

MAINE STATE LEGISLATURE

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SMC
R. 04-3

L.D. 1774

Date: 1-11-12

MINORITY

(Filing No. S- 371)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

125TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 612, L.D. 1774, Bill, "An Act Regarding the Matching Funds Provisions of the Maine Clean Election Act"

Amend the bill by striking out the title and substituting the following:

'An Act To Provide an Alternative to the Matching Funds Provisions of the Maine Clean Election Act'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

Sec. 1. 21-A MRSA §1017, sub-§3-B, as corrected by RR 2009, c. 2, §46, is repealed.

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

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

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

4-A. Basis for penalties. The penalty for late filing of a report required under this subchapter, except for accelerated 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:

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

COMMITTEE AMENDMENT

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1 Any penalty of less than \$10 is waived.
2 Violations accumulate on reports with filing deadlines in a 2-year period that begins on
3 January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding
4 of a violation.
5 A report required to be filed under this subchapter that is sent by certified or registered
6 United States mail and postmarked at least 2 days before the deadline is not subject to
7 penalty.
8 A registration or report may be provisionally filed by transmission of a facsimile copy of
9 the duly executed report to the commission, as long as the facsimile copy is filed by the
10 applicable deadline and an original of the same report is received by the commission
11 within 5 calendar days thereafter.
12 ~~The penalty for late filing of an accelerated campaign finance report as required in section~~
13 ~~1017, subsection 3-B may be up to but no more than 3 times the amount by which the~~
14 ~~contributions received or expenditures obligated or made by the candidate exceed the~~
15 ~~applicable Maine Clean Election Fund disbursement amount, per day of violation. The~~
16 ~~commission shall make a finding of fact establishing when the report was due prior to~~
17 ~~imposing a penalty under this subsection. A penalty for failure to file an accelerated~~
18 ~~campaign finance report must be made payable to the Maine Clean Election Fund. In~~
19 ~~assessing a penalty for failure to file an accelerated campaign finance report, the~~
20 ~~commission shall consider the existence of mitigating circumstances. For the purposes of~~
21 ~~this subsection, "mitigating circumstances" has the same meaning as in subsection 2.~~

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

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

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

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

30 **Sec. 6. 21-A MRSA §1122, sub-§7, ¶B,** as amended by PL 2009, c. 190, Pt. B,
31 §1, is further amended to read:

32 B. Made by a registered voter within the electoral division for the office a candidate
33 is seeking and whose voter registration has been verified according to procedures
34 established by the commission; and

35 **Sec. 7. 21-A MRSA §1122, sub-§7, ¶C,** as amended by PL 2007, c. 443, Pt. B,
36 §2, is repealed.

37 **Sec. 8. 21-A MRSA §1124, sub-§2, ¶D,** as enacted by IB 1995, c. 1, §17, is
38 repealed.

39 **Sec. 9. 21-A MRSA §1125, sub-§1,** as amended by PL 2011, c. 389, §51, is
40 further amended to read:

B. of S.

1 **1. Declaration of intent.** A participating candidate must file a declaration of intent
2 to seek certification as a Maine Clean Election Act candidate and to comply with the
3 requirements of this chapter. The declaration of intent must be filed with the commission
4 prior to or during the qualifying period, except as provided in subsection 11, according to
5 forms and procedures developed by the commission. Qualifying contributions collected
6 more than 5 business days before the declaration of intent has been filed will not be
7 counted toward the eligibility requirement in ~~subsection~~ subsections 3 and 9-A.

8 **Sec. 10. 21-A MRSA §1125, sub-§2, ¶¶B and C,** as enacted by IB 1995, c. 1,
9 §17, are amended to read:

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

12 C. ~~Five hundred~~ One thousand dollars for a candidate for the State House of
13 Representatives.

14 **Sec. 11. 21-A MRSA §1125, sub-§2-A, ¶C,** as amended by PL 2009, c. 302,
15 §11 and affected by §24, is further amended to read:

16 C. Upon requesting certification, a participating candidate shall file a report of all
17 seed money contributions and expenditures. ~~If the candidate is certified, any unspent~~
18 ~~seed money will be deducted from the amount distributed to the candidate as~~
19 ~~provided in subsection 8-A. Seed money unspent or obligated once a participating~~
20 ~~candidate is certified is subject to the expenditure restrictions as distributions~~
21 ~~received from the fund.~~

22 **Sec. 12. 21-A MRSA §1125, sub-§5,** as amended by PL 2011, c. 389, §52, is
23 further amended to read:

24 **5. Certification of Maine Clean Election Act candidates.** Upon receipt of a ~~final~~
25 ~~complete~~ submittal of qualifying contributions the documents required for certification
26 under subsection 4 by a participating candidate, the executive director of the commission
27 shall determine whether the candidate has:

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

29 B. Submitted the appropriate number of valid qualifying contributions;

30 C. Qualified as a candidate by petition or other means no later than 5 business days
31 after the end of the qualifying period;

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

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

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

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

40 D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13;

H. of S.

COMMITTEE AMENDMENT "A" to S.P. 612, L.D. 1774

1 D-4. Not failed to pay any civil penalty assessed by the commission under this Title,
2 except that a candidate has 3 business days from the date of the request for
3 certification to pay the outstanding penalty and remain eligible for certification;

4 D-5. Not submitted any fraudulent qualifying contributions or any falsified
5 acknowledgement forms for qualifying contributions or seed money contributions;
6 and

7 E. Otherwise met the requirements for participation in this Act.

8 The executive director shall certify a candidate complying with the requirements of this
9 section as a Maine Clean Election Act candidate as soon as possible after ~~final~~ receiving
10 the complete submittal of qualifying contributions and other supporting documents
11 required under subsection 4 but no later than 3 business days for legislative candidates
12 and 5 business days for gubernatorial candidates. The executive director may take
13 additional time if further investigation is necessary to verify compliance with this Act as
14 long as the commission notifies the candidate regarding the anticipated schedule for
15 conclusion of the investigation. A candidate or other interested person may appeal the
16 decision of the executive director to the members of the commission in accordance with
17 subsection 14.

18 A certified candidate must comply with all requirements of this Act after certification and
19 throughout the primary and general election periods. Failure to do so is a violation of this
20 chapter.

21 **Sec. 13. 21-A MRSA §1125, sub-§6**, as amended by PL 2011, c. 389, §54, is
22 further amended to read:

23 **6. Restrictions on contributions and expenditures for certified candidates.** After
24 certification, a candidate must limit the candidate's campaign expenditures and
25 obligations, including outstanding obligations, to the revenues distributed to the candidate
26 from the fund and may not accept any contributions other than qualifying contributions
27 under subsection 9-A unless specifically authorized by the commission. Candidates may
28 also accept and spend interest earned on fund revenues in campaign bank accounts. All
29 revenues distributed to a certified candidate from the fund must be used for campaign-
30 related purposes. The candidate, the treasurer, the candidate's committee authorized
31 pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee
32 may not use these revenues for any but campaign-related purposes. The commission
33 shall publish guidelines outlining permissible campaign-related expenditures.

34 **Sec. 14. 21-A MRSA §1125, sub-§7, ¶C**, as amended by PL 2007, c. 443, Pt. B,
35 §6, is further amended to read:

36 C. No later than 3 days after the primary election results are certified, for general
37 election certified candidates, revenues from the fund must be distributed according to
38 whether the candidate is in a contested or uncontested general election. Supplemental
39 payments to a legislative candidate in a contested general election must be made in
40 the manner set forth in subsection 9-A.

41 **Sec. 15. 21-A MRSA §1125, sub-§8-A**, as enacted by PL 2009, c. 302, §17 and
42 affected by §24, is amended to read:

1 **8-A. Amount of fund distribution.** By September 1, 2011, and at least every 2
2 years after that date, the commission shall determine the amount of funds to be
3 distributed to participating candidates in legislative elections based on the type of election
4 and office. The commission shall distribute a smaller payment to a candidate who does
5 not have an opponent in the election. In making this determination, the commission may
6 take into consideration any relevant information, including but not limited to:

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

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

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

13 For a legislative candidate in a contested general election, the commission shall
14 determine the amounts of the initial payment and 2 supplemental payments for which a
15 candidate may qualify under subsection 9-A. The initial payment may not be less than
16 the total of the 2 supplemental payments for which a candidate may qualify.

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

24 For contested gubernatorial primary elections, the amount of revenues distributed is
25 \$400,000 per candidate in a primary election. For uncontested gubernatorial primary
26 elections the amount of revenues distributed is \$200,000. For contested and uncontested
27 gubernatorial general elections, the amount of revenues distributed is \$600,000 per
28 candidate in the general election.

29 **Sec. 16. 21-A MRSA §1125, sub-§9,** as repealed and replaced by PL 2009, c.
30 652, Pt. A, §25 and affected by §26, is repealed.

31 **Sec. 17. 21-A MRSA §1125, sub-§9-A** is enacted to read:

32 **9-A. Supplemental payments for legislative candidates in a contested general**
33 **election.** This subsection governs the qualification for and receipt of supplemental
34 **payments.** **A participating candidate who is a legislative candidate in a contested general**
35 **election may qualify to receive up to 2 supplemental payments from the fund by**
36 **collecting additional qualifying contributions beyond the number of qualifying**
37 **contributions required by subsection 3, paragraph B or C and submitted in the manner**
38 **described in subsection 4. A legislative candidate who is unopposed in the general**
39 **election is not eligible to receive supplemental payments.**

40 **A. A candidate may collect qualifying contributions to qualify for supplemental**
41 **payments from January 1st to June 30th of the election year.**

PL 2011

1 candidate for Governor who submits the required number of qualifying contributions and
2 other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st
3 preceding the primary election and who is certified is eligible for revenues from the fund
4 in the same amounts and at the same time as an uncontested primary election
5 gubernatorial candidate and a general election gubernatorial candidate as specified in
6 subsections 7 and 8-A. Revenues for the general election must be distributed to the
7 candidate for Governor no later than 3 days after the primary election results are certified.

8 **Sec. 19. 21-A MRSA §1125, sub-§13-A**, as amended by PL 2011, c. 389, §58
9 and affected by §62, is further amended to read:

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

19 This subsection takes effect September 1, 2011.

20 **Sec. 20. 21-A MRSA §1126**, as amended by PL 2001, c. 465, §7, is further
21 amended to read:

22 **§1126. Commission to adopt rules**

23 The commission shall adopt rules to ensure effective administration of this chapter.
24 These rules must include but must not be limited to procedures for obtaining qualifying
25 contributions, certification as a Maine Clean Election Act candidate, qualification for
26 supplemental payments, circumstances involving special elections, vacancies, recounts,
27 withdrawals or replacements, collection of revenues for the fund, distribution of fund
28 revenue to certified candidates, return of unspent fund disbursements, disposition of
29 equipment purchased with clean election funds and compliance with the Maine Clean
30 Election Act. Rules of the commission required by this section are major substantive
31 rules as defined in Title 5, chapter 375, subchapter H-A 2-A.

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

34 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who
35 violates any provision of this chapter or rules of the commission adopted pursuant to
36 section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund.
37 ~~The commission may assess a fine of up to \$10,000 for a violation of the reporting~~
38 ~~requirements of sections 1017 and 1019-B if it determines that the failure to file a timely~~
39 ~~and accurate report resulted in the late payment of matching funds.~~ In addition to any
40 fine, for good cause shown, a candidate, treasurer, consultant or other agent of the
41 candidate or the political committee authorized by the candidate pursuant to section
42 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be
43 required to return to the fund all amounts distributed to the candidate from the fund or

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1 any funds not used for campaign-related purposes. If the commission makes a
2 determination that a violation of this chapter or rules of the commission has occurred, the
3 commission shall assess a fine or transmit the finding to the Attorney General for
4 prosecution. A final determination by the commission may be appealed to Superior Court
5 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
6 Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the
7 commission pursuant to this subsection that are not paid in full within 30 days after
8 issuance of a notice of the final determination may be enforced in accordance with
9 section 1004-B. Fines paid under this section must be deposited in the fund. In
10 determining whether or not a candidate is in violation of the expenditure limits of this
11 chapter, the commission may consider as a mitigating factor any circumstances out of the
12 candidate's control.

13 **Sec. 22. Resolve 2011, c. 89** is repealed.

14 **Sec. 23. Distributions for the 2012 primary and general elections.**
15 Notwithstanding the Maine Revised Statutes, Title 21-A, section 1125, subsection 8-A,
16 the Commission on Governmental Ethics and Election Practices shall distribute the
17 following amounts to certified candidates for the Legislature for the 2012 election cycle:

- 18 1. For candidates for the State House of Representatives:
 - 19 A. Five hundred dollars for uncontested candidates during the primary election
20 cycle;
 - 21 B. One thousand five hundred dollars for contested candidates in a primary election;
 - 22 C. One thousand three hundred sixty-eight dollars for uncontested candidates in a
23 general election; and
 - 24 D. Five thousand dollars for the initial payment for contested candidates in a general
25 election and \$2,500 for each supplemental payment as provided by this Act.
- 26 2. For candidates for the State Senate:
 - 27 A. Two thousand dollars for uncontested candidates during the primary election
28 cycle;
 - 29 B. Six thousand dollars for contested candidates in a primary election;
 - 30 C. Six thousand two hundred ninety-six dollars for uncontested candidates in a
31 general election; and
 - 32 D. Twenty-five thousand dollars for the initial payment for contested candidates in a
33 general election and \$12,500 for each supplemental payment as provided by this Act.

34 **Sec. 24. Rules.** The Commission on Governmental Ethics and Election Practices
35 shall adopt rules to implement this Act no later than 45 days after enactment of this Act.
36 Rules adopted in accordance with this section are routine technical rules as defined by the
37 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. The commission shall post
38 the adopted rules on its publicly accessible website and shall summarize the adopted rules
39 in a guidebook distributed to certified candidates.

40 **Sec. 25. Appropriations and allocations.** The following appropriations and
41 allocations are made.

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

Initiative: Allocates payments to candidates based upon repealing Resolve 2011, chapter 89, which reduced the amount distributed during the 2012 election cycle to 5% less than the amount distributed during the 2010 election cycle.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$245,835	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$245,835</u>	<u>\$0</u>

Governmental Ethics and Election Practices - Commission on 0414

Initiative: Adjusts allocations of payments to legislative candidates in contested general election races based upon providing additional opportunities to qualify for supplemental funds and eliminating matching funds.

OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
All Other	\$1,000,074	(\$927,880)
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$1,000,074</u>	<u>(\$927,880)</u>

ETHICS AND ELECTION PRACTICES, COMMISSION ON GOVERNMENTAL DEPARTMENT TOTALS	2011-12	2012-13
OTHER SPECIAL REVENUE FUNDS	\$1,245,909	(\$927,880)
DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,245,909</u>	<u>(\$927,880)</u>

SUMMARY

This amendment amends the bill submitted by the Joint Standing Committee on Veterans and Legal Affairs as authorized by Resolve 2011, chapter 103. This amendment to the bill is the minority report of the committee. Like the bill, this amendment, which is submitted in response to the ruling of the United States Supreme Court in Arizona Free Enterprise Club's Freedom Club PAC v. Bennett (2011), strikes provisions governing and references to matching funds in the Maine Clean Election Act and repeals campaign finance reporting requirements directly related to the qualification for and distribution of matching funds. Unlike the bill, this amendment establishes an alternative that provides legislative candidates in contested races the opportunity to qualify for supplemental funds to support their campaigns. Under this amendment, a contested candidate certified to participate in the Maine Clean Election Act is able to qualify for up to 2 additional

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COMMITTEE AMENDMENT "A" to S.P. 612, L.D. 1774

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distributions: the first distribution would be made after September 1st of the election year upon request of the candidate and the 2nd after October 1st upon request of the candidate. In order to qualify for both supplemental payments, a candidate for the House of Representatives needs to collect an additional 60 qualifying contributions by June 30th of the election year. Similarly, a candidate for the Senate is required to collect 200 additional qualifying contributions to receive both supplemental distributions. The amendment doubles the amount of seed money contributions legislative candidates may receive. The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)



125th MAINE LEGISLATURE

LD 1774

LR 2682(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A" S - 371

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	\$1,245,909	(\$927,880)	\$1,000,074	(\$927,880)
Revenue				
Other Special Revenue Funds	\$14,775	\$0	\$14,775	\$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. It also establishes additional chances for legislative candidates in contested general election races to qualify for supplemental funds and it repeals Resolve 2011, c. 89, which reduced the amount distributed during the 2012 election cycle to 5% less than the amount distributed during the 2010 election cycle. The bill includes an Other Special Revenue Funds allocation to the Commission on Governmental Ethics and Election Practices of \$1,245,909 in fiscal year 2011-12 and a deallocation of \$927,880 in fiscal year 2012-13 related to these provisions. This analysis assumes participation in the Maine Clean Elections process will decrease due to the elimination of matching funds. In order to qualify for supplemental funds candidates must collect additional qualifying contributions, therefore Other Special Revenue Funds will increase by \$14,775 in fiscal year 2011-12.