

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing: General Elections for the Offices of Governor and of Lieutenant Governor; and Primary Elections for the Office of Governor

Adopted Amendments: N.J.A.C. 19:25-1.7, 3.3, 5.3, 8.1, 10.10, 11.1, 11.2, 11.14, 15.1, 15.3, 15.4, 15.6, 15.9 through 15.15, 15.17, 15.17A, 15.18, 15.20, 15.21, 15.22, 15.24, 15.26, 15.27, 15.28A, 15.28B, 15.29A, 15.30, 15.31, 15.32, 15.33, 15.35, 15.39, 15.40, 15.44 through 15.52, 15.53, 15.54, 15.58, 15.59, 15.66, 16.3, 16.7, 16.10, 16.13, 16.18, 16.18A, 16.21, 16.25, 16.30, 16.31, 16.36, 16.39, 16.43, 19.1, 19.2, and 19.7

Adopted New Rules: N.J.A.C. 19:25-15.4A and 15.5

Proposed: May 21, 2012 at 44 N.J.R. 1593(a).

Adopted: September 20, 2012 by the Election Law Enforcement Commission, Jeffrey M. Brindle, Executive Director.

Filed: September 20, 2012 as R.2012 d.172, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3.).

Authority: New Jersey Constitution, Article V, Section I, paragraph 4, P.L. 2009, c. 66, N.J.S.A. 19:44A-6, 19:44A-6.1, 19:44A-38, and 19:44B-7.

Effective Date: October 15, 2012.

Expiration Date: March 25, 2017.

Summary of Hearing Officer's Recommendations and Agency's Response:

A public hearing on the notice of proposal was conducted before the sitting New Jersey Election Law Enforcement Commission (the Commission) on July 17, 2012 in the Edward J. Farrell

Memorial Conference Room, 28 West State Street, 12th Floor, Trenton, New Jersey. No persons appeared to testify. Advance written notice of the hearing was circulated on or about June 12, 2012, to the Secretary of State, the County Clerks, the State House press corps, and other interested individuals. The period for receipt of written comments expired on July 20, 2012, and no written comments were received. The sitting Commission voted on September 11, 2012 to adopt the amendments as proposed, with technical changes to N.J.A.C. 19:25-15.3, 15.10, 15.11, 15.12, 15.17, 15.17A, 15.26, 15.30, 15.49, 16.7, 16.10, and 16.31, not requiring additional public notice and comment, to make language gender neutral. The record of opportunity for the public to be heard may be reviewed by contacting Michelle R. Levy, Esq. Assistant Legal Director, Election Law Enforcement Commission, P.O. Box 185, Trenton, New Jersey 08625-0185.

Summary of Public Comment and Agency Response:

No public comments were received.

Summary of Agency-Initiated Changes upon Adoption:

The sitting Commission voted on September 11, 2012 to adopt the amendments as proposed, with technical changes to N.J.A.C. 19:25-15.3, 15.10, 15.11, 15.12, 15.17, 15.17A, 15.26, 15.30, 15.49, 16.7, 16.10, and 16.31, not requiring additional public notice and comment, to make language gender neutral.

Federal Standards Statement

No Federal standards or requirements are applicable to the subject matter of the amendments and new rules. The rules set forth in N.J.A.C. 19:25 concern New Jersey filing entities or contributors. As a result, a Federal standards analysis is not required.

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

SUBCHAPTER 15. PUBLIC FINANCING; GENERAL ELECTIONS FOR THE
OFFICES OF GOVERNOR AND OF LIEUTENANT GOVERNOR

19:25-15.3 Definitions for this subchapter

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Candidate" means an individual who has filed a nominating petition, or has filed a form D-1 with the Commission, or has solicited contributions or made or incurred expenditures on behalf of ***[his or her candidacy]* **the candidate's campaign*****, or has allowed others to solicit contributions or make or incur expenditures on behalf of ***[his or her candidacy]* **the candidate's campaign***** for election to the office of Governor of New Jersey, or who has received funds or other benefits or has made payments solely for the purpose of determining whether or not the individual should become a candidate for the office of Governor of New Jersey in any general election for which the Legislature makes an appropriation for public funding. "Candidate" shall also mean an individual who is selected and certified pursuant to N.J.A.C. 19:25-15.4A who seeks election to the office of Lieutenant Governor.

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19:25-15.10 Non-participating candidates

(a) (No change from proposal.)

(b) Non-participating candidates for the offices of Governor and of Lieutenant Governor are jointly subject to the \$3,400 limit on guarantors of bank loans, except if the guarantor is the non-participating candidate *[himself or herself]*.

(c) - (d) (No change from proposal.)

19:25-15.11 Limitations on participating candidates

(a) Each candidate for the office of Governor and for the office of Lieutenant Governor intending to participate in public funding, in addition to any other requirement imposed by the Act or this subchapter, is subject to the following limitations:

1. No publicly funded candidate for the office of Governor may make expenditures from *[his or her]* ***the candidate's*** own funds, including any contributions from *[his or her]* ***the candidate's*** own funds, in aid of *[his or her candidacy]* ***the candidate's campaign*** in excess of \$25,000. Any loan guaranteed with such candidate's own funds must be included in calculating the aggregate contribution of the candidate in aid of *[his or her candidacy]* ***the candidate's campaign*** until such time as the loan is no longer outstanding.
2. No publicly funded candidate for the office of Lieutenant Governor may make expenditures from *[his or her]* ***the candidate's*** own funds, including any contributions from *[his or her]* ***the candidate's*** own funds, in aid of *[his or her candidacy]* ***the candidate's campaign*** in excess of \$25,000. Any loan guaranteed with such candidate's own funds must be included in

calculating the aggregate contribution of the candidate in aid of *[his or her candidacy]* ***the candidate's campaign*** until such time as the loan is no longer outstanding.

3. – 4. (No change from proposal.)

5. Contributions by any candidate for the office of Governor in excess of \$3,400 from *[his or her]* ***the candidate's*** own funds in aid of *[his or her candidacy]* ***the candidate's campaign*** shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

6. Contributions by any candidate for the office of Lieutenant Governor in excess of \$3,400 from *[his or her]* ***the candidate's*** own funds in aid of *[his or her candidacy]* ***the candidate's campaign*** shall not be deposited in a matching fund account and shall not be calculated in determining eligibility for public matching funds.

19:25-15.12 Who may or may not contribute

(a) No person, candidate committee, joint candidates committee, political committee, continuing political committee, or legislative leadership committee, other than a candidate contributing *[his or her]* ***the candidate's*** own funds to *[his or her]* ***the candidate's own*** campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or on behalf of a candidate, whether or not participating in public funding, for election to the offices of Governor and of Lieutenant Governor in a general election, in the

aggregate in excess of \$3,400. Any such contribution in excess of \$3,400 must be returned to the contributor pursuant to the requirements of N.J.A.C. 19:25-11.8, and evidence of repayment shall be submitted to the Commission.

(b) – (g) (No change from proposal.)

19:25-15.17 Matching of funds

(a) – (b) (No change from proposal.)

(c) Candidates for the offices of Governor and of Lieutenant Governor who jointly seek to become eligible to receive matching funds shall certify to the Commission in a written statement signed by the candidate for Governor that **[his or her]** ***the candidate*** is a candidate for Governor in a general election and by the candidate for Lieutenant Governor that **[his or her]** ***the candidate*** is a candidate for Lieutenant Governor and that they have jointly received and deposited into their matching fund account contributions eligible for match of at least \$340,000 from persons, candidate committees, joint candidates committees, political committees, continuing political committees, or legislative leadership committees each of whose contributions in the aggregate does not exceed \$3,400, and that at least \$340,000 of such contributions have been expended. "Expended" for this purpose shall mean disbursed or committed for expenditure in the campaign.

(d) – (j) (No change from proposal.)

19.25-15.17A Reporting of issue advocacy organization information

(a) A candidate seeking to qualify for receipt of public matching funds who participated in an issue advocacy organization during the four years prior to the date upon which **[he or she]**

the candidate became a candidate for election to the office of Governor or office of Lieutenant Governor, or who is at the time of the application for receipt of public matching funds participating in an issue advocacy organization, shall be ineligible to receive public matching funds unless the candidate files an Issue Advocacy Organization Report of Contributions and Expenditures (Form P-2). For the purposes of this section, a candidate shall be deemed to be participating in an issue advocacy organization if the candidate forms or formed, assists or assisted in the formation of, or was or is involved in any way in the management of an issue advocacy organization.

(b) – (c) (No change from proposal.)

(d) The report filed by a candidate for Lieutenant Governor pursuant to (a) above shall include the following:

1. The name(s) of the issue advocacy organization(s) in which the candidate was a participant during the four years prior to the date upon which ***[he or she]* the candidate*** became a candidate for election to the office of Lieutenant Governor or in which the candidate is a participant;

- 2.-5. (No change from proposal.)

(e) (No change from proposal.)

[(e)] **(f)** A candidate shall not be required to file the Issue Advocacy Organization Report of Contributions and Expenditures (Form P-2) if the candidate certifies and files the Candidate Certification-Issue Advocacy Organization Participation (Form P-2A) to the effect that:

1. The candidate was not, during the four years prior to the date upon which ***[he or she]* the candidate*** became a candidate for election to the office of Governor or Lieutenant Governor a participant in any issue advocacy organization and is not at the time of the

application for receipt of public matching funds participating in any issue advocacy organization;
or

2. The candidate participated during the four years prior to the date upon which *[he or she] ***the candidate*** became a candidate for election to the office of Governor or Lieutenant Governor in an issue advocacy organization or organizations, or is a participant in an issue advocacy organization or organizations at the time of the application for receipt of public matching funds, but the organization or organizations file reports of contributions and expenditures with the Commission or with the Federal Election Commission.

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by qualified candidates shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3:

1. (No change.)
2. Travel expenses of the candidates, as that term is defined in N.J.A.C. 19:25-15.27(a), or of any person other than the candidates if such traveling expenses are voluntarily paid by such person without any understanding or agreement with such candidates that they shall be, directly or indirectly, repaid to *[him or her]* ***that person*** by the candidates, shall not be deemed expenditures within the meaning of N.J.S.A. 19:44A-7.
- 3.- 4. (No change.)

19:25-15.30 Borrowing of funds; repayment

Any candidates for the offices of Governor and of Lieutenant Governor, the candidates' campaign treasurer, or deputy campaign treasurer, may borrow funds from any national or State bank, provided that no person, candidate committee, joint candidates committee, political committee, continuing political committee, or legislative leadership committee other than the candidate or the State committee may in any way endorse or guarantee such loan in the aggregate in excess of the \$3,400 contribution limit. Except for a non-participating candidate guaranteeing a loan to *[his or her]* ***the candidate's own*** campaign, the amount so borrowed shall not at any one time in the aggregate exceed \$50,000 for *[their]* ***the*** campaign, and must be repaid in full by such candidate or *[his or her]* ***the*** campaign treasurer or deputy campaign treasurer from monies accepted or allocated pursuant to N.J.S.A. 19:44A-29 not later than 20 days prior to the general election. Certification of such repayment shall be made by the borrower to the Commission not later than 15 days prior to the date of the general election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the Commission, all payment of public funds to such candidate shall promptly cease and the Commission shall take action as directed by the Act to prohibit the expenditure by the candidate of monies received from the fund and any other monies received by *[him or her]* ***the candidate*** in aid of *[his or her candidacy]* ***the candidate's campaign*** in such general election.

19:25-15.49 Statement of candidates electing to participate in debates

(a) Candidates for the offices of Governor and of Lieutenant Governor who have not by September 1 preceding a general election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial general election debates by:

1. Notifying the Commission in writing no later than September 1 preceding the general election for the office of Governor of the candidate for the office of Governor*'s' *[of his or her]* intent to participate in the two general election debates for the office of Governor, and the candidate for the office of Lieutenant Governor*'s' *[of his or her]* intent to participate in one general election debate for the office of Lieutenant Governor; and
 2. (No change from proposal.)
- (b) - (d) (No change from proposal.)

SUBCHAPTER 16. PUBLIC FINANCING OF PRIMARY ELECTION FOR GOVERNOR

19:25-16.7 Candidates deemed non-participating; effect

Any candidate, who does not by the last day for filing petitions to nominate candidates to be voted upon in a primary election for Governor, make application for public funding in a primary election pursuant to N.J.A.C. 19:25-16.18 (Matching of funds) shall be deemed non-participating in public funding of that primary election and shall not receive public funds on behalf of *[his or her]* **the candidate's** campaign.

19:25-16.10 Who may or may not contribute

(a) No person, other than a candidate contributing *[his or her]* **the candidate's** own funds to *[his or her]* **the candidate's** campaign, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of

the candidacy of, or on behalf of, a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of \$3,400. Any such contribution in excess of \$3,400 must be returned to the contributor pursuant to the requirements of N.J.A.C. 19:25-11.8, and evidence of the repayment shall be submitted to the Commission.

(b) – (g) (No change.)

19:25-16.31 Borrowing of funds; repayment

Any candidate, *[his or her]* campaign treasurer, or deputy campaign treasurer of the candidate, may borrow funds from any national or State bank, provided that no person, candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee, other than the candidate, may in any way endorse or guarantee such loan in the aggregate in excess of the \$3,400 contribution limit. Except for a non-participating candidate guaranteeing a loan to *[his or her]* ***the candidate's own*** campaign, the amount so borrowed shall not at any one time in the aggregate exceed \$50,000 and must be repaid in full by such candidate or *[his or her]* ***the candidate's*** campaign treasurer or deputy campaign treasurer from monies accepted or allocated pursuant to N.J.S.A. 19:44A-29 not later than 20 days prior to the primary election. Certification of such repayment shall be made by the borrower to the Commission not later than 15 days prior to the date of the primary election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the Commission, all payment of public funds to such candidate shall promptly cease and the Commission shall take action as directed by the Act to prohibit the expenditure by the candidate of monies received from the fund

and any other monies received by *[him or her]* ***the candidate*** in aid of *[his or her candidacy]* ***the candidate's campaign*** in such primary election.