

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: April 14, 2021

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 1284 **An Act To Amend the Maine Clean Election Act and Related Laws**

SUMMARY

LD 1284 makes the following changes to [Title 21-A, ch. 14](#), the [Maine Clean Election Act](#):

1. It changes the title of Act to the Maine Publicly Financed Election Act (“Act”) and the name of the Maine Clean Election Fund to the Maine Publicly Financed Election Fund (“Fund”)—see bill sections 1-4, 8-13, 16-18, 20, 23 and 35-39.
2. It changes from \$3,000,000 to \$2,000,000 the amount of General Fund dollars (sales, use and income tax revenue) that must be transferred to the Fund annually—see bill sec. 17 (p.4, line 30);
3. Like [LD 921](#), it eliminates the ability of gubernatorial candidates to receive funding under the Act—see bill sections 10, 12, 14, 16, 19, 21-22, 23 (p.7, line 25), 24, 28, 33 and 34;
4. It restricts candidates seeking to participate in the Act to collecting seed money contributions from registered voters in the electoral division for the office the candidate is seeking and clarifies that seed money reports must be filed by Legislative candidates applying for certification under the Act—see bill sections 15 and 20;
5. It eliminates the ability of certified candidates to obtain supplemental fund distributions by collecting additional qualifying contributions—see bill sections 17 (p.4, line 28), 22, 27 and 29-32.
6. It changes the distribution amounts for certified candidates to match the distribution amounts, rounded to the nearest \$500, established by the Commission on Governmental Ethics and Election Practices (“Ethics Commission”) for certified Maine Clean Election Act candidates in 2014, prior to passage of the 2015 citizen’s initiative, [I.B. 2015, Ch. 1](#)—see bill secs. 29-30; and
7. It clarifies the commission’s authority to maintain, increase or reduce the amount of fund distributions every 2 years based on changes to the Consumer Price Index—see bill section 32.

LD 1284 also makes the following changes to [Title 21-A, ch. 13](#), Maine’s campaign finance laws:

1. It repeals [21-A M.R.S. 1014\(2-B\)](#), which requires communications financed by independent expenditures to include a conspicuous statement listing the top 3 funders of the entity making the independent expenditure—see bill section 6; and
2. It specifies that party committees and political action committees (PACs), but not individuals, are required to file reports with the Ethics Commission if they make independent expenditures aggregating in excess of \$250 during any one candidate’s election—see bill section 7.

ADDITIONAL INFORMATION

A. Fund revenue sources under LD 1284

LD 1284 reduces from \$3,000,000 to \$2,000,000 the annual transfer of sales, use and income tax revenue to the Fund. LD 1284 does not alter the requirements in [21-A M.R.S. §1124\(2\)](#) that the following additional sources of revenue are credited to the fund:

- The qualifying contributions collected by candidates seeking to be certified under the Act;
- Revenue from the tax checkoff program - *i.e.*, optional payments of \$3 per taxpayer;
- Unspent seed money contributions of candidates certified under the Act;
- Unspent fund distributions, which must be returned by certified candidates who drop out of the race as well as unspent fund revenues returned by certified candidates after losing a primary election and by all other certified candidates after the general election;
- Voluntary donations to the Fund; and
- Fines collected for late-filed campaign finance reports under [21-A M.R.S. § 1020-A\(4-A\)](#) as well as fines collected for violations of the MCEA under [21-A M.R.S. §1127](#).

B. Comparison of Fund distributions under current law and LD 1284:

In addition to eliminating all Fund distributions for gubernatorial candidates, the bill would affect Fund distributions for Legislative candidates as follows:

| | 2020 election Senate amounts* | LD 1284 Senate amounts* | 2020 election House amounts* | LD 1284 House amounts* |
|---------------------|--|----------------------------|---|---------------------------|
| Uncontested primary | \$2,125 | \$2,000 | \$500 | \$500 |
| Contested primary | \$10,575 | \$7,500 | \$2,500 | \$1,500 |
| Uncontested general | \$6,350 | \$7,000 | \$1,500 | \$1,500 |
| Contested general | | | | |
| Initial | \$21,175 | \$21,500 | \$5,000 | \$4,500 |
| Supp. | Up to 8 payments of \$5,300 | — | Up to 8 payments of \$1,250 | — |

* In addition, Senate candidates may raise and spend up to \$3,000 in seed money contributions and House candidates may raise and spend up to \$1,000 in seed money contributions pre-certification. Under LD 1284, seed money contributions may only be raised from in-district registered voters.

For historical information on MCE Fund distribution amounts, *see* the [2019 MCEA Study Report](#) prepared by Ethics Commission Staff. The 2014 Fund distribution amounts appear on page 6.

C. Independent Expenditure reports under current law and LD 1284

Pursuant to [21-A M.R.S. §1019-B](#) (attached) an “independent expenditure” is an expenditure made by a person, including a party committee or a PAC, that is neither a candidate contribution nor coordinated with or suggested by a candidate or campaign and that funds one of the following communications:

- A communication expressly advocating the election or defeat of a candidate; or

- A communication that names or depicts a clearly identified candidate that is disseminated within 28 days of a primary, 35 days of a special election or between Labor Day and a general election, *unless* the person making the expenditure demonstrates to the Ethics Commission that the communication was not intended to influence a candidate election.

Under [§1019-B\(3\)](#), whenever a person makes any independent expenditure “in excess of \$250 during any one candidate’s election,” the person must file a [report](#) with the Ethics Commission that:

- Itemizes each independent expenditure that exceeds \$250—including the date and purpose of each expenditure and the payee or creditor; and
- Includes a statement under oath that the expenditure was not coordinated with a candidate.

The Ethics Commission’s website includes [guidance](#) describing the types of covered communications, including palm cards, advertisements, phone banks, etc., but excluding telephone surveys, telephone calls stating a candidate’s position on an issue to encourage a person to vote (but not for or against any candidate) and voter guides. *See also* [97-270 C.M.R. ch.1, §10](#) (2019) (relevant rules).

LD 1284 would remove the obligation of all persons—except party committees and political action committees—to file independent expenditure reports.

D. Top 3 funder disclosure requirement (repealed by LD 1284)

Current [§1014\(2-B\)](#) (*attached*), which was enacted as part of [L.B. 2015, Ch. 1](#), requires “an entity” that makes an independent expenditure to “conspicuously” disclose the top 3 funders of the entity, but only if the funder provided at least \$1,000 to the entity since the most recent general election. After this requirement was enacted, the Ethics Commission posted a [guidance](#) document on its website describing the types of funders who must be disclosed and providing examples of acceptable disclosures. The Ethics Commission also adopted rules explaining, for example, the required print size and duration of these disclosures as well as the types of funders that must be disclosed by a SSF or a PAC fully funded by another PAC. *See* [97-270 C.M.R. ch.1, §7\(12\)](#) (2019).

REQUESTS FOR INFORMATION

To Anna Kellar, Maine Citizens for Clean Elections

- How many currently serving Legislators were certified as Maine Clean Election candidates?

TECHNICAL ISSUES

None identified.

FISCAL IMPACT

Not yet determined.

§1014. Publication or distribution of political communications

1. Authorized by candidate. Whenever a person makes an expenditure to finance a communication expressly advocating the election or defeat of a clearly identified candidate through broadcasting stations, cable television systems, newspapers, magazines, campaign signs or other outdoor advertising facilities, publicly accessible sites on the Internet, direct mails or other similar types of general public political advertising or through flyers, handbills, bumper stickers and other nonperiodical publications, the communication, if authorized by a candidate, a candidate's authorized political committee or their agents, must clearly and conspicuously state that the communication has been so authorized and must clearly state the name and address of the person who made or financed the expenditure for the communication. A communication financed by a candidate or the candidate's committee is not required to state the address of the candidate or committee that financed the communication. If a communication that is financed by someone other than the candidate or the candidate's authorized committee is broadcast by radio, only the city and state of the address of the person who financed the communication must be stated. [PL 2013, c. 494, §1 (AMD).]

2. Not authorized by candidate. If the communication described in subsection 1 is not authorized by a candidate, a candidate's authorized political committee or their agents, the communication must clearly and conspicuously state that the communication is not authorized by any candidate and state the name and address of the person who made or financed the expenditure for the communication, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. If the communication is in written form, the communication must contain at the bottom of the communication in print that is no smaller in size than 12-point bold print, Times New Roman font, the words "NOT PAID FOR OR AUTHORIZED BY ANY CANDIDATE." [PL 2013, c. 362, §2 (AMD).]

2-A. Other communications. Whenever a person makes an expenditure to finance a communication that names or depicts a clearly identified candidate and that is disseminated during the 28 days, including election day, before a primary election, during the 35 days, including election day, before a special election or during the period of time from Labor Day to the election day for a general election through the media described in subsection 1, the communication must state the name and address of the person who made or financed the communication and a statement that the communication was or was not authorized by the candidate, except that a communication broadcast by radio is only required to state the city and state of the address of the person that financed the communication. The disclosure is not required if the communication was not made for the purpose of influencing the candidate's nomination for election or election. [PL 2019, c. 323, §5 (AMD).]

2-B. Top 3 funders; independent expenditures. A communication that is funded by an entity making an independent expenditure as defined in section 1019-B, subsection 1 must conspicuously include the following statement:

"The top 3 funders of (name of entity that made the independent expenditure) are (names of top 3 funders)."

The information required by this subsection may appear simultaneously with any statement required by subsection 2 or 2-A. A communication that contains a visual aspect must include the statement in written text. A communication that does not contain a visual aspect must include an audible statement. This statement is required only for communications made through broadcast or cable television, broadcast radio, Internet audio programming, direct mail or newspaper or other periodical publications.

A cable television or broadcast television communication must include both an audible and a written statement. For a cable television or broadcast television communication 30 seconds or less in duration, the audible statement may be modified to include only the single top funder.

The top funders named in the required statement consist of the funders providing the highest dollar amount of funding to the entity making the independent expenditure since the day following the most recent general election day.

A. For purposes of this subsection, "funder" includes:

- (1) Any entity that has made a contribution as defined in section 1052, subsection 3 to the entity making the independent expenditure since the day following the most recent general election day; and

(2) Any entity that has given a gift, subscription, loan, advance or deposit of money or anything of value, including a promise or agreement to provide money or anything of value whether or not legally enforceable, except for transactions in which a fair value is given in return, since the day following the most recent general election day. [IB 2015, c. 1, §3 (NEW).]

B. If funders have given equal amounts, creating a tie in the ranking of the top 3 funders, the tie must be broken by naming the tying funders in chronological order of the receipt of funding until 3 funders are included in the statement. If the chronological order cannot be discerned, the entity making the independent expenditure may choose which of the tying funders to include in the statement. In no case may a communication be required to include the names of more than 3 funders. [IB 2015, c. 1, §3 (NEW).]

C. The statement required under this subsection is not required to include the name of any funder who has provided less than \$1,000 to the entity making the independent expenditure since the day following the most recent general election day. [IB 2015, c. 1, §3 (NEW).]

D. If only one or 2 funders must be included pursuant to this subsection, the communication must identify the number of funders as "top funder" or "top 2 funders" as appropriate. If there are no funders required to be included under this subsection, no statement is required. [IB 2015, c. 1, §3 (NEW).]

E. When compiling the list of top funders, an entity making an independent expenditure may disregard any funds that the entity can show were used for purposes unrelated to the candidate mentioned in the communication on the basis that funds were either spent in the order received or were strictly segregated in other accounts. [IB 2015, c. 1, §3 (NEW).]

F. In any communication consisting of an audio broadcast of 30 seconds or less or a print communication of 20 square inches or less, the requirements of this subsection are satisfied by including the name of the single highest funder only. [IB 2015, c. 1, §3 (NEW).]

G. If the list of funders changes during the period in which a recurring communication is aired or published, the statement appearing in the communication must be updated at the time that any additional payments are made for that communication. [IB 2015, c. 1, §3 (NEW).]

H. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, forms and procedures for ensuring compliance with this subsection. Rules adopted pursuant to this paragraph must ensure that the information required by this subsection is effectively conveyed for a sufficient duration and in a sufficient font size or screen size where applicable without undue burden on the ability of the entity to make the communication. The rules must also provide an exemption for types of communications for which the required statement would be impossible or impose an unusual hardship due to the unique format or medium of the communication. [IB 2015, c. 1, §3 (NEW).]

...

4. Enforcement. A violation of this section may result in a civil penalty of no more than 100% of the amount of the expenditure in violation, except that an expenditure for yard signs lacking the required information may result in a maximum civil penalty of \$200. In assessing a civil penalty, the commission shall consider, among other things, how widely the communication was disseminated, whether the violation was intentional, whether the violation occurred as the result of an error by a printer or other paid vendor and whether the communication conceals or misrepresents the identity of the person who financed it. If the person who financed the communication or who committed the violation corrects the violation within 10 days after receiving notification of the violation from the commission by adding the missing information to the communication, the commission may decide to assess no civil penalty. [IB 2015, c. 1, §4 (AMD).]

...

6. Exclusions. The requirements of this section do not apply to:

A. Handbills or other literature produced and distributed at a cost not exceeding \$100 and prepared by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a

candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [PL 2011, c. 389, §13 (NEW).]

B. Campaign signs produced and distributed at a cost not exceeding \$100, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [PL 2013, c. 494, §2 (AMD).]

C. Internet and e-mail activities costing less than \$100, as excluded by rule of the commission, paid for by one or more individuals who are not required to register or file campaign finance reports with the commission and who are acting independently of and without authorization by a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee or an agent of a candidate, candidate's authorized campaign committee, party committee, political action committee or ballot question committee; [PL 2013, c. 494, §2 (AMD).]

D. Communications in which the name or address of the person who made or authorized the expenditure for the communication would be so small as to be illegible or infeasible, including communications on items such as ashtrays, badges and badge holders, balloons, campaign buttons, clothing, coasters, combs, emery boards, envelopes, erasers, glasses, key rings, letter openers, matchbooks, nail files, noisemakers, paper and plastic cups, pencils, pens, plastic tableware, 12-inch or shorter rulers, swizzle sticks, tickets to fund-raisers and similar items determined by the commission to be too small and unnecessary for the disclosures required by this section and in electronic media advertisements where compliance with this section would be impractical due to size or character limitations; and [PL 2013, c. 494, §3 (NEW).]

E. Campaign signs that are financed by the candidate or candidate's authorized committee and that clearly identify the name of the candidate and are lettered or printed individually by hand. [PL 2013, c. 494, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 161, §6 (NEW). PL 1987, c. 188, §17 (AMD). PL 1989, c. 504, §§5,6,31 (AMD). PL 1991, c. 466, §37 (AMD). PL 1991, c. 839, §§8-10 (AMD). PL 1995, c. 483, §6 (AMD). PL 2003, c. 302, §1 (AMD). PL 2003, c. 510, §F1 (AMD). PL 2003, c. 510, §F2 (AFF). PL 2003, c. 599, §15 (AFF). PL 2005, c. 301, §§10-12 (AMD). PL 2005, c. 308, §1 (AMD). PL 2005, c. 542, §1 (AMD). PL 2007, c. 443, Pt. A, §9 (AMD). PL 2009, c. 183, §1 (AMD). PL 2009, c. 190, Pt. A, §§2, 3 (AMD). PL 2009, c. 652, Pt. A, §20 (AMD). PL 2011, c. 360, §1 (AMD). PL 2011, c. 389, §§10-13 (AMD). PL 2013, c. 362, §§1-3 (AMD). PL 2013, c. 494, §§1-3 (AMD). IB 2015, c. 1, §§3, 4 (AMD). PL 2019, c. 323, §§5, 6 (AMD).

§1019-B. Reports of independent expenditures

1. Independent expenditures; definition. For the purposes of this section, an "independent expenditure":

A. Is any expenditure made by a person, party committee or political action committee, other than by contribution to a candidate or a candidate's authorized political committee, for any communication that expressly advocates the election or defeat of a clearly identified candidate; and [PL 2019, c. 323, §15 (AMD).]

B. Is presumed to be any expenditure made to design, produce or disseminate a communication that names or depicts a clearly identified candidate and is disseminated during the 28 days, including election day, before a primary election; during the 35 days, including election day, before a special election; or from Labor Day to a general election day. [IB 2015, c. 1, §5 (AMD).]

2. Rebutting presumption. A person presumed under this section to have made an independent expenditure may rebut the presumption by filing a signed written statement with the commission within 48 hours of disseminating the communication stating that the cost was not incurred with the intent to influence the nomination, election or defeat of a candidate, supported by any additional evidence the person chooses to submit. The commission may gather any additional evidence it deems relevant and material and shall determine by a preponderance of the evidence whether the cost was incurred with intent to influence the nomination, election or defeat of a candidate. [PL 2019, c. 323, §16 (AMD).]

3. Report required; content; rules. [PL 2009, c. 524, §6 (RPR); MRSA T. 21-A §1019-B, sub-§3 (RP).]

4. Report required; content; rules. A person, party committee or political action committee that makes any independent expenditure in excess of \$250 during any one candidate's election shall file a report with the commission. In the case of a municipal election, the report must be filed with the municipal clerk.

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. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 558, §2 (AMD).]

B. A report required by this subsection must contain an itemized account of each expenditure in excess of \$250 in any one candidate's election, the date and purpose of each expenditure and the name of each payee or creditor. The report must state whether the expenditure is in support of or in opposition to the candidate and must include, under penalty of perjury, as provided in Title 17-A, section 451, a statement under oath or affirmation whether the expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, the candidate or an authorized committee or agent of the candidate. [PL 2015, c. 350, §6 (AMD).]

C. A report required by this subsection must be on a form prescribed and prepared by the commission. A person filing this report may use additional pages if necessary, but the pages must be the same size as the pages of the form. The commission may adopt procedures requiring the electronic filing of an independent expenditure report, as long as the commission receives the statement made under oath or affirmation set out in paragraph B by the filing deadline and the commission adopts an exception for persons who lack access to the required technology or the technological ability to file reports electronically. The commission may adopt procedures allowing for the signed statement to be provisionally filed by facsimile or electronic mail, as long as the report is not considered complete without the filing of the original signed statement. [PL 2013, c. 334, §16 (AMD).]

5. Exclusions. An independent expenditure does not include:

A. An expenditure made by a person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents; [PL 2011, c. 389, §21 (NEW).]

B. A telephone survey that meets generally accepted standards for polling research and that is not conducted for the purpose of changing the voting position of the call recipients or discouraging them from voting; [PL 2011, c. 389, §21 (NEW).]

C. A telephone call naming a clearly identified candidate that identifies an individual's position on a candidate, ballot question or political party for the purpose of encouraging the individual to vote, as long as the call contains no advocacy for or against any candidate; and [PL 2011, c. 389, §21 (NEW).]

D. A voter guide that consists primarily of candidates' responses to surveys and questionnaires and that contains no advocacy for or against any candidate. [PL 2011, c. 389, §21 (NEW).]

SECTION HISTORY

PL 2003, c. 448, §3 (NEW). PL 2007, c. 443, Pt. A, §20 (AMD). PL 2009, c. 366, §5 (AMD). PL 2009, c. 366, §12 (AFF). PL 2009, c. 524, §§6, 7 (AMD). PL 2011, c. 389, §§20, 21 (AMD). PL 2011, c. 389, §62 (AFF). PL 2011, c. 558, §2 (AMD). PL 2013, c. 334, §§15, 16 (AMD). IB 2015, c. 1, §§5, 6 (AMD). PL 2015, c. 350, §6 (AMD). PL 2019, c. 323, §§15-17 (AMD).