

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

SECOND REGULAR SESSION-2012

Legislative Document

No. 1774

S.P. 612

In Senate, January 17, 2012

**An Act Regarding the Matching Funds Provisions of the Maine
Clean Election Act**

(EMERGENCY)

Reported by the Majority from the Joint Standing Committee on Veterans and Legal
Affairs pursuant to Resolve 2011, chapter 103, section 2.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

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

3 **Whereas,** the Supreme Court of the United States has ruled on matching funds
4 provisions in a program that provides public financing to legislative candidates similar to
5 the Maine Clean Election Act; and

6 **Whereas,** the Maine Clean Election Act will be administered during the 2012
7 election cycle, which commences prior to 90 days after adjournment; and

8 **Whereas,** the Legislature must conform the Maine Clean Election Act to the court's
9 ruling as soon as possible; and

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

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

15 **Sec. 1. 21-A MRSA §1017, sub-§3-B,** as corrected by RR 2009, c. 2, §46, is
16 repealed.

17 **Sec. 2. 21-A MRSA §1019-B, sub-§4, ¶A,** as enacted by PL 2009, c. 524, §7, is
18 amended to read:

19 A. A report required by this subsection must be filed with the commission according
20 to a reporting schedule that the commission shall establish by rule that takes into
21 consideration existing campaign finance reporting requirements ~~and matching fund~~
22 ~~provisions under chapter 14.~~ Rules adopted pursuant to this paragraph are routine
23 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

24 **Sec. 3. 21-A MRSA §1020-A, sub-§4-A,** as amended by PL 2007, c. 443, Pt. A,
25 §22, is further amended to read:

26 **4-A. Basis for penalties.** The penalty for late filing of a report required under this
27 subchapter, ~~except for accelerated campaign finance reports required pursuant to section~~
28 ~~1017, subsection 3-B,~~ is a percentage of the total contributions or expenditures for the
29 filing period, whichever is greater, multiplied by the number of calendar days late, as
30 follows:

31 A. For the first violation, 1%;

32 B. For the 2nd violation, 3%; and

33 C. For the 3rd and subsequent violations, 5%.

34 Any penalty of less than \$10 is waived.

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

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

7 A registration or report may be provisionally filed by transmission of a facsimile copy of
8 the duly executed report to the commission, as long as the facsimile copy is filed by the
9 applicable deadline and an original of the same report is received by the commission
10 within 5 calendar days thereafter.

11 ~~The penalty for late filing of an accelerated campaign finance report as required in section~~
12 ~~1017, subsection 3-B may be up to but no more than 3 times the amount by which the~~
13 ~~contributions received or expenditures obligated or made by the candidate exceed the~~
14 ~~applicable Maine Clean Election Fund disbursement amount, per day of violation. The~~
15 ~~commission shall make a finding of fact establishing when the report was due prior to~~
16 ~~imposing a penalty under this subsection. A penalty for failure to file an accelerated~~
17 ~~campaign finance report must be made payable to the Maine Clean Election Fund. In~~
18 ~~assessing a penalty for failure to file an accelerated campaign finance report, the~~
19 ~~commission shall consider the existence of mitigating circumstances. For the purposes of~~
20 ~~this subsection, "mitigating circumstances" has the same meaning as in subsection 2.~~

21 **Sec. 4. 21-A MRSA §1020-A, sub-§5-A, ¶¶C and D**, as amended by PL 2003,
22 c. 628, Pt. A, §4, are further amended to read:

23 C. One thousand dollars for reports required under section 1017, subsection 2,
24 paragraphs A and F and section 1017, subsection 3-A, paragraphs A and E; or

25 D. Five hundred dollars for municipal, district and county committees for reports
26 required under section 1017-A, subsection 4-B; ~~or~~.

27 **Sec. 5. 21-A MRSA §1020-A, sub-§5-A, ¶E**, as enacted by PL 2001, c. 714, Pt.
28 PP, §1 and affected by §2, is repealed.

29 **Sec. 6. 21-A MRSA §1125, sub-§8-A, ¶¶A and B**, as enacted by PL 2009, c.
30 302, §17 and affected by §24, are amended to read:

31 A. The range of campaign spending by candidates for that office in the 2 preceding
32 elections; and

33 B. The Consumer Price Index published monthly by the United States Department of
34 Labor, Bureau of Labor Statistics and any other significant changes in the costs of
35 campaigning such as postage or fuel; ~~and~~.

36 **Sec. 7. 21-A MRSA §1125, sub-§8-A, ¶C**, as enacted by PL 2009, c. 302, §17
37 and affected by §24, is repealed.

38 **Sec. 8. 21-A MRSA §1125, sub-§9**, as repealed and replaced by PL 2009, c. 652,
39 Pt. A, §25 and affected by §26, is repealed.

1 **Sec. 9. 21-A MRSA §1125, sub-§13-A**, as amended by PL 2011, c. 389, §58 and
2 affected by §62, is further amended to read:

3 **13-A. Distributions not to exceed amount in fund.** The commission may not
4 distribute revenues to certified candidates in excess of the total amount of money
5 deposited in the fund as set forth in section 1124. Notwithstanding any other provisions
6 of this chapter, if the commission determines that the revenues in the fund are insufficient
7 to meet distributions under subsection 8-A ~~or 9~~, the commission may permit certified
8 candidates to accept and spend contributions, reduced by any seed money contributions,
9 aggregating no more than the applicable contribution limits established by the
10 commission pursuant to section 1015, up to the applicable amounts set forth in
11 ~~subsections~~ subsection 8-A ~~and 9~~ according to rules adopted by the commission.

12 This subsection takes effect September 1, 2011.

13 **Sec. 10. 21-A MRSA §1127, sub-§1**, as amended by PL 2009, c. 302, §23, is
14 further amended to read:

15 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who
16 violates any provision of this chapter or rules of the commission adopted pursuant to
17 section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund.
18 ~~The commission may assess a fine of up to \$10,000 for a violation of the reporting~~
19 ~~requirements of sections 1017 and 1019-B if it determines that the failure to file a timely~~
20 ~~and accurate report resulted in the late payment of matching funds.~~ In addition to any
21 fine, for good cause shown, a candidate, treasurer, consultant or other agent of the
22 candidate or the political committee authorized by the candidate pursuant to section
23 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be
24 required to return to the fund all amounts distributed to the candidate from the fund or
25 any funds not used for campaign-related purposes. If the commission makes a
26 determination that a violation of this chapter or rules of the commission has occurred, the
27 commission shall assess a fine or transmit the finding to the Attorney General for
28 prosecution. A final determination by the commission may be appealed to Superior Court
29 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
30 Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the
31 commission pursuant to this subsection that are not paid in full within 30 days after
32 issuance of a notice of the final determination may be enforced in accordance with
33 section 1004-B. Fines paid under this section must be deposited in the fund. In
34 determining whether or not a candidate is in violation of the expenditure limits of this
35 chapter, the commission may consider as a mitigating factor any circumstances out of the
36 candidate's control.

37 **Sec. 11. Appropriations and allocations.** The following appropriations and
38 allocations are made.

39 **ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL**
40 **Governmental Ethics and Election Practices - Commission on 0414**

41 Initiative: Reduction in payments to candidates from eliminating matching funds.
42

1	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
2	All Other	(\$473,001)	(\$927,880)
3			
4	OTHER SPECIAL REVENUE FUNDS TOTAL	(\$473,001)	(\$927,880)

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

7 **SUMMARY**

8 This bill strikes provisions governing and references to matching funds within the
9 Maine Clean Election Act in response to the 2011 ruling of the United States Supreme
10 Court in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett (2011). The bill
11 also repeals candidate and independent expenditure reporting requirements directly
12 related to the matching funds provisions. The bill includes an appropriations and
13 allocations section.



125th MAINE LEGISLATURE

LD 1774

LR 2682(01)

An Act Regarding the Matching Funds Provisions of the Maine Clean Election Act

Fiscal Note for Original Bill
Committee: Veterans and Legal Affairs
Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Appropriations/Allocations				
Other Special Revenue Funds	(\$473,001)	(\$927,880)	(\$473,001)	(\$927,880)
Revenue				
Other Special Revenue Funds	(\$23,650)	\$0	(\$23,650)	\$0

Fiscal Detail and Notes

This legislation, in response to the ruling of the United States Supreme Court, repeals requirements related to qualification for and distribution of matching funds. The bill includes an Other Special Revenue Funds deallocation to the Commission on Governmental Ethics and Election Practices of \$473,001 in fiscal year 2011-12 and \$927,880 in fiscal year 2012-13 for reduced payments to candidates related to eliminating matching funds. This analysis assumes participation in the Maine Clean Elections process will decrease due to the elimination of matching funds, therefore Other Special Revenue Funds revenue will decrease by \$23,650 in fiscal year 2011-12 from reduced qualifying contributions.