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

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

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

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

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

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

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

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

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

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

5. Content. A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. If the payee is a member of the candidate's household or immediate family, the candidate must disclose the family candidate's relationship to the payee in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

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

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

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

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

If ~~no~~ a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall calculate the penalty as prescribed in subsection 4-A and shall mail final notice of the penalty to the candidate and treasurer. A detailed summary of all notices must be provided to the commission.

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

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

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

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

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

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

If ~~no~~ a determination is not requested, the preliminary penalty calculated by the commission staff is final. The commission staff shall calculate the penalty based on the provision of subsection 3 and shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

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

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

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

C. Upon requesting certification, a participating candidate shall file a report of all seed money contributions and expenditures. If the candidate is certified, any unspent seed money will be deducted from the amount distributed to the candidate as provided in subsection 88-A.

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

6-A. Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 88-A for certified candidates in a contested election.

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

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

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

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

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

(1) For a legitimate campaign-related purpose;

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

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

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

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

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

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

7. Timing of fund distribution. The commission shall distribute to certified candidates revenues from the fund in amounts determined under subsection ~~88-A~~ in the following manner.

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

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

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

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

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

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

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

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

- A. The range of campaign spending by candidates for that office in the 2 preceding elections;
- B. The Consumer Price Index published monthly by the United States Department of Labor, Bureau of Labor Statistics and any other significant changes in the costs of campaigning such as postage or fuel; and
- C. The impact of independent expenditures on the payment of matching funds.

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

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

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

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

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

10. Candidate not enrolled in a party. An unenrolled candidate who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 15th preceding the primary election and who is certified is eligible for revenues from the fund in the

same amounts and at the same time as an uncontested primary election candidate and a general election candidate as specified in subsections 7 and ~~88-A~~. Otherwise, an unenrolled candidate must submit the required number of qualifying contributions and the other required documents under subsection 4 by 5:00 p.m. on June 2nd preceding the general election. If certified, the candidate is eligible for revenues from the fund in the same amounts as a general election candidate, as specified in subsection ~~88-A~~. Revenues for the general election must be distributed to the candidate no later than 3 days after certification.

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

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

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

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

- A. Bank or other account statements for the campaign account covering the duration of the campaign;
- B. A vendor invoice stating the particular goods or services purchased for every expenditure of \$50 or more; and
- C. A record proving that a vendor received payment for every expenditure of \$50 or more in the form of a cancelled check, cash receipt from the vendor or bank or credit card statement identifying the vendor as the payee; and
- D. For any services provided to the campaign by a vendor for which the candidate paid \$500 or more for the election cycle, invoices, timesheets or other documentation specifying in detail the services the vendor provided, the amount paid and the basis for the compensation paid by the campaign.

The treasurer shall preserve the records for 23 years following the candidate's final campaign finance report for the election cycle. The candidate and treasurer shall submit photocopies of the records to the commission upon its request.

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

13. Distributions not to exceed amount in fund. The commission may not distribute revenues to certified candidates in excess of the total amount of money deposited in the fund as set forth in section 1124. Notwithstanding any other provisions of this chapter, if the commission determines that the revenues in the fund are insufficient to meet distributions under subsections 88-A or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than \$500 per donor per election for gubernatorial candidates and \$250 per donor per election for State Senate and State House candidates, up to the applicable amounts set forth in subsections 88-A and 9 according to rules adopted by the commission.

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

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

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

SUMMARY

The bill makes changes to the enforcement procedures of the Maine Commission on Governmental Ethics and Election Practices with respect to candidates, political action committees and political committees. If the commission is considering finding the candidate or committee in violation or

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

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

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