



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
Citizens' Election Program

Memorandum

TO: Government Administration and Elections Committee Members

FROM: Beth A. Rotman, Director of Public Campaign Financing

DATE: February 25, 2008

RE: Citizens' Election Program — Proposed Legislative Changes

This memo summarizes the substantive proposed changes to the Citizens' Election Program (the "Program") that the State Elections Enforcement Commission (the "Commission") proposes that the General Assembly address during the current legislative session so the Program will run smoothly during the 2008 General Assembly elections.

A. Initial Grant Application Schedule [CONN. GEN. STAT. § 9-706]

The statute requires the Commission to make prompt determinations, in three business days or less, whether a candidate is eligible to receive an initial grant. There are no application deadlines in the current law, so this floating three-day turnaround for a Commission payment determination could result in a Commission payment determination meeting on virtually every business day for a period of several months. The law should be amended to include application deadlines, which would allow participating candidates to follow a concrete and predictable schedule. The deadlines would also allow the Commission to make payment determinations at fixed times, and allow the Commission to plan Commission meetings as well as payment determination dates for initial grant payments.

So that the deadlines are clear to all candidates, the Commission would publish a calendar setting forth these specific deadlines. This deadline schedule would be coordinated with the annual calendar published by the Secretary of State.

Additionally, so the Commission has adequate time to review all documentation supporting qualifying contributions, the payment determination review period should be extended from three business days to four business days. Applications submitted by the Thursday deadline would be acted on by the Commission by no later than the following Wednesday. Additionally, a second application deadline and Commission payment determination meeting would be available for the period representing the time the Commission anticipates the highest volume of applications for public grants.

Lastly, in the event of extraordinary circumstances (such as a national, regional, or local emergency or local natural disaster), the payment determination period should be changed to “as soon as reasonably practicable under the circumstances.”

B. Supplemental Reporting, Receiving, and Spending Supplemental Grant Money [CONN. GEN. STAT. § 9-712 and § 9-713]

The provisions relating to supplemental reporting and supplemental grant money contain several issues, which impact the administration of the Program, complicate filings and expense monitoring for treasurers, and could disadvantage participating candidates.

1. Acknowledge *Spending Ability* of Nonparticipating Opponent and Change Supplemental Grant Eligibility to Include Opponent’s Total Receipts [CONN. GEN. STAT. § 9-712 and § 9-713]

Connecticut’s statute only provides for supplemental grants if a nonparticipating opponent makes expenditures in excess of the applicable expenditure limit for a participating candidate. In contrast, Arizona and Maine provide supplemental grant money if the opponent *makes such “excess expenditures” or receives contributions* that exceed the applicable spending limit for a participating candidate. A.R. Stat. § 16-952; Ar. Reg. § 2-20-113; 21-A M.R.S.A. § 1125(9).

During our training sessions potential candidates and treasurers have voiced concern about a situation where a nonparticipating opponent with a substantial “war-chest” of available funds spends substantial money in the final days before an election, but the participating opponent is unable to benefit from supplemental public funds in time before the election. This concern is legitimate since nonparticipating opponents must actually make expenditures in excess of the participating candidate’s expenditure limit before a participating candidate may be issued *any* supplemental grant funds.

If the statute is amended to allow participants to receive supplemental grant funds if the opponent *makes excess expenditures or receives contributions or other receipts (such as loans or personal funds)* that exceed the applicable spending limit for a participating candidate, it is less likely that a participating candidate would be blind-sided by an opponent’s last minute expenditures, and be unable to respond. Accordingly, the statute should be amended so the Program will provide supplemental grant funds based on receipts and expenditures of candidates opposing participating candidates.

2. Eliminate Escrow Requirement [CONN. GEN. STAT. § 9-712 and § 9-713]

Presently, the law requires any candidate in a race involving a nonparticipating candidate to file a supplemental campaign finance report (“initial supplemental statement”) when such candidate’s aggregate spending exceeds ninety percent (90%) of a participating candidate’s *full applicable grant amount*. § 9-712. At this time, the Commission is required to notify the State Comptroller, who must place an amount equal to twenty-five percent (25%) of the applicable full grant in escrow, for each participating candidate in that race.

This process could be more efficient. Because a substantial amount of money is already in the Citizens’ Election Fund, and because the Commission is already charged with determining whether or not the Fund contains sufficient money for each regular election year, the ninety percent escrow requirement is not necessary. Accordingly, the proposed change would eliminate the ninety-percent escrow provision (as well as the similar escrow provisions when the high-spending opponent’s expenditures exceed one hundred forty percent, one hundred sixty five percent, and one hundred ninety percent of the applicable full grant amount).

3. Link the 90% Reporting and Release of Supplemental Grant Money to “Applicable Expenditure Limit” Instead of “Grant Amount” [CONN. GEN. STAT. § 9-712 and § 9-713]

Once the Commission determines that a high-spending candidate’s aggregate spending exceeds one hundred percent of a participating candidate’s *full applicable grant amount*, the Commission must initiate a voucher, whereby each participating candidate opposing such candidate receives, via electronic fund transfer, an amount equal to twenty-five percent (25%) of the applicable full grant.

However, *a participating candidate may not spend any of this supplemental grant money until the high-spending opponent makes an excess expenditure*, which is defined as an expenditure which exceeds the expenditure limit of a participating candidate. For purposes of supplemental grants, the expenditure limit is equal to the required amount of qualifying contributions plus the applicable full grant amount for the primary campaign period or general election campaign period (whichever is applicable).

The statute is inconsistent in that the initial supplemental statement and the release of supplemental grant money link to *ninety percent of the initial grant amount*, but the participating candidate is only able to spend the supplemental grant money when the high-spending opponent's expenditures exceed the applicable spending limit, which equals *the sum of required qualifying contributions plus the applicable initial grant amount*.

The proposed change would link the initial supplemental statement to a percentage (*i.e.* 90%) of the *applicable spending limit*. A candidate would be required to file an initial supplemental statement when his or her expenditures made or contributions received during the campaign period exceed a stated percentage of the applicable spending limit for that campaign period. The *applicable spending limit* is the sum of the required amount of qualifying contributions plus applicable full grant amount for the campaign period.

4. Allow Candidates to Spend Supplemental Grant Money in Statutorily Defined Increments [CONN. GEN. STAT. § 9-712 and § 9-713]

Presently, the statute allows candidates *to receive* supplemental grant money, in the amount of twenty-five percent of the initial grant, when a high-spending opponent has spent at a certain level (one hundred percent, one hundred twenty-five percent, one hundred fifty percent, and one hundred seventy-five percent of the applicable grant amount) – but the participant is only allowed *to spend* an amount equal to the excess expenditure of the high-spending opponent, as confirmed by the Commission.

For example, if a nonparticipating candidate for State Senator spends more than \$100,000 (which is calculated by adding the \$15,000 required qualifying contributions, plus the \$85,000 applicable full grant amount), a participating candidate may receive a supplemental grant of \$21,250. If the nonparticipating candidate has spent \$101,000, the participating candidate who receives the additional \$21,250 may only spend \$1,000 of the supplemental grant. If, the next day, the nonparticipating candidate spends another \$1,250, the participating candidate may then spend \$1,250 of the supplemental grant. This poses great challenges for participating candidates because they would be at a constant risk of unwittingly making an excess expenditure themselves, because they would have a large supplemental grant waiting in their depository account, but could only spend it in bits and pieces. Moreover, participating candidates would be at the mercy of the reporting diligence of high-spending nonparticipating candidates, and could not respond quickly to an opponent's last-minute expenditures.

The proposed change would allow participating candidates to spend the applicable supplemental grant (twenty-five percent of the applicable full grant amount) after it is issued. The Commission would make supplemental grant determinations at the stated applicable limits included in the law, and participating candidates could spend each supplemental block grant until reaching the next stated spending threshold. This method has worked well in New York City as part of the New York City Campaign Finance Program, and would accomplish the dual goals of eliminating the need for the participating candidate to constantly track even the smallest expenditures of a high-spending opponent and enabling participating candidates to respond to high-spending opponents.

C. Lower the Threshold for Mandatory Electronic Filing

Mandating electronic filing is crucial to the Program's goal of providing the public with the utmost transparency, and accurate and prompt disclosure of campaign finances. Electronic filing is required in most major public financing jurisdictions, and is particularly important to contemporaneous disclosure of campaign expenditures of public dollars. Accordingly, the statute should be amended to require electronic filing at a \$10,000 threshold rather than the \$250,000 currently included in the law.

Mandatory electronic filing is a seminal ingredient in any campaign finance program striving for utmost accountability and transparency. Widespread and prompt access to accurate searchable information about the sources and uses of money that fuel campaigns is critical to a meaningful campaign finance disclosure program. Mandatory electronic filing will enable candidates and the public to search and analyze campaign information immediately after it is filed with the Commission. The comprehensive and up-to-date campaign finance disclosure information that such mandatory electronic filing would provide will go far toward strengthening the Commission's ability to implement the Citizens' Election Program and enforce Program requirements, together with broader campaign finance law requirements.

Mandatory electronic filing also serves a practical role in administering the Program. First, requiring each campaign to enter its own data helps to ensure that the data entered is accurate. The campaign treasurer is better situated than Commission staff or third party data entry clerks to know and confirm the accuracy of the data entered. This requirement would not overly burden campaigns, since many campaigns use campaign finance software for their own purposes, yet still file campaign finance disclosure statements on paper. Second, because the Commission must determine whether a grant applicant is eligible to receive a grant within days after receiving the application, much of the data that is currently filed on paper will need to be sent off-site to be entered overnight, so that the Commission audit staff has time to actually review the application. Mandatory electronic filing will eliminate the need for this offsite overnight

data entry. Third, mandatory electronic filing will facilitate the application review process and will facilitate Program compliance. For example, the electronic filing program can be programmed to verify whether John Smith is the same person as J. Smith, and will be able to automatically calculate an individual's aggregate contribution amount. Finally, mandatory electronic filing will help campaigns file complete disclosure statements, as the electronic filing program will be able to caution and warn the treasurer if any of the required data fields are not completed. This will help reduce the number of amended reports, and will thus increase the efficiency of both campaigns and Commission staff.

Notably, in the proposed legislation, this last proposed change would become effective January 1, 2009.