

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents.

TITLE I – FAIR ELECTION FINANCING OF SENATE ELECTION CAMPAIGNS

Subtitle A – Fair Election Financing Program

Section 101. Findings and declarations.

This section states the premises for the legislation.

Section 102. Eligibility requirements and benefits of Fair Elections financing of Senate election campaigns.

Section 102 of the bill would create a new Title V in the 1971 Federal Election Campaign Act [FECA] (2 U.S.C. 431 et seq.), consisting of thirteen sections which form the centerpiece of the bill.

The proposed new section 501 of FECA sets forth several definitions of terms used in the new Title, including “allocation from the fund,” “fair elections qualifying period,” “fair elections start date,” “fund,” “immediate family,” various “candidates” (independent, major party, minor party, non-participating, and participating), “qualifying contributions,” and “seed money contributions.”

The proposed new section 502 of FECA establishes a Senate Fair Elections Fund within the Treasury, delineates the types and sources of funds to be held by the Fund (including proceeds from spectrum auctions, amounts designated by individuals on tax returns, excess spectrum user fees, voluntary contributions, qualifying contributions, program penalties, and investment returns), specifies that the fund should invest excess fund holdings to generate additional revenue, and delineates how the Fund is to be used to make payments to participating candidates.

The proposed new section 503 of FECA specifies the general procedures, timeframes, and criteria that a candidate must meet to be eligible to receive public funds from the Senate Fair Elections Fund, including the filing of an initial statement of intent to seek certification and a subsequent affidavit declaring compliance with the requirements.

The proposed new section 504 of FECA sets forth requirements that a Senate candidate interested in receiving Fair Elections financing must meet to satisfy seed money contribution requirements, including separate accounting, compliance with limits and usage, maintenance of records, and reporting and disclosure obligations. Prior to the candidate receiving funds from the Senate Fair Elections Fund, a candidate wishing to qualify as a participating candidate may spend only “seed money.” As defined in proposed new section 501 and further provided in proposed new section 510(c) of FECA, seed money contributions are private contributions of not more than \$100 in the aggregate from an individual. A candidate may raise seed money up to the amount of the general election Fair Elections funds for which the candidate would be eligible in that state, but once a candidate chooses to participate, any seed money contributions beyond the Act’s limit (\$75,000 plus an additional \$7,500 for every congressional district over one in the state) will be deducted from the candidate’s allocation of Fair Elections funds. Seed money can be spent only on campaign-related costs such as opening an office, funding a grassroots campaign, holding community meetings, and raising qualifying contributions.

The proposed new section 505 of FECA specifies the requirements a candidate must satisfy in obtaining qualifying contributions in order to be eligible to receive Fair Elections funds, thereby effectively

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

demonstrating viability as a candidate. The section includes a formula for determining the minimum number of qualifying contributions needed, as well as requirements relating to receipt of the sums, the information that must be obtained from contributors, the deposit of qualifying contributions with the Fund, the signing of affidavits from collecting agents, and a process for verification of the amounts collected and their source. In order to be eligible for Fair Elections funds, a major party candidate must gather a number of qualifying contributions equal to 2000 plus an additional 500 for each congressional district in excess of one in the state. Minor party and independent candidates must collect 150% of the number that major party candidates must collect in order to receive the same amount of Fair Elections funds as major party candidates. Otherwise, their funding will be prorated based on past election spending, as spelled out in the new section 510(c) of FECA. A qualifying contribution is \$5, made by an individual who is a resident of the candidate's state, and is made during the qualifying period, which runs from January 1st following the previous election cycle and closes 60 days prior to the date of that election. Qualifying contributions are not funds retained or spent by the candidate for their campaign but are remitted to the Senate Fair Elections Fund by check, money order, or credit or debit card payment authorization. The Federal Election Commission will establish procedures for verification of qualifying contributions.

The proposed new section 506 of FECA describes permissible contributions and expenditures a candidate may accept (including seed money, qualifying contributions, Fair Elections funds, and broadcast vouchers) and imposes restrictions on other sources of contributions. Coordinated political party expenditures are not treated as expenditures by the candidate under this section, and contributions to the leadership PACs of participating candidates are subject to seed money restrictions. The section also sets forth exceptions to address how a candidate may qualify despite having raised, but not spent, contributions from impermissible sources, as well as a special transition rule for contributions prior to the date of enactment.

The proposed new section 507 of FECA outlines the requirement that participating candidates engage in one primary election and two general election debates with other willing candidates in advance of the election.

The proposed new section 508 of FECA specifies that the Federal Election Commission is required to determine whether to certify a candidate as eligible to participate in the Senate Fair Elections Fund, and to provide notification to the candidate no later than five days after the candidate files the affidavit (as required under proposed new FECA section 503(a)(2) declaring that all requirements have been met). The section also outlines procedures for the revocation of that certification.

The proposed new section 509 of FECA delineates the benefits to which a participating is entitled (including base funds, fair fight funds, and broadcast vouchers), provides that Fair Elections money may only be used for campaign-related costs, and specifies a maximum 45 day period after the election for remittance to the Fund of unspent sums.

The proposed new section 510 of FECA provides the timeframe for when the funds are to be made available (generally within 48 hours of certification), the methods of payment, the amounts to be provided to candidates, the formulae for determining the base allocations for primary, general, runoff, special, uncontested, and one-party-dominant-state elections, and computation provisions applicable to different types of candidates (major party, minor party, and independents). The base allocation for the general election is computed as follows: \$750,000 plus \$150,000 for each congressional district in excess of one in the state. The primary allocation equals 67% of the general election allocation, and the runoff and uncontested election allocations equal 25% of the general election allocation. Allocations for minor party

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

and independent candidates are prorated based on past electoral performance, unless they collected 150% of the number of qualifying contributions required under the new section 505 of FECA. The section outlines how candidates running in states that have a party registration differential above 15% (one-party-dominant states) can choose to take full funding in the primary rather than the general. This section also requires indexing of the basic allocation formula based on inflation, and includes an adjustment mechanism to reflect the unique costs of the media markets in each state.

The proposed new section 511 of FECA includes provisions for determining whether a participating candidate is eligible to receive additional allocations designated as “fair fight funds,” which would provide a dollar-for-dollar match, not to exceed 200% of the base allocation, in order for the candidate to remain competitive in the face of spending by or on behalf of an opponent that exceed the base allocation amount provided to the participating candidate. The section provides formulae for calculating the applicable matching funds based on the combined total of an opposing candidate’s direct spending, independent expenditures, and electioneering communications. A participating candidate’s matching funds are reduced by 25% of independent expenditures and electioneering communications made on that candidates behalf.

The proposed new section 512 of FECA provides directives to the Federal Election Commission for establishing and publishing rules and procedures for administration of the Fair Elections system.

The proposed new section 513 of FECA establishes penalties for the misuse of Fair Elections money and for expenditure by a participating candidate of money other than clean money.

Section 103. Reporting requirements nonparticipating candidates.

Section 103 requires that a nonparticipating candidate file additional funding reports with the Commission if his or her total contributions or expenditures, whichever are greater, exceed 75% of a participating candidate’s Fair Elections allocation in the same election. A nonparticipating candidate must file a report when that 75% threshold is exceeded, as well as additional reports 42, 21, and 12 days before the election. During the last 14 days before the election, additional reports must be filed by nonparticipating candidates for each contribution, expenditure, or obligation to make expenditures aggregating \$1,000 or more. After the 12th day, reports must be filed within 24 hours up until 5 P.M. on the day of the election. The reports are limited to aggregate contributions received and expenditures made; itemized reports are filed on the regular schedule under FECA. This section also provides for increased penalties for non-reporting.

Section 104. Modification of electioneering communication reporting requirement.

Section 104 requires that transcripts of electioneering communications be submitted to the Commission to aid in the determination of opposition communications against participating candidates.

Section 105. Limitation on expenditures by political party committees in elections with participating candidates.

Section 105 requires that aggregate coordinated expenditures by national and state party committees on behalf of participating candidates cannot exceed 10% of the Fair Elections allocation for which the participating candidate is eligible under the new section 510(c) of FECA.

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

Section 106. Audits

Section 106 requires that the Commission conduct random audits of at least 30% of the participating candidate campaigns to monitor program compliance.

Subtitle B – Senate Fair Elections Fund Revenues

Section 111. Deposit of proceeds from recovered spectrum auctions.

Section 111 requires that 10% of the revenues generated through the auction of unused broadcast spectrum be deposited in the Senate Fair Elections Fund.

Section 112. Designation of income tax payments.

Section 112 specifies that individuals may designate \$10 of their income tax liability to be deposited in the Senate Fair Elections Fund. [Note that this section, which mirrors the income tax check-off provision of S.436, is included as a placeholder for now.]

Section 113. Tax credit for voluntary donations to the Senate Fair Elections Fund

Section 113 specifies that individuals claim a tax credit of up to \$500 for money donated to the Senate Fair Elections Fund.

Subtitle C – Fair Elections Review Commission

Section 121. Establishment of Commission.

Section 121 establishes a Fair Elections Review Commission to review the number of qualifying contributions required, the level of funding allocations, and the overall performance of the program in an effort to keep the program relevant over time. The Commission shall report to Congress no later than March 30th following each election cycle in the form of recommended legislation.

Section 122. Structure and membership of the Commission.

Section 122 establishes that the Commission will consist of five members, the first two of which are appointed by the Senate Majority and Minority Leaders. Those two members select the remaining three. The section also defines the qualifications and term lengths for Commissioners.

Section 123. Powers of the Commission.

Section 123 specifies that the Commission may hold meetings and hearings, and can secure information from federal agencies in the course of meeting its purposes.

Section 124. Administration.

Section 124 specifies the compensation and available personnel for the Commissioners.

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

Section 125. Authorization of Appropriations.

Section 125 authorizes such sums as are necessary for the Commission to operate.

Section 126. Expedited Consideration of Commission Recommendations

Section 126 specifies how the Commission's recommendations should be considered in the Senate, such that the recommendations are taken as a whole and either passed or voted down without individual members having the ability to tweak the allocations for their own campaigning purposes. A different, competing bill could always be offered by any member as an alternative to the Commission bill. Specifically, this section requires that the legislation submitted to Congress by the Commission be introduced in the Senate within 60 days, that the Rules Committee shall hold a hearing on the legislation within 60 days of bill introduction, that the Rules Committee report out the bill within 60 days of its referral without amendment (favorably or unfavorably), that a motion to proceed to the bill be offered within 60 days of Rules Committee reporting it, that no amendments be in order, that debate be limited to 40 hours, and that a vote occur at the end of that 40 hour period. This section also provides for similar consideration in the House.

TITLE II – VOTER INFORMATION

Section 201. Broadcasts relating to candidates.

The lowest unit charge for broadcast advertising shall be guaranteed for federal party committees and candidates. A participating candidate in a contested election shall be charged 80 percent of the lowest charge described in section 315(b) of the Communications Act of 1934 (47 U.S.C. 315(b)) for purchased broadcast time during the 45 days preceding the primary and 60 days preceding the general election. This section also bars broadcaster preemption of purchased airtime and requires the FEC to conduct broadcaster compliance audits.

Section 202. Political advertisements vouchers for participating candidates.

This section amends the Communications Act of 1934 by providing participating candidates in the general election with vouchers for the purchase of broadcast time amounting to \$100,000 per candidate times the number of congressional districts in the state. Candidates may exchange broadcast vouchers for an equivalent value of cash with their national party organizations. National party organizations may use the exchanged vouchers to purchase broadcast time for generic party advertising, to support state and local candidates, and to specifically support participating federal candidates. This section establishes a Political Advertising Voucher Account from which broadcaster reimbursements will be distributed. This Account will be funded via a spectrum use fee, which the FCC shall assess and collect annually, equal to 1% of a non-public broadcasting station's gross revenues. Excess funds in this account at the end of an election cycle will be deposited in the Fair Elections Fund.

Section 203. FCC to prescribe standardized form for reporting candidate campaign ads.

This section requires the FCC to initiate rulemaking to develop a standardized form to be used by broadcasting stations for recording and reporting information on the purchase of advertising time by or on behalf of a candidate for Federal elective office.

FAIR ELECTIONS NOW ACT

SECTION-BY-SECTION ANALYSIS

Section 204. Limit on Congressional use of the franking privilege.

The section prohibits franked mass mailings for all candidates during the period that begins 90 days before the primary election date and ends on the date of the general election by a Senate candidate who holds Congressional office, unless the Member has made a public announcement that the Member will not be a candidate for any federal office that year. The section provides an exception to the prohibition for mailings that include only the notice of a public meeting, the candidate's name, and the date, time, and place of the public meeting.

TITLE III – RESPONSIBILITIES OF THE FEDERAL ELECTION COMMISSION

Section 301. Petition for certiorari.

The section allows the FEC to petition to the U.S. Supreme Court on certiorari.

Section 302. Filing by Senate candidates with Commission.

The section requires Senate candidates to file designations, statements, and reports directly with the Commission.

Section 303. Promoting expedited availability of FEC reports.

The section instructs the Commission to require the filing of reports in electronic form. The section also requires any political committee to notify the Commission and the Secretary of State, when appropriate, of any contribution received between 90 days before an election and when the polls close for such election. The notifications are to be made within 24 hours after the receipt of the contribution, and shall include the name of the candidate involved (as appropriate), the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the contribution.

TITLE IV -- MISCELLANEOUS PROVISIONS

Section 401. Severability.

The section allows for any section of the legislation to be severed if found unconstitutional without affecting the remainder of the Act.

Section 402. Review of constitutional issues.

The section allows for an appeal directly to the U.S. Supreme Court for any final judgment, decree, or order issued by any court ruling on the constitutionality of any provision of or amendment made by the Act.

Section 403. Effective date.

The Act and the amendments made by the Act would take effect on January 1, 2008.