

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

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'Sec. 1. 21-A MRSA §1017, sub-§3-B, as corrected by RR 2009, c. 2, §46, is repealed.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

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

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

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 B, §2, is repealed.

Sec. 8. 21-A MRSA §1124, sub-§2, ¶D, as enacted by IB 1995, c. 1, §17, is repealed.

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

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

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

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

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

Sec. 11. 21-A MRSA §1125, sub-§2-A, ¶C, as amended by PL 2009, c. 302, §11 and affected by §24, is further 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 8-A. Seed money unspent or obligated once a participating candidate is certified is subject to the expenditure restrictions as distributions received from the fund.~~

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

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

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

B. Submitted the appropriate number of valid qualifying contributions;

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

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

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

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

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

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

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

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

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

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

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

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

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions other than qualifying contributions under subsection 9-A unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.[PL 2011, c. 389, § 54 (AMD).]

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

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. Supplemental payments to a legislative candidate in a contested general election must be made in the manner set forth in subsection 9-A.

Sec. 15. 21-A MRSA §1125, sub-§8-A, as enacted by PL 2009, c. 302, §17 and affected by §24, is amended 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. The commission shall distribute a smaller payment to a candidate who does not have an opponent in the election. 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; 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.
- C. The impact of independent expenditures on the payment of matching funds.

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

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

Sec. 16. 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. 17. 21-A MRSA §1125, sub-§9-A is enacted to read:

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

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

B. A candidate shall submit the required number of qualifying contributions, acknowledgments by the contributors and proofs of verification of the contributors' voter registrations pursuant to section 1122, subsection 7 to the commission no later than 5:00 p.m. on June 30th of the election year.

C. A candidate for the State House of Representatives must submit at least 30 valid qualifying contributions to qualify for one supplemental payment and at least 60 valid qualifying contributions to qualify for 2 supplemental payments. A candidate for the State Senate must submit at least 100 valid qualifying contributions to qualify for one supplemental payment and at least 200 valid qualifying contributions to qualify for 2 supplemental payments.

D. The commission shall count a qualifying contribution as valid toward the supplemental payment requirements if the contribution:

(1) Meets the requirements for a qualifying contribution in section 1122, subsection 7;

(2) Was not counted toward eligibility for certification in subsection 3; and

(3) Is documented with the required acknowledgments by the contributor and proof of voter registration of the contributor pursuant to section 1122, subsection 7.

E. The commission shall determine the number of supplemental payments for which a candidate is eligible and notify the candidate within 10 business days of the determination, but no later than July 15th of the election year. A candidate or another interested person may appeal the determination. The commission shall establish an appeals process for appeals made pursuant to this paragraph that is similar to the process under subsection 14.

F. The commission may make the first supplemental payment after September 1st upon request of the candidate. The commission may make the 2nd supplemental payment after October 1st upon request of the candidate. A request for supplemental payment must be received by the commission no later than the 8th day before the general election.

G. The commission may establish alternate schedules to qualify for and request supplemental payments for a candidate in a special election or in a primary or general election in which the candidate has replaced a candidate who has withdrawn from the race.

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

10. Candidate not enrolled in a party. An unenrolled candidate for the Legislature who submits the required number of qualifying contributions and other required documents under subsection 4 by 5:00 p.m. on April 20th 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, 8-A and 9-A. ~~Revenues for the general election must be distributed to the candidate no later than 3 days after certification.~~ An unenrolled candidate for Governor who submits the required number of qualifying contributions and other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st 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 gubernatorial candidate and a general election gubernatorial candidate as specified in subsections 7 and 8-A. Revenues for the general election must be distributed to the candidate for Governor no later than 3 days after the primary election results are certified.

Sec. 19. 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 ~~99-A~~, 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 8-A and ~~99-A~~ according to rules adopted by the commission.

This subsection takes effect September 1, 2011.

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

§ 1126. Commission to adopt rules

The commission shall adopt rules to ensure effective administration of this chapter. These rules must include but must not be limited to procedures for obtaining qualifying contributions, certification as a Maine Clean Election Act candidate, ~~qualification for supplemental payments~~, circumstances involving special elections, vacancies, recounts, withdrawals or replacements, collection of revenues for the fund, distribution of fund revenue to certified candidates, return of unspent fund disbursements, disposition of equipment purchased with clean election funds and compliance with the Maine Clean Election Act. Rules of the commission required by this section are major substantive rules as defined in Title 5, chapter 375, subchapter ~~H-A2-A~~.

Sec. 21. 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. 22. Resolve 2011, c. 89 is repealed.

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

1. For candidates for the State House of Representatives:

A. Five hundred dollars for uncontested candidates during the primary election cycle;

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

C. One thousand three hundred sixty-eight dollars for uncontested candidates in a general election; and

D. Five thousand dollars for the initial payment for contested candidates in a general election and \$2,500 for each supplemental payment as provided by this Act.

2. For candidates for the State Senate:

A. Two thousand dollars for uncontested candidates during the primary election cycle;

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

C. Six thousand two hundred ninety-six dollars for uncontested candidates in a general election; and

D. Twenty-five thousand dollars for the initial payment for contested candidates in a general election and \$12,500 for each supplemental payment as provided by this Act.

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

Sec. 25. 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: 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	\$245,835	\$0

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	\$1,000,074	(\$927,880)

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	\$1,245,909	(\$927,880)

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 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)