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

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

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

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

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

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

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

**Sec. 1. 21-A MRSA §1017, sub-§3-B,** as corrected by RR 2009, c. 2, §46, is repealed.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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

**13-A. 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 subsection 8-A or 9, the commission may permit certified candidates to accept and spend contributions, reduced by any seed money contributions, aggregating no more than the applicable contribution limits established by the commission pursuant to section 1015, up to the applicable amounts set forth in ~~subsections~~subsection 8-A and 9 according to rules adopted by the commission.

This subsection takes effect September 1, 2011.

[PL 2011, c. 389, § 58 (AMD).][PL 2011, c. 389, § 62 (AFF).]

**Sec. 10. 21-A MRSA §1127, sub-§1**, as amended by PL 2009, c. 302, §23, 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.~~ 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. 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. 11. Appropriations and allocations.** The following appropriations and allocations are made.

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

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

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
All Other	(\$473,001)	(\$927,880)
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>(\$473,001)</b>	<b>(\$927,880)</b>

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

**SUMMARY**

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