions from registered voters in Maine. Only cash seed money contributions count toward the $40,000 requirement. The candidate shall obtain documentation of the contributions as required by the Act [§1125(2-B)].

~~C.~~ D. **Campaign surplus**. A candidate who has carried forward campaign surplus according to Title 21-A, chapter 13, subchapter II [§1017(8) and §1017(9)], and who intends to become a participating candidate, must dispose of campaign surplus in accordance with the requirements of Title 21-A, chapter 13, subchapter II [§1017(8)]; provided, however, that a candidate may carry forward only those portions of campaign surplus that comply with the provisions of this Act regarding seed money contributions [§§ 1122(9) and 1125(2)]. Any campaign surplus (excluding campaign equipment or property) carried forward under this provision will be counted toward that candidate's total seed money limit.

INFORMATIONAL NOTE: The Commission will provide educational materials to all former candidates who have a campaign surplus describing the requirement that individuals must dispose of campaign surplus to remain eligible for participation as a Maine Clean Election Act candidate.

~~D.~~ E. **Return of Contributions Not in Compliance with Seed Money Restrictions**. A participating candidate who receives a contribution exceeding the seed money per donor restriction or the total amount restriction must immediately return the contribution and may not cash, deposit, or otherwise use the contribution.

~~E.~~ F. **Case-by-Case Exception**. A participating candidate who has accepted contributions or made expenditures that do not comply with seed money restrictions may petition the Commission to remain eligible for certification as a

Maine Clean Election Act candidate. The Commission may approve the petition and restore a candidate's eligibility for certification if the candidate successfully establishes all of the following criteria:

(1) the failure to comply was the result of an unintentional error;

(2) the candidate immediately returned all contributions that did not comply with seed money restrictions or paid for goods or services contributed that did not comply with seed money restrictions;

(3) the candidate petitioned the Commission promptly upon becoming aware of the unintentional error; and

(4) the failure to comply did not involve expenditures by the participating candidate significantly in excess of seed money total amount restrictions or otherwise constitute systematic or significant infractions of seed money restrictions.

~~F.~~ G. After becoming a candidate and prior to certification, accepting a loan from any source including a financial institution and spending money received in the form of a loan, are violations of the seed money restrictions of the Act.

~~G.~~ H. **Other**. A seed money contributor may also make a qualifying contribution to the same participating candidate provided that the contributor otherwise meets the requirements for making a qualifying contribution.

4. **Qualifying Contributions**

A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on forms provided by the Commission.

The forms must include:

(1) the name, residential address and signature of the contributor;

(2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;

(3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;

(4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and

(5) the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services

were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign; the form must also include the residential and mailing addresses and telephone number of the circulator.

B. **Required Number of Qualifying Contributions**. A participating candidate must obtain the number of qualifying contributions during the qualifying period as required by the Act [§1122(7); §1122(8); §1125(3)].

C. **Exchanges for Qualifying Contributions Prohibited**

(1) A participating candidate or an agent of that candidate may not give or offer to give a payment, gift, or anything of value in exchange for a qualifying contribution.

(2) This provision does not prohibit a participating candidate or that candidate's agent from collecting qualifying contributions at events where food or beverages are served, or where campaign promotional materials are distributed, provided that the food, beverage, and campaign materials are offered to all persons attending the event regardless of whether or not particular persons make a qualifying contribution to the participating candidate.

(3) This provision does not prohibit a candidate from using seed money to pay the fee for a money order provided the qualifying contributor pays the $5 amount reflected on the money order as permitted by 21-A M.R.S.A. §1125(3).

D. **Checks Drawn on Business Accounts**. Qualifying contributions must be made with the personal funds of the contributor. The Commission will not count a check drawn from an account with a business name toward the eligibility requirements, unless the name of the contributor is included in the name of the account or the candidate submits a written statement from the contributor indicating that he or she uses the business account for personal expenses.

E. **Family Members**. Family members, domestic partners, and live-in caregivers who reside in a single household may make qualifying contributions in the form of a single check or money order of more than $5 provided that:

(1) all contributors sign the receipt and acknowledgement form;

(2) all contributors are registered to vote at the address of the household; and

(3) all contributions are made with the personal funds of the contributors.

F. **Verification of Registered Voters**

(1) Before submitting qualifying contributions to the Commission, a participating candidate must establish that contributors who made qualifying contributions to that candidate are registered voters.

Ch. 190, § B-1, 21-A M.R.S.A. § 1125(3)

(2) For qualifying contributions made by check or by money order, a ~~A~~ participating candidate must obtain written verification from the Registrar of the number of persons providing qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

Note: staff has inserted "qualifying" in response to comments

(3) For qualifying contributions made over the Internet, the Commission may establish an automated system by which the contributor can verify his or her voter registration based on data derived from the Central Voter Registration System. If the contributor is unable to verify the voter registration, the participating candidate must obtain written verification from the Registrar.

~~(3)~~ (4) Upon request of a participating candidate, and within 10 business days after the date of the request, the Registrar must verify the names of contributors of qualifying contributions who are registered voters within the electoral division for the office the candidate is seeking.

G. **Timing of Verification**. For purposes of this chapter, the Commission will deem verification of registered voters by the Registrar at any time during the qualifying period to be an accurate verification of voter registration even if the registration status of a particular voter may have changed at the time the Commission determines certification of the participating candidate. Proof of voter verification submitted after the qualifying period will not be accepted by the Commission and those qualifying contributions will not be counted toward the number required for certification.

SECTION 3. CERTIFICATION OF PARTICIPATING CANDIDATES

1. **Request for Certification**. A participating candidate may submit a completed request for certification to the Commission at any time during the qualifying period but not later than 5:00 p.m. on the last day of the relevant qualifying period. The request will be deemed complete and considered for certification only when the candidate has submitted to the Commission:

Note: in response to comments, the proposed rule has been amended to clarify that the list in paragraph B refers to *qualifying* contributions. Also, the paragraphs have been re-ordered in response to comments.

A. the qualifying contributions attached to the corresponding original receipt and acknowledgement forms that have been verified by the Registrar(s) of the electoral division for the office the candidate is seeking;

B. a list of all ~~contributors~~ individuals making qualifying contributions and their town or city of residence, sorted alphabetically by the contributor's last name;

C. for gubernatorial candidates, the following documentation for required seed money contributions as required by the Act ([1125(2-B)]: the acknowledgement

Ch. 363, § 3

forms signed by the contributors of seed money, list of seed money contributions, photocopies of checks or money orders received from seed money contributors, and bank or merchant account statements which list contributions made by credit or debit card;

~~C.~~ D. a seed money report of contributions, expenditures, and obligations made or incurred after becoming a candidate, including a report of any unspent seed money; and

~~D.~~ E. a signed request for certification on a form provided by the Commission which contains an affirmation by the candidate that he or she has complied with all seed money and qualifying contribution requirements, has established a separate federally-insured bank account for campaign purposes and, if applicable, that any person who circulated receipt and acknowledgement forms and collected qualifying contributions acted with the candidate's knowledge and consent, and any other information relevant to the certification process.

~~E.~~ F. A candidate may request an extension of time to comply with paragraphs ~~B, C, and D~~B, D, and E. The Commission staff shall grant all reasonable requests or state in writing the reasons for denying the request. The Commission and the Commission staff may not grant an extension of time to comply with paragraph A or C.

2. **Order of Review**. The Commission will review candidate requests for certification in the order in which they are received, except that it will give priority to those candidates who are in a contested primary election.

3. **Unspent Seed Money**. In order to distribute funds expeditiously, the Commission will deduct from the initial distribution from the Fund to a certified candidate an amount equal to the amount of unspent seed money reported by that candidate.

4. **Certification**. The Commission will certify a candidate as a Maine Clean Election Act candidate upon the participating candidate's satisfaction of the requirements of the Act [§1125] and this chapter.

5. **Appeals**. Any appeals challenging a certification decision by the Commission must be in accordance with the Act [§1125(14)].

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. **Fund Distribution**

A. **Establishment of Account**. Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.

B. **Manner of Distribution of Fund**. The Commission will authorize distribution of revenues from the Fund to certified candidates by the most expeditious means

practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:

(1) checks payable to the certified candidate or the certified candidate's political committee; or

(2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

2. **Timing of Fund Distributions**

A. **Distribution of Applicable Amounts**. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.

B. **Matching Fund Allocations**. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.

C. **Advances**

(1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.

(2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.

3. **Matching Fund Provision**

A. **General**. The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].

B. **Matching Fund Computation Involving Only Certified Candidates**

(1) For each certified candidate, the Commission will:

(a) add to the initial distribution amount for that election:

(i) the sum of any matching funds previously provided for that election, and

(ii) the sum of independent expenditures made in support of each certified candidate; and

(b) subtract the sum of independent expenditures made in opposition to each certified candidate.

(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.

(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.

C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures**. In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:

(1) The Commission will first determine the applicable amount for the nonparticipating candidate

(a) by adding:

(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or unspent funds carried forward from a previous election to the current election, whichever is greater, and

(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and

(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.

(2) The Commission then will determine the applicable amount for the certified candidate

(a) by adding:

(i) the amount of the initial distribution for that election;

(ii) the sum of independent expenditures made in support of the certified candidate;

(iii) the sum of matching fund allocations already provided to the certified candidate; and

(iv) the amount of:

a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or

b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or

c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and

(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.

(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.

D. **Matching Fund Computation Not Involving a Nonparticipating Candidate**. In races in which there are two or more certified candidates and at least one nonparticipating candidate,

(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and

(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then

(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.

E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.

F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe -- he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.

Ch. 363, § 7

G. **Matching Fund Cap**. Matching funds are limited as provided in the Act [§1125(9)]. ~~to 2 times the amount originally distributed to a certified candidate~~

~~from the Fund for that election.~~ Certified candidates are not entitled to cumulative matching funds for multiple opponents.

H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.

I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.

The staff recommends not adopting the proposed rule, because the language has been moved to the proposed Chapter 3, Section 4(4) that would be considered as part of a new rule-making (Agenda Item #3).

K. **Treatment of Authorized Contributions to Certified Candidates.** If a certified candidate has been authorized to collect and spend contributions pursuant to section 1125(13) of the Act and Section 4(4) of this chapter, the amount of private contributions that the candidate has been authorized to spend shall be treated as Fund revenues received by the candidate for the purpose of calculating matching funds.

Advance Purchases of Goods and Services for the General Election

A. If, prior to the primary election, a candidate purchases or receives in-kind contributions of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for any certified candidate in the same race.

B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.

C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.

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

To: Commission Members

From: Cyndi Phillips, Commission Assistant
Jonathan Wayne, Executive Director

Date: August 27, 2009

Re: Summary of Comments Received from the Public at the July 30, 2009 Hearing on Proposed Amendments to Commission Rules

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Testimony of Alison Smith, Co-Chair of the Maine Citizens for Clean Elections

Alison Smith stated that the Maine Citizens for Clean Elections (MCCE) would be submitting final thoughts in writing at a later date, but wanted to make some comments today.

[Chapter 3, Section 4(4)] She said the MCCE's largest area for concern is the rule addressing what happens if the Maine Clean Election Fund runs short. She said the proposed rules are "nowhere near fleshed out enough to actually give a candidate any sort of confidence that they understand how that would work" and that while some of the questions are answered in the proposed rule, "some of the big questions are not addressed." She said that candidates who are considering running in 2010 as MCEA candidates need to know what would happen if the Fund were to run short.

[Chapter 1, Section 6(8)] Ms. Smith also expressed concern over the new Chapter 1 rule regarding contributions from a minor child. She said the rationale for the proposed rule

was unconvincing, and that the proposed language could apply to all contributions. She said the rule needs to be clear and unique to contributions from minors. She thought that there may be value in a rule addressing funds that are owned by a minor in a trust, but controlled by a fiduciary who makes the decision to contribute the funds. Ms. Smith said that if the Commission has a rule, it should be crisp and it should address something relevant and unique to the situation of a minor.

Ms. Smith addressed other proposed changes to the Chapter 3 Rules:

- Section 2(3)(C) – she suggested striking the words "during the qualifying period" because candidates can collect seed money contributions before the beginning of the qualifying period (*i.e.*, the period in which $5 qualifying contributions may be received)
- Section 2(4)(F)(3) – Ms. Smith suggested inserting the word "qualifying" before "contributions" to distinguish them from traditional campaign contributions
- Section 3(1)(B) – she suggested that the rule should address what documentation candidates would need to submit to the Commission to support the value of an in-kind contribution received. Ms. Smith stated that to her recollection in-kind contributions were never discussed in the Maine Legislature when the topic of mandatory seed money came up.
- Section 3(1)(C) – Ms. Smith said that the Commission should clarify that this section applies to people making qualifying contributions and that the four paragraphs in Section 3(1) should be re-ordered so that provisions relating to qualifying contributions are grouped together.

[Chapter 3, Section 4(4)(A)] Ms. Smith addressed the rule regarding MCEA candidates collecting contributions if the Maine Clean Election Fund has fallen short. She stated that in most cases candidates collect seed money during the primary election period. So, the rule should specify that any seed money received from a contributor will be counted toward the contributor's limit for the *primary* election. Ms. Smith also suggested deleting the phrase "during the qualifying period" because seed money can be collected before the beginning of the qualifying period.

[Chapter 3, Section 4(4)(C)] Ms. Smith said that the Maine Citizens for Clean Elections agrees that MCEA expenditure guidelines should apply to expenditures of contributions collected by certified MCEA candidates if the Fund runs short. Even if a candidate is authorized to accept contributions, the candidate remains a certified MCEA candidate. It would be difficult to treat pots of money in different ways. It would be a good practice that if you sign up to be an MCEA candidate that you be prepared to remain an MCEA candidate all the way through. Having a rule that would say something different would only invite monkey business when dealing with enforcement issues about how the candidate spent the money. The point of allowing a candidate to make up the money that the Commission is not able to pay out is not to, then, blow the campaign wide open and to change the rules. It is to allow the candidate to run the MCEA campaign that they signed up to run.

[Chapter 3, Section 5(3)(K)] Ms. Smith expressed that "we have some concern" about the provision that if candidates are authorized to collect and spend contributions, the amount of private contributions will be treated as MCEA payments for purpose of calculating matching funds. She stated that "this is one of those areas that raises more questions." She raised a hypothetical example of a MCEA candidate who would normally receive an initial payment of $2,000, but who only received $1,000 because of insufficient money in the Fund. She asked whether the threshold for the opposing privately financed candidate to file an accelerated report would also be reduced to $1,000. Because the rule does not address that issue, "that indicates that maybe that hasn't been thought through quite well enough."

She stressed the importance of looking at this section again in a timely fashion so that candidates are well aware up front what they may be facing if the public funds are not available.

Testimony of Attorney Daniel I. Billings, Esq.

[Chapter 3, Section 4(4)] Daniel I. Billings, Esq. stated that the proposed rule is fine as far as it goes, but he believed it did not answer some questions that candidates need to see addressed. He said that the uncertainty of what would happen if there's insufficient money in the Fund is a significant cause for concern. He stressed the importance of having these questions answered before the election season begins. He said if the decisions are made now, people would be less likely to attribute partisan considerations to the Commission.

Mr. Billings said that initially he had constitutional concerns about applying the expenditure guidelines to candidates' spending of private contributions. After thinking about it, he concluded that the Commission could apply expenditure guidelines in this case to candidates who made a voluntary decision to run a publicly funded campaign.

Practically, the Commission could require candidates to put contributions in a separate account and *not* apply the guidelines to those funds, but that might raise administrative difficulties. Even if the contributions are put in a separate account, money is fungible and it is really one campaign. Having a blanket rule for both MCEA funds and traditional campaign contributions would certainly be easier to apply.

In response to a question from Commissioner Marsano about dividing the reduced payments between legislative and gubernatorial races, Mr. Billings said it depends on how much the Fund is short. If the Fund is a little short, the Commission may wish to reduce payments to gubernatorial candidates only, because it may be easier for gubernatorial candidates to gear up to raise private funds. On the other hand, if the reduction were made across the board for all candidates (legislative and gubernatorial), the impact might be slight. He said not having the "what-if's" answered in time for the election season would discourage some candidates from applying for public funding.

In response to a concern expressed by Commissioner Youngblood, Mr. Billings said that the current statute would not allow an MCEA candidate to opt out of the public financing program if they were concerned about not receiving matching funds due to a shortfall. The

matching funds payments are an important part of making the public financing program work. If it weren't for the matching funds, fewer candidates would participate in the system. The matching funds are important not just in response to a traditionally financed opponent, but also in response to large independent expenditures by PACs and party committees in key races.

Mr. Billings said that he would prefer to see that reductions be made in the initial payments to candidates (in June) *across the board.* The Commission should set aside money for matching funds for two reasons. First, matching funds are key to making the whole system work. Second, if the Commission tells the legislative candidates in June that they need to raise, for example, $1,000, that is fairly easy. If the legislative candidates are told in October that they need to raise $1,000 so that they can spend matching funds, that's pretty difficult. If candidates have to raise the funds in the last 10 days before the general election, that may encourage candidates to do things they shouldn't in the heat of the campaign to raise the money, whereas if the fundraising is in June the candidate can raise the funds in a more methodical way. If candidates expect that they might need to raise contributions in order to spend matching funds, some candidates would opt out of the system.

Testimony of Joseph Greenier

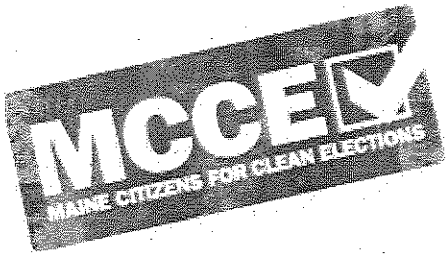
Joseph Greenier suggested that MCEA funds "should be there" for legislative candidates. A candidate should not be able to receive public funding for one office in a primary

election and then receive public funding for another office in the general election. He stated that this happened in the 2006 Governor's race.

Additional Comments by Alison Smith

In response to questions from Commissioner Marsano, Alison Smith said that the Maine Citizens for Clean Elections had not discussed the choices for reducing the payments to MCEA candidates if there is a shortfall. She said the Commission should make the decisions soon. She said that the Commission might decide that the fairest, simplest, best way is that the reduction would be applied to all candidates, which would be fair and would minimize the effect on any one candidate. However, that might not be the most practical thing.

Ms. Smith recommended that the rule on MCEA candidates raising contributions should address how candidates can dispose of contributions that they raised but did not spend. She believed the rule should also address whether a candidate may use his or her own money without limitation should there be a shortfall.



To: Commission on Governmental Ethics and Election Practices
Re: Clean Election Act Rulemaking
Date: August 14, 2009

Thank you for the opportunity to comment on these proposed rules. This written testimony supplements our oral testimony delivered at the hearing on July 30th, 2009.

Our biggest concerns as we review the proposed Chapter 3 rule changes lie in the sections that deal with what happens if the Fund runs short. The statute states:

> *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-A [INITIAL DISTRIBUTIONS] or 9 [MATCHING FUNDS], the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than $750 per donor per election for gubernatorial candidates and $350 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 8-A [INITIAL DISTRIBUTIONS] and 9 [MATCHING FUNDS] according to rules adopted by the commission.*

Our fervent hope is that the Legislature is willing and able to fully fund the program so that this event does not occur. That being said, we do think that the level of concern among legislators, administrators and potential candidates about the state budget does demand that the rules be fleshed out in case a shortfall does occur in 2010.

The statute, while specific as to the limits of this fundraising, leaves the logistics to the Commission to work out in rulemaking. The current rule simply says that if a shortfall occurs, the Commission would notify candidates that they could raise and spend contributions and would specify the "timeline and procedures for compliance" in that notice. Clearly, candidates can't wait until the time of an actual shortfall to know how this limited private fundraising would work, so this rulemaking is timely.

We are very concerned that the proposed rules beg more questions than they answer. We believe that much more work has to be done to come up with rules that fully flesh out how the limited private fundraising would be carried out by Clean Election candidates should that situation come about, and we suggest the Commission actively solicit input from a range of people involved with campaigns to make sure the final rules are adequate. Since there was

relatively little public testimony at the hearing on July 30th, the Commission might consider convening a stakeholder meeting to make sure all the potential issues are identified.

At the July hearing, attorney Dan Billings recommended that the Commission make some policy decisions now about how any shortfall would be handled during the election, for example, holding back initial distributions in order to preserve matching funds, cutting distributions to either legislative or gubernatorial candidates but not both rather than spreading the shortfall across all certified candidates, etc. We think it is worth considering these questions and making a deliberate decision about which are appropriately dealt with in the rule and which could be left to a later date when more is known about the size and timing of any shortfall. It is useful to consider how the proposed rules would hold up under the different scenarios that these policy decisions would create.

Another area which begs various questions is in further defining the contributions that could occur if a shortfall occurs. The statute states that the contribution limits for the contributions that could be allowed are $350 for legislative candidates and $750 for gubernatorial candidates. While those are the same as the limits for privately funded candidates, the statute does not specifically refer back to the laws that govern those candidates. The proposed rule should clarify whether the candidate and his or her spouse are subject to the limits, whether the candidate may loan the campaign money and raise money later to reimburse, and how surplus funds may be disposed.

Comments on Chapter 3 Rules

1. Chapter 3, Section 2 (3) (C) Strike the words, "during the qualifying period." Seed Money may be raised before the qualifying period starts.

2. Chapter 3, Section 2 (4) (F) (3) Insert the word "qualifying." "All qualifying contributions made over the Internet…"

3. Chapter 3, Section 3 (1) (B) What documentation is needed for in-kind contributions, should there be any from in-state voters during the Seed Money period? Is the description of the in-kind contribution on the reporting form sufficient, or should candidates produce something more concrete to ensure that the value claimed is accurate?

4. Chapter 3, Section 3 (1) (C) Clarify that this paragraph applies to people who made qualifying contributions. We suggest reordering these paragraphs so that the two that apply to qualifying contributions (A and C) are together and the two that apply to seed money (B and D) are together.

5. Chapter 3, Section 4 (4) (A) This paragraph says that Seed Money will be counted toward the contribution limits, but does not specify as to which election. We believe that Seed Money should count against the contribution limit when the private fundraising occurs in the same election. Most Seed Money contributions are made during the primary election

(exceptions are special elections and replacement candidates), and those should not count against the contribution limit if the shortfall occurs during the general election. We believe this is consistent with the statute. The phrase "during the qualifying period" should be deleted.

6. Chapter 3, Section 4 (4) (B) The concept of allowing candidates to raise private contributions but not spend them unless the Commission gives permission is not completely consistent with the statute, which states that the Commission may allow certified candidates to "accept and spend" contributions. We certainly understand the benefit to the candidate of being able to gather contributions before they are actually needed, and do not argue that the statute would not allow such a scheme. We do believe that this idea of private fundraising prior to the authorization to spend additional monies does pose a serious question about the wisdom of allowing or requiring candidates to commingle these private funds with the public dollars in the campaign account.

7. Chapter 3, Section 4 (4) (C) We agree that Clean Election expenditure guidelines should apply to all expenditures made by certified candidates. This paragraph specifies that allowable private contributions must be deposited in the campaign account, thus commingled with funds from the Maine Clean Election Fund. This makes sense for funds that the candidate is authorized to spend, but we are not sure it is wise to commingle funds that the candidate is not authorized to spend.

Comment on Chapter 1 Rules

Section 6 (8) This section addresses contributions from minor children. We found the rationale for this new rule to be unconvincing. The new mandatory Seed Money requirement should not be a factor at all, since those contributions may only come from registered Maine voters who by definition are not minors.

Maine law does not prohibit minors from making contributions or single out minors in any way. So, it would be inappropriate for the rule to impose new restrictions. The concepts in the proposed language – that contributions are made voluntarily; are not coerced or made without the person's knowledge; and are made from the contributors own funds, could apply to all contributions. The unique concern that arises with contributions from minors is preventing adults from using minors to effectively circumvent contribution limits.

We are not convinced there needs to be a rule about this, but the Commission might want to consider addressing scenarios particular to minors such as what leeway if any a fiduciary might have in making or facilitating a contribution from funds owned but not controlled by a minor, such as those in a trust.

We look forward to working with the Commission and other interested parties to improve these rules so that the Clean Election system will function well during the 2010 election and beyond.

Please see Sec. 1 and 10.

PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve the Maine Clean Election Act

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

Sec. 1. 1 MRSA §1015, sub-§3, ¶B, as amended by PL 2005, c. 301, §3, is further amended to read:

B. The Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer may not intentionally solicit or accept a contribution from a lobbyist, lobbyist associate or employer during any period of time in which the Legislature is convened before final adjournment, except for a qualifying contribution as defined under Title 21-A, section 1122, subsection 7. A lobbyist, lobbyist associate or employer may not intentionally give, offer or promise a contribution, other than a qualifying contribution, to the Governor, a member of the Legislature or any constitutional officer or the staff or agent of the Governor, a member of the Legislature or any constitutional officer during any time in which the Legislature is convened before final adjournment. These prohibitions apply to ~~direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise~~contributions directly and indirectly solicited or accepted by, or given, offered and promised to a political action committee, ballot question committee or party committee of which the Governor, a member of the Legislature, a constitutional officer or the staff or agent of these officials is a treasurer, officer or primary fund-raiser or decision maker.

Sec. 2. 21-A MRSA §1015, sub-§1, as amended by PL 2007, c. 443, Pt. A, §10, is further amended to read:

1. Individuals. An individual may not make contributions to a candidate in support of the candidacy of one person aggregating more than ~~$500~~$750 in any election for a gubernatorial candidate or more than ~~$250~~$350 in any election for any other candidate. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by $25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

Sec. 3. 21-A MRSA §1015, sub-§2, as amended by PL 2007, c. 443, Pt. A, §11, is further amended to read:

2. Committees; corporations; associations. A political committee, political action committee, other committee, firm, partnership, corporation, association or organization may not make contributions to a candidate in support of the candidacy of one person aggregating more than ~~$500~~$750 in any election for a gubernatorial candidate or more than ~~$250~~$350 in any election for any other

candidate. Beginning December 1, 2010, contribution limits in accordance with this subsection are adjusted every 2 years based on the Consumer Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics and rounded to the nearest amount divisible by $25. The commission shall post the current contribution limit and the amount of the next adjustment and the date that it will become effective on its publicly accessible website and include this information with any publication to be used as a guide for candidates.

Sec. 4. 21-A MRSA §1122, sub-§7, ¶A, as amended by PL 2009, c. 190, Pt. B, §1, is further amended to read:

A. Of $5 or more in the form of a check or a money order payable to the fund and signed by the contributor in support of a candidate or made over the Internet in support of a candidate according to the procedure established by the commission;

Sec. 5. 21-A MRSA §1122, sub-§8, ¶B, as amended by PL 2001, c. 465, §3, is further amended to read:

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~~20th 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~~or the next business day following April 20th if the office of the commission is closed on April 20th.

Sec. 6. 21-A MRSA §1125, sub-§3, ¶B, as enacted by IB 1995, c. 1, §17, is amended to read:

B. For a candidate for the State Senate, at least ~~150~~175 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or

Sec. 7. 21-A MRSA §1125, sub-§3, ¶C, as enacted by IB 1995, c. 1, §17, is amended to read:

C. For a candidate for the State House of Representatives, at least ~~50~~60 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

Sec. 8. 21-A MRSA §1125, sub-§8, ¶D, as amended by PL 2003, c. 453, §1, is further amended to read:

D. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is ~~40%~~33% of the amount distributed to a participating candidate in a contested general election.

Sec. 9. 21-A MRSA §1125, sub-§12-C is enacted to read:

12-C. **Payments to political committees.** If a certified candidate makes a payment of fund revenues to a political action committee or party committee, the candidate shall include in reports required under this section a detailed explanation of the goods or services purchased according to forms and procedures developed by the commission that is sufficient to demonstrate that the payment was

made solely to promote the candidate's election.

Sec. 10. Commission to adopt rules regarding general election contributions during primary election cycle. No later than December 1, 2009, the Commission on Governmental Ethics and Election Practices shall adopt rules that authorize candidates to accept contributions to be used for a general election campaign during the primary election period. The rules must require that contributions be segregated and declared as primary or general election contributions and that general election campaign contributions may not be borrowed to support a primary election campaign. Rules adopted in accordance with this section are routine technical rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Effective 90 days following adjournment of the 124th Legislature, First Regular Session, unless otherwise indicated.

Please see Sec. A-20, 4 B-1, and B-3.

PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Laws Governing Campaign Finance Reports and the Maine Clean Election Act

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

PART A

Sec. A-1. 21-A MRSA §1011, 2nd ¶, as enacted by PL 1995, c. 483, §2, is amended to read:

Candidates for municipal office as defined in Title 30-A, section 2502, subsection 1 ~~and referenda as defined in Title 30-A, section 2502, subsection 2~~ are governed by this subchapter, with the following provisions:

Sec. A-2. 21-A MRSA §1014, sub-§1, as amended by PL 2007, c. 443, Pt. A, §9, is further amended to read:

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. The following forms of political communication do not require the name and address of the person who made or authorized the expenditure for the communication because the name or address would be so small as to be illegible or infeasible: ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section. A communication financed by a candidate or the candidate's committee ~~that is made through a broadcasting station~~ is not required to state the address of the candidate or committee that financed the communication.

Sec. A-3. 21-A MRSA §1014, sub-§3-A, as enacted by PL 1991, c. 839, §9, is amended to read:

3-A. In-kind contributions of printed materials. A candidate, political committee or political action committee shall report on the campaign finance report as a contribution to the candidate, political committee or political action committee any contributions of in-kind printed materials to be used in the support of a candidate or in the support or defeat of a ~~cause to be voted upon at referendum~~ballot question. Any in-kind contributions of printed materials used or distributed by a

question and that ~~spends~~receives contributions or makes expenditures aggregating more than $1,500 in a calendar year for that purpose, including for the collection of signatures for a direct initiative or referendum in this State; and

(5) Any organization that does not have as its major purpose promoting, defeating or influencing candidate elections but that ~~spends~~receives contributions or makes expenditures aggregating more than $5,000 in a calendar year for the purpose of promoting, defeating or influencing in any way the nomination or election of any candidate to political office; and

Sec. A-17. 21-A MRSA §1053, last ¶, as enacted by PL 2007, c. 443, Pt. A, §29, is repealed.

Sec. A-18. 21-A MRSA §1053-A is enacted to read:

§ 1053-A. Municipal elections

Organizations that qualify as political action committees under section 1052, subsection 5 and that are organized to influence elections on the municipal ballot in towns or cities with a population of 15,000 or more shall register and file reports with the municipal clerk as required by Title 30-A, section 2502. The reports must be filed in accordance with the reporting schedule in section 1059 and must contain the information listed in section 1060. A political action committee registered with the commission and that receives contributions or makes expenditures relating to a municipal election shall file a copy of the report containing such contributions or expenditures with the clerk in the subject municipality.

Sec. A-19. 21-A MRSA §1053-B is enacted to read:

§ 1053-B. Out-of-state political action committees

A political action committee organized outside of this State shall register and file reports with the commission in accordance with sections 1053 and 1058. The committee is not required to register and file reports if the committee's only financial activity within the State is to make contributions to candidates, party committees, political action committees or ballot question committees registered with the commission or a municipality and the committee has not raised and accepted any contributions during the calendar year to influence an election or campaign in this State.

Sec. A-20. 21-A MRSA §1056-B, as amended by PL 2007, c. 477, §4, is further amended to read:

§ 1056-B.Ballot question committees

Any person not defined as a political action committee who ~~solicits and~~ receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of $5,000 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file ~~a report~~reports with the commission in accordance with this section. ~~In the case of a municipal election, a copy of the same information must be filed with the clerk of that municipality.~~ Within 7 days of receiving contributions or making expenditures that exceed $5,000, the person shall register with the commission as a ballot question committee. For the purposes of this section, expenditures include paid staff time spent for the purpose of influencing in any way a ballot question.

The commission must prescribe forms for the registration, and the forms must include specification of a treasurer for the committee, any other principal officers and all individuals who are the primary fund-raisers and decision makers for the committee. In the case of a municipal election, the registration and reports must be filed with the clerk of that municipality.

1. Filing requirements. A report required by this section must be filed with the commission according to athe reporting schedule ~~that the commission shall establish that takes into consideration existing campaign finance reporting schedule requirements~~ in section 1059. After completing all financial activity, the committee shall terminate its campaign finance reporting in the same manner provided in section 1061. The committee shall file each report required by this section through an electronic filing system developed by the commission unless granted a waiver under section 1059, subsection 5.

2. Content. A report must contain an itemized account of each expenditure made to and contribution received from a single source aggregating in excess of $100 in any election; the date of each contribution; the date and purpose of each expenditure; ~~and~~ the name and address of each contributor, payee or creditor; and the occupation and principal place of business, if any, for any person who has made contributions exceeding $100 in the aggregate. The filer is required to report only those contributions made to the filer for the purpose of initiating, promoting, defeating or influencing in any way a ballot question and only those expenditures made for those purposes. The definitions of "contribution" and "expenditure" in section 1052, subsections 3 and 4, respectively, apply to persons required to file ballot question reports.

2-A. Contributions. For the purposes of this section, "contribution" includes, but is not limited to:

A. Funds that the contributor specified were given in connection with a ballot question;

B. Funds provided in response to a solicitation that would lead the contributor to believe that the funds would be used specifically for the purpose of initiating, promoting, defeating or influencing in any way a ballot question;

C. Funds that can reasonably be determined to have been provided by the contributor for the purpose of initiating, promoting, defeating or influencing in any way a ballot question when viewed in the context of the contribution and the recipient's activities regarding a ballot question; and

D. Funds or transfers from the general treasury of an organization filing a ballot question report.

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

4. Records. A person filing a report required by this section shall keep records as required by this subsection for ~~one year~~4 years following the election to which the records pertain.

A. The filer shall keep a detailed account of all contributions made to the filer for the purpose of

1. Registration. A political action committee required to register under section 1053 or 1053-B or a ballot question committee required to register under section 1056-B that fails to do so ~~in accordance with section 1053~~ or that fails to provide the information required by the commission for registration may be assessed a ~~forfeiture~~fine of $250.

Sec. A-29. 21-A MRSA §1062-A, sub-§2, as amended by PL 2007, c. 443, Pt. A, §38, is further amended to read:

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty in whole or in part if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;

B. An error by the commission staff; or

C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service.

Sec. A-30. 21-A MRSA §1062-A, sub-§4, as enacted by PL 1995, c. 483, §21, is amended to read:

4. Maximum penalties. The maximum ~~penalties~~penalty under this subchapter ~~are~~is $10,000 for reports required under section 1056-B or section 1059~~, subsection 2, paragraphs B, C and E and $5,000 for reports required under section 1059, subsection 2, paragraph A~~.

Sec. A-31. 21-A MRSA §1062-A, sub-§8-A, as enacted by PL 2003, c. 628, Pt. A, §9, is amended to read:

8-A. Penalties for failure to file report. The commission may assess a civil penalty for failure to file a report required by this subchapter. The maximum penalty for failure to file a report required under section 1056-B or section 1059~~, subsection 2, paragraph B, C or E~~ is $10,000. ~~The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph A is $5,000~~.

PART B

Sec. B-1. 21-A MRSA §1122, sub-§7, as amended by PL 2007, c. 443, Pt. B, §2, is further amended to read:

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~~,~~and signed by the contributor ~~and made~~ in support of a candidate or made over the Internet in support of a candidate according to the procedure established by the commission;

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~~according to procedures established by the commission;

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.

Sec. B-2. 21-A MRSA §1125, sub-§5, ¶D-3, as enacted by PL 2007, c. 443, Pt. B, §6, is amended to read:

D-3. Not ~~had prior requests for certification denied on the basis of substantial violations~~otherwise substantially violated the provisions of this chapter or chapter 13 ~~or certification revoked under subsection 5-A, paragraphs C to G~~;

Sec. B-3. 21-A MRSA §1128, as enacted by IB 1995, c. 1, §17, is amended to read:

§ 1128.Study report

By ~~January 30, 2002~~March 15, 2011 and every ~~four~~4 years after that date, the commission shall prepare for the joint standing committee of the Legislature having jurisdiction over legal affairs a report documenting, evaluating and making recommendations relating to the administration, implementation and enforcement of the Maine Clean Election Act and Maine Clean Election Fund.

Sec. B-4. Routine technical rules. Notwithstanding the Maine Revised Statutes, Title 21-A, section 1126, rules adopted to establish procedures for verifying the voter registration of individuals making qualifying contributions are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Effective 90 days following adjournment of the 124th Legislature, First Regular Session, unless otherwise indicated.

Please see Sections 2,3,5,10,12

PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Maine Clean Election Laws Governing Gubernatorial Candidates

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

Whereas, this legislation makes changes to the Maine Clean Election Act for funding of gubernatorial candidates, including increasing seed money contributions; and

Whereas, the window within which prospective candidates for the 2010 gubernatorial race must make a decision concerning whether to accept Maine Clean Election Act funds is closing rapidly; and

Whereas, in order for a prospective gubernatorial candidate to make a fully informed decision regarding participation as a Maine Clean Election Act candidate, it is imperative that the changes made by this legislation take effect as soon as possible; 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:

Sec. 1. 21-A MRSA §1122, sub-§8, ¶A, as amended by PL 2001, c. 465, §3, is further amended to read:

A. For a gubernatorial participating candidate, the qualifying period begins ~~November 1st~~October 15th immediately preceding the election year and ends at 5:00 p.m. on April ~~15th~~1st 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~~.

Sec. 2. 21-A MRSA §1125, sub-§2, ¶A, as enacted by IB 1995, c. 1, §17, is amended to read:

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

Sec. 3. 21-A MRSA §1125, sub-§2-B is enacted to read:

2-B. **Seed money required for gubernatorial candidates; documentation.** For seed money contributions that a candidate for Governor collects to satisfy the requirement in subsection 5, paragraph C-1, the candidate shall obtain the contributor's name, residence address, mailing address, telephone number if provided by the contributor and other information required for reporting under section 1017, subsection 5. For these contributions, the candidate shall submit to the commission during the qualifying period:

A. A contribution acknowledgment form as determined by the commission, to be completed by each person that contributes seed money, that includes the name, residence address, mailing

address, optional telephone number and signature of the person making the seed money contribution acknowledging that the contribution was made with the person's personal funds and will not be reimbursed by any source;

B. A list of the seed money contributions in a format determined by the commission that includes the name and mailing address of the contributor;

C. For seed money contributions received by check or money order, photocopies of the check or money order; and

D. For seed money contributions received by debit or credit card, a bank or merchant account statement that contains the cardholder's name and that otherwise meets the requirements specified by the commission in order to verify compliance with subsection 5, paragraph C-1.

The commission may permit the submission of an online or electronic acknowledgment form as required by paragraph A for seed money contributions made via the Internet.

Sec. 4. 21-A MRSA §1125, sub-§4, as amended by PL 2007, c. 443, Pt. B, §6, is further amended to read:

4. Filing with commission. A participating candidate must submit qualifying contributions, receipt and acknowledgement forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11. ~~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.~~

Sec. 5. 21-A MRSA §1125, sub-§5, ¶C-1 is enacted to read:

C-1. As a gubernatorial candidate, collected at least $40,000 in seed money contributions from registered voters in the State;

Sec. 6. 21-A MRSA §1125, sub-§5-A, as enacted by PL 2007, c. 443, Pt. B, §6, is amended to read:

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~~.~~; or

I. As a gubernatorial candidate, failed to properly report seed money contributions as required by this section.

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.

Sec. 7. 21-A MRSA §1125, sub-§7, ¶B, as amended by PL 2001, c. 465, §4, is further amended to read:

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

Sec. 8. 21-A MRSA §1125, sub-§8, ¶E, as enacted by PL 2003, c. 453, §1, is amended to read:

E. For contested gubernatorial primary elections, the amount of revenues distributed is ~~$200,000~~$400,000 per candidate in the primary election.

Sec. 9. 21-A MRSA §1125, sub-§8, ¶E-1 is enacted to read:

E-1. For uncontested gubernatorial primary elections, the amount of revenues distributed is $200,000 per candidate in the primary election.

Sec. 10. 21-A MRSA §1125, sub-§9, as amended by PL 2007, c. 443, Pt. B, §6, is further amended to read:

9. Matching funds. When any report required under this chapter or chapter 13 shows that the sum of a candidate's expenditures or obligations, contributions and loans, or fund revenues received, whichever is greater, in conjunction with independent expenditures reported under section 1019-B, exceeds the sum of an opposing certified candidate's fund revenues, in conjunction with independent expenditures, the commission shall issue immediately to the opposing certified candidate an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to 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~~1/2 the amount originally distributed under subsection 8, paragraph E for contested candidates and subsection 8, paragraph E-1 for uncontested candidates. Matching funds for certified gubernatorial candidates in a general election are limited to the amount originally distributed under subsection 8, paragraph F.

Sec. 11. 21-A MRSA §1125, sub-§10, as amended by PL 2007, c. 443, Pt. B, §6, is further amended to read:

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 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 for the Legislature 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. An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st preceding the primary election and who is certified is eligible for revenues from the fund in the same amounts and at the same time as an uncontested primary election gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

Sec. 12. Routine technical rules. Notwithstanding the Maine Revised Statutes, Title 21-A, section 1126, rules adopted by the Commission on Governmental Ethics and Election Practices to implement this Act are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 13. Application. This Act applies to gubernatorial candidates seeking certification under the Maine Clean Election Act beginning with primary and general elections in 2010, regardless of when a gubernatorial candidate registered as a candidate with the Commission on Governmental Ethics and Election Practices or when the candidate filed a declaration of intent with the commission under the Maine Revised Statutes, Title 21-A, section 1125, subsection 1.

Sec. 14. 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: Reduces funding for the Maine Clean Election Fund based upon changes in seed money requirements and matching funds for gubernatorial candidates.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	($800,000)	($600,000)

OTHER SPECIAL REVENUE FUNDS TOTAL	($800,000)	($600,000)

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 124th Legislature, First Regular Session, unless otherwise indicated.

Please see Sec. 2

PLEASE NOTE: Legislative Information ***cannot*** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Resolve, To Reduce Funding to Maine Clean Election Act Candidates

Sec. 1 Funding reduced for Maine Clean Election Act candidates. Resolved: That, notwithstanding the Maine Revised Statutes, Title 21-A, chapter 14 and Public Law 2009, chapter 213, Part NNNN, the amount distributed to certified candidates for the Legislature by the Commission on Governmental Ethics and Election Practices pursuant to the Maine Clean Election Act during the 2010 election cycle must be equal to the amount distributed to certified candidates for the Legislature by the commission during the 2008 election cycle; and be it further

Sec. 2 Distributions to certified candidates; rules. Resolved: That, notwithstanding Public Law 2009, chapter 213, Part NNNN, sections 1 to 3, the Commission on Governmental Ethics and Election Practices shall distribute Maine Clean Election Act funds to certified legislative candidates in accordance with section 1 and to gubernatorial candidates in accordance with the Maine Revised Statutes, Title 21-A, section 1125. The commission shall also establish rules to implement Title 21-A, section 1125, subsection 13. The rules must set forth procedures for certified Maine Clean Election Act candidates to accept and spend contributions if the commission determines that revenues in the Maine Clean Election Fund are insufficient to make distributions to certified candidates. Rules adopted in accordance with this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The commission shall publish the adopted rules on its publicly accessible website and in a guidebook distributed to certified candidates. The commission shall report back to the Joint Standing Committee on Legal and Veterans Affairs by February 15, 2010 on how the distributions provided by Title 21-A, chapter 14 are to be made; and be it further

Sec. 3 Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Reduces funding for Maine Clean Election Act candidates.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
All Other	($353,000)	$0
OTHER SPECIAL REVENUE FUNDS TOTAL	($353,000)	$0

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

A. All goods and services received prior to certification must be paid for with seed money contributions, except for goods and services that are excluded from the definition of contribution in section 1012, subsection 2, paragraph B. It is a violation of this chapter for a participating candidate to use fund revenues received after certification to pay for goods and services received prior to certification,.

B. Prior to certification, a participating candidate may obligate an amount greater than the seed money collected, but may only receive that portion of goods and services that has been paid for or will be paid for with seed money. A participating candidate who has accepted contributions or made expenditures that do not comply with the seed money restrictions under this chapter may petition the commission to remain eligible for certification as a Maine Clean Election Act candidate in accordance with rules of the commission, if the failure to comply was unintentional and does not constitute a significant infraction of these restrictions.

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

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

A. For a gubernatorial candidate, at least 3,250 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 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 acknowledgment.

4. Filing with commission. A participating candidate must submit qualifying contributions, receipts and acknowledgment forms, proof of verification of voter registration and a seed money report to the commission during the qualifying period according to procedures developed by the commission, except as provided under subsection 11. 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 qualifying contributions by a participating candidate, the commission or its executive director shall determine whether the candidate has:

A. Signed and filed a declaration of intent to participate in this Act;

B. Submitted the appropriate number of valid qualifying contributions;

C. Qualified as a candidate by petition or other means;

D. Not accepted contributions, except for seed money contributions, and otherwise complied with seed money restrictions;

D-1. Not run for the same office as a nonparticipating candidate in a primary election in the same election year;

D-2. Not been found to have made a material false statement in a report or other document submitted to the commission;

D-3. Not 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;

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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 an additional amount equivalent to the difference. Matching funds for certified candidates for the Legislature are limited to two times the amount originally distributed under subsection 8, paragraph A or C, whichever is applicable. Matching funds for certified gubernatorial candidates in a primary election are limited to two 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.

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 three (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;

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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, receipt from the vendor or bank or credit card statement identifying the vendor as the payee.

The treasurer shall preserve the records for two (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 set forth in subsections 8 and 9 according to rules adopted by the commission.

14. Appeals. 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 to the full commission within seven (7) days of the certification decision. The appeal must be in writing and must set forth the reasons for the appeal.

B. Within five (5) days after an appeal is properly made and after notice is given to the challenger and any opponent, the commission shall hold a hearing, except that the commission may extend this period upon agreement of the challenger and the candidate whose certification is the subject of the appeal, or in response to the request of either party upon a showing of good cause. The appellant has the burden of proving that the certification decision was in error as a matter of law or was based on factual error. The commission must rule on the appeal within five (5) business days after the completion of the hearing.

§ 110.17 Price index increase.

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each expenditure limitation so increased shall be the expenditure limitation in effect for that calendar year.

(2) For purposes of this paragraph (a), the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political party committees to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased contribution limitations shall be in effect as provided in 11 CFR 110.1(b)(1)(ii), 110.1(c)(1)(ii), 110.2(e)(2) and 110.5(b)(3).

(2) For purposes of this paragraph (b) the term *base period* means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after the increases under paragraph (a) or (b) of this section is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(d) *Definition of price index.* For purposes of this section, the term *price index* means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd-numbered year, the Commission will publish in the FEDERAL REGISTER the amount of the expenditure and contribution limitations in effect and place such information on the Commission's Web site.

[67 FR 69949, Nov. 19, 2002]

§ 110.18 Voting age population.

There is annually published by the Department of Commerce in the FEDERAL REGISTER an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each Congressional district. The term *voting age population* means resident population, 18 years of age or older.

[68 FR 457, Jan. 3, 2003]

§ 110.19 Contributions by minors.

An individual who is 17 years old or younger (a Minor) may make contributions to any candidate or political committee that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(a) The decision to contribute is made knowingly and voluntarily by the Minor;

(b) The funds, goods, or services contributed are owned or controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

[70 FR 5568, Feb. 3, 2005]

§ 110.20 Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals (2 U.S.C. 441e, 36 U.S.C. 510).

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Disbursement* has the same meaning as in 11 CFR 300.2(d).

(2) *Donation* has the same meaning as in 11 CFR 300.2(e).

(3) *Foreign national* means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not