

**OTHER AGENCIES**  
**ELECTION LAW ENFORCEMENT COMMISSION**  
**Public Financing: General and Primary Elections for the Office of Governor**  
**Proposed New Rules: N.J.A.C. 19:25-15.47B, 15.47C, 16.34A, and 16.34B**

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

Authority: N.J.S.A. 19:44A-6

Calendar Reference: See summary below for explanation of exception to calendar requirement.  
Proposal Number: PRN 2008 -

The sitting New Jersey Election Law Enforcement Commission will conduct a **public hearing** concerning this proposal on **Tuesday, January 20 2009** at 11:00 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, January 16, 2009.

Submit written comments by January 30, 2009, to:

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

The agency proposal follows:

**Summary**

The New Jersey Election Law Enforcement Commission (hereafter, the Commission) proposes new rules concerning application for termination of reporting with net liabilities by publicly financed gubernatorial candidates. The new rules are proposed for Subchapters 15 (general election) and 16 (primary election) of the gubernatorial public financing regulations. The proposed new rules which follow are based upon the experience of the Commission and its staff in administering the filing of campaign finance reports in the gubernatorial public financing program as required by the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.* (the Act).

The Commission has found that in a small number of cases, a publicly financed gubernatorial candidate committee incurs debt during the election and is unable to raise funds after a certain

time period postelection to satisfy the outstanding obligations. The candidate committee is currently required to continue filing quarterly reports, and cannot file a final report, as long as the obligations remain unpaid. The possibility arises that a campaign which is unable to raise funds postelection to liquidate its obligations may be required to file postelection quarterly reports without a possibility of termination.

The Commission proposes new rules N.J.A.C. 19:25-15.47B and 16.34A, Application for termination of reporting with net liabilities by publicly financed candidates to allow the Commission to give approval for publicly financed gubernatorial candidates to file a final report to terminate the reporting of the candidate committee. The Commission believes that the proposed new rules protect the integrity of the contribution limits by providing certification requirements regarding the nature of the underlying obligations in conjunction with the definition of what constitutes a “contribution” under the Reporting Act and Commission regulations.

Publicly financed candidates are required within six months of the election to return all funds in their public funds account and any other campaign account to the State “after satisfaction of all outstanding obligations;” see N.J.S.A. 19:44A-35. Postelection expenditures are restricted to payment of outstanding obligations incurred on or before the date of the election or to pay the reasonable and necessary costs of closing the campaign, see N.J.S.A. 19:44A-35 and N.J.A.C. 19:25-15.47 and 16.34.

Commission regulations concerning postelection reporting and termination of reporting by candidates for New Jersey elective office who are not subject to the Subchapter 15 and Subchapter 16 gubernatorial public financing regulations provide that a candidate committee may continue to receive contributions postelection to satisfy net liabilities for that past election for that office, or may transfer such outstanding obligations to a future election, see N.J.A.C. 19:25-8.7(b)2 and 19:25-8.7A. Unlike all other candidates, however, publicly financed candidates may not transfer outstanding obligations to a future election; [see Commission Advisory Opinion 01-2004](#).

Since a publicly financed candidate may not transfer outstanding obligations to a future campaign, the possibility arises that a campaign which is unable to raise funds postelection to liquidate its obligations as contemplated by N.J.S.A. 19:44A-35 may be required to file postelection quarterly reports without a possibility of termination. The Commission recommends that the proposed application for finalization will provide a disclosure mechanism and a reasonable time limit on postelection reporting which acknowledges the impracticality of requiring a campaign to file postelection quarterly reports without end. The proposed new rules would follow N.J.A.C. 19:25-15.47, Repayment of public or other funds (general election) which concerns return of monies to the State following “liquidation of all obligations.”

The proposed language incorporates the description of “net liabilities” as found in N.J.A.C. 19:25-8.7A, which defines net liabilities as outstanding obligations in excess of the total assets of the candidate committee including its cash balances in all of its depository accounts.

The proposed new rules would require a certification of each outstanding obligation, as to the initial date incurred and the date each was reported on a report filed with the Commission. This

certification is important not only to ensure compliance with the expenditure limits of the public financing program, but also to confirm that public disclosure of such obligations has been met through all required prior filings. In addition, the certification process will require that the campaign provide information as to the efforts made to retire each obligation, including all contributions that have been raised and expended postelection towards such retirement. The Commission finds that a campaign must be required to demonstrate some degree of good faith in an effort to retire liabilities, rather than simply wait for the proposed seven-year period to lapse.

The proposed application may not be made earlier than seven years after the date of the election. The proposed time period of seven years is recommended in order to ensure a sufficient and reasonable time period after the election for a campaign to engage in fundraising to retire debt of the campaign. Pursuant to N.J.S.A. 2A:14-1, an action at law for recovery upon a contractual claim or liability must be commenced within six years after accrual of the cause of action. Therefore the proposed time period of seven years extends beyond the statute of limitations on any initial claim arising by the date of the election. However, the Commission notes further that the statute of limitations is an affirmative defense that must be pleaded in an action in a court of law; see N.J. Ct. R. 4:5-4. The Commission emphasizes that it does not intend by this regulation to become an arbiter of enforceability of a contractual obligation between a campaign and a vendor but rather to allow a reasonable procedure and reasonable time period for a campaign to terminate its reporting obligations.

The candidate and treasurer must make certifications regarding the circumstances of the obligation, efforts to retire, compromise or resolve the debt, that no further contributions are expected, that all assets have been liquidated and applied to retire debt, that no further expenditures will be made except to bring remaining depository account balances to zero, and that all required reports have been timely filed (except for good cause shown).

The proposed application further requires a separate certification that no pledge or commitment has been made or received that the payment of such obligation will be forgiven or assumed by any party other than the candidate committee. An outstanding obligation represents an expenditure for goods or services. It is a commitment by the campaign to pay for goods or services rendered by a vendor or another party. The Commission believes that upon a transfer in that commitment or transfer of that liability from the campaign, that the campaign receives a contribution in the amount of that outstanding obligation. The proposed certification language mirrors the definition of "contribution" in N.J.S.A. 19:44A-3d and N.J.A.C. 19:25-1.7, and would require the candidate and treasurer to certify to the Commission that no pledge or commitment was ever made that such debt would be forgiven.

Under the proposed new rules, the Commission shall review each application and base its consideration upon the factors listed above. Furthermore, all outstanding issues with the Commission staff arising from postelection audits must be resolved.

The Commission also proposes new rules N.J.A.C. 19:25-15.47C and 16.34B, Final report certification with net liabilities for publicly financed candidates. Under these proposed rules, the campaign would file a final report following approval of its application for termination of reporting. Due to passage of time between the application and the final report, the Commission

proposes that the candidate and treasurer be required to recertify the statements regarding outstanding obligations that concern possible agreements between the campaign and the vendor, in order to address possible circumvention of the contribution limits.

The proposed rules anticipate that any campaign carrying a balance in a depository account will make final disbursements of any remaining depository balance, including returning any unspent funds to the Commission for return to the State, and contain language that specifically provides that if the proposed procedures are followed, an outstanding obligation does not convert into a “contribution” under the definitions in Commission regulations. Finally, recognizing the potential for false or misleading certifications, the proposed new rules reiterate the Commission’s statutory authority to make referrals for possible criminal violations including false certifications to the Office of the Attorney General.

The Commission understands that the public and the regulated community may need guidance concerning the proposed new rules. The Commission therefore anticipates that further regulatory action may be needed to address concerns, and that the public and regulated community may submit requests for advisory opinions to clarify the application of the new rules.

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

### **Social Impact**

Because there are few publicly funded gubernatorial candidates, the Commission believes that the proposed new rules will impact a small number of candidate committees. The proposed certifications and approval process will have a positive social impact by providing safeguards that ensure the integrity of the public financing program, and reduce replicative filing of unchanging information.

The Commission believes that the proposed new rules will have the salutary effect of providing maximum disclosure of outstanding debt while also reducing redundant filing related to debt that cannot be retired where a publicly financed gubernatorial candidate committee has been unable to raise funds to satisfy the outstanding obligations. The Commission believes that no compelling purpose is served by requiring such a committee to file reports indefinitely, where all pertinent information has been reported and publicly disclosed, and a period of seven years after the election has passed.

The Commission proposes a practical approach to terminating this reporting obligation, which gives the public additional information regarding the circumstances surrounding the assumption of the debt, efforts to retire the debt, and certification that there was no prior agreement that would circumvent contributions limits. The proposed rules require that all outstanding obligation have been previously reported as expenditures of the campaign, and therefore the proposed new rules will not increase the likelihood of contravention of expenditure limits, which are a significant component of the public financing system. The Commission will retain its ability to make a referral to the Office of the Attorney General upon receipt of evidence of false certification or misrepresentation of contributions or expenditures.

### **Economic Impact**

The Commission anticipates that publicly financed gubernatorial candidate committees may incur some additional costs in submitting an application for termination of reporting with net liabilities pursuant to proposed new rules N.J.A.C. 19:25-15.47B and 16.34A. Such applications are voluntary, and the candidate can weigh whether or not the benefits of potentially terminating reporting are worth the additional bookkeeping costs. There will be additional costs to the Commission associated with reviewing these applications. However, should the Commission approve the application for termination of reporting, the committee will only need to file one additional (final) report, and will not be required to continue filing quarterly reports indefinitely under N.J.A.C. 19:25-8.7A, which will eliminate the Commission's cost of reviewing such reports.

The proposed new rules do not attempt to invalidate any outstanding debts, or rule on the statute of limitations or applicability of any legal remedies that a vendor or service provider may take. The Commission's proposal affects only the issue of whether a publicly financed candidate committee with an outstanding debt may apply for termination of its reporting obligation, and therefore does not have an economic impact on the vendor or service provider of the underlying obligation.

### **Federal Standards Statement**

A federal standards analysis is not required because the proposed new rules concern New Jersey filing entities. The new rules and amendments are not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed new rules are not expected to result in the generation or loss of jobs.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Statement**

The proposed new rules do not impose recordkeeping, reporting, or other compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While it is conceivable that small businesses may be owed outstanding obligations by publicly financed gubernatorial candidates, the reporting and recordkeeping requirements generated by the new rules are solely on the candidate committee which had incurred the debt.

### **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.

### **Housing Affordability Impact Statement**

The proposed new rules are not expected to have any impact on affordable housing in New Jersey and it is unlikely that the regulation would evoke a change in the average costs associated with housing because the proposed rules concern campaign finance reporting by publicly financed gubernatorial candidates.

### **Smart Growth Development Impact Statement**

The proposed new rules are not expected to have any impact on smart growth and it is unlikely that the regulation would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules concern reporting under the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.*

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

#### **19:25-15.47B - Application for termination of reporting with net liabilities by publicly financed candidates**

**(a) A publicly financed candidate who has returned all public moneys to the Commission in compliance with the requirements of N.J.A.C. 19:25-15.47, but who has continued to file postelection quarterly reports to report net liabilities, that is, outstanding obligations in excess of the total assets of the candidate committee including its cash balance in all of its depository accounts, may apply to the Commission to file a final report to terminate the reporting of the candidate committee as set forth in subsections (b) through (e) below.**

**(b) Such application shall not be made earlier than seven years after the date of the election.**

**(c) Each candidate and treasurer filing an application for termination of reporting shall certify the following:**

- 1. For each outstanding obligation, the date each obligation was incurred and the date it was first reported on a report filed with the Commission;**
- 2. A statement describing the efforts made by the campaign to retire the outstanding obligations, including without limitation, efforts to compromise or resolve the debt with the vendor or service provider;**

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3. That the candidate committee expects to receive no further contributions to retire its net liabilities in the election;
4. That the candidate committee has liquidated all assets and applied proceeds from such liquidation to retire debt;
5. That the candidate committee expects to make no further expenditures except to bring any remaining depository account balance to zero; and
6. All reports required by the Reporting Act and Commission regulations have been timely filed and correctly stated, except for good cause shown.

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(d) For each outstanding obligation described in subsection (c)1 above, the candidate and the treasurer shall make a separate certification that no pledge or commitment has been made or received by any candidate or treasurer, or other authorized person or representative of the campaign, or by the candidate committee, that the payment of such obligation will be forgiven or assumed by any party other than the candidate committee.

(e) The Commission shall review each such application and shall grant its approval to such application based upon consideration of: all factors set forth in (c) and (d) above, and whether or not all outstanding audit issues have been resolved with the candidate committee.

#### 19:25-15.47C Final report certification with net liabilities for publicly financed candidates

(a) Upon approval by the Commission pursuant to the provisions of N.J.A.C. 19:25-15.47B above, a publicly financed candidate may file a final report and certification of termination of reporting upon a form prescribed by the Commission.

(b) Each candidate and treasurer filing a final report described in (a) above shall recertify the statements described in N.J.A.C. 19:25-15.47B (d) for each outstanding obligation.

(c) The final report shall show a zero balance in all campaign depository accounts and all final expenditures of the campaign fund in accordance with N.J.A.C. 19:25-15.45, post-election payment of expenses, and N.J.A.C. 19:25-15.47, repayment of public or other funds.

(d) An outstanding obligation reported on a certificate of termination of reporting filed pursuant to (a), (b) and (c) above shall not be considered a "contribution" under the definition of N.J.A.C. 19:25-1.7.

(e) Notwithstanding (d) above, by enacting these provisions, the Commission does not waive its authority pursuant to N.J.S.A. 19:44A-6(b)10 to make a referral to the

Office of the Attorney General for possible violations of N.J.S.A. 19:44A-21(a) and N.J.S.A. 19:44A-21(b), upon subsequent receipt of evidence of false certification or misrepresentation of contributions or expenditures.

19:25-16.34A - Application for termination of reporting with net liabilities by publicly financed candidates

(a) A publicly financed candidate who has returned all public moneys to the Commission in compliance with the requirements of N.J.A.C. 19:25-16.34, but who has continued to file postelection quarterly reports to report net liabilities, that is, outstanding obligations in excess of the total assets of the candidate committee including its cash balance in all of its depository accounts, may apply to the Commission to file a final report to terminate the reporting of the candidate committee as set forth in subsections (b) through (e) below.

(b) Such application shall not be made earlier than seven years after the date of the election.

(c) Each candidate and treasurer filing an application for termination of reporting shall certify the following:

1. For each outstanding obligation, the date each obligation was incurred and the date it was first reported on a report filed with the Commission;
2. A statement describing the efforts made by the campaign to retire the outstanding obligations, including without limitation, efforts to compromise or resolve the debt with the vendor or service provider;
3. That the candidate committee expects to receive no further contributions to retire its net liabilities in the election;
4. That the candidate committee has liquidated all assets and applied proceeds from such liquidation to retire debt;
5. That the candidate committee expects to make no further expenditures except to bring any remaining depository account balance to zero; and
6. All reports required by the Reporting Act and Commission regulations have been timely filed and correctly stated, except for good cause shown.

(d) For each outstanding obligation described in subsection (c)1 above, the candidate and the treasurer shall make a separate certification that no pledge or commitment has been made or received by any candidate or treasurer, or other authorized person or representative of the campaign, or by the candidate committee, that the payment of such obligation will be forgiven or assumed by any party other than the candidate committee.

(e) The Commission shall review each such application and shall grant its approval to such application based upon consideration of: all factors set forth in (c) and (d) above, and whether or not all outstanding audit issues have been resolved with the candidate committee.

**19:25-16.34B Final report certification with net liabilities for publicly financed candidates**

(a) Upon approval by the Commission pursuant to the provisions of N.J.A.C. 19:25-16.34A above, a publicly financed candidate may file a final report and certification of termination of reporting upon a form prescribed by the Commission.

(b) Each candidate and treasurer filing a final report described in (a) above shall recertify the statements described in N.J.A.C. 19:25-16.34A(d) for each outstanding obligation.

(c) The final report shall show a zero balance in all campaign depository accounts and all final expenditures of the campaign fund in accordance with N.J.A.C. 19:25-16.33, post-election payment of expenses, and N.J.A.C. 19:25-16.34, repayment of public or other funds.

(d) An outstanding obligation reported on a certificate of termination of reporting filed pursuant to (a), (b) and (c) above shall not be considered a "contribution" under the definition of N.J.A.C. 19:25-1.7.

(e) Notwithstanding (d) above, by enacting these provisions, the Commission does not waive its authority pursuant to N.J.S.A. 19:44A-6(b)10 to make a referral to the Office of the Attorney General for possible violations of N.J.S.A. 19:44A-21(a) and N.J.S.A. 19:44A-21(b), upon subsequent receipt of evidence of false certification or misrepresentation of contributions or expenditures.

ELECTION LAW ENFORCEMENT  
COMMISSION

By: \_\_\_\_\_s/\_\_\_\_\_  
FREDERICK M. HERRMANN, Ph.D.  
Executive Director