

SENATE, No. 1047

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Senators LYNCH, CONNORS, Casey and Adler

1 AN ACT concerning the Election Law Enforcement Commission and
2 amending P.L.1973, c.83, P.L.1974, c.26, P.L.1981, c.129 and
3 P.L.1991, c.244.

4

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

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8 1. Section 6 of P.L.1973, c.83 (C.19:44A-6) is amended to read as
9 follows:

10 6. a. The commission shall appoint a full-time executive director,
11 legal counsel and hearing officers, all of whom shall serve at the
12 pleasure of the commission and shall not have tenure by reason of the
13 provisions of chapter 16 of Title 38 of the Revised Statutes. The
14 commission shall also appoint such other employees as are necessary
15 to carry out the purposes of this act, which employees shall be in the
16 [classified] career service of the civil service and shall be appointed in
17 accordance with and shall be subject to the provisions of Title [11]
18 11A, Civil Service.

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

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

31 (2) Prepare and publish a manual for all candidates, political
32 committees and continuing political committees, prescribing the
33 requirements of the law, including uniform methods of bookkeeping
34 and reporting and requirements as to the length of time that any person

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

Matter underlined thus is new matter.

1 required to keep any records pursuant to the provisions of this act
2 shall retain such records, or any class or category thereof, or any
3 other documents, including canceled checks, deposit slips, invoices
4 and other similar documents, necessary for the compilation of such
5 records;

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

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

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

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

15 (7) Ascertain whether candidates, committees, organizations or
16 others have failed to file reports or have filed defective reports;
17 extend, for good cause shown, the dates upon which reports are
18 required to be filed; give notice to delinquents to correct or explain
19 defects; and make available for public inspection a list of such
20 delinquents;

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

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

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

32 (11) Use the moneys collected from the fines levied pursuant to
33 section 22 of P.L.1973, c.83 (C.19:44A-22), section 16 of P.L.1974,
34 c.26 (C.19:44A-41), section 8 of P.L.1981, c.129 (C.19:44B-8) and
35 section 11 of P.L.1991, c.244 (C.52:13C-23.1) to help fund the
36 commission's enforcement responsibilities.

37 c. The commission shall take such steps as may be necessary or
38 appropriate to furnish timely and adequate information, in appropriate
39 printed summaries and in such other form as it may see fit, to every
40 candidate or prospective candidate for public office who becomes or
41 is likely to become subject to the provisions of this act, and to every
42 treasurer and depository duly designated under the provisions of this
43 act, informing them of their actual or prospective obligations and
44 responsibilities under this act. Such steps shall include, but not be
45 limited to, furnishing to every person on whose behalf petitions of
46 nomination are filed for any public office a copy of such printed

1 summary as aforesaid, which shall be furnished to such person by the
2 commission through the public official charged with the responsibility
3 of receiving and accepting such petitions of nomination, at the time
4 when such petitions are filed. The commission shall also make
5 available copies of such printed summary to any other person
6 requesting the same. The commission shall also take such steps as it
7 may deem necessary or effectual to disseminate among the general
8 public such information as may serve to guide all persons who may
9 become subject to the provisions of this act by reason of their
10 participation in election campaigns or in the dissemination of political
11 information, for the purpose of facilitating voluntary compliance with
12 the provisions and purposes of this act. In the dissemination of such
13 information, the commission shall to the greatest extent practicable
14 enlist the cooperation of commercial purveyors, within and without the
15 State, of materials and services commonly used for political campaign
16 purposes.

17 d. If the nomination for or election to any public office or party
18 position becomes void under the terms of subsection c. of section 21
19 of this act, the withholding or revocation of his certificate of election,
20 the omission of his name from the ballot or the vacation of the office
21 into which he has been inducted as a result of such void election, as
22 the case may be, shall be subject to the provisions of chapter 3,
23 articles 2 and 3, of this Title (R.S. 19:3-7 et seq.).

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

26 f. The commission through its legal counsel is authorized to render
27 advisory opinions as to whether a given set of facts and circumstances
28 would constitute a violation of any of the provisions of this act, or
29 whether a given set of facts and circumstances would render any
30 person subject to any of the reporting requirements of this act.

31 Unless an extension of time is consented to by any person
32 requesting an advisory opinion, the commission shall render its
33 advisory opinion within 10 days of receipt of the request therefor.
34 Failure of the commission to reply to a request for an advisory
35 opinion within the time so fixed or agreed to shall preclude it from
36 instituting proceedings for imposition of a penalty upon any person
37 for a violation of this act arising out of the particular facts and
38 circumstances set forth in such request, except as such facts and
39 circumstances may give rise to a violation when taken in conjunction
40 with other facts and circumstances not set forth in such request.

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

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

45 22. a. (1) Except as provided in subsection e. or f., any person,
46 including any candidate, treasurer, candidate committee or joint

1 candidates committee, political committee, continuing political
2 committee, political party committee or legislative leadership
3 committee, charged with the responsibility under the terms of this act
4 for the preparation, certification, filing or retention of any reports,
5 records, notices or other documents, who fails, neglects or omits to
6 prepare, certify, file or retain any such report, record, notice or
7 document at the time or during the time period, as the case may be,
8 and in the manner prescribed by law, or who omits or incorrectly
9 states or certifies any of the information required by law to be included
10 in such report, record, notice or document, any person who proposes
11 to undertake or undertakes a public solicitation, testimonial affair or
12 other activity relating to contributions or expenditures in any way
13 regulated by the provisions of this act who fails to comply with those
14 regulatory provisions, and any other person who in any way violates
15 any of the provisions of this act shall, in addition to any other penalty
16 provided by law, be liable to a penalty of not more than [\$3,000.00]
17 \$6,000.00 for the first offense and not more than [\$6,000.00]
18 \$12,000.00 for the second and each subsequent offense.

19 (2) No person shall willfully and intentionally agree with another
20 person to make a contribution to a candidate, candidate committee,
21 joint candidates committee, political committee, continuing political
22 committee, political party committee, or legislative leadership
23 committee with the intent, or upon the condition, understanding or
24 belief, that the recipient candidate or committee shall make or have
25 made a contribution to another such candidate or committee, but this
26 paragraph shall not be construed to prohibit a county or municipal
27 committee of a political party from making a contribution or
28 contributions to any candidate, candidate committee, joint candidates
29 committee, political committee, continuing political committee,
30 political party committee, or legislative leadership committee. A
31 finding of a violation of this paragraph shall be made only upon clear
32 and convincing evidence. A person who violates the provisions of this
33 paragraph shall be liable to a penalty equal to three times the amount
34 of the contribution which that person agreed to make to the recipient
35 candidate or committee.

36 b. Upon receiving evidence of any violation of this section, the
37 Election Law Enforcement Commission shall have power to hold, or
38 to cause to be held under the provisions of subsection d. of this
39 section, hearings upon such violation and, upon finding any person to
40 have committed such a violation, to assess such penalty, within the
41 limits prescribed in subsection a. or subsection e. of this section, as it
42 deems proper under the circumstances, which penalty shall be paid
43 forthwith into the [State Treasury for the general purposes of the
44 State] General Fund for appropriation by the Legislature to the
45 commission.

46 c. In assessing any penalty under this section, the Election Law

1 Enforcement Commission may provide for the remission of all or any
2 part of such penalty conditioned upon the prompt correction of any
3 failure, neglect, error or omission constituting the violation for which
4 said penalty was assessed.

5 d. The commission may designate a hearing officer to hear
6 complaints of violations of this act. Such hearing officer shall take
7 testimony, compile a record and make factual findings, and shall
8 submit the same to the commission, which shall have power to assess
9 penalties within the limits and under the conditions prescribed in
10 subsections b. and c. of this section. The commission shall review the
11 record and findings of the hearing officer, but it may also seek such
12 additional testimony as it deems necessary. The commission's
13 determination shall be by majority vote of the entire authorized
14 membership thereof.

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

19 (1) Not more than [~~\$5,000.00~~] \$10,000.00 if the cumulative total
20 amount of those contributions is less than or equal to \$5,000.00;

21 (2) Not more than [~~\$75,000.00~~] \$150,000.00 if the cumulative
22 total amount of those contributions was more than \$5,000.00 but less
23 than \$75,000; and

24 (3) Not more than [~~\$100,000.00~~] \$200,000.00 if the cumulative
25 total amount of those contributions is equal to or more than
26 \$75,000.00.

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

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

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

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

40 16. a. Any person who willfully and knowingly violates sections 4,
41 6, 9, 10 or 19 of this act shall in addition to any other penalty
42 provided by law, be liable to a penalty of not more than [~~\$1,000.00~~]
43 \$2,000.00 for the first offense and not more than [~~\$2,000.00~~]
44 \$4,000.00 for the second and each subsequent offense.

45 b. Upon receiving evidence of any violation of sections 4, 6, 9, 10
46 or 19 of this act, the Election Law Enforcement Commission shall

1 have power to hold, or to cause to be held under the provisions of
2 subsection d. of this section, hearings upon such violation and, upon
3 finding any person to have committed such a violation, to assess such
4 penalty, within the limits prescribed in subsection a. of this section, as
5 it deems proper under the circumstances, which penalty shall be paid
6 forthwith into the [State Treasury for the general purposes of the
7 State] General Fund for appropriation by the Legislature to the
8 commission. Such penalty shall be enforceable in a summary
9 proceeding under [the "Penalty Enforcement Law" (N.J.S. 2A:58-1
10 et seq.).] "the penalty enforcement law," N.J.S.2A:58-1 et seq.

11 c. In assessing any penalty under this section, the Election Law
12 Enforcement Commission may provide for the remission of all or any
13 part of such penalty conditioned upon the prompt correction of any
14 failure, neglect, error or omission constituting the violation for which
15 said penalty was assessed.

16 d. The commission may designate a hearing officer to hear
17 complaints of violations of this act. Such hearing officer shall take
18 testimony, compile a record and make factual findings, and shall
19 submit the same to the commission, which shall have power to assess
20 penalties within the limits and under the conditions prescribed in
21 subsection b. of this section. The commission shall review the record
22 and findings of the hearing officer, but it may also seek such additional
23 testimony as it deems necessary. The commission's determination shall
24 be by majority vote of the entire authorized membership thereof.

25 (cf: P.L.1974,c.26,s.16)

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

29 8. a. Any person who willfully and knowingly violates sections 4,
30 6, 9, 10 or 19 of this act shall in addition to any other penalty
31 provided by law, be liable to a penalty of not more than [\$1,000.00]
32 \$2,000.00 for the first offense and not more than [\$2,000.00]
33 \$4,000.00 for the second and each subsequent offense.

34 b. Upon receiving evidence of any violation of sections 4, 6, 9, 10
35 or 19 of this act, the Election Law Enforcement Commission shall
36 have power to hold, or to cause to be held under the provisions of
37 subsection d. of this section, hearings upon such violation and, upon
38 finding any person to have committed such a violation, to assess such
39 penalty, within the limits prescribed in subsection a. of this section, as
40 it deems proper under the circumstances, which penalty shall be paid
41 forthwith into the [State Treasury for the general purposes of the
42 State] General Fund for appropriation by the Legislature to the
43 commission. Such penalty shall be enforceable in a summary
44 proceeding under [the "Penalty Enforcement Law" (N.J.S. 2A:58-1
45 et seq.).] "the penalty enforcement law," N.J.S.2A:58-1 et seq.

46 c. In assessing any penalty under this section, the Election Law

1 Enforcement Commission may provide for the remission of all or any
2 part of such penalty conditioned upon the prompt correction of any
3 failure, neglect, error or omission constituting the violation for which
4 said penalty was assessed.

5 d. The commission may designate a hearing officer to hear
6 complaints of violations of this act. Such hearing officer shall take
7 testimony, compile a record and make factual findings, and shall
8 submit the same to the commission, which shall have power to assess
9 penalties within the limits and under the conditions prescribed in
10 subsection b. of this section. The commission shall review the record
11 and findings of the hearing officer, but it may also seek such additional
12 testimony as it deems necessary. The commission's determination shall
13 be by majority vote of the entire authorized membership thereof.
14 (cf: P.L.1981,c.129, s.8)

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16 5. Section 11 of P.L.1991, c.244 (C.52:13C-23.1) is amended to
17 read as follows:

18 11. Upon receiving evidence of any violation of P.L.1971, c.183
19 (C.52:13C-18 et seq.), as amended and supplemented, the commission
20 shall have power to bring complaint proceedings, to issue subpoenas
21 for the production of witnesses and documents, and to hold or to
22 cause to be held by the Office of Administrative Law, hearings upon
23 such complaint. In addition to any other penalty provided by law, any
24 person who is found to have committed such a violation shall be liable
25 for civil penalty not in excess of [~~\$1,000~~] \$2,000.00, which penalty
26 may be collected in a summary proceeding pursuant to "the penalty
27 enforcement law" (N.J.S.2A:58-1 et seq.) and paid forthwith into the
28 General Fund for appropriation by the Legislature to the commission.
29 (cf: P.L.1991,c.244,c.11)

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31 6. This act shall take effect immediately.

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STATEMENT

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36 The purpose of this bill is to provide the Election Law Enforcement
37 Commission (ELEC) with a source of funding to help carry out its
38 enforcement responsibilities.

39 Specifically, the bill:

40 1) doubles all current civil fines and penalties provided for in "The
41 New Jersey Campaign Contributions and Expenditures Reporting
42 Act," the Gubernatorial public financing statutes, the Gubernatorial
43 and Legislative candidate financial disclosure statutes and the
44 "Legislative Activities Disclosure Act of 1971"; and

45 2) provides that all of the moneys collected from persons and
46 committees found in violation of those statutes shall be paid directly

1 to the General Fund for appropriation by the Legislature to ELEC,
2 rather than to the State Treasury for the general purposes of the State.

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7 Increases civil fines and penalties imposed by ELEC; remits moneys
8 collected therefrom to General Fund for appropriation by the
9 Legislature to commission.