

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: March 3, 2021

To: Veterans and Legal Affairs Committee

From: Janet Stocco, Legislative Analyst

LD 413 **An Act To Apply the Same Auditing Standards to All Candidates and Political Action Committees** (*Rep. Riseman*)

SUMMARY

LD 413 directs the Commission on Governmental Ethics and Election Practices (“the Commission”) to conduct random audits and investigations of (1) political action committees (“PACs”) that are required to file campaign finance reports with the commission and (2) candidates for state office—*i.e.*, candidates for Governor, State Senator, State Representative and presidential elector. The bill also directs the commission to adopt rules to implement these requirements, which must at a minimum include:

- Requiring the audit and investigation of an equal percentage of: (1) Primary candidates for state office who are certified as Maine Clean Election Act (“MCEA”) candidates and (2) primary candidates for state office who are not certified as MCEA candidates.
- Requiring the audit and investigation of an equal percentage of: (1) general election candidates who are certified as MCEA candidates; (2) general election candidates who are not certified as MCEA candidates; and (3) PACs required to file campaign finance reports with the commission.
- Establishing standard auditing requirements applicable to each candidate or PAC selected for an audit, including that the candidate or PAC disclose records of all contributions and expenditures.

ADDITIONAL INFORMATION:

- **Affected political action committees (PACs).** LD 413 applies to PACs required to file reports with the commission under [21-A M.R.S. §1059](#). This includes the following types of PACs described in [§1052\(5\)](#) and required to file campaign finance reports under [§1052-A](#):
 - A separate segregated fund established by a corporation, labor organization or other organization **if** its purpose is to initiate or influence a candidate or ballot question campaign **and** it receives contributions or makes expenditures aggregating in excess of \$1,500 for that purpose.
 - Any person other than an individual, for example a corporation or organization, **if either**:
 - Its *major purpose* is to initiate or influence a *candidate or ballot question* campaign **and** it receives contributions or makes expenditures aggregating in excess of \$1,500 in a calendar year for that purpose; **or**
 - It *does not have a major purpose* of initiating or influencing a *candidate* campaign but receives contributions or makes expenditures aggregating in excess of \$5,000 in a calendar year for that purpose.

- **Not included.** The bill does not require audits of ballot question committees, defined in §1056-B as persons that do *not have a major purpose* of initiating or influencing a *ballot question campaign* but that receive contributions or make expenditures aggregating in excess of \$5,000 for that purpose.
- **Current law and practice: auditing MCEA candidates.** The Ethics Commission is required by 21-A M.R.S. §1125(12-B) to audit the campaign of each gubernatorial candidate who receives funding under the MCEA. Although not required by law, the Ethics Commission also currently conducts random audits of 20% of the legislative MCEA candidates each election cycle. The approximately \$40,000 cost of these legislative-candidate audits is paid out of the Maine Clean Election Fund.
- **Past legislation.** LD 413 is substantively identical to LD 1187 from the 129th Legislature. VLA voted 8-5 in favor of an amendment to LD 1187 that struck and replaced the bill text with a General Fund appropriation to cover the cost (\$52,000) of conducting random post-election audits of 20% of non-MCEA legislative candidates. LD 1187 ultimately died on the Special Appropriations table.

ISSUES RAISED AT PUBLIC HEARING

Ethics Commission concerns. In his testimony, the Executive Director of the Ethics Commission raised several concerns regarding the Ethics Commission’s ability to implement the bill.

- **Financial:** The Ethics Commission does not have sufficient non-MCEA funds to contract with an outside accounting firm or to hire additional staff to conduct the audits of traditionally financed candidates and PACs envisioned by the bill. In addition, Maine Clean Election Fund dollars may not be utilized to finance these audits. See 21-A M.R.S. §1124(1) (“The Maine Clean Election Fund is established to finance the election campaigns of certified Maine Clean Election Act candidates running for Governor, State Senator and State Representative and to pay administrative and enforcement costs of the commission *related to this Act.*”) (emphasis added).
- **Staff:** Although current Ethics Commission staff do not possess sufficient expertise to conduct true audits of non-MCEA candidates and PACs, commission staff would be willing to conduct investigations that involve: requiring a randomly selected percentage of traditionally financed candidates and PACs to submit their monthly bank statements to the commission and then comparing those bank statements with the contributions and expenditures reported by those traditionally financed candidates and PACs in their campaign finance reports. It would not be possible for staff to conduct these investigations during an election year, however, when they are engaged in performing other statutorily required duties. In addition, if conducted during non-election years, these investigations would necessarily reduce staff time for preparing written guidance, conducting rulemaking and completing other projects.

INFORMATION REQUESTS

To bill sponsor: Can you provide evidence demonstrating that increased auditing increases compliance with campaign-finance laws?

To analyst: If the bill is enacted, would the cost of hiring additional Ethics Commission staff or the costs of contracting with an outside auditing firm be reflected in the fiscal note?

Answer. If the committee votes in favor of the bill as drafted, the fiscal note prepared by OFPR will reflect the costs associated with completing the audits or investigations the bill requires. If the committee does not specify how the Ethics Commission should complete the required audits, the Executive Director indicates he is likely to request that the fiscal note include an appropriation to cover the expense of contracting with an outside auditing firm. For example, the appropriation that was drafted as part of the [committee amendment](#) to LD 1187 in the 129th Legislature was drafted in this manner. Alternatively, the committee may direct OFPR to prepare a fiscal note that appropriates sufficient General Fund dollars to establish a new part-time or full-time position within the Ethics Commission to perform the required audits.

FISCAL IMPACT

Not yet determined; but see fiscal note discussion above.