

MAINE STATE LEGISLATURE

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AMS

L.D. 1809

DATE: 6-13-01

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LEGAL AND VETERANS AFFAIRS

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1352, L.D. 1809, Bill, "An Act Concerning the Penalties for Late Filing of Accelerated Campaign Reporting Under the Maine Clean Election Act"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, to ensure the uniform application of the law for calendar year 2001, it is necessary that this Act take effect immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 1 MRSA §1002, sub-§1, ¶A, as repealed and replaced by IB 1995, c. 1, §1, is amended to read:

A. By March 31, 1997, and as needed after that date, the Governor, the President of the Senate, the Senate Minority Leader, the Speaker of the House and the House Minority Leader shall jointly establish and publish a nomination

COMMITTEE AMENDMENT

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2 period during which members of the public, groups and
3 organizations may nominate qualified individuals to the
4 Governor for appointment to the commission. ~~The initial~~
5 ~~nomination period must close by May 1, 1997.~~ The names of
6 all nominees must be made public upon nomination.

7 **Sec. 2. 1 MRSA §1002, sub-§5,** as enacted by PL 1975, c. 621,
8 §1, is amended to read:

9
10 **5. Employees.** The commission may shall employ an
11 administrative director and such other assistance as may be
12 necessary to carry out its duties. The commission also shall
13 retain a general counsel as an employee of the commission. The
14 general counsel may not hold any other state office or otherwise
15 be employed by the State. Compensation paid to the commission's
16 general counsel must be paid using funds from the Maine Clean
17 Election Fund established by Title 21-A, section 1124. The
18 commission shall select the administrative director and general
19 counsel by an affirmative vote of at least 4 commission members.

20
21 **Sec. 3. 21-A MRSA §1002,** as enacted by PL 1985, c. 161, §6,
22 is amended to read:

23 **§1002. Meetings of commission**

24
25 The commission shall meet in Augusta for the purposes of
26 this chapter at least ~~4 times during~~ once per month in any year
27 in which primary and general elections are held and every 2 weeks
28 in the 60 days preceding an election. In the 28 days preceding an
29 election, the commission shall meet in Augusta within one
30 calendar day of the filing of any complaint or question with the
31 commission. Agenda items in the 28 days preceding an election
32 must be decided within 24 hours of the filing unless all parties
33 involved agree otherwise. Meetings may be held over the
34 telephone if necessary, as long as the commission office remains
35 open for attendance by complainants, witnesses and other members
36 of the public. Notwithstanding Title 1, chapter 13, telephone
37 meetings of the commission are permitted only during the 28 days
38 prior to an election when the commission is required to meet
39 within 24 hours of the filing of any complaint or question with
40 the commission. The commission office must be open with adequate
41 staff resources available to respond to inquiries and receive
42 complaints from 8 a.m. until at least 5:30 p.m. on the Saturday,
43 Sunday and Monday immediately preceding an election and from 8
44 a.m. until at least 8 p.m. on election day. The commission shall
45 meet at other times on the call of the Secretary of State, the
46 Speaker of the House, the President of the Senate, the chairman
47 chair or a majority of the members of the commission, provided
48 that as long as all members are notified of the time, place and
49 purpose of the meeting at least 24 hours in advance.
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7 8 9

2 **Sec. 4. 21-A MRSA §1003, sub-§4**, as enacted by PL 1985, c.
161, §6, is amended to read:

4 **4. Attorney General.** The Upon the request of the
6 commission, the Attorney General is--the--counsel--for--the
8 commission--and--may shall aid in any investigation, provide
10 advice, examine any witnesses before the commission or otherwise
12 assist the commission in the performance of its duties. The
commission shall refer any apparent violations of this chapter to
the Attorney General for prosecution.

14 **Sec. 5. 21-A MRSA §1017, sub-§3-B**, as enacted by IB 1995, c.
1, §12, is repealed and the following enacted in its place:

16 **3-B. Accelerated reporting schedule.** Additional reports
18 are required from nonparticipating Maine Clean Election Act
candidates pursuant to this subsection.

20 A. In addition to other reports required by law, any
22 candidate for Governor, State Senate or State House of
24 Representatives who is not certified as a Maine Clean
26 Election Act candidate under chapter 14 and who receives,
28 spends or obligates more than 1% in excess of the primary or
30 general election distribution amounts for a Maine Clean
Election Act candidate in the same race shall file by any
means acceptable to the commission, within 48 hours of that
event, a report with the commission detailing the
candidate's total campaign contributions, obligations and
expenditures to date.

32 B. A nonparticipating candidate with a Maine Clean Election
34 Act opponent shall file the following additional reports
36 detailing the candidate's total campaign contributions,
38 obligations and expenditures to date, unless that candidate
signs an affidavit by the date the report is due, attesting
that the candidate has not received, spent or obligated an
amount sufficient to require a report under paragraph A:

40 (1) A report filed not later than 5 p.m. on the 42nd
42 day before the date on which an election is held and
complete as of the 49th day before that date;

44 (2) A report filed no later than 5 p.m. on the 21st
46 day before the date on which an election is held and
complete as of the 28th day before that date; and

48 (3) A report filed no later than 5 p.m. on the 12th
50 day before the date on which an election is held and
complete as of the 19th day before that date.

2 The commission shall provide forms to facilitate compliance
 4 with this subsection. The commission shall notify a
 6 candidate within 48 hours if an amount reported on any
 8 report under paragraph B exceeds 1% in excess of the primary
 or general election distribution amounts for a Maine Clean
 Election Act candidate in the same race and no report has
 been received under paragraph A.

10 **Sec. 6. 21-A MRSA §1020-A, sub-§4**, as amended by IB 1995, c.
 12 1, §15, is further amended to read:

14 **4. Basis for penalties.** The penalty for late filing of a
 16 report required under this subchapter, except for accelerated
 18 campaign finance reports required pursuant to section 1017,
 subsection 3-B, is a percentage of the total contributions or
 expenditures for the filing period, whichever is greater,
 multiplied by the number of calendar days late, as follows:

- 20 A. For the first violation, 1%;
- 22 B. For the 2nd violation, 3%; and
- 24 C. For the 3rd and subsequent violations, 5%.

26 Any penalty of less than \$5 is waived.

28 Violations accumulate on reports with filing deadlines in a
 30 2-year period that begins on January 1st of each even-numbered
 year. Waiver of a penalty does not nullify the finding of a
 violation.

32 A report required to be filed under this subchapter that is sent
 34 by certified or registered United States mail and postmarked at
 least 2 days before the deadline is not subject to penalty.

36 A registration or report may be provisionally filed by
 38 transmission of a facsimile copy of the duly executed report to
 the commission, as long as an original of the same report is
 40 received by the commission within 5 calendar days thereafter.

42 ~~Notwithstanding any other provisions of this section, a candidate~~
 ~~who fails to file~~ The penalty for late filing of an accelerated
 44 campaign finance report as required in section 1017, subsection
 3-B must be assessed a penalty at least is equivalent to but no
 46 more than 3 times the amount by which the contributions received
 or expenditures obligated or made by the candidate, whichever is
 48 greater, exceed the applicable Maine Clean Election Fund
 disbursement amount, per day of violation. The commission shall
 50 make a finding of fact establishing when the report was due prior

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to imposing a penalty under this subsection. A penalty for failure to file an accelerated campaign finance report must be made payable to the Maine Clean Election Fund. In assessing a penalty for failure to file an accelerated campaign finance report, the commission shall consider the existence of mitigating circumstances. For the purposes of this subsection, "mitigating circumstances" has the same meaning as in subsection 2.

This subsection is repealed August 1, 2002.

Sec. 7. 21-A MRSA §1020-A, sub-§5, as enacted by PL 1995, c. 483, §15, is amended to read:

5. Maximum penalties. Penalties assessed under this subchapter may not exceed:

A. Five thousand dollars for reports required under section 1017, subsection 2, paragraphs B, C, D, E or H; section 1017, subsection 3-A, paragraphs B, C, D or F; section 1017, subsection 4; and section 1019;

B. Five thousand dollars for state party committee reports required under section 1017-A, subsection 4, paragraphs A and C and section 1018, subsection 2;

C. One thousand dollars for reports required under section 1017, subsection 2, paragraphs A and F; section 1017, subsection 3-A, paragraphs A and E; and state party committee reports required to be filed under section 1017-A, subsection 4, paragraph B; or

D. Five hundred dollars for municipal, district and county committees for reports required under section 1017-A, subsection 4, paragraphs A, B and C and section 1018, subsection 2; or

E. Three times the unreported amount for reports required under section 1017, subsection 3-B, if the unreported amount is less than \$5,000 and the commission finds that the candidate in violation has established, by a preponderance of the evidence, that a bona fide effort was made to file an accurate and timely report.

This subsection is repealed August 1, 2002.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

2 2001-02 2002-03
 4 **ETHICS AND ELECTION PRACTICES,**
 6 **COMMISSION ON GOVERNMENTAL**
 8 **Commission on Governmental Ethics**
 8 **and Election Practices**

10 All Other \$20,900 \$20,900

12 Provides funds for the per
 14 diem and other expenses
 16 associated with increasing
 18 the number of meetings of the
 20 commission and for increased
 overtime costs associated
 with extending the office
 hours of the commission prior
 to elections.

22 **Sec. 9. Allocation.** The following funds are allocated from
 24 Other Special Revenue funds to carry out the purposes of this Act.

26 2001-02 2002-03
 28 **ETHICS AND ELECTION PRACTICES,**
 30 **COMMISSION ON GOVERNMENTAL**
 32 **Commission on Governmental**
 32 **Ethics and Election Practices**

34 Positions (1,000) (1,000)
 34 Personal Services \$39,560 \$55,576
 36 All Other (\$39,560) (\$55,576)

38 Allocates funds for one
 40 General Counsel position and
 deallocates funds from the
 42 Maine Clean Election Fund to
 fund the position.

44 **COMMISSION ON GOVERNMENTAL ETHICS**
AND ELECTION PRACTICES
TOTAL _____ _____
\$0 \$0

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Sec. 10. Retroactivity. That section of this Act that amends the Maine Revised Statutes, Title 21-A, section 1020-A, subsections 4 and 5 applies retroactively to January 1, 2000.

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

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

	2001-02	2002-03
APPROPRIATIONS/ALLOCATIONS		
General Fund	\$20,900	\$20,900

This bill includes General Fund appropriations of \$20,900 and \$20,900 in fiscal years 2001-02 and 2002-03, respectively, for the Commission on Governmental Ethics and Election Practices for the per diem and additional operating expenses associated with increasing the number of meetings of the commission and the overtime costs associated with the requirement that the office of the commission be open from 8:00 a.m. to 5:30 p.m. on the Saturday and Sunday prior to an election and until 8:00 p.m. on election day.

This bill also includes Other Special Revenue fund allocations of \$39,560 and \$55,576 in fiscal years 2001-02 and 2002-03, respectively, for one General Counsel position within the commission. This bill also includes a corresponding deallocation from the Maine Clean Election Fund to provide funding for the position.'

SUMMARY

This amendment replaces the bill. It amends current law to specify that the Governor shall make nominations to the Commission on Governmental Ethics and Election Practices public upon nomination. It requires that the commission employ general counsel and an administrative director as employees of the commission. General counsel compensation would be paid for using the Maine Clean Election Fund. The Attorney General would still aid the commission upon request. Current law requires that the Commission on Governmental Ethics and Election Practices meet 4 times a year. This amendment requires the commission to meet

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2 once per month, every 2 weeks 60 days prior to an election and
every day during the 28 days prior to an election as long as
4 there are agenda items that require consideration. Such agenda
items must be decided within 24 hours of the filing of an inquiry
6 or complaint with the commissioner unless all parties involved
agree otherwise. In the 28 days prior to an election, the
8 commission may hold meetings by telephone. The office of the
commission is required to be open from 8 a.m. to 5:30 p.m. on the
10 Saturday, Sunday and Monday prior to an election and until 8 p.m.
12 on election day. The amendment also establishes a reporting
schedule for candidates with an opponent who is a participating
14 candidate in the Maine Clean Election Act. Current law specifies
mitigating circumstances and allows the consideration of those
16 circumstances that may be considered by the commission when
assessing penalties for the late filing of some reports. This
18 amendment extends that provision to the consideration of
penalties for the late filing of accelerated reports required
20 when a traditionally funded candidate who receives, spends or
obligates 101% of the distribution received by an opponent who is
22 a participating candidate in the Maine Clean Election Act. It
also requires the commission to notify a candidate if any
24 reported amount results in a candidate exceeding 101% of the
funding received by that candidate's opponent who is a
26 participating candidate in the Maine Clean Election Act. Under
this amendment, the commission is required to make a finding of
28 fact establishing when an accelerated report was due prior to
assessing a penalty. The amendment also provides for a ceiling
30 to the penalty assessed for late filing of an accelerated report
as long as the commission finds that a bona fide effort was made
32 to file an accurate and timely report. The changes made by this
amendment are retroactive to January 1, 2000. The penalty
provisions regarding late filing of accelerated reports are
34 repealed August 1, 2002.

36 This amendment also adds an appropriation, an allocation, an
emergency preamble, emergency clause and a fiscal note to the
bill.