Agenda Item #3

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND TWELVE

H.P. 1410 - L.D. 1906

Resolve, Regarding Legislative Review of Portions of Chapter 3: Maine Clean Election Act and Related Provisions, a Major Substantive Rule of the Commission on Governmental Ethics and Election Practices

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 Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

Whereas, the above-named major substantive rule has been submitted to the Legislature for review; and

Whereas, immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; 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

Sec. 1. Adoption. Resolved: That final adoption of portions of Chapter 3: Maine Clean Election Act and Related Provisions, a provisionally adopted major substantive rule of the Commission on Governmental Ethics and Election Practices that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

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

State of Maine Legislature

Summary of LD 1906

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LD 1906 (HP 1410)

"Resolve, Regarding Legislative Review of Portions of Chapter 3: Maine Clean Election Act and Related Provisions, a Major Substantive Rule of the Commission on Governmental Ethics and Election Practices"

(Emergency)

Status Summary

Reference Committee	**Veterans and Legal Affairs**
Last House Action	**4/9/2012 - FINALLY PASSED.** Sent for concurrence. ORDERED SENT FORTHWITH.
Last Senate Action	**4/9/2012 -** Under suspension of the Rules **FINALLY PASSED** - Emergency - 2/3 Elected Required, in concurrence.
Last Engrossed by House on	**4/5/2012**
Last Engrossed by Senate on	**4/5/2012**
Governor Action	**Signed by the Governor (Emergency Measure)**
Chapter	**158**
Final Law Type	**Resolve**
Date	**4/18/2012**

Related Links

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SECTION 2. PROCEDURES FOR PARTICIPATION

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4. Qualifying Contributions

A. General. A participating candidate may collect qualifying contributions only during the relevant qualifying period. Qualifying contributions collected more than five days before filing a Declaration of Intent with the Commission will not be counted toward the eligibility requirement. Qualifying contributions must be acknowledged and reported on forms provided by the Commission.

The forms must include:

(1) the name, residential address and signature of the contributor;

(2) an affirmation by the contributor that the contribution was made with his or her personal funds, in support of the candidate and that the contributor did not receive anything of value in exchange for his or her signature and contribution;

(3) a clear and conspicuous statement that the candidate is collecting signatures and qualifying contributions in order to obtain public funding to finance the candidate's campaign;

(4) the signature of the municipal registrar or his or her designee verifying the voter registration of the contributors listed on the form; and

(5) ~~the signature of any person, other than the candidate, who circulated the forms and collected signatures and contributions, whether the services were provided for compensation or on a volunteer basis, affirming that he or she collected the qualifying contributions, that the contributor signed the form in the circulator's presence, that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be and that the contribution came from the personal funds of the contributor, that the circulator did not give anything of value to the contributor in exchange for the contribution and signature, and that the circulator did not represent the purpose of collecting the contributions and signatures to be for any purpose other than obtaining public funds to finance the candidate's campaign; the form must also include the residential and mailing addresses and telephone number of the circulator~~ an affirmation by the person who circulated the form that the circulator collected the contribution, that to the best of the circulator's knowledge and belief the contribution came from the personal funds of the contributor, that nothing was provided to

the contributor in exchange for the contribution, and any additional information required by the Commission in order to protect the reliability of the qualification process.

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SECTION 4. FUND ADMINISTRATION

1. **Coordination with State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to ensure the use of timely and accurate information regarding the status of the Fund.

2. **Publication of Fund Revenue Estimates.** By September 1st preceding each election year, the Commission will publish an estimate of revenue in the Fund available for distribution to certified candidates during the upcoming year's election. The Commission will update the estimate of available revenue in the Fund after April 15th of an election year and again within 30 days after the primary election in an election year.

3. **Computation of Disbursement Amounts.** By July 1, 1999, and at least every 4 years after that date, the Commission will determine the amount of revenue to be distributed to certified candidates based on the type of election and office in accordance with the Act [§1125(8)].

4. **Authorizing Contributions due to Shortfall in the Fund.**

   A. **Authorization by Commission to accept contributions.** If the Commission determines that the revenues in the Fund may be insufficient to make payments under section 1125 of the Act, the Commission may reduce payments of public campaign funds to certified candidates and permit them to accept and spend contributions in accordance with the Act [§1125(13)].

   B. **Limitations on permitted contributions.** If permitted to accept contributions, a certified candidate may not accept a contribution in cash or in-kind from any contributor, including the candidate and the candidate's spouse or domestic partner, that exceeds $750 per election for gubernatorial candidates and $350 per election for State Senate and State House candidates. A candidate may not solicit or receive any funds in the form of a loan with a promise or expectation that the funds will be repaid to the contributor. If a contributor made a seed money contribution to a candidate, the amount of the seed money contribution shall count toward the contribution limit for the primary election. For a replacement candidate or candidate in a special election, a seed money contribution shall count toward the contribution limit for the election in which the candidate is running.

   C. **Apportioning reductions in public funds payments.** Upon determining the amount of the projected shortfall, the Commission shall then determine the amount and apportionment of the reductions in payments to certified candidates. ~~The Commission shall reduce the initial payments to legislative candidates for the general election and the matching funds available for gubernatorial~~

~~candidates in the general election, unless the Commission determines that there are policy reasons to apportion the reductions differently.~~

~~D. **Campaign contributions to replace matching funds.** If the Commission reduces the amount of matching funds to be paid to certified candidates, it may permit candidates to raise contributions to replace matching funds in advance of the authorization to spend matching funds. Any amount of contributions raised that exceeds the amount of campaign funds the candidate has been authorized to spend must be deposited into a separate account with a bank or other financial institution. The candidate may spend the contributions as matching funds only if authorized by the Commission staff. The unauthorized expenditure of contributions raised to replace matching funds is a substantial violation of the Act and this rule.~~

E. **Written notice to candidates.** The Commission shall notify participating and certified candidates in writing of any projected shortfall in the Fund and specify timelines and procedures for compliance with this subsection in the event of a shortfall.

F. **Procedures for candidates.** The candidate shall deposit any authorized contributions into the campaign account into which Maine Clean Election Act funds have been deposited, except funds which must be deposited in a separate account under paragraph D. The candidate shall disclose all contributions received in regular campaign finance reports. The Commission's expenditure guidelines for Maine Clean Election Act funds apply to the spending of the contributions authorized under this subsection.

G. **Disposing of surplus campaign funds.** After the election, the candidate must return any surplus campaign funds which the candidate was authorized to spend to the Commission upon the filing of the 42-day post-election report except for any money retained for purposes of an audit by the Commission pursuant to section 7, subsection 2(B). If the candidate has collected campaign contributions which the candidate was not authorized to spend, the candidate may dispose of those funds within 60 days after the election by returning them to the contributors, donating them to the Maine Clean Election Fund, or by making an unrestricted gift to the State. All expenditures of surplus campaign funds must be disclosed in campaign finance reports in accordance with 21-A M.R.S.A. § 1017.

~~H. **Effect of fundraising on matching funds calculation.** If the Commission authorizes a certified candidate to accept campaign contributions pursuant to section 1125(13) of the Act and this subsection, the amount of the contributions that the candidate has been authorized to spend shall be treated as fund revenues received by the candidate for the purpose of calculating matching funds. Any reduction in the amount of public campaign funds paid to a certified candidate under sections 1125(8) or (10) of the Act will not affect the fundraising or spending threshold that triggers accelerated reporting by an opponent of the certified candidate under 21-A M.R.S.A. § 1017(3-B).~~

SECTION 5. DISTRIBUTION OF FUNDS TO CERTIFIED CANDIDATES

1. **Fund Distribution**

A. **Establishment of Account**. Upon the certification of a participating candidate, the Commission will establish an account with the Office of the Controller, or such other State agency as appropriate, for that certified candidate. The account will contain sufficient information to enable the distribution of revenues from the Fund to certified candidates by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund.

B. **Manner of Distribution of Fund**. The Commission will authorize distribution of revenues from the Fund to certified candidates in accordance with the time schedule specified in the Act [§ 1125(7)] by the most expeditious means practicable that ensures accountability and safeguards the integrity of the Fund. Such means may include, but are not limited to:

(1) checks payable to the certified candidate or the certified candidate's political committee; or

(2) electronic fund transfers to the certified candidate's or the certified candidate's political committee's campaign finance account.

C. **Coordination with Other State Agencies**. The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.

~~2. **Timing of Fund Distributions**~~

~~A. **Distribution of Applicable Amounts**. The Commission will authorize the initial distribution of applicable amounts from the Fund to certified candidates in accordance with the time schedule specified in the Act [§1125(7)] and this Chapter.~~

~~B. **Matching Fund Allocations**. At any time after certification, revenues from the Fund may be distributed to certified candidates in accordance with subsection 3, below.~~

~~C. **Advances**~~

~~(1) To facilitate administration of the Matching Fund Provision of this chapter, and to encourage participation in the Act, the Commission may authorize the advance distribution of revenues from the Fund to certified candidates. In determining whether to authorize such advances and the amounts of any such advances, the Commission will consider the amount of revenue in the Fund, the number of certified candidates, the number of nonparticipating candidates, and information contained in campaign finance and independent expenditure reports.~~

~~(2) A certified candidate may only draw upon, spend or otherwise use, such advance Fund distributions after receiving written notification from the Commission authorizing a matching fund allocation in a specified amount. Written notification by the Commission may be by letter, facsimile or electronic means.~~

~~3. **Matching Fund Provision**~~

~~A. **General.** The Commission will authorize immediately an allocation of matching funds to certified candidates in accordance with the Act when the Commission determines that the eligibility for receipt of matching funds has been triggered [§1125(9)].~~

~~B. **Matching Fund Computation Involving Only Certified Candidates**~~

~~(1) For each certified candidate, the Commission will:~~

~~(a) add to the initial distribution amount for that election:~~

~~(i) the sum of any matching funds previously provided for that election, and~~

~~(ii) the sum of independent expenditures made in support of each certified candidate; and~~

~~(b) subtract the sum of independent expenditures made in opposition to each certified candidate.~~

~~(2) The Commission will compare the final computed amounts and will immediately authorize a matching fund allocation equal to the difference to the certified candidate with the lesser amount.~~

~~(3) In computations involving only certified candidates, the Commission will not use seed money raised or unspent funds remaining after a primary election in computing the amount of matching funds.~~

~~C. **Matching Fund Computation Based on Nonparticipating Candidates' Receipts or Expenditures.** In races in which there is at least one certified and one nonparticipating candidate, and the matching fund computation is triggered by the financial activity of nonparticipating candidate, including any independent expenditures in support of the nonparticipating candidate:~~

~~(1) The Commission will first determine the applicable amount for the nonparticipating candidate~~

~~(a) by adding:~~

~~(i) the sum of the nonparticipating candidate's expenditures, obligations and in-kind contributions, or the sum of the nonparticipating candidate's cash and in-kind contributions and loans, including surplus or~~

~~unspent funds carried forward from a previous election to the current election, whichever is greater, and~~

~~(ii) the sum of independent expenditures made in support of the same nonparticipating candidate; and~~

~~(b) by subtracting the sum of independent expenditures made in opposition to the same nonparticipating.~~

~~(2) The Commission then will determine the applicable amount for the certified candidate~~

~~(a) by adding:~~

~~(i) the amount of the initial distribution for that election;~~

~~(ii) the sum of independent expenditures made in support of the certified candidate;~~

~~(iii) the sum of matching fund allocations already provided to the certified candidate; and~~

~~(iv) the amount of:~~

~~a) any seed money raised by an enrolled certified candidate in a primary or special election or by a replacement candidate in a general election; or~~

~~b) any unspent funds carried forward from the primary election to the subsequent general election by an enrolled certified candidate in a general election; or~~

~~c) any seed money raised and, if applicable, any other distribution received prior to the general election distribution by an unenrolled certified candidate in a general or special election; and~~

~~(b) by subtracting the sum of independent expenditures made in opposition to the same certified candidate.~~

~~(3) The Commission will compare the final computed amounts and, if the amount for the certified candidate is less than the amount for the nonparticipating candidate, will immediately authorize a matching fund allocation equal to the difference to the certified candidate.~~

~~D. **Matching Fund Computation Not Involving a Nonparticipating Candidate.** In races in which there are two or more certified candidates and at least one nonparticipating candidate,~~

~~(1) if the matching fund computation is triggered by an independent expenditure in support of or opposition to a certified candidate, and~~

~~(2) the campaign totals, including independent expenditures, of any nonparticipating candidate in the race are equal to or less than the campaigns totals, including independent expenditures, of at least one certified candidate in the race; then~~

~~(3) the matching fund computation must be completed according to the procedure in paragraph B of this subsection.~~

~~E. The Commission will make computations promptly upon the filing of campaign finance reports and independent expenditure reports.~~

~~F. To prevent the abuse of the Matching Fund Provision, the Commission will not base any calculation on independent expenditures that, although containing words of express advocacy, also contain other words or phrases that have no other reasonable meaning than to contradict the express advocacy. For example, expenses related to a communication saying, "Vote for John Doe—he's incompetent and inexperienced," will not be considered a communication in support of John Doe in the calculation of matching funds.~~

~~G. **Matching Fund Cap.** Matching funds are limited as provided in the Act [§1125(9)]. Certified candidates are not entitled to cumulative matching funds for multiple opponents.~~

~~H. **Other.** Any distribution based on reports and accurate calculations at the time of distribution is final, notwithstanding information contained in subsequent reports.~~

~~I. **Coordination with Other State Agencies.** The Commission will coordinate with the Office of the Controller and other relevant State agencies to implement a mechanism for the distribution of Fund revenues to certified candidates that is expeditious, ensures public accountability, and safeguards the integrity of the Fund.~~

~~J. **Disbursements with No Campaign Value.** If a privately financed candidate has received monetary contributions which are disbursed in ways that do not in any way influence the nomination or election of the candidate, those receipts will not be considered by the Commission in calculating matching funds for his or her opponent. Such disbursements may include repaying a loan received by the candidate, refunding a contribution to a contributor, or transferring funds to a party or political committee for purposes that do not relate to the candidate's race.~~

~~4. **Advance Purchases of Goods and Services for the General Election**~~

~~A. If, prior to the primary election, a candidate purchases or receives in-kind contributions of consulting services, or the design, printing, or distribution of campaign literature and advertising, including radio and television advertising, but uses or will use a preponderance of those services exclusively for the general election, then the portion used or to be used for the general election must be counted as a general election receipt or expenditure in calculating the amount of matching funds for any certified candidate in the same race.~~

~~B. If a certified candidate in a general election believes that an opponent, or person or committee making an independent expenditure, has failed to disclose an advance purchase for the general election, the certified candidate shall submit a written request for an investigation to the Commission no later than August 30 of the election year, or within 30 days of the opponent's filing of the 42-day post-primary report, whichever is later. The request must identify the pre-primary election expenditure that is believed to be for the general election and must state a specific basis for believing that the goods and services purchased were not used for the primary election.~~

~~C. The Commission will request a response from the opposing candidate or other respondent, and will make a determination whether the expenditure should be counted toward the certified candidate's eligibility for matching funds.~~

SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts ~~plus any authorized matching fund allocations~~;

2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];

3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;

4. not use revenues distributed from the Fund to purchase goods to sell for profit;

5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters:

   A. $250 for a candidate for the State House of Representatives;

   B. $750 for a candidate for the State Senate; and

   C. $2,500 by a gubernatorial candidate.

   The candidate may also use his or her personal funds for these purposes; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.

SECTION 7. RECORD KEEPING AND REPORTING

1. **Record Keeping by Participating and Certified Candidates.** Participating and certified candidates and their treasurers must comply with applicable record keeping requirements set forth in Title 21-A, chapter 13, subchapter II [§1016], and chapter 14 [§1125(12-A)]. Failure to keep or produce the records required under Title 21-A and these rules is a

violation of the Act for which the Commission may impose a penalty. The Commission may also require the return of funds for expenditures lacking supporting documentation if a candidate or treasurer is found in violation of the record keeping requirements. The candidate or the treasurer shall have an opportunity to be heard prior to any Commission decision imposing a penalty or requiring the return of funds under this section. In addition to these specific actions, the Commission may also take any other action authorized under Title 21-A.

A. **Fiduciary Responsibility for Funds**. All funds provided to a certified candidate or to a candidate's authorized political committee must be segregated from, and may not be commingled with, any other funds, other than unspent seed money. ~~Matching fund advance revenues for which no spending authorization has been issued must be deposited in a federally insured account and may not be used until the candidate receives authorization to spend those funds.~~

B. **Meal Expenses**. A candidate or treasurer must obtain and keep a record for each meal expenditure of more than $50. The record must include itemized bills for the meals, the names of all participants in the meals, the relationship of each participant to the campaign, and the specific, campaign-related purpose of each meal.

C. **Vehicle Travel Expenses**. If a campaign uses public campaign funds to reimburse the candidate or another individual for their vehicle travel, the ~~A~~ candidate or treasurer must obtain and keep a record of vehicle travel expenses for which reimbursements are made ~~from campaign funds~~.

(1) **Amount of reimbursement.** Reimbursement ~~must be based on~~ may not exceed the standard mileage rate prescribed for employees of the State of Maine for the year in which the election occurs. ~~For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination, destination and purpose of the travel, and the total amount claimed for reimbursement.~~ A candidate may be reimbursed for vehicle travel expenses at a rate less than the standard mileage rate. A candidate may also reimburse a volunteer for vehicle travel expenses at a rate less than the standard mileage rate as long as the difference does not exceed $100 per volunteer per election.

(2) **Contents of record.** For each trip for which reimbursement is made, a record must be maintained showing the dates of travel, the number of miles traveled, the origination (if different than the residence of the person reimbursed), destination and purpose of the travel, and the total amount claimed for reimbursement. The record should contain an affirmation by the person being reimbursed that it is an accurate record of the dates, purpose, and distance of the campaign travel. The person seeking the reimbursement must have recorded the details of the campaign travel contemporaneously with the travel or within two calendar days afterward.

(3) **Penalties for non-compliance.** The Commission may disallow any vehicle travel reimbursements for which the candidate or the treasurer cannot produce ~~an accurate~~ record maintained in accordance with this Rule and may require the campaign to repay the amount of the reimbursement to the Maine Clean Election Fund. The Commission may also assess a penalty pursuant 21-A M.R.S.A. § 1127(1) if a campaign reimburses travel expenses without having kept a record that is fully compliant with the requirements of this Rule.

2. **Reporting by Participating and Certified Candidates**

A. **General.** Participating and certified candidates must comply with applicable reporting requirements set forth in Title 21-A, chapter 13, subchapter II [§1017].

B. **Return of ~~Matching Fund Advances and~~ Unspent Fund Revenues.** ~~Matching fund advance revenues that have not been authorized for spending and unspent~~ Unspent Fund revenues shall be returned to the Fund as follows:

~~(1) **Unauthorized Matching Funds.** Candidates must return all matching fund advance revenues for which no spending authorization was issued prior to an election to the Commission by check or money order payable to the Fund within 2 weeks following the date of the election.~~

(2) **Unspent Fund Revenues for Unsuccessful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was defeated, that candidate must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to $2,000 in order to defray expenses associated with an audit by the Commission.

~~(2-A) **Unspent Matching Funds for Successful Primary Election Candidates.** Upon the filing of the 42-day post-primary election report for a primary election in which a certified candidate was successful, that candidate must return any unspent matching funds received for the primary election. Matching funds received for the primary election may not be used for campaign expenditures for the general election.~~

(3) **Unspent Fund Revenues for All General and Special Election Candidates.** Upon the filing of the 42-day post-election report for a general or special election, all candidates must return all unspent Fund revenues to the Commission by check or money order payable to the Fund, except that a gubernatorial candidate may be allowed to reserve up to $3,500 in order to defray expenses associated with an audit by the Commission.

C. **Liquidation of Property and Equipment.** Property and equipment that is not exclusive to use in a campaign (e.g., computers and associated equipment, etc.) that has been purchased with Maine Clean Election Act funds loses its campaign-related purpose following the election. Such property and equipment purchased

for $50 or more must be liquidated at its fair market value and the proceeds thereof reimbursed to the Maine Clean Election Fund as unspent fund revenues in accordance with the schedule in paragraph B above. Candidates may not return unsold property or equipment to the Commission.

(1) The liquidation of campaign property and equipment may be done by sale to another person or purchase by the candidate.

(2) Liquidation must be at the fair market value of the property or equipment at the time of disposition. Fair market value is determined by what is fair, economic, just, equitable, and reasonable under normal market conditions based upon the value of items of similar description, age, and condition as determined by acceptable evidence of value. A campaign's sale of property or equipment through an on-line commercial auction shall be considered by the Commission as a factor in favor of determining that the campaign has recovered the fair market value of the property or equipment.

(3) If the campaign sells the property or equipment to the candidate or a member of the candidate's immediate family or campaign staff, the campaign must receive at least ~~40%~~ 75% of the original purchase price.