

SENATE, No. 752

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Senators MacINNES, CASEY, Codey, Adler, Lipman, Lynch,
Lesniak, Rice, Baer, O'Connor, Kenny, Bryant, McGreevey,
McNamara and Schluter

1 AN ACT concerning the Election Law Enforcement Commission,
2 amending P.L.1973, c.83, P.L.1974, c.26 and P.L.1981, c.129,
3 supplementing Title 52 of the Revised Statutes, and making an
4 appropriation.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

- 8
- 9 1. (New section) The Legislature finds and declares:
- 10 a. Fostering public trust in State government and in the electoral
11 process that enables the public to select the leaders of that government
12 is in the forefront of the public's interest.
- 13 b. Public trust is strengthened by providing complete and timely
14 access to those public documents that relate to the electoral process
15 in this State.
- 16 c. The Election Law Enforcement Commission (ELEC) serves as
17 the repository and monitor of such documents and it is in the public's
18 interest that access to campaign finance reports filed by candidates and
19 their contributors be available for public inspection in a timely manner
20 and in detail.
- 21 d. Under ELEC's current system campaign finance reports are
22 generally not available in a timely manner, for the lag between the
23 filing of the reports and their accessibility to the public is often at least
24 a week.
- 25 e. Public trust in the electoral process and the public trust in
26 general would thus be well served by establishing a dedicated source
27 of funding to purchase or otherwise acquire such technology and to
28 hire such additional staff as may be necessary to enable ELEC to
29 provide the public with timely access to the campaign finance reports
30 it receives.
- 31
- 32 2. Section 6 of P.L.1973, c.83 (C.19:44A-6) is amended to read as

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 follows:

2 6. a. The commission shall appoint a full-time executive director,
3 legal counsel and hearing officers, all of whom shall serve at the
4 pleasure of the commission and shall not have tenure by reason of the
5 provisions of chapter 16 of Title 38 of the Revised Statutes. The
6 commission shall also appoint such other employees as are necessary
7 to carry out the purposes of this act, which employees shall be in the
8 [classified] career service of the civil service and shall be appointed in
9 accordance with and shall be subject to the provisions of Title [11]
10 11A, Civil Service.

11 b. It shall be the duty of the commission to enforce the provisions
12 of this act, to conduct hearings with regard to possible violations and
13 to impose penalties; and for the effectual carrying out of its
14 enforcement responsibilities the commission shall have the authority
15 to initiate a civil action in any court of competent jurisdiction for the
16 purpose of enforcing compliance with the provisions of this act or
17 enjoining violations thereof or recovering any penalty prescribed by
18 this act. The commission shall promulgate such regulations and
19 official forms and perform such duties as are necessary to implement
20 the provisions of this act. Without limiting the generality of the
21 foregoing, the commission is authorized and empowered to:

22 (1) Develop forms for the making of the required reports;

23 (2) Prepare and publish a manual for all candidates, political
24 committees and continuing political committees, prescribing the
25 requirements of the law, including uniform methods of bookkeeping
26 and reporting and requirements as to the length of time that any person
27 required to keep any records pursuant to the provisions of this act
28 shall retain such records, or any class or category thereof, or any other
29 documents, including canceled checks, deposit slips, invoices and
30 other similar documents, necessary for the compilation of such
31 records;

32 (3) Develop a filing, coding and cross-indexing system;

33 (4) Permit copying or photo-copying of any report required to be
34 submitted pursuant to this act as requested by any person;

35 (5) Prepare and make available for public inspection summaries of
36 all said reports grouped according to candidates, parties and issues,
37 containing the total receipts and expenditures, and the date, name,
38 address and amount contributed by each contributor;

39 (6) Prepare and publish, prior to May 1 of each year, an annual
40 report to the Legislature;

41 (7) Ascertain whether candidates, committees, organizations or
42 others have failed to file reports or have filed defective reports;
43 extend, for good cause shown, the dates upon which reports are
44 required to be filed; give notice to delinquents to correct or explain
45 defects; and make available for public inspection a list of such
46 delinquents;

1 (8) Ascertain the total expenditures for candidates and determine
2 whether they have exceeded the limits set forth in this act; notify
3 candidates, committees or others if they have exceeded or are about
4 to exceed the limits imposed;

5 (9) Hold public hearings, investigate allegations of any violations
6 of this act, and issue subpoenas for the production of documents and
7 the attendance of witnesses;

8 (10) Forward to the Attorney General or to the appropriate county
9 prosecutor information concerning any violations of this act which may
10 become the subject of criminal prosecution or which may warrant the
11 institution of other legal proceedings by the Attorney General;

12 (11) Use the moneys disbursed from the Public Access
13 Enhancement Fund, established pursuant to section 6 of P.L. , c.
14 (C.)(now pending before the Legislature as this bill), to purchase
15 or otherwise acquire such technology and to hire such additional staff
16 as may be necessary to enable the commission to provide the public
17 with timely access to the campaign finance reports it receives.

18 c. The commission shall take such steps as may be necessary or
19 appropriate to furnish timely and adequate information, in appropriate
20 printed summaries and in such other form as it may see fit, to every
21 candidate or prospective candidate for public office who becomes or
22 is likely to become subject to the provisions of this act, and to every
23 treasurer and depository duly designated under the provisions of this
24 act, informing them of their actual or prospective obligations and
25 responsibilities under this act. Such steps shall include, but not be
26 limited to, furnishing to every person on whose behalf petitions of
27 nomination are filed for any public office a copy of such printed
28 summary as aforesaid, which shall be furnished to such person by the
29 commission through the public official charged with the responsibility
30 of receiving and accepting such petitions of nomination, at the time
31 when such petitions are filed. The commission shall also make
32 available copies of such printed summary to any other person
33 requesting the same. The commission shall also take such steps as it
34 may deem necessary or effectual to disseminate among the general
35 public such information as may serve to guide all persons who may
36 become subject to the provisions of this act by reason of their
37 participation in election campaigns or in the dissemination of political
38 information, for the purpose of facilitating voluntary compliance with
39 the provisions and purposes of this act. In the dissemination of such
40 information, the commission shall to the greatest extent practicable
41 enlist the cooperation of commercial purveyors, within and without the
42 State, of materials and services commonly used for political campaign
43 purposes.

44 d. If the nomination for or election to any public office or party
45 position becomes void under the terms of subsection c. of section 21
46 of this act, the withholding or revocation of his certificate of election,

1 the omission of his name from the ballot or the vacation of the office
2 into which he has been inducted as a result of such void election, as
3 the case may be, shall be subject to the provisions of chapter 3, articles
4 2 and 3, of this Title (R.S. 19:3-7 et seq.).

5 e. The commission shall be assigned suitable quarters for the
6 performance of its duties hereunder.

7 f. The commission through its legal counsel is authorized to render
8 advisory opinions as to whether a given set of facts and circumstances
9 would constitute a violation of any of the provisions of this act, or
10 whether a given set of facts and circumstances would render any
11 person subject to any of the reporting requirements of this act.

12 Unless an extension of time is consented to by any person
13 requesting an advisory opinion, the commission shall render its
14 advisory opinion within 10 days of receipt of the request therefor.
15 Failure of the commission to reply to a request for an advisory opinion
16 within the time so fixed or agreed to shall preclude it from instituting
17 proceedings for imposition of a penalty upon any person for a violation
18 of this act arising out of the particular facts and circumstances set
19 forth in such request, except as such facts and circumstances may give
20 rise to a violation when taken in conjunction with other facts and
21 circumstances not set forth in such request.

22 (cf: P.L.1983, c.579, s.10)

23

24 3. Section 22 of P.L.1973, c. 83 (C.19:44A-22) is amended to read
25 as follows:

26 22. a. (1) Except as provided in subsection e. or f., any person,
27 including any candidate, treasurer, candidate committee or joint
28 candidates committee, political committee, continuing political
29 committee, political party committee or legislative leadership
30 committee, charged with the responsibility under the terms of this act
31 for the preparation, certification, filing or retention of any reports,
32 records, notices or other documents, who fails, neglects or omits to
33 prepare, certify, file or retain any such report, record, notice or
34 document at the time or during the time period, as the case may be,
35 and in the manner prescribed by law, or who omits or incorrectly
36 states or certifies any of the information required by law to be included
37 in such report, record, notice or document, any person who proposes
38 to undertake or undertakes a public solicitation, testimonial affair or
39 other activity relating to contributions or expenditures in any way
40 regulated by the provisions of this act who fails to comply with those
41 regulatory provisions, and any other person who in any way violates
42 any of the provisions of this act shall, in addition to any other penalty
43 provided by law, be liable to a penalty of not more than \$3,000.00 for
44 the first offense and not more than \$6,000.00 for the second and each
45 subsequent offense.

46 (2) No person shall willfully and intentionally agree with another

1 person to make a contribution to a candidate, candidate committee,
2 joint candidates committee, political committee, continuing political
3 committee, political party committee, or legislative leadership
4 committee with the intent, or upon the condition, understanding or
5 belief, that the recipient candidate or committee shall make or have
6 made a contribution to another such candidate or committee, but this
7 paragraph shall not be construed to prohibit a county or municipal
8 committee of a political party from making a contribution or
9 contributions to any candidate, candidate committee, joint candidates
10 committee, political committee, continuing political committee,
11 political party committee, or legislative leadership committee. A
12 finding of a violation of this paragraph shall be made only upon clear
13 and convincing evidence. A person who violates the provisions of this
14 paragraph shall be liable to a penalty equal to three times the amount
15 of the contribution which that person agreed to make to the recipient
16 candidate or committee.

17 b. Upon receiving evidence of any violation of this section, the
18 Election Law Enforcement Commission shall have power to hold, or
19 to cause to be held under the provisions of subsection d. of this
20 section, hearings upon such violation and, upon finding any person to
21 have committed such a violation, to assess such penalty, within the
22 limits prescribed in subsection a. or subsection e. of this section, as it
23 deems proper under the circumstances, which penalty shall be paid
24 forthwith into the State Treasury [for the general purposes of the
25 State] and credited to the Public Access Enhancement Fund,
26 established pursuant to section 6 of P.L. , c. (C.)(now pending
27 before the Legislature as this bill).

28 c. In assessing any penalty under this section, the Election Law
29 Enforcement Commission may provide for the remission of all or any
30 part of such penalty conditioned upon the prompt correction of any
31 failure, neglect, error or omission constituting the violation for which
32 said penalty was assessed.

33 d. The commission may designate a hearing officer to hear
34 complaints of violations of this act. Such hearing officer shall take
35 testimony, compile a record and make factual findings, and shall
36 submit the same to the commission, which shall have power to assess
37 penalties within the limits and under the conditions prescribed in
38 subsections b. and c. of this section. The commission shall review the
39 record and findings of the hearing officer, but it may also seek such
40 additional testimony as it deems necessary. The commission's
41 determination shall be by majority vote of the entire authorized
42 membership thereof.

43 e. Any person who willfully and intentionally makes or accepts any
44 contribution in violation of section 4 of P.L.1974, c.26 (C.19:44A-29)
45 or section 18, 19 or 20 of P.L.1993, c.65 (C.19:44A-11.3,
46 C.19:44A-11.4 or C.19:44A-11.5), shall be liable to a penalty of:

1 (1) Not more than \$5,000.00 if the cumulative total amount of
2 those contributions is less than or equal to \$5,000.00;

3 (2) Not more than \$75,000.00 if the cumulative total amount of
4 those contributions was more than \$5,000.00 but less than \$75,000;
5 and

6 (3) Not more than \$100,000.00 if the cumulative total amount of
7 those contributions is equal to or more than \$75,000.00.

8 f. In addition to any penalty imposed pursuant to subsection e. of
9 this section, a person holding any elective public office shall forfeit
10 that public office if the Election Law Enforcement Commission
11 determines that the cumulative total amount of the illegal
12 contributions was more than \$50,000.00 and that the violation had a
13 significant impact on the outcome of the election.

14 g. Any penalty prescribed in this section shall be enforced in a
15 summary proceeding under "the penalty enforcement law,"
16 N.J.S.2A:58-1 et seq.

17 (cf: P.L.1993, c.65, s.13)

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19 4. Section 16 of P.L.1974, c.26 (C.19:44A-41) is amended to read
20 as follows:

21 16. a. Any person who willfully and knowingly violates sections
22 4, 6, 9, 10 or 19 of this act shall in addition to any other penalty
23 provided by law, be liable to a penalty of not more than \$1,000.00 for
24 the first offense and not more than \$2,000.00 for the second and each
25 subsequent offense.

26 b. Upon receiving evidence of any violation of sections 4, 6, 9, 10
27 or 19 of this act, the Election Law Enforcement Commission shall
28 have power to hold, or to cause to be held under the provisions of
29 subsection d. of this section, hearings upon such violation and, upon
30 finding any person to have committed such a violation, to assess such
31 penalty, within the limits prescribed in subsection a. of this section, as
32 it deems proper under the circumstances, which penalty shall be paid
33 forthwith into the State Treasury [for the general purposes of the
34 State] and credited to the Public Access Enhancement Fund,
35 established pursuant to section 6 of P.L. , c. (C.)(now pending
36 before the Legislature as this bill). Such penalty shall be enforceable
37 in a summary proceeding under the "Penalty Enforcement Law"
38 (N.J.S.2A:58-1 et seq.).

39 c. In assessing any penalty under this section, the Election Law
40 Enforcement Commission may provide for the remission of all or any
41 part of such penalty conditioned upon the prompt correction of any
42 failure, neglect, error or omission constituting the violation for which
43 said penalty was assessed.

44 d. The commission may designate a hearing officer to hear
45 complaints of violations of this act. Such hearing officer shall take
46 testimony, compile a record and make factual findings, and shall

1 submit the same to the commission, which shall have power to assess
2 penalties within the limits and under the conditions prescribed in
3 subsection b. of this section. The commission shall review the record
4 and findings of the hearing officer, but it may also seek such additional
5 testimony as it deems necessary. The commission's determination shall
6 be by majority vote of the entire authorized membership thereof.
7 (cf: P.L.1974, c.26, s.16)

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9 5. Section 8 of P.L.1981, c.129 (C.19:44B-8) is amended to read
10 as follows:

11 8. a. Any candidate charged with the responsibility under the terms
12 of this act for the filing of any reports or other documents required to
13 be filed pursuant to this act who fails, neglects or omits to file any
14 such report or document at the time and in the manner prescribed by
15 law, or who omits or incorrectly states any of the information required
16 by law to be included in such report or document, shall, in addition to
17 any other penalty provided by law, be liable to a penalty of not more
18 than \$1,000.00 for the first offense and not more than \$2,000.00 for
19 the second and each subsequent offense.

20 b. Upon receiving evidence of any violation of this section, the
21 Election Law Enforcement Commission shall have power to hold, or
22 to cause to be held, hearings upon such violation and, upon finding any
23 person to have committed such a violation, to assess such penalty,
24 within the limits prescribed in subsection a. of this section, as it deems
25 proper under the circumstance which penalty shall be paid forthwith
26 into the State Treasury [for the general purposes of the State] and
27 credited to the Public Access Enhancement Fund, established pursuant
28 to section 6 of P.L. _____, c. _____ (C. _____)(now pending before the
29 Legislature as this bill). Such penalty shall be enforceable in a
30 summary proceeding under the "Penalty Enforcement Law"
31 (N.J.S.2A:58-1 et seq.).

32 c. In assessing any penalty under this section, the Election Law
33 Enforcement Commission may provide for the remission of all or any
34 part of the penalty conditioned upon the prompt correction of any
35 failure, neglect, error or omission constituting the violation for which
36 the penalty was assessed, provided the correction is made on a date
37 prior to the election for which the candidate has filed a declaration of
38 candidacy or petition to appear on the ballot.

39 (cf: P.L.1981, c.129, s.8)

40

41 6. (New section) a. There is created in the Department of the
42 Treasury a revolving, nonlapsing fund to be known as the Public
43 Access Enhancement Fund. The fund shall be credited with all
44 penalties collected by the State Treasury pursuant to section 22 of
45 P.L.1973, c.83 (C.19:44A-22), section 41 of P.L.1974, c.26
46 (C.19:44A-41) and section 8 of P.L.1981, c.129 (C.19:44B-8). The

1 commission shall also deposit into the fund all fees collected annually
2 from providing photocopies and computer printouts and any moneys
3 as may hereafter be donated by members of the public or appropriated
4 to the fund by law.

5 b. The moneys in the fund shall be disbursed to the commission
6 upon approval of the Director of the Office of Management and
7 Budget in the Department of Treasury and the Joint Budget Oversight
8 Committee or its successor.

9 c. All moneys held in the fund and not disbursed shall be
10 administered by the State Treasurer and may be invested or reinvested,
11 at the discretion thereof, in legal obligations of this State or of the
12 United States. Any income or interest earned by, or increment to,
13 moneys so invested or reinvested shall be added to the moneys held in
14 the fund.

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16 7. (New section) The Election Law Enforcement Commission shall
17 enter into a contract for a study of the ways and means necessary to
18 enable: a. campaign finance reports to be available to the public no
19 later than 48 hours after filing; b. computerized summaries to be
20 available (1) with respect to an election for member of the Legislature,
21 for a county office, or for a municipal office in the 25 most populous
22 municipalities, no later than 60 days after such an election, and (2)
23 with respect to the State committee of a political party, a legislative
24 leadership committee, a county committee of a political party, and the
25 municipal committee of a political party in the 25 most populous
26 municipalities, no later than 60 days after the filing of each quarterly
27 report by each such committee; and c. electronic access to be
28 available through the State Library network and an Internet web site.
29 No later than 180 days after the effective date of this act, the
30 commission shall report to the Legislature and the Governor on the
31 findings and recommendations of the study and on the commission's
32 plan to implement those recommendations.

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34 8. (New section) The Election Law Enforcement Commission
35 shall, within 90 days after the effective date of P.L. , c. (C.)
36 (now pending before the Legislature as this bill), develop and make
37 available computer software that permits any filing entity to file
38 reports with the commission by electronic means.

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40 9. (New section) There is appropriated to the Election Law
41 Enforcement Commission from the Productive and Efficiency Program
42 in the Department of the Treasury such sum as may be necessary to
43 conduct the study required pursuant to section 7 of this act.

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45 10. This act shall take effect immediately.

STATEMENT

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This bill establishes the Public Access Enhancement Fund for the Election Law Enforcement Commission (ELEC). Its purpose is to provide ELEC with a dedicated source of money to purchase or acquire such technology and to hire such additional staff as may be necessary to enable the commission to provide the public with timely access to the campaign finance reports it receives. The current system is not working, for those reports are not generally available in a timely manner.

Specifically, the bill provides that the fund shall be revolving and nonlapsing and shall be credited with all penalties collected by the State Treasury from any person, committee, corporation or labor organization found to be in violation of the "New Jersey Campaign Contributions and Expenditures Reporting Act" (P.L.1973, c.83; C.19:44A-1 et seq.), the gubernatorial public financing statutes (P.L.1974, c.26; C.19:44A-27 et seq.) or the statutes requiring financial disclosure by every candidate for the office of Governor and every candidate for the office of member of the Legislature (P.L.1981, c.129; C.19:44B-1 et seq.). All fees collected by ELEC for providing photocopies and computer printouts would also be deposited into the fund.

Under the bill, the moneys in the fund would be disbursed to the commission upon approval of the Director of the Office of Management and Budget in the Department of Treasury and the Joint Budget Oversight Committee or its successor.

The bill also provides for ELEC to enter into a contract for a study of the ways and means necessary to enable (1) campaign finance reports to be available to the public no later than 48 hours after filing; (2) computerized summaries to be available (a) with respect to an election for member of the Legislature, for a county office, or for a municipal office in the 25 most populous municipalities, no later than 60 days after such an election, and (b) with respect to the State committee of a political party, a legislative leadership committee, a county committee of a political party, and the municipal committee of a political party in the 25 most populous municipalities, election, no later than 60 days after the filing of each quarterly report by each such committee; and (3) electronic access to be available through the State Library network and an Internet web site. No later than 180 days after the effective date of this act, ELEC shall report to the Legislature and the Governor on the findings and recommendations of the study and on the commission's plan to implement those recommendations.

Finally, the bill includes a provision that requires the commission to develop and make available computer software that permits any filing entity to file reports with the commission by electronic means.

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3 Establishes Public Access Enhancement Fund for ELEC; appropriates
4 such sum as necessary to conduct study to enhance public access.