

CHAPTER 121

AN ACT establishing a pilot project for the public financing of the campaigns of candidates seeking election to the office of member of the General Assembly.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "New Jersey Fair and Clean Elections Pilot Project."

2. The Legislature finds and declares that:

a. It is the opinion of many residents of this State that the current system of privately-financed campaigns for office of member of the Legislature allows individuals and committees who contribute large amounts of money to have an undue influence on the political process.

b. There is also the belief among many residents that under the current system, the free-speech rights of those candidates and voters who are not wealthy are diminished because the political process is influenced by individuals and committees who can afford to spend large amounts of money on political communications.

c. The result of these beliefs is an erosion in public confidence in the democratic process and democratic institutions, leaving much of the electorate questioning whether their elected officials are accountable mostly to the major contributors who finance their campaigns.

d. It is possible that a voluntary clean money campaign finance system for legislative candidates would strengthen democracy in New Jersey by removing access to wealth as a major determinant of a citizen's influence within the political process.

e. Establishment of a clean elections pilot project would provide selected candidates for the offices of member of the General Assembly with equal resources with which to communicate with voters, reverse the escalating cost of elections and free those candidates from the chore of raising money, thus allowing them more time to conduct their official duties and communicate with their constituents.

f. This pilot project, based on the laws currently in effect in Maine and Arizona, would be a significant step towards strengthening public confidence in this State's democratic processes and institutions.

3. As used in this act:

"Certified candidate" means a candidate seeking election to the office of member of the General Assembly who chooses to seek such office pursuant to the provisions of the "New Jersey Fair and Clean Elections Pilot Project" and is certified as a New Jersey Fair and Clean Elections candidate pursuant to section 9 of this act.

"Commission" means the Election Law Enforcement Commission, established pursuant to section 5 of P.L.1973, c.83 (C.19:44A-5).

"Department" means the Department of the Treasury.

"Fund" means the New Jersey Fair and Clean Elections Fund established pursuant to section 5 of this act.

"New Jersey Fair and Clean Elections candidate" means a candidate who is a certified candidate.

"NJCCEC" means the New Jersey Citizens' Clean Elections Commission established pursuant to section 17 of this act.

"Nonparticipating candidate" means a candidate seeking election to the office of member of the General Assembly who does not seek office pursuant to the provisions of this act and is not certified as a New Jersey Fair and Clean Elections candidate pursuant to section 9 of this act.

"Participating candidate" means a candidate seeking election to the office of member of the General Assembly who chooses to seek such office pursuant to the provisions of this act and is seeking certification as a New Jersey Fair and Clean Elections candidate pursuant to section 9 of this act.

"Qualifying contribution" means any contribution of money made to a participating candidate by any individual:

a. who is a voter registered to vote in the legislative district the candidate represents or seeks to represent;

b. contributed during the designated qualifying period and received with the knowledge and

approval of the candidate;

c. that is acknowledged by a written receipt that identifies the name and mailing address of the contributor, and the occupation of that person and the name and mailing address of the person's employer on forms provided by the commission; and

d. that equals for a candidate seeking election to the office of member of the General Assembly in 2005, at least 1,000 contributions of \$5 and at least 500 contributions of \$30 in the form of a check or money order payable to the fund in support of a participating candidate.

"Qualifying period" means for a participating candidate seeking election to the office of member of the General Assembly in 2005, the period of time beginning the 25th day following the day of the primary election that year and ending at 4 p.m. on the 62nd day prior to the day of the next immediate general election.

"Seed money contribution" means a contribution of money of no more than \$200 per individual made to a participating candidate and includes a contribution from the candidate or from a member of the candidate's immediate family.

4. There is hereby established a pilot project for the public financing of the campaign of candidates seeking election to the office of member of the General Assembly from two legislative districts in 2005. The pilot project shall be open to certified candidates for those offices nominated directly by petition. Candidates participating in this pilot project shall comply with all applicable provisions of the "The New Jersey Campaign Contributions and Expenditures Reporting Act," P.L.1973, c.83 (C.19:44A-1 et seq.), unless otherwise provided by this act.

5. a. There is established in the Department of the Treasury a fund to be known as the "New Jersey Fair and Clean Elections Fund," hereinafter referred to as the fund, to be held separate and apart from all other funds of the State. The department shall administer the fund and moneys in the fund shall be used to finance the election campaigns of New Jersey Fair and Clean Elections candidates, certified as such by the commission pursuant to section 9 of this act, seeking election to the office of member of the General Assembly, as provided by this act. All moneys on deposit pursuant to subsection b. of this section shall be appropriated for the fiscal year in which there is an election to elect members of the General Assembly, as required pursuant to this act.

b. Moneys from the following sources shall be deposited in the fund:

(1) the qualifying contributions required to be submitted to the commission pursuant to section 9 of this act;

(2) seed money contributions remaining unspent after a candidate has become a certified candidate;

(3) voluntary donations made directly to the fund;

(4) all earnings received from the investment of money in the fund;

(5) fines and penalties collected by the commission pursuant to section 18 of this act; and

(6) money appropriated to the fund.

6. The participants in the New Jersey Fair and Clean Elections Pilot Project shall be selected as follows:

a. The chair of the State political party whose candidate for the office of Governor received the largest number of votes in the most recent gubernatorial election shall select one of the following three legislative districts: the 6th, 7th or 15th district, which districts were approved by the Apportionment Commission on April 11, 2001 and described in the corrected plan for legislative districts filed with the New Jersey Secretary of State on April 17, 2001, and the individuals who are candidates for election to the office of member of the General Assembly in 2005 from the selected district and members of the same political party as the chair shall be deemed participating candidates; and

b. The chair of the State political party whose candidate for the office of Governor received the next largest number of votes in the most recent gubernatorial election shall select one of the following three legislative districts: the 9th, 11th or 13th district, which districts were approved by the Apportionment Commission on April 11, 2001 and described in the corrected plan for

legislative districts filed with the New Jersey Secretary of State on April 17, 2001, and the individuals who are candidates for election to the office of member of the General Assembly in 2005 from the selected district and members of the same political party as the chair shall be deemed participating candidates.

c. The selections required by subsections a. and b. of this section shall be made by the respective State chairs no later than the 20th day following the day of the primary election in 2005.

d. In the event that one or both of the State chairs refuse to make such a selection by the deadline provided for in subsection c. of this section, there shall be established an alternative selection committee to make such a selection from the districts stated in subsection a. or subsection b. of this section, as may be appropriate. The committee shall be comprised of three members: one former Governor of this State and one other person, each to be appointed by the Speaker of the General Assembly and one person to be appointed by the Minority Leader of the General Assembly. The appointments to the committee shall be made no later than the 21st day following the day of the primary election. The committee shall select the district or districts to participate in the pilot project no later than the 24th following the day of the primary election.

7. a. Upon selection pursuant to section 6 of this act, each participating candidate shall:

(1) sign and file a declaration of intent to seek certification as a New Jersey Fair and Clean Elections candidate and to comply with the requirements of this act and it shall be filed with the commission prior to or during the qualifying period using the forms and procedures developed by the commission pursuant to section 19 of this act;

(2) submit a declaration of intent prior to accepting qualifying contributions under section 8 of this act; and

(3) (a) suspend, for the time the person is a participating or certified candidate, all access the candidate or any member of the candidate committee has to the funds of the candidate committee of that candidate, including those that the candidate has as part of a joint candidates committee, which have been raised prior to selection, except as provided in subsection b.; and

(b) certify on a form to be developed by the commission that he or she will not seek to use such funds in any way that would assist the candidate once certified as a New Jersey Fair and Clean Elections candidate.

b. A participating candidate may use funds raised and reported to the commission pursuant to P.L.1973, c.83 (C.19:44A-1 et seq.) prior to becoming such a candidate as the seed money required of a participating candidate, but only to the extent that such money can be attributable to contributions of \$200 or less from individuals.

8. a. Subsequent to being selected as a participating candidate and prior to certification as a certified candidate, a participating candidate shall not accept contributions other than qualifying contributions, nor shall a participating candidate accept seed money contributions greater than \$3,000 in the aggregate for a candidate seeking election to the office of member of the General Assembly in 2005.

b. For a participating candidate seeking election to the office of member of the General Assembly in 2005 to show that he or she has sufficient support, the candidate shall obtain qualifying contributions during the qualifying period from no fewer than 1,500 voters registered to vote in the legislative district the candidate represents or seeks to represent.

No payment, gift or other thing of value shall be given in exchange for a qualifying contribution.

c. A participating candidate shall submit qualifying contributions to the commission in accordance with procedures developed by the commission.

9. Upon receipt of the final submittal of qualifying contributions within the qualifying period by a participating candidate, the commission shall certify that candidate as a New Jersey Fair and Clean Elections candidate if the candidate has:

a. signed and filed a declaration of intent to participate in the election as a New Jersey Fair and Clean Elections candidate, pursuant to section 7 of this act;

b. received the appropriate amount of valid qualifying contributions, pursuant to section 8 of this act;

c. not accepted other contributions, except for seed money contributions, and otherwise complied with the contribution restrictions of this act;

d. in the case of candidates seeking election to the offices of member of the General Assembly by direct nomination, submitted to the Attorney General a petition of nomination with the required number of valid signatures, as required by chapter 13 of Title 19 of the Revised Statutes; and

e. otherwise met the requirements to be considered a New Jersey Fair and Clean Elections candidate pursuant to this act.

No participating candidate, other than such a candidate seeking office by means of direct nomination by petition, shall be certified as a New Jersey Fair and Clean Elections candidate unless both candidates for election to the office of member of the General Assembly in 2005 who are members of the same political party in the legislative district the candidates represent or seek to represent, meet the criteria established by this section and are otherwise eligible to be certified as New Jersey Fair and Clean Elections candidates.

The commission shall certify a participating candidate as soon as possible, and in any case no later than three days, after the candidate makes his or her final submission of qualifying contributions. Upon certification, a candidate shall transfer to the fund any unspent seed money contributions. A certified candidate shall comply with the provisions of this act after the candidate has been certified through the period of the general election, for candidates for election to the office of member of the General Assembly in 2005.

To be eligible for certification, a candidate shall accept and spend only seed money contributions after becoming a participating candidate and throughout the qualifying period. A participating candidate shall not accept or spend seed money contributions after certification as a New Jersey Fair and Clean Elections candidate. All seed money contributions shall be reported to the commission in accordance with procedures developed thereby pursuant to section 19 of this act.

After certification, a candidate shall limit his or her campaign expenditures and obligations, including outstanding obligations, to the moneys distributed to the candidate from the fund and shall not accept any other contributions unless specifically authorized by the commission. All such funds distributed to certified candidates from the fund shall be used only for the purposes provided in section 17 of P.L.1993, c.65 (C.19:44A-11.2).

A certified candidate shall not appear, or authorize his or her name, image or photograph to be used, in any advertisements promoting the election of a nonparticipating candidate seeking public office in the same district as the certified candidate.

Once certified, a candidate shall be permitted to withdraw from being a certified candidate and become a nonparticipating candidate at any time prior to the day of the election with the approval of the NJCCEC, which shall consider such requests on a case by case basis. Any candidate who withdraws from being a certified candidate shall remit to the fund any money received therefrom pursuant to this act unless directed otherwise by the NJCCEC and the commission may assess a penalty for such a withdrawal.

10. Each participating candidate certified as a New Jersey Fair and Clean Elections candidate in 2005 and seeking election to the office of member of the General Assembly shall be provided with an amount of money from the fund equal to 75 percent of the average amount of money expended by candidates who are members of the political parties seeking the office of member of the General Assembly in the legislative districts of those certified candidates in the two immediately preceding general elections for that office, as determined by the commission, but in no event shall the amount of money thus provided exceed \$100,000.

All such money shall be provided by the department from the fund established in section 5 of this act no later than the third day following certification in accordance with such procedures as the department and the commission shall establish.

11. a. If the certified candidates seeking election to the office of member of the General

Assembly in 2005 are opposed for election from the legislative district in which they seek office by nonparticipating candidates, each such certified candidate shall receive from the fund an amount of the money equal to the amount of money that would have been issued to each nonparticipating candidate from the fund pursuant to section 10 of this act if that nonparticipating candidate had been a certified candidate.

b. If a campaign report of a nonparticipating candidate for election to the office of member of the General Assembly in 2005 shows that the aggregate amount of the contributions, alone or in conjunction with money spent on behalf of such a candidate by a person or a political committee, continuing political committee, political party committee, candidate committee, joint candidates committee or legislative leadership committee not acting in concert with that nonparticipating candidate, exceeds the amount of money provided to each certified candidate pursuant to section 10 of this act for such candidates in the district, the department shall issue to each certified candidate, as soon as practicable, an additional amount of money from the fund equivalent to the excess amount, up to a maximum of \$50,000.

c. If certified candidates or nonparticipating candidates are determined by the commission to be benefiting from money spent on behalf of such candidates by a person or a political committee, continuing political committee, political party committee, candidate committee, joint candidates committee or legislative leadership committee not acting in concert with those certified candidates or nonparticipating candidates, each of the certified candidates seeking election to the office of member of the General Assembly in 2005 in the same legislative district who are not benefiting from such an expenditure of money shall be provided with money from the fund, following a procedure to be determined by the commission, in an amount not to exceed \$50,000.

d. These amounts of money shall be in addition to the money from the fund provided to a certified candidate seeking election to the office of member of the General Assembly in 2005, pursuant to section 10 of this act.

12. A candidate seeking the office of member of the General Assembly in 2005 by means of direct nomination by petition, pursuant to chapter 13 of Title 19 of the Revised Statutes, and who is certified by the commission shall be eligible for moneys from the fund at the same time as the other certified candidates seeking election to that office who have been nominated in a primary election, but in an amount equal to not more than half of the amount provided to the other certified candidates, as provided in section 10 of this act.

13. Notwithstanding the provisions of section 16 of P.L.1973, c.83 (C.19:44A-16) or any other law, rule or regulation relating to the reporting of campaign contributions by a candidate to the contrary, certified candidates shall report all contributions and expenditures, obligations and related activities to the commission on a schedule and according to procedures developed by the commission. In developing such schedule and procedures, the commission shall use to the greatest extent possible the existing campaign reporting schedule and procedures established in section 16 of P.L.1973, c.83 (C.19:44A-16) for candidate committees and joint candidates committees.

Each certified candidate who is defeated in a general election in 2005 shall, upon the filing of a final report relative to the election, return to the commission for deposit into the fund all unspent fund moneys.

The commission shall insure public access to the campaign finance reports required pursuant to this section and, wherever possible, shall use electronic means for the reporting, storing and display of such information.

The commission shall also prepare a voter's guide for the general public for each of the elections in which certified candidates are seeking office in 2005. The guide shall list the names of each candidate seeking office at that election and both certified candidates and nonparticipating candidates shall be invited by the commission to submit a statement, not to exceed 500 words in length for inclusion in the guide. It shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted on the web site of the commission as soon as may be practicable.

14. Whenever any certified candidate makes, incurs, or authorizes an expenditure to finance a communication aiding or promoting the election of the candidate alone or in conjunction with the other certified candidate who is a member of the same political party and seeking the office of member of the General Assembly from the same legislative district, or the defeat of such candidate's or candidates' opponent or opponents, the communication shall include:

(a) in the case of radio, an audio statement in the candidate's own voice, or if in conjunction with the other certified candidate each candidate's own voice, that identifies the candidate, the office the candidate is seeking, and that the candidate has approved the communication; or

(b) in the case of television, the Internet or any other similar form of communication containing audio and visual, a statement in the candidate's own voice, or if in conjunction with the other certified candidate in each candidate's own voice, that identifies the candidate, the office the candidate is seeking, and that the candidate has approved the communication, that is either spoken by the candidate during an unobscured full-screen view of the candidate or through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the candidate that occupies at least eighty percent of the vertical screen height, and includes the candidate's statement at the end of the communication in clearly readable writing in letters equal to at least four percent of the vertical picture height and visible for at least four seconds, except that an Internet communication consisting of printed material only, with or without photographs, shall include the written statement described above; or

(c) in the case of any other form of communication, the communication shall include the written statement described in subparagraph (b) above.

A certified candidate alone or in conjunction with the other certified candidate who is a member of the same party and seeking the office of member of the General Assembly from the same legislative district may include in any communication made pursuant to this section a statement that he or she is a New Jersey Fair and Clean Elections candidate.

15. a. A candidate who has been denied certification by the commission as a New Jersey Fair and Clean Elections candidate or an opponent for a public office of a candidate who has been certified as a New Jersey Fair and Clean Elections candidate may challenge a certification decision by the commission as follows.

A candidate or an opponent may appeal to the commission within three days of the decision to grant or deny a certification. The appeal shall be in writing and shall set forth the reasons for the appeal.

Within five days after an appeal is filed, the commission shall hold a hearing thereon after notice is given of the hearing to the challenger. The challenger has the burden of providing evidence to demonstrate that the decision of the commission to certify, or to deny certification of, the candidate was improper. The commission shall rule on the appeal within three days after the completion of the hearing.

A challenger may appeal to Superior Court a decision on an appeal rendered by the commission pursuant to this section and the court shall hear the appeal and render a decision thereon in an expedited manner.

b. Any candidate whose certification by the commission is revoked as a result of an appeal to Superior Court shall return to the commission for deposit into the fund any unspent moneys received to date from the fund.

c. If the commission or the court finds that an appeal was made frivolously or to cause delay or hardship, the commission or court may require the challenger to pay the expenses of the commission, the court and the challenged candidate, if any such expenses have been incurred.

16. The commission shall sponsor at least two debates among the candidates participating in the pilot project established by this act. All certified candidates shall be required to participate in the debates. The manner in which such debates are conducted shall be determined by the commission, which shall also specify by rule or regulation the penalty a certified candidate shall incur for failure to participate in such a debate. All certified candidates shall be announced as to their certification and the meaning of that certification during the debate, in a manner to be determined by the commission. The commission shall invite and permit nonparticipating

candidates to participate in the debates.

17. a. There is established a commission, to be known as the New Jersey Citizens' Clean Elections Commission, to consist of nine members. The Governor shall appoint one person who is a member of the public, and the Senate President and the Speaker of the General Assembly shall each appoint two persons, each of whom are members of the public. No more than three of the public members shall be members of the same political party.

The Senate President shall appoint one member of the Senate, who shall be a member of the same political party as the Senate President. The Senate Minority Leader shall appoint one member of the Senate, who shall be a member of the same political party as the Senate Minority Leader. The Speaker of the General Assembly shall appoint one member of the General Assembly, who shall be a member of the same political party as the Speaker. The Minority Leader of the General Assembly shall appoint one member of the General Assembly, who shall be a member of the same political party as the General Assembly Minority Leader. A vacancy in the membership of the NJCCEC shall be filled in the same manner in which the original appointment was made.

b. The members of the NJCCEC shall be appointed no later than the 30th day following January 1, 2005 and shall hold their initial organizational meeting no later than the 30th day following their appointment. The members shall elect one of the members to serve as chair and the chair may appoint a secretary, who need not be a member of the NJCCEC. The members of the NJCCEC shall serve without compensation, but shall be eligible for reimbursement for necessary and reasonable expenses incurred in the performance of their official duties within the limits of funds appropriated or otherwise made available to the NJCCEC.

c. The NJCCEC shall meet at the call of the chair. The NJCCEC shall elicit testimony from the public at such times and places as the chair shall designate and shall hold at least three public hearings in different parts of the State following the 2005 general election. A meeting of the NJCCEC shall be called at the request of five of the NJCCEC's members and five members of the NJCCEC shall constitute a quorum at any meeting thereof.

d. It shall be the duty of the NJCCEC to:

(1) examine the experience, both positive and negative, of the New Jersey Fair and Clean Elections Pilot Project with respect to the election of members of the General Assembly in 2005;

(2) review and recommend criteria for selecting districts to participate in the pilot project in 2007 and provide information to candidates in those districts seeking nomination for election and election to the office of member of the Senate and the office of member of the General Assembly regarding:

(a) the seed money contribution amount, qualifying contribution amount and the qualifying period for candidates seeking the office of member of the Senate; and

(b) the amount of money from the fund provided to, and the qualifying period for, candidates in a primary election for the general election, and the criteria for selection of legislative districts to participate in the New Jersey Fair and Clean Elections Pilot Project as candidates seeking the office of member of the Senate and candidates seeking the office of member of the General Assembly;

(3) determine the feasibility of establishing the New Jersey Fair and Clean Elections Pilot Project as the public financing system for candidates for the offices of member of the Senate and General Assembly in this State;

(4) examine the means by which to finance the New Jersey Fair and Clean Elections Pilot Project for candidates in this State; and

(5) consider such other matters relating to the issue of "clean elections" and campaign finance as the members of the NJCCEC may deem appropriate.

e. The NJCCEC shall be entitled to call to its assistance and avail itself of the services of the employees of any State, county, or municipal department, board, bureau, commission or agency, as it may require and as may be available for its purposes, and to employ stenographic and clerical assistance.

f. The NJCCEC shall:

(1) issue a preliminary report to the Legislature on the pilot project established by this act with respect to the 2005 general election no later than the 90th day following the day of that

election; and

(2) issue a final report to the Legislature on its findings and recommendations relative to the pilot project with respect to the 2005 general election, including, but not limited to, any suggestions for changes in the project for the 2007 primary and general elections, no later than the 180th day following the day of the 2005 general election and the final report shall contain such legislation as prepared by the NJCCEC and recommended thereby for enactment.

18. a. (1) Any person, including any candidate, treasurer or other official associated with the campaign of a certified or participating candidate, with the responsibility for the preparation, certification, filing or retention of any reports, records, notices or other documents in paper or electronic form, who fails, neglects or omits to prepare, certify, file or retain any such report, record, notice or document at the time or during the time period, as the case may be, and in the manner prescribed by law, or who omits or incorrectly states or certifies any of the information required by law to be included in such report, record, notice or document, and any other person who in any way violates any of the provisions of this act, shall, in addition to any other penalty provided by law, be liable to a penalty of not more than \$6,000 for the first offense and not more than \$12,000 for the second and each subsequent offense. Upon receiving evidence of a violation, the commission shall use the procedure provided for in section 22 of P.L.1973, c.83 (C.19:44A-22) for investigating the violation and assessing a penalty, if deemed appropriate.

(2) The fine imposed for a violation of paragraph (1) of this subsection shall, upon payment to the commission, be deposited in the fund.

b. Any individual found to have knowingly and willfully given any amount of money to another person for the purpose of having that other person give such money, or a part thereof, to a participating candidate as a qualifying contribution is guilty of a crime of the fourth degree.

c. (1) Any person, including any candidate, treasurer or other official associated with the campaign of a certified or participating candidate, who knowingly and willfully makes a false statement or files a false report, record, notice or document in paper or electronic form or so violates any other provision of this act is guilty of a crime of the third degree.

(2) Any individual found to be in violation of paragraph (1) of this subsection shall remit in an expedited manner to the commission for deposit into the fund all moneys distributed to the candidate since he or she was certified as a New Jersey Fair and Clean Elections candidate for the election cycle in which the offense occurred.

d. Any participating candidate who files a report found to be in violation of section 8 of this act shall be disqualified as a candidate for the public office sought or shall forfeit office if elected.

19. The commission shall promulgate such rules and regulations as it deems necessary to implement the provisions of this act. These rules and regulations shall include, but not be limited to, procedures for obtaining qualifying contributions, obtaining certification as a New Jersey Fair and Clean Elections candidate, the collection of moneys for the fund, the distribution of fund moneys to certified candidates and the return of unspent distributed fund moneys from certified candidates.

20. The Fair and Clean Elections Pilot Project established by this act shall be reauthorized by the Legislature and the Governor in sufficient time to permit candidates in each of four legislative districts to be able to seek nomination for election and election to the office of member of the Senate and the office of member of the General Assembly in 2007 pursuant to this project. The act reauthorizing the project shall consider the findings and recommendations contained in the final report of the NJCCEC, pursuant to section 16 of this act (P.L.2004, c.121).

21. This act shall take effect immediately, except that:

a. sections 1 through 16 and sections 18 through 19 shall expire on the day the NJCCEC issues its final report; and

b. section 17 shall expire on the 180th day following the day the NJCCEC issues its final report.

Approved August 11, 2004.