

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**To correct an error  
in printing,  
pages 4 and 7 of LD text supplied  
from an electronic file copy.**



# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

---

Legislative Document

No. 1451

S.P. 536

In Senate, April 8, 2009

**An Act To Amend the Maine Clean Election Act and the  
Enforcement Procedures of the Commission on Governmental  
Ethics and Election Practices**

---

Reported by Senator SULLIVAN of York for the Commission on Governmental Ethics and Election Practices pursuant to the Maine Revised Statutes, Title 1, section 1009.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

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

2 **Sec. 1. 21-A MRSA §1004-A, last ¶**, as amended by PL 2007, c. 443, Pt. A, §2,  
3 is further amended to read:

4 When the commission has reason to believe that a violation has occurred, the  
5 commission shall provide written notice to the candidate, party committee, political  
6 action committee, committee treasurer or other respondent and shall afford them an  
7 opportunity to appear before the commission and to request an adjudicatory hearing  
8 before assessing the commission makes a determination or assesses any penalty. An  
9 adjudicatory hearing must be held if requested. In determining any penalty under  
10 subsections 3, 4 and 5, the commission shall consider, among other things, the level of  
11 intent to mislead, the penalty necessary to deter similar misconduct in the future and the  
12 harm suffered by the public from the incorrect disclosure. A final determination by the  
13 commission may be appealed to the Superior Court in accordance with Title 5, chapter  
14 375, subchapter 7 and the Maine Rules of Civil Procedure Rule 80C.

15 **Sec. 2. 21-A MRSA §1004-A**, as amended by PL 2007, c. 443, Pt. A, §2, is  
16 further amended by adding at the end a new paragraph to read:

17 Penalties assessed pursuant to this section that have not been paid in full within 30  
18 days after issuance of a notice of the final determination may be enforced in accordance  
19 with section 1004-B.

20 **Sec. 3. 21-A MRSA §1004-B** is enacted to read:

21 **§1004-B. Enforcement of penalties assessed by the commission**

22 The assessment of a penalty or order for return of Maine Clean Election Act funds by  
23 the commission for a violation of the statutes or rules administered by the commission,  
24 determined after opportunity for hearing and after hearing if one is requested, is  
25 enforceable by the Superior Court by any suitable process, including execution against  
26 goods, chattel and real estate. The commission may present certified copies of any final  
27 determination assessing a penalty or order for return of Maine Clean Election Act funds  
28 to the clerk of courts for Kennebec County, who shall submit that final determination to  
29 any Justice of the Superior Court. The Justice of the Superior Court shall render a pro  
30 forma decision in accordance with the determination and cause all parties to be notified.  
31 The decision must be for enforcement of the commission's determination. The decision  
32 has the same effect, and all proceedings in relation to the decision are the same as though  
33 rendered in an action for judgment duly heard and determined by the court.

34 **Sec. 4. 21-A MRSA §1017, sub-§5**, as amended by PL 2007, c. 567, §1, is  
35 further amended to read:

36 **5. Content.** A report required under this section must contain the itemized accounts  
37 of contributions received during that report filing period, including the date a contribution  
38 was received, and the name, address, occupation, principal place of business, if any, and  
39 the amount of the contribution of each person who has made a contribution or  
40 contributions aggregating in excess of \$50. The report must contain the itemized

1 expenditures made or authorized during the report filing period, the date and purpose of  
2 each expenditure and the name of each payee and creditor. If the payee is a member of  
3 the candidate's household or immediate family, the candidate must disclose the family  
4 candidate's relationship to the payee in a manner prescribed by the commission. The  
5 report must contain a statement of any loan to a candidate by a financial institution in  
6 connection with that candidate's candidacy that is made during the period covered by the  
7 report, whether or not the loan is defined as a contribution under section 1012, subsection  
8 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for  
9 the timely and accurate filing of each required report.

10 **Sec. 5. 21-A MRSA §1020-A, sub-§6**, as amended by PL 2007, c. 443, Pt. A,  
11 §23, is repealed and the following enacted in its place:

12 **6. Request for a commission determination.** If the commission staff finds that a  
13 candidate or political committee has failed to file a report required under this subchapter,  
14 the commission staff shall mail a notice by certified mail to the candidate or political  
15 committee within 3 business days following the filing deadline informing the candidate or  
16 political committee that a report was not received. If a candidate or a political committee  
17 files a report required under this subchapter late, a notice of preliminary penalty must be  
18 sent to the candidate or political committee whose registration or campaign finance report  
19 was not received by 11:59 p.m. on the deadline date, informing the candidate or political  
20 committee of the staff finding of violation and preliminary penalty calculated under  
21 subsection 4-A and providing the candidate or political committee with an opportunity to  
22 request a determination by the commission. The notice must be sent by certified mail.  
23 Any request for a determination must be made within 14 calendar days of receipt of the  
24 commission's notice. The 14-day period during which a determination may be requested  
25 begins on the day a recipient signs for the certified mail notice of the proposed penalty. If  
26 the certified letter is refused or left unclaimed at the post office, the 14-day period begins  
27 on the day the post office indicates it has given first notice of a certified letter. A  
28 candidate or political committee requesting a determination may either appear in person  
29 or designate a representative to appear on the candidate's or political committee's behalf  
30 or submit a sworn statement explaining the mitigating circumstances for consideration by  
31 the commission. A candidate or political committee also may request an adjudicatory  
32 hearing prior to a determination by the commission, and an adjudicatory hearing must be  
33 held if requested. A final determination by the commission may be appealed to the  
34 Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules  
35 of Civil Procedure, Rule 80C.

36 **Sec. 6. 21-A MRSA §1020-A, sub-§7**, as amended by PL 2007, c. 443, Pt. A,  
37 §24, is further amended to read:

38 **7. Final notice of penalty.** If a determination has been requested by the candidate or  
39 political committee and made by the commission, notice of the commission's final  
40 determination and the penalty, if any, imposed pursuant to this subchapter must be sent to  
41 the candidate and the treasurer political committee.

42 If no a determination is not requested, the preliminary penalty calculated by the  
43 commission staff is final. The commission staff shall calculate the penalty as prescribed

1. ~~in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer.~~  
2. ~~A detailed summary of all notices must be provided to the commission.~~

3. **Sec. 7. 21-A MRSA §1020-A, sub-§10**, as amended by PL 1999, c. 426, §33, is  
4. repealed and the following enacted in its place:

5. **10. Enforcement.** A penalty assessed pursuant to this section that has not been paid  
6. in full within 30 days after issuance of a notice of the final determination may be  
7. enforced in accordance with section 1004-B.

8. **Sec. 8. 21-A MRSA §1062-A, sub-§5**, as amended by PL 2007, c. 443, Pt. A,  
9. §40, is repealed and the following enacted in its place:

10. **5. Request for a commission determination.** If the commission staff finds that a  
11. political action committee has failed to file a report required under this subchapter, the  
12. commission staff shall mail a notice by certified mail to the treasurer of the political  
13. action committee within 3 business days following the filing deadline informing the  
14. treasurer that a report was not received. If a political action committee files a report  
15. required under this subchapter late, a notice of preliminary penalty must be forwarded to  
16. the treasurer of the political action committee whose report is not received by 11:59 p.m.  
17. on the deadline date, informing the treasurer of the commission staff finding of violation  
18. and preliminary penalty calculated under subsection 3 and providing the treasurer with an  
19. opportunity to request a determination by the commission. The notice must be sent by  
20. certified mail. A request for determination must be made within 14 calendar days of  
21. receipt of the commission's notice. The 14-day period during which a determination may  
22. be requested begins on the day a recipient signs for the certified mail notice of the  
23. proposed penalty. If the certified letter is refused or left unclaimed at the post office, the  
24. 14-day period begins on the day the post office indicates it has given first notice of a  
25. certified letter. A principal officer or treasurer requesting a determination may either  
26. appear in person or designate a representative to appear on the principal officer's or  
27. treasurer's behalf or submit a sworn statement explaining the mitigating circumstances for  
28. consideration by the commission. A principal officer or treasurer also may request an  
29. adjudicatory hearing prior to a determination by the commission, and an adjudicatory  
30. hearing must be held if requested. A final determination by the commission may be  
31. appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and  
32. the Maine Rules of Civil Procedure, Rule 80C.

33. **Sec. 9. 21-A MRSA §1062-A, sub-§6**, as amended by PL 1999, c. 426, §34, is  
34. further amended to read:

35. **6. Final notice of penalty.** After a commission meeting, notice of the final  
36. determination of the commission and the penalty, if any, imposed pursuant to this  
37. subchapter must be sent to the principal officer and the treasurer of the political action  
38. committee.

39. ~~If no a determination is not requested, the preliminary penalty calculated by the~~  
40. ~~commission staff is final. The commission staff shall calculate the penalty based on the~~  
41. ~~provision of subsection 3 and shall mail final notice of the penalty to the principal officer~~

1 and to the treasurer of the political action committee. A detailed summary of all notices  
2 must be provided to the commission.

3 **Sec. 10. 21-A MRSA §1062-A, sub-§9**, as amended by PL 1999, c. 426, §34, is  
4 repealed and the following enacted in its place:

5 **9. Enforcement.** A penalty assessed pursuant to this section that has not been paid  
6 in full within 30 days after issuance of a notice of the final determination may be  
7 enforced in accordance with section 1004-B.

8 **Sec. 11. 21-A MRSA §1125, sub-§2-A, ¶C**, as enacted by PL 2007, c. 443, Pt.  
9 B, §6, is amended to read:

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

14 **Sec. 12. 21-A MRSA §1125, sub-§6-A**, as enacted by PL 2007, c. 443, Pt. B, §6,  
15 is amended to read:

16 **6-A. Assisting a person to become an opponent.** A candidate or a person who later  
17 becomes a candidate and who is seeking certification under subsection 5, or an agent of  
18 that candidate, may not assist another person in qualifying as a candidate for the same  
19 office if such a candidacy would result in the distribution of revenues under subsections 7  
20 and § 8-A for certified candidates in a contested election.

21 **Sec. 13. 21-A MRSA §1125, sub-§6-B**, as enacted by PL 2007, c. 567, §2, is  
22 repealed.

23 **Sec. 14. 21-A MRSA §1125, sub-§6-C** is enacted to read:

24 **6-C. Expenditures to the candidate or family or household members.**  
25 Expenditures to the candidate or immediate family member or household member of the  
26 candidate are governed by this subsection.

27 A. The candidate may not use fund revenues to compensate the candidate or a sole  
28 proprietorship of the candidate for campaign-related services.

29 B. A candidate may not make expenditures using fund revenues to pay a member of  
30 the candidate's immediate family or household, a business entity in which the  
31 candidate or a member of the candidate's immediate family or household holds a  
32 significant proprietary or financial interest or a nonprofit entity in which the  
33 candidate or a member of the candidate's immediate family or household is a  
34 director, officer, executive director or chief financial officer, unless the expenditure is  
35 made:

36 (1) For a legitimate campaign-related purpose;

37 (2) To an individual or business that provides the goods or services being  
38 purchased in the normal course of the individual's occupation or the business; and

1           (3) In an amount that is reasonable taking into consideration current market  
2           value and other factors the commission may choose to consider.

3           For the purpose of this paragraph, "business entity" means a corporation, limited  
4           liability company, limited partnership, limited liability partnership and general  
5           partnership.

6           If a candidate uses fund revenues for an expenditure covered by this paragraph, the  
7           candidate shall submit evidence demonstrating that the expenditure complies with the  
8           requirements of this paragraph if requested by the commission.

9           This subsection does not prohibit reimbursement to the candidate or a member of a  
10           candidate's household or immediate family when made in accordance with this chapter  
11           and rules adopted by the commission.

12           **Sec. 15. 21-A MRSA §1125, sub-§7**, as amended by PL 2007, c. 443, Pt. B, §6,  
13           is further amended to read:

14           **7. Timing of fund distribution.** The commission shall distribute to certified  
15           candidates revenues from the fund in amounts determined under subsection § 8-A in the  
16           following manner.

17           A. Within 3 days after certification, for candidates certified prior to March 15th of  
18           the election year, revenues from the fund must be distributed as if the candidates are  
19           in an uncontested primary election.

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

23           B-1. For candidates in contested primary elections receiving a distribution under  
24           paragraph A, additional revenues from the fund must be distributed within 3 days of  
25           March 15th of the election year.

26           C. No later than 3 days after the primary election results are certified, for general  
27           election certified candidates, revenues from the fund must be distributed according to  
28           whether the candidate is in a contested or uncontested general election.

29           Funds may be distributed to certified candidates under this section by any mechanism that  
30           is expeditious, ensures accountability and safeguards the integrity of the fund.

31           **Sec. 16. 21-A MRSA §1125, sub-§8**, as amended by PL 2007, c. 443, Pt. B, §6,  
32           is repealed.

33           **Sec. 17. 21-A MRSA §1125, sub-§8-A** is enacted to read:

34           **8-A. Amount of fund distribution.** By September 1, 2011, and at least every 2  
35           years after that date, the commission shall determine the amount of funds to be  
36           distributed to participating candidates in legislative elections based on the type of election  
37           and office. In making this determination, the commission may take into consideration  
38           any relevant information, including but not limited to:



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

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

6 C. The impact of independent expenditures on the payment of matching funds.

7 Before making any determination, the commission shall provide notice of the  
8 determination and an opportunity to comment to the President of the Senate, the Speaker  
9 of the House of Representatives, all floor leaders, the members of the joint standing  
10 committee of the Legislature having jurisdiction over legal affairs and persons who have  
11 expressed interest in receiving notices of opportunities to comment on the commission's  
12 rules and policies. The commission shall present at a public meeting the basis for the  
13 commission's final determination.

14 For gubernatorial primary elections, the amount of revenues distributed is \$200,000 per  
15 candidate in the primary election. For gubernatorial general elections, the amount of  
16 revenues distributed is \$600,000 per candidate in the general election.

17 **Sec. 18. 21-A MRSA §1125, sub-§9**, as amended by PL 2007, c. 443, Pt. B, §6,  
18 is further amended to read:

19 **9. Matching funds.** When any report required under this chapter or chapter 13  
20 shows that the sum of a candidate's expenditures or obligations, contributions and loans,  
21 or fund revenues received, whichever is greater, in conjunction with independent  
22 expenditures reported under section 1019-B, exceeds the sum of an opposing certified  
23 candidate's fund revenues, in conjunction with independent expenditures, the commission  
24 shall issue immediately to the opposing certified candidate an additional amount  
25 equivalent to the difference. Matching funds for certified candidates for the Legislature  
26 are limited to 2 times the amount originally distributed under subsection 8, ~~paragraph A~~  
27 ~~or C, whichever is applicable~~ 8-A. Matching funds for certified gubernatorial candidates  
28 in a primary election are limited to 2 times the amount originally distributed under  
29 subsection 8, ~~paragraph E~~ \$400,000. Matching funds for certified gubernatorial  
30 candidates in a general election are limited to the amount originally distributed under  
31 subsection 8, ~~paragraph F~~ \$600,000.

32 **Sec. 19. 21-A MRSA §1125, sub-§10**, as amended by PL 2007, c. 443, Pt. B, §6,  
33 is further amended to read:

34 **10. Candidate not enrolled in a party.** An unenrolled candidate who submits the  
35 required number of qualifying contributions and other required documents under  
36 subsection 4 by 5:00 p.m. on April 15th preceding the primary election and who is  
37 certified is eligible for revenues from the fund in the same amounts and at the same time  
38 as an uncontested primary election candidate and a general election candidate as specified  
39 in subsections 7 and 8 ~~8-A~~. Otherwise, an unenrolled candidate must submit the required  
40 number of qualifying contributions and the other required documents under subsection 4  
41 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is  
42 eligible for revenues from the fund in the same amounts as a general election candidate,

1 as specified in subsection ~~8~~ 8-A. Revenues for the general election must be distributed to  
2 the candidate no later than 3 days after certification.

3 **Sec. 20. 21-A MRSA §1125, sub-§12**, as amended by PL 2007, c. 571, §12, is  
4 further amended to read:

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

18 **Sec. 21. 21-A MRSA §1125, sub-§12-A**, as amended by PL 2007, c. 443, Pt. B,  
19 §6, is further amended to read:

20 **12-A. Required records.** The treasurer shall obtain and keep:

21 A. Bank or other account statements for the campaign account covering the duration  
22 of the campaign;

23 B. A vendor invoice stating the particular goods or services purchased for every  
24 expenditure of \$50 or more; ~~and~~

25 C. A record proving that a vendor received payment for every expenditure of \$50 or  
26 more in the form of a cancelled check, cash receipt from the vendor or bank or credit  
27 card statement identifying the vendor as the payee; and

28 D. For any services provided to the campaign by a vendor for which the candidate  
29 paid \$500 or more for the election cycle, invoices, timesheets or other documentation  
30 specifying in detail the services the vendor provided, the amount paid and the basis  
31 for the compensation paid by the campaign.

32 The treasurer shall preserve the records for ~~2~~ 3 years following the candidate's final  
33 campaign finance report for the election cycle. The candidate and treasurer shall submit  
34 photocopies of the records to the commission upon its request.

35 **Sec. 22. 21-A MRSA §1125, sub-§13**, as enacted by IB 1995, c. 1, §17, is  
36 amended to read:

37 **13. Distributions not to exceed amount in fund.** The commission may not  
38 distribute revenues to certified candidates in excess of the total amount of money  
39 deposited in the fund as set forth in section 1124. Notwithstanding any other provisions  
40 of this chapter, if the commission determines that the revenues in the fund are insufficient

1 to meet distributions under subsections § 8-A or 9, the commission may permit certified  
2 candidates to accept and spend contributions, reduced by any seed money contributions,  
3 aggregating no more than \$500 per donor per election for gubernatorial candidates and  
4 \$250 per donor per election for State Senate and State House candidates, up to the  
5 applicable amounts set forth in subsections § 8-A and 9 according to rules adopted by the  
6 commission.

7 **Sec. 23. 21-A MRSA §1127, sub-§1**, as amended by PL 2005, c. 542, §6, is  
8 further amended to read:

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

35 **Sec. 24. Effective date.** Those sections of this Act that repeal the Maine Revised  
36 Statutes, Title 21-A, section 1125, subsection 8 and enact Title 21-A, section 1125,  
37 subsection 8-A take effect September 1, 2011. Those sections of this Act that amend  
38 Title 21-A, section 1125, subsection 2-A, paragraph C and Title 21-A, section 1125,  
39 subsections 6-A, 7, 9, 10 and 13 take effect September 1, 2011.

## 40 SUMMARY

41 The bill makes changes to the enforcement procedures of the Maine Commission on  
42 Governmental Ethics and Election Practices with respect to candidates, political action  
43 committees and political committees. If the commission is considering finding the

1 candidate or committee in violation or assessing a penalty, the candidate or committee  
2 may request that the commission conduct a formal adjudicatory hearing in accordance  
3 with the Maine Administrative Procedure Act. The bill also clarifies that a candidate or  
4 political committee who has been found in violation may appeal the commission's  
5 determination to the Superior Court. If the candidate or committee does not appeal the  
6 commission's determination and does not pay a penalty assessed by the commission or  
7 return Maine Clean Election Act funds, the commission may enforce the penalty or order  
8 to return funds by submitting the commission's determination to the clerk of courts for  
9 Kennebec County, rather than by proving the violation through the initiation of a civil  
10 lawsuit.

11 The bill also amends the commission's calculation of the initial public funds payment  
12 made to legislative candidates participating in the Maine Clean Election Act. Currently,  
13 those payments are based solely on average spending by all candidates in the preceding 2  
14 elections. The bill would permit the commission beginning September 1, 2011 to  
15 consider other factors, such as increases in the cost of campaigning, after seeking  
16 comment from the commission's legislative oversight committee, legislative leadership  
17 and other interested persons.

18 The bill also amends current requirements on candidates who pay campaign funds to  
19 members of the candidate's household or immediate family. It clarifies that the  
20 requirements apply to payees who are members of the candidate's household or who are  
21 members of the candidate's immediate family.