

ELECTION LAW ENFORCEMENT COMMISSION

REGULATIONS OF THE ELECTION LAW ENFORCEMENT COMMISSION

New Jersey Fair and Clean Elections Pilot Project

Proposed New Rules: Subchapter 23. New Jersey Fair and Clean Elections Pilot Project N.J.A.C. 19:25-23.1 through 19:25-23.34

Authorized By: Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D.,
Executive Director

Authority: P.L.2004, c.121, §19

Calendar Reference: See summary below for explanation of exception to calendar requirement.

Proposed Number: PRN 2005-178

The sitting New Jersey Election Law Enforcement Commission (hereafter, Commission) will conduct a **public hearing** concerning this proposal on **Tuesday, June 21, 2005** at 11:15 a.m. at:

Election Law Enforcement Commission
Edward J. Farrell Memorial Conference Room
28 West State Street, 12th Floor
Trenton, New Jersey

Persons wishing to testify are requested to reserve time to speak by contacting Administrative Assistant Elbia L. Zeppetelli at (609) 292-8700 no later than Friday, June 17, 2005.

Submit written comments by July 15, 2005 to:

Michelle R. Levy, Esq., Assistant Legal Director
Election Law Enforcement Commission
P.O. Box 185
Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

A major innovation in the ethics reform legislation enacted by the Legislature in 2004 was the New Jersey Fair and Clean Elections Pilot Project, P.L.2004, c.121 (hereafter, the Act). The Legislature declared that:

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. . . . 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. . . . 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. P.L.2004, c.121, §2.

As mandated by Section 19 of the Act, the Commission proposes the following new rules to implement the New Jersey Fair and Clean Elections Pilot Project.

Definitions: The definitions contained in the Act are set forth at N.J.A.C. 19:25-23.1, Definitions. These definitions include, among others, the statutory definitions of “certified candidate,” “participating candidate,” “nonparticipating candidate,” “qualifying contribution,” “qualifying period,” and “seed money.” The Commission proposes that a definition of “initial grant” be added to describe the amount calculated by the Commission, pursuant to P.L.2004, c.121, §10, that each certified candidate in a legislative district is entitled to receive in the 2005 general election. The Commission also proposes that a definition of “Campaign Reporting Act” be included to refer to the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1, et seq., which governs reporting obligations for all candidates, including Clean Elections candidates.

Application of the Act: The Commission proposes N.J.A.C. 19:25-23.2, Application of the Act in the 2005 general election, to establish that the pilot project applies only to candidates, including candidates nominated directly by petition, running for the General Assembly in the 2005 general election in the two legislative districts selected pursuant to P.L.2004, c.121, §6. The new rule also states that all pilot project candidates are required to comply with all applicable provisions of the Campaign Reporting Act, unless otherwise provided by the Act or the new rules.

N.J.A.C. 19:25-23.3, Notification of selection of legislative districts, is proposed to describe the statutory process for selection of the two 2005 pilot project legislative districts and to require that the Commission notify candidates in the two selected districts of the pilot project’s statutory and regulatory requirements.

Declaration of Intent to be a Certified Candidate: The Act requires that each participating candidate sign and file a declaration of intent to be a certified Clean Elections candidate; see P.L.2004, c.121, §7. Proposed N.J.A.C. 19:25-23.4, Declaration of intent to be a certified candidate, requires that a candidate certify his or her acceptance of the statutory restrictions imposed on a certified candidate. These restrictions include, among others, that the Declaration be filed before accepting qualifying contributions and that the candidate will suspend access to and shall not use funds in any existing candidate committee or joint candidates committee. The Commission proposes that additional requirements established by the Act be included in the

Declaration: that the candidate will accept only seed money and qualifying contributions during the qualifying period; that the seed money contributions will not exceed \$3,000 in the aggregate; that each seed money contribution will be from an individual and no more than \$200.00; that the candidate will spend only Clean Elections funds if certified; that, with the exception of a candidate seeking election by means of direct nomination by petition, both candidates in the same party must meet the criteria for certification as a Clean Elections candidate; and that the candidate must also agree to the Act's debate requirement. In addition, the Commission proposes that the rule preclude receipt of a seed money contribution in the form of a loan because unspent seed money must be returned to the Fund by a candidate once the candidate is certified by the Commission.

Written Contribution Receipt: The Act's requirement that a written receipt be made for each qualifying contribution is set forth in N.J.A.C. 19:25-23.5, Written receipt for a qualifying contribution. The proposed rule requires that candidates observe the existing requirements of N.J.A.C. 19:25-10.15, Contributions made by check, to determine whether or not a qualifying contribution received by means of a check is a contribution from an individual. The Commission proposes that the rule include a requirement that if a contribution is received by means of a money order, the written contribution receipt must contain the signature of the contributor, because without a signature on the written receipt for a money order contribution, it may not be possible to verify that a qualifying contribution was received from a registered voter, as required by the Act.

Recordkeeping: Proposed N.J.A.C. 19:25-23.6, Recordkeeping, requires that a participating or certified candidate comply with the recordkeeping requirements of the Campaign Reporting Act and Commission regulations, unless otherwise provided by the Act or this subchapter.

Submission Procedures: N.J.A.C. 19:25-23.7, Submission of qualifying contributions for initial grant, establishes the procedures by which a candidate applies to receive the initial grant amount. The candidate must file a submission form and certify that he or she has complied with various Clean Elections requirements, including the requirement that each qualifying contribution was received from a voter registered to vote in the legislative district the candidate represents or seeks to represent. The qualifying contributions must accompany each submission. The submission must identify each qualifying contribution by reporting the contributor's full name and mailing address, the date of receipt of the contribution, the amount of the contribution, the occupation of the contributor, and the name and mailing address of the contributor's employer. The candidate must report on the first such submission all seed money contributions received. The proposed rule further requires that a candidate certify on his or her final submission that he or she met the Act's requirement to obtain contributions from no fewer than 1,500 registered voters in the legislative district the candidate represents or seeks to represent.

The Commission proposes N.J.A.C. 19:25-23.8, Dates of submissions, which states that submissions may be filed on the second and fourth Thursdays in July and August, the first Thursday in September, and the fourth business day after the final day of the qualifying period. P.L.2004, c.121, §9 contemplates multiple submission dates, and the proposed dates do not conflict with gubernatorial matching fund submission dates. As with the gubernatorial public financing program, the Commission proposes that submissions be due for filing at noon, which

permits staff to conduct an immediate facial review of the submission before the end of the business day.

The Act requires the Commission to certify a candidate to receive Clean Elections funds within three days of receipt of the candidate's final submission; see P.L.2004, c.121, §9. Proposed N.J.A.C. 19:25-23.9, Notification of certification; initial grant, establishes the procedures by which the Commission will provide written notification to a candidate that he or she has met the certification criteria or provide written notification to a candidate who has been denied certification of the reasons for the denial. The proposed rule also recites the statutory provision that a certified candidate seeking office by means of direct nomination by petition shall receive an initial grant from the Fund in an amount equal to not more than half of the initial grant amount calculated by the Commission for that legislative district; see P.L.2004, c.121, §12.

Appeal of Certification Decision: P.L.2004, c.121, §15 (Section 15) provides that, if the Commission denies certification to a candidate as a Clean Elections candidate, the candidate may challenge the Commission's determination. Section 15 also permits an opponent to challenge a candidate's certification. Based upon its experience with litigation in the gubernatorial public financing program, the Commission proposes that the Clean Elections rules establish procedural standards for an appeal of the Commission's certification decision. The Commission believes that rules governing such an appeal are especially important because the Commission must resolve such matters in a very short preelection time frame.

The Commission therefore proposes N.J.A.C. 19:25-23.10, Appeal of certification decision, to incorporate the statutory three-day period to file a written appeal of a Commission certification decision and the requirement that the Commission hold a hearing on the appeal within five days. The proposed rule includes the statutory provision for appeal to Superior Court of the Commission's decision on an appeal and for return of any unspent moneys to the Fund if a candidate's certification is revoked as a result of an appeal to Superior Court. The Commission proposes that an appellant be required to include as part of the written appeal information to support the candidate's claim that he or she should be granted certification as a Clean Elections candidate or that an opponent should not have been granted certification. The proposed rule includes standards for service of the written appeal and provides that the Commission may refer an appeal to the Office of Administrative Law for hearing as a contested case which shall be governed by the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Return of Seed Money: The Act requires that a certified candidate return unspent seed money to the Fund; see P.L.2004, c.121, §5b(1) and §9. The Commission proposes N.J.A.C. 19:25-23.11, Return of seed money; report, to require that within 48 hours of receipt of notification that a candidate is certified as a Clean Elections candidate, the candidate shall file a report disclosing the amount of seed money received and spent and provide a check made payable to the Fund in the amount of the unspent balance of seed money.

N.J.A.C. 19:25-23.12, Reporting contributions, reiterates the statutory requirement that all seed money and qualifying contributions be reported even though they are below the \$300.00 contribution reporting threshold in the Campaign Reporting Act; see P.L.2004, c.121, §13.

Limitation on Spending: P.L.2004, c.121, §9 requires that after certification, a candidate shall limit his or her campaign expenditures and obligations, including outstanding obligations, to only the moneys distributed to the candidate from the Fund, and that all such funds be spent only for the purposes permitted in the Campaign Reporting Act; see N.J.S.A. 19:44A-11.2. The Commission proposes N.J.A.C. 19:25-23.13, Use of funds, to include those spending requirements.

Prohibition on Use of the Name, Image, or Picture of a Clean Elections Candidate: A certified candidate is prohibited by the Act from authorizing the use of his or her name, image or photograph in any advertisement to promote the election of a nonparticipating candidate seeking public office in the same legislative district as the certified candidate; see P.L.2004, c.121, §9e. The Commission's proposal does not include the word "appear," which is part of the statutory text, because it may be constitutionally impermissible to prohibit any candidate from appearing with other candidates. The Commission believes that the prohibition was intended to prevent a certified candidate from permitting his or her name, image, or picture from being used in support of a nonparticipating candidate, and that the remaining text is sufficient to convey the restriction. The Commission therefore recommends proposal of N.J.A.C. 19:25-23.14, Use of name, image, or photograph of certified candidate, to incorporate the statutory restriction.

Withdrawal: Section 9e of the Act permits a candidate to withdraw from being a certified candidate and to become a nonparticipating candidate at any time prior to the day of the election with the approval of the New Jersey Citizens' Clean Elections Commission (NJCCEC). The Act further requires that a withdrawn candidate remit to the Fund any money received pursuant to the Act unless directed otherwise by the NJCCEC and provides that the Commission may assess a penalty for withdrawal. The Commission therefore proposes N.J.A.C. 19:25-23.15, Withdrawal to include these requirements.

Receipt of Additional Funds: There are three ways that a certified candidate may receive funds in addition to the initial grant. A certified candidate may receive an amount equal to the initial grant if the opposing party candidates do not participate in the program. The certified candidate may receive up to a maximum of \$50,000 if contributions in excess of initial grant amount are received by a nonparticipating candidate. Finally, a certified candidate may receive an amount, not to exceed \$50,000, if certified or non-certified candidates in the same legislative district are benefiting from independent expenditures; see P.L.2004, c.121, §11.

The Commission proposes N.J.A.C. 19:25-23.16, Additional funds for a certified candidate, to require that the Commission obtain additional funds equivalent to the initial grant amount if the opposing party candidates do not participate in the program. Proposed N.J.A.C. 19:25-23.17, Claim for additional funds for excess contributions, requires a certified candidate to file a claim with the Commission for additional Clean Elections funds if an opposing nonparticipating candidate receives contributions in excess of the initial grant amount in that legislative district.

Proposed N.J.A.C. 19:25-23.18, Claim for additional funds for independent expenditures, requires that a certified candidate file a claim and supply evidence that another candidate or candidates for the office of member of the General Assembly in the same legislative district is or

are benefiting from an independent expenditure or independent expenditures in an amount greater than \$1,000. The Commission believes that it is reasonable to require the certified candidate to file evidence of the independent expenditure because the candidate or his or her supporters will be more likely to have access to and be able to supply copies of the independent expenditure communication. The Commission proposes inclusion of the \$1,000 threshold amount for an independent expenditure claim based on its experience in enforcing claims of expenditure limit violations in the gubernatorial public financing program; see N.J.A.C. 19:25-15.65 and 16.48. The Commission believes that an independent expenditure below the \$1,000 threshold would be likely to have a *de minimis* effect in an election in a legislative district.

Return of Unspent Funds: The Act requires defeated candidates to return unspent Clean Elections moneys to the Fund; see P.L.2004, c.121, §13. The Commission believes that all candidates should be obligated to return unspent funds at the conclusion of the Clean Elections candidacy, and that there is no public policy reason to use the distinction between a successful and an unsuccessful candidate as the basis for requiring return of public money. Further, publicly financed gubernatorial candidates, whether successful or not, are required to return unspent funds to the State; see N.J.S.A. 19:44A-35c. The Commission therefore proposes N.J.A.C. 19:25-23.19, Return of unspent funds, to require that each certified candidate return unspent funds upon the filing of a final report for the 2005 general election. Because the Commission believes that a certified candidate should be under a duty to preserve Clean Elections money for return to the Fund, the Commission further recommends that the rule restrict postelection spending to the satisfaction of outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes and to pay the reasonable and necessary costs of closing the campaign. These restrictions are identical to those placed on publicly financed gubernatorial candidates; see N.J.S.A. 19:44A-35c and N.J.A.C. 19:25-15.47 and 16.34.

Political Identification Requirements: N.J.A.C. 19:25-23.20, Political identification requirements, reiterates the Act's special requirements for political identification on radio, television, and Internet communications; see P.L.2004, c.121, §14. The proposed rule also permits a certified candidate to state in any communication that he or she is a New Jersey Fair and Clean Elections candidate.

Voter's Guide: Section 13 of the Act requires that the Commission prepare a Voter's Guide listing all candidates seeking the office of member of the General Assembly in the pilot districts and identifying those candidates who are certified candidates. All candidates may submit a 500-word statement for inclusion in the Guide. N.J.A.C. 19:25-23.21, Voter's guide statement, to establishes a specific deadline for receipt by the Commission of the candidates' statements. The need for a date certain for filing the candidates' statements is based upon the Commission's experience in collecting gubernatorial candidates' statements for inclusion on the sample ballots; see N.J.S.A. 19:44A-37 and N.J.A.C. 19:25-15.44.

Debate Rules: The Act's requires that each Clean Elections candidate participate in two debates as a condition of continued certification; see P.L.2004, c.121, §16.

N.J.A.C. 19:25-23.22, Debate requirement; nonparticipating candidates, requires that each certified candidate participate in two debates and that nonparticipating candidates shall be invited

to take part in the debates. The Act does not specify the length of the mandatory debates. The Commission proposes a requirement that each debate to be at least one hour in duration, which is the length required of gubernatorial candidates' debates; see N.J.S.A. 19:44A-46.

The Commission also proposes N.J.A.C. 19:25-23.23, Debate sponsor selection, to require that the certified candidates in a legislative district select the sponsors for the two debates. The certified candidates in a legislative district have unique knowledge of organizations in their district that might serve as sponsors of the two debates and of resources, such as locations, available for the debates. Based on its experience since 1989 with mandatory gubernatorial candidates' debates, the Commission believes that two criteria are necessary for selection of an organization to sponsor a debate: that a sponsor organization to be unaffiliated with any political party or with any holder of or candidate for public office and that the organization must not have endorsed any candidate in the pending general election and agrees not to make any such endorsement until the completion of any debate sponsored by the organization. These criteria have been applied successfully to select gubernatorial debate sponsors; see N.J.S.A. 19:44A-46c.

The Commission believes that it is important to establish a "window" of time during which the two debates must occur. Any appeal of a candidate's certification, pursuant to N.J.A.C. 19:25-23.10, should be concluded by October 1st. The Commission therefore proposes N.J.A.C. 19:25-23.24, Conduct of the debates; dates, to require that the two debates occur no earlier than October 3rd and no later than the fifth day prior to the general election in which the candidates are seeking election to the office of member of the General Assembly. Further, the proposed rule requires that the sponsor specifically identify the certified candidates and explain the meaning of that certification.

Proposed N.J.A.C. 19:25-23.25, Candidate debate certification, requires each certified candidate to file with the Commission, no later than October 1st, detailed information concerning plans for the two debates. Candidates' debates benefit the voting public most when they have the broadest dissemination. Therefore the information to be reported is similar to the information which the Commission requires from applicants to sponsor the gubernatorial candidates' debates; see N.J.S.A. 19:44A-46 and N.J.A.C. 19:25-15.50 and 19:25-16.39. Among other details, the dates, times, locations, and formats of the debates must be reported, along with information concerning media coverage of the debates and plans for an audience. The proposed rule also requires the Commission to review each debate certification to ensure that no debate is scheduled at the same time and on the same date as a gubernatorial candidates' debate.

The Commission proposes a series of rules to provide procedures in the event that a certified candidate fails to participate in a mandatory debate. These rules are modeled on the rules for publicly financed gubernatorial candidates; see N.J.A.C. 19:25-15.54 through 19:25-15.58 and N.J.A.C. 19:25-16.43 through 19:25-16.47.

N.J.A.C. 19:25-23.26, Complaint alleging failure to participate in debate, establishes rules for the contents of and service of a complaint against a candidate who is alleged to have failed to debate.

N.J.A.C. 19:25-23.27, Candidate response to complaint for failure to participate in a debate or debates, describes the contents of and service of an answer to a complaint alleging failure to debate.

N.J.A.C. 19:25-23.28, Commission response to complaint for failure to participate in a debate or debates, requires that the Commission meet as soon as practicable, after receipt of a complaint and answer, to determine whether there is reasonable cause to believe the respondent candidate may have failed to participate as required in a general election debate. The rule further requires that the Commission stop the review of any pending application from the respondent candidate for moneys from the Fund.

Hearing requirements are proposed in N.J.A.C. 19:25-23.29, Conduct of the hearing, and mirror requirements applicable to publicly financed gubernatorial candidates. A hearing on a complaint concerning debate participation shall be governed by the New Jersey Uniform Administration Procedure Rules, N.J.A.C. 1:1 et seq., and the complaining candidate has the burden of proving non-participation by a preponderance of the credible evidence. The respondent candidate charged with the failure to participate in a debate shall have the burden of proving justification or excuse by a preponderance of the credible evidence.

P.L.2004, c.121, §16 vested the Commission with authority to determine the penalty for a candidate who failed to debate. N.J.A.C. 19:25-23.30, Final decision of non-participation, provides that the Commission may find that a candidate's failure to participate in a debate was justifiable or excusable. In the absence of such a finding, the Commission proposes that it is appropriate for the Commission to cease the distribution of any further moneys from the Fund to the candidate. N.J.A.C. 19:25-23.31, Penalty for failure to debate, provides that a certified candidate who is found by the Commission to have failed to participate in a required candidates' debate shall 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. This penalty is consistent with the penalties set forth in the Act; see P.L.2004, c.121, §18.

Penalties: The Commission proposes two rules concerning penalties for Clean Elections candidates that are specified at Section 18 of the Act. Proposed N.J.A.C. 19:25-23.32, Monetary penalties, provides for fines of not more than \$6,000 for the first offense and not more than \$12,000 for the second and each subsequent offense for various civil violations of the Act. Proposed N.J.A.C. 19:25-23.33, Criminal penalties, provides notice that it is a crime of the fourth degree if an individual is found to have knowingly and willfully given money to another person for the purpose of having that other person give such money to a participating candidate as a qualifying contribution. It is a crime of the third degree for a person, including any candidate or treasurer, to knowingly and willfully make a false statement or file a false report. The proposed rule includes the statutory requirement that any individual who is found to be in violation of the criminal provisions of the Act must return to the Commission all Clean Elections moneys distributed to the candidate.

N.J.A.C. 19:25-23.34, Disqualification as a candidate; forfeiture of office, repeats the statutory requirement that a candidate shall be disqualified as a candidate or shall forfeit his or her office if elected if the candidate files or filed a report that is found by the Commission to be in violation

of certain provisions of the Act; see P.L.2004, c.121, §8 and §18d. These provisions include accepting contributions other than qualifying contributions, accepting seed money contributions greater than \$3,000 in the aggregate, obtaining qualifying contributions from fewer than 1,500 voters registered to vote in the legislative district, or giving a payment, gift or other thing of value in exchange for a qualifying contribution.

Clean Elections Campaign Depository: The Commission proposes that all seed money contributions and all moneys received by a certified candidate from the Fund be deposited into a separate campaign depository account established for the 2005 general election and not commingled with contributions received for any other election. By depositing seed money contributions into a separate account, it will be easier for a certified candidate to identify and return unspent seed money to the Fund upon certification. Further, the initial grant amount and additional funds provided to a certified candidate are to be deposited into the same separate campaign depository. The Commission believes that use of a separate account will facilitate return of unspent moneys to the Fund at the conclusion of a Clean Elections candidacy. The Commission therefore proposes that the following sections of the rules include the requirement to deposit funds into a separate depository: N.J.A.C. 19:25-23.4, Declaration of intent to be a certified candidate; N.J.A.C. 19:25-23.9, Notification of certification; initial grant; N.J.A.C. 19:25-23.16, Additional funds for a certified candidate; N.J.A.C. 19:25-23.17, Claim for additional funds for excess contributions; and, N.J.A.C. 19:25-23.18, Claim for additional funds for independent expenditures.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Legislature stated in the findings incorporated in the New Jersey Fair and Clean Elections Pilot Project that 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.” The Legislature also found that many residents believe “that under the current system [of campaign financing], 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.” To remedy this situation, the Legislature stated its belief 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. See P.L.2004, c.121, §2. The Commission’s proposed new rules to implement the Clean Elections Pilot Project are therefore expected to have a positive social impact as the first step toward a solution to the problems identified by the Legislature.

The proposed new rules will have the salutary effect of providing specific procedures for a candidate who wishes to participate as a Clean Elections candidate in the 2005 general election. A Clean Elections candidate may accept only “seed money” and qualifying contributions. The proposed rules not only define those terms, but also set the specific time period during which

such contributions may be received. The proposed rules establish procedures for filing submissions of contributions to establish that a candidate has met the criteria for Clean Elections status. The Commission is authorized to determine whether or not a candidate has met the criteria for acceptance as a Clean Elections candidate, and the rules contain procedures for a candidate who wishes to appeal the Commission's decision. The proposed rules also deal with applying for: additional funds as a Clean Elections candidate, the candidates' debates, and the new Voter's Guide that must be compiled by the Commission. The rules also include restrictions on spending by Clean Elections candidates. These rules provide comprehensive procedures for candidates in the Pilot Project and therefore have the social benefit of providing certainty for candidates participating in an experimental program.

The Commission anticipates that the Pilot Project and the proposed rules will contribute toward "strengthening public confidence in this State's democratic processes and institutions." See P.L.2004, c.121, §2. The new law creates the nine-member New Jersey Citizens' Clean Elections Commission (NJCEC), whose responsibility it is to evaluate the effectiveness of the 2005 general election Pilot Project, make recommendations for a pilot project in 2007, and "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." See P.L.2004, c.121, §17. Whether or not the Pilot Project has met the expectations established by the Legislature will be determined by the NJCEC. The Commission therefore anticipates that the actual social impact of the Pilot Project will be assessed and identified following the 2005 general election as part of the statutorily required evaluation performed by the NJCEC.

Economic Impact

The New Jersey Fair and Clean Elections Pilot Project will operate for the first time in the 2005 general election for candidates for the office of General Assembly in two legislative districts. Because a candidate who participates in the Clean Elections Pilot Project agrees to limit the amount of his or her campaign spending to only those funds provided by the Pilot Project, participation in the program must be voluntary in order to meet constitutional requirements; see Buckley v. Valeo, 424 U.S. 1 (1976). Further, as set forth in the new rules proposed by the Commission, a candidate must meet statutory criteria in order to be certified to participate. It is therefore not possible at this time to predict the number of candidates who will agree to and qualify to participate in the Pilot Project.

Each certified Clean Elections candidate in the Pilot Project will receive an initial grant of up to \$100,000. The exact amount of the initial grant in a legislative district is calculated by the Commission and is 75 percent of the average amount of money spent by candidates running for Assembly seats in that legislative district in the two immediately preceding general elections. P.L.2004, c.121, §10. A candidate, other than a political party candidate, may not receive more than half of the initial grant amount; see P.L.2004, c.121, §12. A certified candidate may also receive additional sums from the Clean Elections Fund as follows: an amount up to the initial grant amount if the opposing party's candidates are not participating candidates; an amount not to exceed \$50,000 if contributions received by a nonparticipating candidate exceed the initial grant amount; and an amount not to exceed \$50,000 if independent expenditures are made on

behalf of an opponent. See P.L.2004, c.121, §11. The Commission therefore believes that a certified Clean Elections candidate may receive no more than \$300,000 from the Fund for 2005 general election expenses.

However, because it is expected that each legislative district in the Pilot Project will have a different initial grant amount and because the number of certified candidates is unknown, it is not possible to estimate the cost of the New Jersey Fair and Clean Elections Pilot Project until the conclusion of the 2005 general election. The new law therefore established the NJCCEC which must report to the Legislature no later than the 90th day following the 2005 general election on the Clean Elections Pilot Project; see P.L.2004, c.121, §17. The Commission understands that a major focus of this report will be an assessment of the economic impact of the program.

The Commission believes that the salutary economic impact of the Clean Elections Pilot Project was expressed by the legislative finding that 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.” P.L.2004, c.121, §2. The Legislature further declared that the 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.” P.L.2004, c.121, §2.

Federal Standards Statement

A federal standards analysis is not required because the proposed new rules concern candidates for the office of member of the General Assembly in New Jersey in the 2005 general election. The new rules are not subject to any Federal requirements or standards.

Jobs Impact

The new rules are not expected to have any impact upon the generation or loss of jobs.

Agriculture Industry Impact

The new rules are not expected to have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The new rules affect only candidates for the office of member of the General Assembly in the 2005 general election and their candidate committees, which are not considered to be small businesses as that term is defined under the Regulatory Flexibility Act. Further, contributions to candidates participating in the Clean Elections Pilot Project may only be made by individuals, who are not small businesses under the Regulatory Flexibility Act. Therefore, the proposed new rules do not affect, impact, or impose reporting, recordkeeping, or other compliance duties on

small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Smart Growth Impact

The proposed new rules are not expected to have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Subchapter 23: New Jersey Fair and Clean Elections Pilot Project

19:25-23.1 Definitions

The following words and terms, when used in this subchapter shall have the following meanings unless a different meaning clearly appears from the context.

“Act” means P.L.2004, c.121.

“Campaign Reporting Act” means The New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq.

"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 the Act and this subchapter.

"Commission" means the Election Law Enforcement Commission.

"Department" means the Department of the Treasury.

"Fund" means the New Jersey Fair and Clean Elections Fund established pursuant to the Act.

“Initial grant” means the amount calculated by the Commission, no later than the 25th day following the day of the primary election, for a legislative district to be 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 that legislative district in the two immediately preceding general elections for that office, which amount shall in no event exceed \$100,000.

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

"NJCCEC" means the New Jersey Citizens' Clean Elections Commission established pursuant to the 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 the Act and this subchapter.

"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 the Act and is seeking certification as a New Jersey Fair and Clean Elections candidate pursuant to the Act and this subchapter.

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

1. That is a contribution from an individual who is a voter registered to vote in the legislative district the candidate represents or seeks to represent;

2. That is contributed during the designated qualifying period and received with the knowledge and approval of the candidate;

3. That is acknowledged by a written receipt from the participating candidate, on a form provided by the Commission, 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; and

4. That equals contributions from 1,500 contributors for a candidate seeking election to the office of member of the General Assembly in 2005, each contribution in the form of a check or money order made payable to the Fund in support of a participating candidate, and comprised of at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00.

"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.

19:25-23.2 Application of the Act in the 2005 general election

The New Jersey Fair and Clean Elections Pilot Project, established pursuant to the Act, shall be open to candidates seeking election to the office of member of the General Assembly in the 2005 general election in the two legislative districts selected pursuant to P.L.2004, c.121, §6. The pilot project shall be open to certified candidates for those offices nominated directly by petition. Candidates participating in the New Jersey Fair and Clean Elections Pilot Project shall comply with all applicable provisions of the Campaign Reporting Act unless otherwise provided by the Act or this subchapter.

19:25-23.3 Notification of selection of legislative districts

(a) The chairpersons of the two State political party committees shall, no later than the 21st day following the 2005 primary election, or the alternative selection committee shall, no later than the 25th day following the 2005 primary election, notify the Commission in writing or by fax of the legislative districts selected, pursuant to P.L.2004, c.121, §6, for the New Jersey Fair and Clean Elections Pilot Project.

(b) The Commission shall provide immediate written notification to all candidates for office of member of the General Assembly in the legislative districts selected pursuant to (a) above, of the provisions of the Act and this subchapter.

19:25-23.4 Declaration of intent to be a certified candidate

(a) A candidate for the office of member of the General Assembly in the 2005 general election who intends to be a certified candidate shall certify and file with the Commission a Declaration of Intent to be a Certified Candidate.

(b) The Declaration of Intent to be a Certified Candidate shall be filed with the Commission no later than 4 p.m. on the 62nd day prior to the 2005 general election and shall include the following statements by the candidate:

1. That he or she is filing the Declaration of Intent to be a Certified Candidate in order to become a participating candidate in the New Jersey Fair and Clean Elections Pilot Project and shall comply with the requirements of the Act;
2. That on or after the date of filing of the Declaration of Intent to be a Certified Candidate he or she:
 - i. Shall suspend all access to existing candidate committee and joint candidates committee funds; and
 - ii. Shall not use existing candidate committee and joint candidates committee funds in any way that would assist his or her 2005 general election candidacy if certified by the Commission as a Clean Elections candidate;

3. That he or she may use funds raised and reported to the Commission pursuant to the Campaign Reporting Act prior to becoming a participating candidate as the seed money required of a participating candidate, but only to the extent that such money can be attributable to contributions of \$200.00 or less from individuals.
4. That on and after the date of filing of the Declaration of Intent to be a Certified Candidate and until being certified by the Commission, he or she shall accept only seed money contributions, not to exceed \$3,000 in the aggregate, with each seed money contribution from an individual in an amount not to exceed \$200.00, and qualifying contributions;
5. That he or she shall not accept any seed money contribution in the form of a loan;
6. That upon receipt of notification by the Commission that he or she is a certified candidate, he or she:
 - i. Shall not accept or spend any further seed money;
 - ii. Shall transfer any remaining unspent seed money to the Fund; and
 - iii. Shall limit the total amount of expenditures and obligations in the 2005 general election, including outstanding obligations, to the moneys distributed from the Fund.
7. That he or she shall comply with the Clean Elections Candidate debate requirement by making arrangements for and participating in two debates among candidates in his or her legislative district and by notifying the Commission on or before October 1st of the arrangements for the two debates; and
8. That he or she understands that, with the exception of a candidate seeking election by means of direct nomination by petition, he or she will not be certified by the Commission as a certified candidate unless the other candidate in his or her legislative district for election to the office of member of the General Assembly in the 2005 general election in his or her political party meets the criteria for and is eligible for certification as a Clean Elections candidate.

(c) All seed money contributions shall be deposited into a separate campaign depository established pursuant to N.J.A.C. 19:25-4.1A.

19:25-23.5 Written receipt for a qualifying contribution

(a) In addition to the records required to be made and maintained pursuant to N.J.A.C. 19:25-23.6, a participating candidate shall for each qualifying contribution make and maintain a written receipt, on a form provided by the Commission, which shall contain the name and mailing address of the contributor, the occupation of the contributor, as required pursuant to N.J.A.C. 19:25-10.2A, and the name and mailing address of the contributor's employer, and which identifies whether the qualifying contribution was received by means of a check or money order.

(b) A participating candidate shall observe the requirements of N.J.A.C. 19:25-10.15 to determine whether or not a qualifying contribution received by means of a check is a contribution from an individual.

(c) The written receipt described in (a) above shall contain the signature of the contributor for each qualifying contribution received by means of a money order.

(d) A participating candidate shall maintain a copy of the written receipt for a qualifying contribution for a period of not less than four years after the date of the election to which it is relevant.

19:25-23.6 Recordkeeping

Each participating candidate and each certified candidate shall comply with the recordkeeping requirements of the Campaign Reporting Act and N.J.A.C. 19:25-7 for all contributions and expenditures, unless otherwise provided by the Act or this subchapter.

19:25-23.7 Submission of qualifying contributions for initial grant

(a) A candidate seeking to receive the initial grant of funds as a certified candidate shall, not later than the last date for filing a submission, pursuant to N.J.A.C. 19:25-23.8, file with the Commission a submission or submissions, on forms provided by the Commission, each submission containing the following statements by the candidate:

- 1. That since filing the Declaration of Intent to be a Certified Candidate he or she has accepted only seed money contributions, not to exceed \$3,000 in the aggregate, with each seed money contribution received from an individual in an amount not to exceed \$200.00, and qualifying contributions;**
- 2. That no payment, gift or other thing of value has been given in exchange for a qualifying contribution;**
- 3. That a written receipt was made, pursuant to N.J.A.C. 19:25-23.6, for each qualifying contribution in the submission and that each qualifying contribution in the submission was;**

- i. Received from a voter registered to vote in the legislative district the candidate represents or seeks to represent;
- ii. Received either by means of a check or money order made payable to the Fund; and
- iii. Received during the qualifying period.

(b) The qualifying contributions shall accompany each submission.

(c) Each submission shall contain a list of the qualifying contributions which includes for each qualifying contribution the contributor's full name and mailing address, the date of receipt of the contribution, the amount of the contribution, the occupation of the contributor and the name and mailing address of the contributor's employer. The list shall also identify whether a qualifying contribution was received by means of a check or by means of a money order.

(d) A candidate shall report on each submission the total number of and total dollar amount of qualifying contributions contained in the submission and shall report the number of and total amount of \$5.00 qualifying contributions and the number of and total amount of \$30.00 qualifying contributions contained in the submission.

(e) A candidate shall report on his or her first submission all seed money contributions received since filing the Declaration of Intent to be a Certified Candidate, pursuant to N.J.A.C. 19:25-23.4, and shall report on each subsequent submission seed money contributions received since filing the last such submission.

(f) A candidate shall certify on his or her final submission as follows:

1. That during the qualifying period he or she obtained contributions from no fewer than 1,500 voters registered to vote in the legislative district the candidate represents or seeks to represent, which 1,500 contributions included at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00; and
2. That during the qualifying period he or she accepted and spent only seed money contributions, not to exceed \$3,000 in the aggregate, with each seed money contribution from an individual in an amount not to exceed \$200.00.

19:25-23.8 Dates of submissions

(a) Submission filing dates are the second and fourth Thursdays in July and August immediately preceding the general election, the first Thursday in September immediately preceding the general election, and the fourth business day after the final day of the qualifying period. A submission must be received in the Commission's offices before 12:00 noon of a submission filing date to be deemed timely filed.

(b) In event that a date for submission shall fall on a holiday, the submission may be filed on the next succeeding business day which is not a holiday.

(c) Nothing contained in this section shall relieve any candidate from the preelection or postelection reporting requirements in the Campaign Reporting Act.

19:25-23.9 Notification of certification; initial grant

(a) The Commission shall within three days of receipt of a submission, certified by the candidate to be his or her final submission, notify the candidate in writing whether or not the candidate has met the criteria for certification as a New Jersey Fair and Clean Elections candidate and shall provide written notification to a candidate who has been denied certification of the reasons for the denial.

(b) The Commission shall certify a candidate as a New Jersey Fair and Clean Elections candidate if the candidate has:

- 1. Signed and filed a Declaration of Intent to be a Certified Candidate, pursuant to N.J.A.C. 19:25-23.4;**
- 2. Filed a submission or submissions reporting that the candidate has received 1,500 qualifying contributions, comprised of at least 1,000 contributions of \$5.00 and at least 500 contributions of \$30.00, each contribution in the form of a check or money order made payable to the Fund;**
- 3. Certified that on and after the date of filing of the Declaration of Intent to be a Certified Candidate he or she accepted and spent only seed money contributions, not to exceed \$3,000 in the aggregate, with each seed money contribution from an individual in an amount not to exceed \$200.00; and**
- 4. In the case of a candidate seeking election to the offices of member of the General Assembly by direct nomination has submitted to the Attorney General a petition of nomination with the required number of valid signatures, as required by N.J.S.A. 19:13-5.**

(c) Except in the case of a candidate seeking office by means of direct nomination by petition, the Commission shall not certify a candidate 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 subchapter and are otherwise eligible to be certified as New Jersey Fair and Clean Elections candidates.

(d) The Commission shall immediately notify the Department that a candidate has been certified as a New Jersey Fair and Clean Elections candidate and shall notify the Department of the initial grant amount for that candidate. The Department shall provide the initial grant amount for each certified candidate no later than the third day following certification by the Commission.

(e) A candidate who is seeking the office of member of the General Assembly in 2005 by means of direct nomination by petition and who is certified by the Commission as a New Jersey Fair and Clean Elections candidate shall be eligible for an initial grant from the Fund in an amount equal to not more than half of the initial grant amount calculated by the Commission for that legislative district.

(f) A candidate who has been certified as a New Jersey Fair and Clean Elections candidate shall deposit the initial grant amount into the separate depository established pursuant to N.J.A.C. 19:25-23.4(c).

19:25-23.10 Appeal of certification decision

(a) To appeal a Commission decision to deny his or her certification as a Clean Elections candidate, a candidate shall within three days of receipt of written notification of the Commission's denial of certification file a written notice of appeal with the Commission which specifically responds to the reasons for non-certification provided pursuant to N.J.A.C. 19:25-23.9 and sets forth a detailed statement of facts and information, including copies of documents such as contribution receipts, to support the candidate's claim that he or she should be granted certification as a Clean Elections candidate.

(b) To appeal a decision by the Commission to grant certification as a Clean Elections candidate to an opposing 2005 general election candidate, a candidate shall within three days of the Commission's decision, file a written notice of appeal with the Commission which contains a detailed statement of facts and information to support the candidate's claim that his or her opponent should not have been certified as a Clean Elections candidate.

(c) Service of a written notice of appeal pursuant to (a) or (b) above shall be made by the appellant by personal service or by certified mail, return receipt requested, upon the respondent candidate, the Commission, and any person named in the written notice of appeal. An appeal shall not be considered filed until it has been served upon the respondent candidate, the Commission, and any person named in the written notice of appeal.

(d) Within five days after a written notice of appeal is filed, the Commission shall hold a hearing on the appeal after notice of the hearing is given to the challenger. The appellant has the burden of providing evidence to demonstrate that the Commission's decision to deny his or her certification or to certify an opposing candidate was improper. The Commission shall rule on the appeal within three days after the completion of the hearing.

(e) The Commission may refer an appeal filed pursuant to this section to the Office of Administrative Law for hearing as a contested case pursuant to the provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administration Procedure Rules, N.J.A.C. 1:1.

(f) The decision on an appeal rendered by the Commission pursuant to this section may be appealed to Superior Court, and the Court shall hear the appeal and render a decision thereon in an expedited manner.

(g) Any candidate whose certification by the Commission as a Clean Elections candidate 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 from the Fund.

(h) 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 appellant to pay the expenses of the Commission, the court and the challenged candidate, if any such expenses have been incurred.

19:25-23.11 Return of seed money; report

(a) Within 48 hours of receipt of notification by the Commission that a candidate is certified as a New Jersey Fair and Clean Elections candidate, the candidate shall:

- 1) Certify and file with the Commission a report, on a form provided by the Commission, reporting the total amount of seed money contributions, the total amount of seed money spent, and the amount of seed money remaining unspent on the date of receipt of notification that the candidate is a New Jersey Fair and Clean Elections candidate; and**
- 2) File with the report for return to the Fund by the Commission a check made payable to the Fund in the amount of the unspent balance of seed money.**

19:25-23.12 Reporting contributions

Notwithstanding the provisions of N.J.S.A. 19:44A-16, or any other law, rule or regulation relating to the reporting of campaign contributions by a candidate to the contrary, a certified candidate shall report all contributions received, regardless of amount.

19:25-23.13 Use of funds

(a) A candidate who has been notified by the Commission that he or she is a certified Clean Elections candidate shall limit his or her campaign expenditures and obligations, including outstanding obligations, to only the moneys distributed to the candidate from the

Fund and shall not accept any other contributions unless specifically authorized by the Commission.

(b) All such funds distributed to a certified candidate from the Fund shall be used only for the purposes provided in N.J.S.A. 19:44A-11.2 and N.J.A.C. 19:25-8.

19:25-23.14 Use of name, image, or photograph of certified candidate

A certified candidate shall not 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 legislative district as the certified candidate.

19:25-23.15 Withdrawal

(a) A certified candidate who wishes to withdraw from the New Jersey Fair and Clean Elections Pilot Project and to cease being a certified candidate shall obtain approval to withdraw from the NJCCEC by:

- 1. Notifying the Commission in writing prior to the day of the 2005 general election of his or her intent to withdraw from the New Jersey Fair and Clean Elections Pilot Project.**
- 2. Notifying the NJCCEC in writing at any time prior to the day of the election of his or her intent to withdraw from the New Jersey Fair and Clean Elections Pilot Project.**

(b) A certified candidate whose withdrawal from the New Jersey Fair and Clean Elections Pilot Project has been approved by the NJCCEC shall remit to the Fund within 48-hours of approval of withdrawal any money received from the Fund pursuant to the Act, unless directed otherwise by the NJCCEC.

(c) The Commission may assess a penalty for such a withdrawal pursuant to N.J.A.C. 19:25-23.32.

19:25-23.16 Additional funds for a certified candidate

(a) The Commission shall request additional funds from the Department for a certified candidate, as set forth in (b) or (c) below, after the following have occurred:

- 1. The deadline to file the Declaration of Intent to be a Certified Candidate has occurred;**
- 2. The Commission has determined that the certified candidates seeking election to the office of member of the General Assembly in 2005 in a**

legislative district are opposed for election in that legislative district by nonparticipating candidates; and

3. The period for filing an appeal of certification pursuant to N.J.A.C. 19:25-23.10 has expired.

(b) For a certified candidate who is not seeking the office of member of the General Assembly in 2005 by means of direct nomination by petition, the Commission shall request an amount equal to the initial grant amount for that legislative district.

(c) For a certified candidate who is seeking the office of member of the General Assembly in 2005 by means of direct nomination by petition, the Commission shall request an amount equal to half of the initial grant amount for that legislative district.

(d) A certified candidate shall deposit the additional funds received pursuant to this section into the separate depository established pursuant to N.J.A.C. 19:25-23.4(c).

19:25-23.17 Claim for additional funds for excess contributions

(a) A certified candidate shall file a claim with the Commission, on a form provided by the Commission, to receive funds in addition to the initial grant amount if a report filed with the Commission by a nonparticipating candidate in the same legislative district, alone or in conjunction with money spent on behalf of the nonparticipating candidate by any other entity, discloses an aggregate amount of contributions received in excess of the initial grant amount in that legislative district.

(b) For the purposes of this section, the term “entity” includes a person, 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.

(c) The claim for additional funds pursuant to (a) above shall be certified as correct by the certified candidate and shall include evidence, including, but not limited to, copies of reports filed with the Commission, to establish that the nonparticipating candidate has received contributions which exceed the initial grant amount in that legislative district.

(d) The claim for addition funds pursuant to (a) above shall include the candidate’s certification that the total amount spent in the election has not exceeded the sum of the maximum \$3,000 in seed money contributions, plus the initial grant amount, plus any additional sums provided to the candidate pursuant to this section and N.J.A.C. 19:25-23.18.

(e) Upon receipt of a certified claim from a candidate pursuant to this section, the Commission shall apply, as soon as practicable, to the Department for an additional amount of money from the Fund for the certified candidate equivalent to the excess amount set forth in the claim.

(f) A certified candidate may receive no more than the total amount of \$50,000 from the Fund for claims submitted pursuant to this section.

(g) A certified candidate shall deposit the additional funds received pursuant to this section into the separate depository established pursuant to N.J.A.C. 19:25-23.4(c).

19:25-23.18 Claim for additional funds for independent expenditures

(a) A certified candidate shall file a claim with the Commission, on a form provided by the Commission, to receive funds in addition to the initial grant amount if any other candidate or candidates, including a certified candidate, for the office of member of the General Assembly in the same legislative district is or are benefiting from an independent expenditure or independent expenditures in an amount greater than \$1,000.

(b) For the purposes of this section, the phrase “benefiting from an independent expenditure or independent expenditures” shall refer to an expenditure made on behalf of another candidate or candidates for General Assembly in the same legislative district as the certified candidate by a person, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee not acting in concert with that other candidate or candidates, and which expenditure is made for a communication to support or defeat that other candidate or candidates for General Assembly in the same legislative district as the certified candidate and makes reference to same.

(c) The claim for additional funds pursuant to (a) above shall be certified as correct by the certified candidate and shall include evidence of the specific cost of the independent expenditure or independent expenditures, including, but not limited to, copies of independent expenditure communications, evidence of printing and mailing costs of the independent expenditure communications, and costs to produce or broadcast independent expenditure communications.

(d) The claim for addition funds pursuant to (a) above shall include the candidate’s certification that the total amount spent in the election has not exceeded the sum of the maximum \$3,000 in seed money contributions, plus the initial grant amount, plus any additional sums provided to the candidate pursuant to this section and N.J.A.C. 19:25-23.17.

(e) Upon receipt of a certified claim from a candidate pursuant to this section, the Commission shall apply, as soon as practicable, to the Department for an additional amount of money from the Fund the certified candidate who is not benefiting from the independent expenditure or expenditures, which amount is equivalent to the cost of the independent expenditure or independent expenditures set forth in the claim.

(f) A certified candidate may receive no more than the total amount of \$50,000 from the Fund for claims submitted pursuant to this section.

(g) A certified candidate shall deposit the additional funds received pursuant to this section into the separate depository established pursuant to N.J.A.C. 19:25-23.4(c).

19:25-23.19 Return of unspent funds

(a) No candidate who has received moneys from the Fund pursuant to this subchapter shall incur any debt or make any expenditure after the date of the election for any purpose other than the following:

- 1. To satisfy outstanding obligations incurred on or before the date of the election made for appropriate campaign purposes: or**
- 2. To pay the reasonable and necessary costs of closing the campaign.**

(b) Each certified candidate shall, upon the filing of a final report for the 2005 general election, return to the Commission for deposit into the Fund all unspent Fund moneys.

19:25-23.20 Political identification requirements

(a) A certified candidate shall be subject to the political identification statement requirements of N.J.A.C. 19:25-13.

(b) 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:

- 1. 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**
- 2. In the case of television, the Internet or any other similar form of communication containing audio and visual formats, 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

3. In the case of any other form of communication, the communication shall include the written statement described in subparagraph 2 above.

(c) 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.

19:25-23.21 Voter's guide statement

(a) Each candidate seeking election to the office of member of the General Assembly in the 2005 general election in the two legislative districts selected pursuant to P.L.2004, c.121, §6 shall be entitled to have a statement submitted by the candidate included in the 2005 general election Voter's Guide.

(b) Each candidate who wishes such a statement to be included in the Voter's Guide shall submit to the Commission, on forms to be provided by the Commission, his or her proposed statement which shall not exceed 500 words in length. The statement shall be submitted to the Commission on or before the 48th day prior to the date on which the general election is to be held.

(c) The Voter's Guide shall list the name of each candidate seeking office at that election and shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. The Commission shall post the Voter's Guide on its web site as soon as may be practicable.

19:25-23.22 Debate requirement; nonparticipating candidates

(a) Each certified candidate shall participate in two debates among candidates for the office of member of the General Assembly in the legislative district the candidate represents or seeks to represent. Each of the two debates shall be of at least one hour's duration.

(b) The certified candidates for the office of member of the General Assembly in the legislative district shall invite all nonparticipating candidates for the office of member of the General Assembly in the same legislative district to participate in the two candidates' debates.

(c) Each certified candidate in a legislative district shall cooperate in the selection of debate sponsors, pursuant to N.J.A.C. 19:25-23.23, and in making all arrangements for the two required debates.

19:25-23.23 Debate sponsor selection

(a) The certified candidates for the office of member of the General Assembly in a legislative district shall be responsible for selection of organizations to sponsor each of the two required debates and for conduct of the two debates.

(b) The certified candidates shall select as sponsors for the required candidates' debates only those organizations that:

- 1. Are unaffiliated with any political party or with any holder of or candidate for public office; and**
- 2. Have not endorsed any candidate in the pending general election for the office of member of the General Assembly in the legislative district which the candidates represent or seek to represent and agree not to make any such endorsement until the completion of any debate sponsored by the organization.**

19:25-23.24 Conduct of the debates; dates

(a) Each of the two required candidates' debates shall be of at least one hour's duration, and each of the two debates shall occur no earlier than October 3rd and no later than the fifth day prior to the general election in which the candidates are seeking election to the office of member of the General Assembly.

(b) During the course of each of the two debates, the sponsor organization shall specifically identify the certified candidates and explain the meaning of that certification.

19:25-23.25 Candidate debate certification

(a) Each certified candidate shall certify and file with the Commission no later than October 1st a report containing the following information:

- 1. The time and date of each debate;**
- 2. The names of the candidates who will participate in the debate;**
- 3. Plans for coverage of each debate by media outlets, including radio, television, and newspapers;**

- 4. The location of each debate, including a description of the building or facility, legal seating capacity, and accessibility for persons with physical disabilities;**
- 5. A description of the format of each debate, including whether or not there will be interactive exchanges among the candidates and opportunities for the public to direct questions to the candidates;**
- 6. Plans, including plans for newspaper advertisements, to disseminate information to the public concerning the date, time, location, and media outlets airing or broadcasting each debate;**
- 7. Plans for accessibility of each debate to hearing-impaired persons in the broadcast audience;**
- 8. Arrangements for a debate moderator or moderators; and**
- 9. Sources of financial support to the organization to underwrite costs associated with the debate or debates.**

(b) If there will be an audience at a debate, the certified candidates shall, in addition to the information required under (a) above, report the following information:

- 1. The number of persons expected in the audience;**
- 2. The method to be used to select the audience, including information on distribution of tickets; and,**
- 3. Plans for interaction between the candidates and the audience.**

(c) If there will be an admission fee or ticket price for attendance at the debate, the certified candidates shall report, pursuant to (a) above, the amount of the admission fee or ticket price and an explanation of why such an admission fee or ticket price is being charged.

(d) The certification filed pursuant to this section shall include the certified candidate's statement that nonparticipating candidates for the office of member of the General Assembly in the legislative district have been invited to participate in the two candidates' debates.

(e) The Commission shall review each debate certification filed pursuant to this section to ensure that no debate is scheduled at the same time and on the same date as a gubernatorial candidates' debate.

19:25-23.26 Complaint alleging failure to participate in debate

(a) A complaint filed with the Commission alleging failure of a certified candidate to participate in a required debate shall:

- 1. Be filed only by a candidate for the same office in the same legislative district;**
- 2. Be in writing and be verified; and**
- 3. Contain a detailed statement alleging with specificity all facts known to the complainant pertinent to the allegation of failure to participate in a debate.**

(b) Service of a complaint alleging failure to participate in a general election debate shall be made by the complainant by personal service or by certified mail, return receipt requested upon the respondent candidate, the debate sponsor, and any person named in the complaint.

19:25-23.27 Candidate response to complaint for failure to participate in a debate or debates

(a) Within five calendar days of service of the complaint upon the respondent candidate, he or she shall respond to the complaint in a written, verified answer which:

- 1. Admits or denies each of the factual allegations contained in the complaint; and**
- 2. Sets forth any affirmative defenses to the allegations contained in the complaint including all facts known to the respondent candidate pertinent to any such affirmative defense.**
- 3. Justification and excuse shall be deemed to be affirmative defenses for the purposes of this section.**

(b) Service of an answer shall be made by the respondent candidate in person or by certified mail, return receipt requested, upon the complainant, the Commission, the debate sponsor, and any person named in the complaint or response.

19:25-23.28 Commission response to complaint for failure to participate in a debate or debates

(a) Upon receipt by the Commission of a verified complaint alleging failure of a certified candidate to participate in a debate and verified answer, the Commission shall meet as soon as practicable to determine whether there is reasonable cause to believe the respondent candidate may have failed to participate as required in a general election debate.

(b) If it is determined by majority vote of the Commission that there is reasonable cause to believe that a candidate may have failed to participate in a debate as required, the Commission shall:

- 1. Cease the review of any application from the respondent candidate for moneys from the Fund which application has not previously been approved; and**
- 2. Schedule a hearing on the complaint to determine whether the respondent candidate has failed to participate in a debate as alleged.**

(c) The Commission shall as soon as practicable notify the respondent candidate in writing of the actions it has taken pursuant to (b) above.

19:25-23.29 Conduct of the hearing

(a) The complainant and the respondent candidate shall appear at the hearing. Other interested persons may appear as permitted by N.J.A.C. 1:1-16 and may be represented as permitted by N.J.A.C. 1:1-5.

(b) The hearing shall be governed by the New Jersey Uniform Administration Procedure Rules, N.J.A.C. 1:1.

(c) The complainant shall have the burden of proving non-participation by a preponderance of the credible evidence, and the respondent candidate charged with the failure to participate in a debate shall have the burden of proving justification or excuse by a preponderance of the credible evidence.

(d) At the request of the complainant or respondent candidate, subpoenas shall be issued to compel the attendance of witnesses to testify at the hearing held to determine a candidate's failure to participate in a debate.

(e) The Commission may refer the matter for hearing to the Office of Administrative Law as a contested case pursuant to the provisions of the New Jersey Uniform Administration Procedure Rules, N.J.A.C. 1:1.

(f) The Commission shall have the authority to assess the costs associated with a hearing held pursuant to this section against any complainant, respondent or interested person permitted to appear.

19:25-23.30 Final decision of non-participation

(a) At the conclusion of a hearing, the Commission shall determine by majority vote:

- 1. Whether a certified candidate required to participate in a general election debate has failed to do so;**
- 2. Whether the failure to participate occurred under circumstances which were beyond the control of the candidate and of such a nature that a reasonable person would find the failure justifiable or excusable.**

(b) The Commission shall serve its written decision upon the participants or upon their legal representatives as soon as practicable.

(c) If the Commission determines that the respondent candidate failed to participate in a general election debate without reasonable justification or excuse, the Commission shall cease the distribution of any further moneys from the Fund to the candidate.

19:25-23.31 Penalty for failure to debate

A certified candidate who is found by the Commission to have failed to participate in a required candidates' debate shall 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.

19:25-23.32 Monetary penalties

(a) 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 the 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.

(b) The Commission shall upon receiving evidence of a violation pursuant to (a) above, use the procedure provided for in N.J.S.A. 19:44A-22 for investigating the violation and assessing a penalty, if a violation is found.

(c) Any fine imposed for a violation pursuant to (a) above shall, upon payment to the Commission, be deposited in the Fund.

19:25-23.33 Criminal penalties

(a) 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.

(b) 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 the Act is guilty of a crime of the third degree.

(c) Any individual found to be in violation of (b) above 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) Upon receipt of evidence of a violation of the Act which may become the subject of criminal prosecution pursuant to (a) or (b) above, the Commission shall forward to the Attorney General information concerning any such violation of the Act.

19:25-23.34 Disqualification as a candidate; forfeiture of office

A candidate who is seeking certification as a Clean Elections candidate or who sought certification as a Clean Elections candidate shall be disqualified as a candidate for the public office sought or shall forfeit office if elected if the candidate files or filed a report that is found by the Commission to be in violation of the Act and this subchapter because:

- (a) The candidate accepted contributions other than qualifying contributions;**
- (b) The candidate accepted seed money contributions greater than \$3,000 in the aggregate;**
- (c) The candidate obtained qualifying contributions during the qualifying period from fewer than 1,500 voters registered to vote in the legislative district the candidate represents or seeks to represent; or**
- (d) The candidate gave a payment, gift or other thing of value in exchange for a qualifying contribution.**

ELECTION LAW ENFORCEMENT COMMISSION

By: _____
FREDERICK M. HERRMANN, PH.D.
Executive Director