

MAINE STATE LEGISLATURE

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L.D. 1774

Date: **2-15-12**

(Filing No. S- **382**)

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**STATE OF MAINE
SENATE
125TH LEGISLATURE
SECOND REGULAR SESSION**

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'Sec. 1. 21-A MRSA §1017, sub-§3-B, as corrected by RR 2009, c. 2, §46, is repealed.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

Any penalty of less than \$10 is waived.

SENATE AMENDMENT

R O F S

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

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

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35 §2, is repealed.

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37 repealed.

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

40 **1. Declaration of intent.** A participating candidate must file a declaration of intent
41 to seek certification as a Maine Clean Election Act candidate and to comply with the

1 requirements of this chapter. The declaration of intent must be filed with the commission
2 prior to or during the qualifying period, except as provided in subsection 11, according to
3 forms and procedures developed by the commission. Qualifying contributions collected
4 more than 5 business days before the declaration of intent has been filed will not be
5 counted toward the eligibility requirement in ~~subsection~~ subsections 3 and 9-A.

6 **Sec. 10. 21-A MRSA §1125, sub-§2, ¶¶B and C**, as enacted by IB 1995, c. 1,
7 §17, are amended to read:

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

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

12 **Sec. 11. 21-A MRSA §1125, sub-§2-A, ¶C**, as amended by PL 2009, c. 302,
13 §11 and affected by §24, is further amended to read:

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

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

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

- 26 A. Signed and filed a declaration of intent to participate in this Act;
- 27 B. Submitted the appropriate number of valid qualifying contributions;
- 28 C. Qualified as a candidate by petition or other means no later than 5 business days
29 after the end of the qualifying period;
- 30 C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money
31 contributions from registered voters in the State;
- 32 D. Not accepted contributions, except for seed money contributions, and otherwise
33 complied with seed money restrictions;
- 34 D-1. Not run for the same office as a nonparticipating candidate in a primary election
35 in the same election year;
- 36 D-2. Not been found to have made a material false statement in a report or other
37 document submitted to the commission;
- 38 D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13;

ROFS

- 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. A
 39 supplemental payment to a legislative candidate in a contested general election must
 40 be made in 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. In making this determination, the commission may take into consideration
 5 any relevant information, including but not limited to:

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

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

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

12 The commission may not make a distribution for a primary election to a participating
 13 candidate who does not have an opponent in the primary election.

14 For a legislative candidate in a contested general election, the commission shall
 15 determine the amount of the initial payment and the supplemental payment for which a
 16 candidate may qualify under subsection 9-A. The supplemental payment to a contested
 17 candidate in a general election must be 45% of the initial distribution amount distributed
 18 to the candidate.

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

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

31 **Sec. 16. 21-A MRSA §1125, sub-§9,** as repealed and replaced by PL 2009, c.
 32 652, Pt. A, §25 and affected by §26, is repealed.

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

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

- 1 A. A candidate may collect qualifying contributions to qualify for a supplemental
- 2 payment from January 1st to June 30th of the election year.
- 3 B. A candidate shall submit the required number of qualifying contributions,
- 4 acknowledgments by the contributors and proofs of verification of the contributors'
- 5 voter registrations pursuant to section 1122, subsection 7 to the commission no later
- 6 than 5:00 p.m. on June 30th of the election year.
- 7 C. A candidate for the State House of Representatives must submit at least 30 valid
- 8 qualifying contributions to qualify for a supplemental payment. A candidate for the
- 9 State Senate must submit at least 85 valid qualifying contributions to qualify for a
- 10 supplemental payment.
- 11 D. The commission shall count a qualifying contribution as valid toward the
- 12 supplemental payment requirements if the contribution:
 - 13 (1) Meets the requirements for a qualifying contribution in section 1122,
 - 14 subsection 7;
 - 15 (2) Was not counted toward eligibility for certification in subsection 3; and
 - 16 (3) Is documented with the required acknowledgments by the contributor and
 - 17 proof of voter registration of the contributor pursuant to section 1122, subsection
 - 18 7.
- 19 E. The commission shall determine if a candidate is eligible for a supplemental
- 20 payment and notify the candidate within 10 business days of the determination, but
- 21 no later than July 15th of the election year. A candidate or another interested person
- 22 may appeal the determination. The commission shall establish an appeals process for
- 23 appeals made pursuant to this paragraph that is similar to the process under
- 24 subsection 14.
- 25 F. The commission shall make the supplemental payment by September 1st prior to
- 26 the election.
- 27 G. The commission may establish alternate schedules to qualify for a supplemental
- 28 payment for a candidate in a special election or in a primary or general election in
- 29 which the candidate has replaced a candidate who has withdrawn from the race.

30 **Sec. 18. 21-A MRSA §1125, sub-§10**, as amended by PL 2011, c. 389, §56 and
 31 affected by §62, is further amended to read:

32 **10. Candidate not enrolled in a party.** An unenrolled candidate for the Legislature
 33 who submits the required number of qualifying contributions and other required
 34 documents under subsection 4 by 5:00 p.m. on April 20th preceding the primary election
 35 and who is certified is eligible for revenues from the fund in the same amounts and at the
 36 same time as an uncontested primary election candidate and a general election candidate
 37 as specified in subsections 7 and, 8-A and 9-A. ~~Revenues for the general election must~~
 38 ~~be distributed to the candidate no later than 3 days after certification.~~ An unenrolled
 39 candidate for Governor who submits the required number of qualifying contributions and
 40 other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st
 41 preceding the primary election and who is certified is eligible for revenues from the fund
 42 in the same amounts and at the same time as an uncontested primary election

1 gubernatorial candidate and a general election gubernatorial candidate as specified in
 2 subsections 7 and 8-A. Revenues for the general election must be distributed to the
 3 candidate for Governor no later than 3 days after the primary election results are certified.

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

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

15 This subsection takes effect September 1, 2011.

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

18 **§1126. Commission to adopt rules**

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

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

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

1 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
 2 Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the
 3 commission pursuant to this subsection that are not paid in full within 30 days after
 4 issuance of a notice of the final determination may be enforced in accordance with
 5 section 1004-B. Fines paid under this section must be deposited in the fund. In
 6 determining whether or not a candidate is in violation of the expenditure limits of this
 7 chapter, the commission may consider as a mitigating factor any circumstances out of the
 8 candidate's control.

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

10 **Sec. 23. Distributions for the 2012 and 2014 primary and general**
 11 **elections.** Notwithstanding the Maine Revised Statutes, Title 21-A, section 1125,
 12 subsection 8-A, the Commission on Governmental Ethics and Election Practices shall
 13 distribute the following amounts to certified candidates for the Legislature for the 2012
 14 and 2014 election cycles:

15 1. For candidates for the State House of Representatives:

16 A. One thousand five hundred dollars for contested candidates in a primary election;

17 B. One thousand four hundred sixty-eight dollars for uncontested candidates in a
 18 general election; and

19 C. Four thousand dollars for the initial payment for contested candidates in a general
 20 election and \$1,900 for the supplemental payment as provided by Title 21-A, section
 21 1125, subsections 8-A and 9-A; and

22 2. For candidates for the State Senate:

23 A. Six thousand dollars for contested candidates in a primary election;

24 B. Seven thousand two hundred sixty dollars for uncontested candidates in a general
 25 election; and

26 C. Twenty-two thousand dollars for the initial payment for contested candidates in a
 27 general election and \$10,000 for the supplemental payment as provided by Title
 28 21-A, section 1125, subsections 8-A and 9-A.

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

35 **Sec. 25. Appropriations and allocations.** The following appropriations and
 36 allocations are made.

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

ROFS

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

1 Initiative: Adjusts allocations of payments to legislative candidates in contested general
2 election races based upon providing an opportunity to qualify for a supplemental payment
3 and eliminating matching funds.

| | | | |
|---|--|------------------|--------------------|
| 4 | OTHER SPECIAL REVENUE FUNDS | 2011-12 | 2012-13 |
| 5 | All Other | \$162,478 | (\$617,780) |
| 6 | | | |
| 7 | OTHER SPECIAL REVENUE FUNDS TOTAL | <u>\$162,478</u> | <u>(\$617,780)</u> |
| 8 | | | |

9 **SUMMARY**

10 This amendment replaces the bill. The amendment strikes provisions governing and
11 references to matching funds in the Maine Clean Election Act and repeals campaign
12 finance reporting requirements directly related to the qualification for and distribution of
13 matching funds. This amendment establishes an alternative that provides legislative
14 candidates in contested races the opportunity to qualify for supplemental funds to support
15 their campaigns. Under this amendment, a contested candidate certified to participate in
16 the Maine Clean Election Act is able to qualify for an additional distribution to be made
17 by September 1st of the election year. In order to qualify for a supplemental payment, a
18 candidate for the House of Representatives needs to collect an additional 30 qualifying
19 contributions by June 30th of the election year. Similarly, a candidate for the Senate is
20 required to collect 85 additional qualifying contributions to receive a supplemental
21 payment. The amendment doubles the amount of seed money contributions legislative
22 candidates may receive. The amendment also adds an appropriations and allocations
23 section.

24 **FISCAL NOTE REQUIRED**

25 (See attached)

26 SPONSORED BY: John L. Patrick

27 (Senator PATRICK)

28 COUNTY: Oxford



125th MAINE LEGISLATURE

LD 1774

LR 2682(05)

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

Fiscal Note for Senate Amendment "A" S - 382

Sponsor: Sen. Patrick of Oxford

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 | \$635,479 | \$310,100 | \$748,479 | \$327,700 |
| Revenue | | | | |
| Other Special Revenue Funds | \$30,750 | \$0 | \$33,975 | \$0 |

Fiscal Detail and Notes

This floor amendment, 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 an additional opportunity for legislative candidates in contested general election races to qualify for a supplemental payment 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 incremental impact as compared to the original bill is an increase in Other Special Revenue Funds allocation to the Commission on Governmental Ethics and Election Practices of \$635,479 in fiscal year 2011-12 and \$310,100 in fiscal year 2012-13 and an increase in Other Special Revenue Funds revenue of \$30,750 in fiscal year 2011-12. This analysis assumes participation in the Maine Clean Elections process will decrease due to the elimination of matching funds.