



TO: The Honorable Senator Nancy B. Sullivan, Senate Chair
The Honorable Representative Pamela Jabar Trinward, House Chair
The Joint Standing Committee on Legal and Veterans Affairs

DATE: April 29, 2009

RE: LD 1451 "An Act To Amend the Maine Clean Election Act and the Enforcement Procedures of the Commission on Governmental Ethics and Election Practices," Senator Sullivan, sponsor (agency bill)

Maine Citizens for Clean Elections (MCCE) supports LD 1451.

While we are generally supportive of the enforcement provisions in LD 1451, we will focus our testimony on two other elements of the bill, Sections 14 and 17.

Section 14 corrects deficiencies in statutory language that was passed last year regarding paying a family or household member with Clean Election funds. The proposed language makes clear that both immediate family members and household members are subject to the ban on such payments, and we believe that is consistent with legislative intent. It also corrects a drafting error which implied that the ban did not apply if certain information was provided to the commission prior to making the expenditure. This error caused the commission to create a pre-approval process in their rules which has weakened the law. MCCE believes this committee and the full legislature meant the law to ban expenditures to family and household members with only a very narrow exception. The pre-approval process allows the commission to grant permission to a candidate to pay a family or household member based on information provided by the candidate prior to making the expenditure. We believe that any candidate contemplating such an expenditure should understand that they do so at their own risk, subject to review by the commission which could find a violation if the expenditure did not entirely fit within the statutory exception. Our sense is that the legislature and this committee intended to strongly discourage payments of Clean Election funds to family and household members so as to guard against personal enrichment by participating candidates. The pre-approval process undermines that intent.

Member Organizations

AARP Maine, Common Cause Maine, EqualityMaine, League of Women Voters of Maine, League of Young Voters, Maine AFL-CIO, Maine Council of Churches, Maine People's Alliance/Maine People's Resource Center, Maine Women's Lobby, NAACP-Portland, Natural Resources Council of Maine, Peace Action Maine

We hope the Commission will engage in rulemaking to eliminate the pre-approval process once these statutory changes are made.

In Section 17, LD 1451 also makes changes to the method of determining initial distribution amounts in legislative races. Currently, the commission must recompute the distribution amounts at least every four years by taking the average of all races over the prior two election cycles. That average becomes the new distribution amount. We have long advocated that the commission take a broader view of the term “average” to employ a more appropriate statistical calculation, but they have felt constrained by the statute to use the arithmetic mean, adding up all the totals and dividing by the number of races. The commission needs the ability to consider other factors in making the determination in order that outliers do not disproportionately affect the numbers.

This proposal grants the commission greater latitude in using a variety of information in order to come up with appropriate distribution numbers. It also describes a public process which guarantees opportunity for both public and legislative comment. We support this proposal, but we would also support an approach which simply states the 2010 distribution amount in statute and ties future distribution amounts to an index.

There has been much talk of indexing when it comes to private contribution limits. If an appropriate index can be agreed upon, we believe that tying future increases in both contribution limits and initial distributions to that index would make for good policy. On the Clean Election side, it would take out the major factors that skew the numbers when averaged: very high or low spending candidates and the payment of significant matching funds in certain races. It would ensure that increases are in line with the actual cost of goods and services. On the private side, it would build in automatic, appropriate increases to contribution limits that are directly tied to an objective measure and would forestall the parade of bills calling for arbitrary changes as was seen this year.

For this scheme to be successful, it is essential that the starting points – the first legislative distribution amounts that would be placed in statute and the revised

contribution limits – be thoughtfully considered. We also suggest that research be done to determine the most appropriate index to use.

Finally, we note that Section 18 regarding matching funds makes a stylistic change, but amends a paragraph where substantive changes are proposed in LD 1380 which is yet to be voted out of committee and may be further amended. We caution the committee to make sure it does not inadvertently amend the same paragraph in conflicting ways in these two bills. A similar concern exists in Sections 16 and 17, where this bill repeals a section that is substantially amended in LD 1380, then creates a new section which lays out the distribution scheme in a slightly different format. We feel certain the committee will find acceptable ways to package recommended changes that avoid these sorts of conflicts and simply flag these for your attention.

Thank you very much for your consideration.

Alison Smith, Co-chair

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