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Date: (Filing No. S-)

VETERANS AND LEGAL AFFAIRS

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

COMMITTEE AMENDMENT “ ” to S.P. 484, L.D. 1523, Bill, “An Act To Improve the Maine Clean Election Act”

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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Sec. 1. 21-A MRSA §1017, sub-§3-B, as corrected by RR 2009, c. 2, §46, is repealed.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

COMMITTEE AMENDMENT

1 ~~provisions under chapter 14.~~ Rules adopted pursuant to this paragraph are routine
2 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

5 **4-A. Basis for penalties.** The penalty for late filing of a report required under this
6 subchapter, ~~except for accelerated campaign finance reports required pursuant to section~~
7 ~~1017, subsection 3-B~~, is a percentage of the total contributions or expenditures for the
8 filing period, whichever is greater, multiplied by the number of calendar days late, as
9 follows:

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

13 Any penalty of less than \$10 is waived.

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

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

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

24 ~~The penalty for late filing of an accelerated campaign finance report as required in section~~
25 ~~1017, subsection 3-B may be up to but no more than 3 times the amount by which the~~
26 ~~contributions received or expenditures obligated or made by the candidate exceed the~~
27 ~~applicable Maine Clean Election Fund disbursement amount, per day of violation. The~~
28 ~~commission shall make a finding of fact establishing when the report was due prior to~~
29 ~~imposing a penalty under this subsection. A penalty for failure to file an accelerated~~
30 ~~campaign finance report must be made payable to the Maine Clean Election Fund. In~~
31 ~~assessing a penalty for failure to file an accelerated campaign finance report, the~~
32 ~~commission shall consider the existence of mitigating circumstances. For the purposes of~~
33 ~~this subsection, "mitigating circumstances" has the same meaning as in subsection 2.~~

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

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

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

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

1 **Sec. 6. 21-A MRSA §1122, sub-§7, ¶B**, as amended by PL 2009, c. 190, Pt. B,
2 §1, is further amended to read:

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

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

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

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

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

19 **Sec. 10. 21-A MRSA §1125, sub-§2, ¶¶B and C**, as enacted by IB 1995, c. 1,
20 §17, are amended to read:

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

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

25 **Sec. 11. 21-A MRSA §1125, sub-§2-A, ¶C**, as amended by PL 2009, c. 302,
26 §11 and affected by §24, is further amended to read:

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

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

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

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

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

- 1 C. Qualified as a candidate by petition or other means no later than 5 business days
2 after the end of the qualifying period;
- 3 C-1. As a gubernatorial candidate, collected at least \$40,000 in seed money
4 contributions from registered voters in the State;
- 5 D. Not accepted contributions, except for seed money contributions, and otherwise
6 complied with seed money restrictions;
- 7 D-1. Not run for the same office as a nonparticipating candidate in a primary election
8 in the same election year;
- 9 D-2. Not been found to have made a material false statement in a report or other
10 document submitted to the commission;
- 11 D-3. Not otherwise substantially violated the provisions of this chapter or chapter 13;
- 12 D-4. Not failed to pay any civil penalty assessed by the commission under this Title,
13 except that a candidate has 3 business days from the date of the request for
14 certification to pay the outstanding penalty and remain eligible for certification;
- 15 D-5. Not submitted any fraudulent qualifying contributions or any falsified
16 acknowledgement forms for qualifying contributions or seed money contributions;
17 and
- 18 E. Otherwise met the requirements for participation in this Act.

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

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

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

34 **6. Restrictions on contributions and expenditures for certified candidates.** After
35 certification, a candidate must limit the candidate's campaign expenditures and
36 obligations, including outstanding obligations, to the revenues distributed to the candidate
37 from the fund and may not accept any contributions other than qualifying contributions
38 under subsection 9-A unless specifically authorized by the commission. Candidates may
39 also accept and spend interest earned on fund revenues in campaign bank accounts. All
40 revenues distributed to a certified candidate from the fund must be used for campaign-
41 related purposes. The candidate, the treasurer, the candidate's committee authorized
42 pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee

1 may not use these revenues for any but campaign-related purposes. The commission
2 shall publish guidelines outlining permissible campaign-related expenditures.

3 **Sec. 14. 21-A MRSA §1125, sub-§7, ¶C**, as amended by PL 2007, c. 443, Pt. B,
4 §6, is further amended to read:

5 C. No later than 3 days after the primary election results are certified, for general
6 election certified candidates, revenues from the fund must be distributed according to
7 whether the candidate is in a contested or uncontested general election. A
8 supplemental payment to a legislative candidate in a contested general election must
9 be made in the manner set forth in subsection 9-A.

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

12 **8-A. Amount of fund distribution.** By September 1, 2011, and at least every 2
13 years after that date, the commission shall determine the amount of funds to be
14 distributed to participating candidates in legislative elections based on the type of election
15 and office. In making this determination, the commission may take into consideration
16 any relevant information, including but not limited to:

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

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

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

23 The commission may not make distributions for the primary election to a participating
24 candidate who does not have an opponent in the primary election.

25 For a legislative candidate in a contested general election, the commission shall
26 determine the amount of the initial payment and the supplemental payment for which a
27 candidate may qualify under subsection 9-A. The supplemental payment to a contested
28 candidate in a general election must be 45% of the initial distribution amount distributed
29 to the candidate.

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

37 For contested gubernatorial primary elections, the amount of revenues distributed is
38 \$400,000 per candidate in a primary election. For uncontested gubernatorial primary
39 elections the amount of revenues distributed is \$200,000. For contested and uncontested
40 gubernatorial general elections, the amount of revenues distributed is \$600,000 per
41 candidate in the general election.

1 **Sec. 16. 21-A MRSA §1125, sub-§9**, as repealed and replaced by PL 2009, c.
2 652, Pt. A, §25 and affected by §26, is repealed.

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

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

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

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

18 C. A candidate for the State House of Representatives must submit at least 30 valid
19 qualifying contributions to qualify for a supplemental payment. A candidate for the
20 State Senate must submit at least 85 valid qualifying contributions to qualify for a
21 supplemental payment.

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

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

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

27 (3) Is documented with the required acknowledgments by the contributor and
28 proof of voter registration of the contributor pursuant to section 1122, subsection
29 7.

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

36 F. The commission shall make the supplemental payment by September 1st prior to
37 the election.

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

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

3 **10. Candidate not enrolled in a party.** An unenrolled candidate for the Legislature
4 who submits the required number of qualifying contributions and other required
5 documents under subsection 4 by 5:00 p.m. on April 20th preceding the primary election
6 and who is certified is eligible for revenues from the fund in the same amounts and at the
7 same time as an uncontested primary election candidate and a general election candidate
8 as specified in subsections 7 ~~and~~ 8-A ~~and~~ 9-A. ~~Revenues for the general election must~~
9 ~~be distributed to the candidate no later than 3 days after certification.~~ An unenrolled
10 candidate for Governor who submits the required number of qualifying contributions and
11 other required documents under subsections 2-B and 4 by 5:00 p.m. on April 1st
12 preceding the primary election and who is certified is eligible for revenues from the fund
13 in the same amounts and at the same time as an uncontested primary election
14 gubernatorial candidate and a general election gubernatorial candidate as specified in
15 subsections 7 and 8-A. Revenues for the general election must be distributed to the
16 candidate for Governor no later than 3 days after the primary election results are certified.

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

19 **13-A. Distributions not to exceed amount in fund.** The commission may not
20 distribute revenues to certified candidates in excess of the total amount of money
21 deposited in the fund as set forth in section 1124. Notwithstanding any other provisions
22 of this chapter, if the commission determines that the revenues in the fund are insufficient
23 to meet distributions under subsection 8-A or ~~9~~ 9-A, the commission may permit certified
24 candidates to accept and spend contributions, reduced by any seed money contributions,
25 aggregating no more than the applicable contribution limits established by the
26 commission pursuant to section 1015, up to the applicable amounts set forth in
27 subsections 8-A and ~~9~~ 9-A according to rules adopted by the commission.

28 This subsection takes effect September 1, 2011.

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

31 **§1126. Commission to adopt rules**

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

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

1 **1. Civil fine.** In addition to any other penalties that may be applicable, a person who
2 violates any provision of this chapter or rules of the commission adopted pursuant to
3 section 1126 is subject to a fine not to exceed \$10,000 per violation payable to the fund.
4 ~~The commission may assess a fine of up to \$10,000 for a violation of the reporting~~
5 ~~requirements of sections 1017 and 1019-B if it determines that the failure to file a timely~~
6 ~~and accurate report resulted in the late payment of matching funds.~~ In addition to any
7 fine, for good cause shown, a candidate, treasurer, consultant or other agent of the
8 candidate or the political committee authorized by the candidate pursuant to section
9 1013-A, subsection 1 found in violation of this chapter or rules of the commission may be
10 required to return to the fund all amounts distributed to the candidate from the fund or
11 any funds not used for campaign-related purposes. If the commission makes a
12 determination that a violation of this chapter or rules of the commission has occurred, the
13 commission shall assess a fine or transmit the finding to the Attorney General for
14 prosecution. A final determination by the commission may be appealed to Superior Court
15 in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil
16 Procedure, Rule 80C. Fines assessed or orders for return of funds issued by the
17 commission pursuant to this subsection that are not paid in full within 30 days after
18 issuance of a notice of the final determination may be enforced in accordance with
19 section 1004-B. Fines paid under this section must be deposited in the fund. In
20 determining whether or not a candidate is in violation of the expenditure limits of this
21 chapter, the commission may consider as a mitigating factor any circumstances out of the
22 candidate's control.

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

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

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

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

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

33 C. Four thousand dollars for the initial payment for contested candidates in a general
34 election and \$1,900 for the supplemental payment as provided by Title 21-A, section
35 1125, subsections 8-A and 9-A; and

36 2. For candidates for the State Senate:

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

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

40 C. Twenty-two thousand dollars for the initial payment for contested candidates in a
41 general election and \$10,000 for the supplemental payment as provided by Title
42 21-A, section 1125, subsections 8-A and 9-A.

