

HPB

298

PHIL KEISLING  
SECRETARY OF STATE  
MICHAEL GREENFIELD  
DEPUTY SECRETARY OF STATE



STATE OF OREGON  
SECRETARY OF STATE  
136 STATE CAPITOL  
SALEM, OREGON 97310-0722  
(503) 378-4139

March 27, 1991

The Honorable Fran Ulmer  
Alaska House of Representatives  
P.O. Box V  
Juneau, AK 99811-3100

Dear Rep. Ulmer:

*Fran* \_\_\_\_\_

It was great to talk with you again last week and get caught up. There's certainly a lot happening with both of us.

I appreciate your willingness to help with the regional primary issue. I'd like to expand on our earlier conversation and give you an idea of where Washington and Oregon are right now.

I met with Washington Secretary of State Ralph Munro earlier this month to discuss the issue, and here's what each of us brought to the table. By current statute, Oregon's presidential primary falls on the third Tuesday in May. But in 1987, we passed a law which states that Oregon will hold a presidential primary election on the fourth Tuesday in March if three of five states -- Alaska, Washington, Idaho, Montana and Wyoming -- do so as well.

Washington's statutory primary date is the fourth Tuesday in May. But, under existing law, the Secretary of State has statutory authority to unilaterally move the primary date to advance the concept of a regional primary.

Secretary Munro came to Salem to encourage Oregon to move to a March date, but faced with budgetary restraints and legislative resistance to changing current Oregon law, I told him that a move to March is unlikely. Instead, we discussed Washington joining Oregon on the third Tuesday in May. Secretary Munro likes this idea and apparently has received a lot of editorial support for this.

— *State of Oregon* —

Page 2

But Secretary Munro faces a challenge. House Bill 2089, which has recently passed the Washington House, moves Washington's primary to the fourth Tuesday in March and removes the secretary of state's statutory authority to move the primary date to advance the concept of a regional primary. (An amendment to HB 2089 which would have preserved the secretary's authority to move the date was defeated.)

House Bill 2089 has moved to the Washington Senate but has not yet been scheduled for a hearing. Secretary Munro's Office tells me that if a hearing is not scheduled by April 5, then the bill is likely dead this session. I have offered to help Secretary Munro however I can over the next week to defeat HB 2089 so that we can continue on the road to a May 19, 1992 primary.

As for Alaska's possible role, it seems that having a presidential primary or caucus on whatever date Oregon and Washington can agree to would maximize the possibility of attracting candidates to your state. Obviously, nothing is certain -- they may avoid us anyway, even if all three of us converge on a single date -- but it seems like it's worth a shot.

I hope this helps. I'll be in touch soon to discuss how we can move closer to a truly regional presidential primary.

Best,

A handwritten signature in cursive script that reads "Phil Keisling".

Phil Keisling

PK/tj

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

MEMORANDUM

March 29, 1991

**SUBJECT:** Presidential primary bill (W.O. 7LS1138)  
**TO:** Representative Fran Ulmer  
**FROM:** John B. Gaguine *JBG*  
Legislative Counsel

Enclosed is a draft bill establishing a presidential primary election in Alaska. It is based on the repealed presidential primary bill, ch. 20, SLA 1980 (a copy of which I previously sent to you), with some major changes.

The first major change is that the lieutenant governor will no longer choose who is a recognized candidate. Instead the lieutenant governor will list all candidates who have filed for matching funds under the federal Presidential Primary Matching Payment Account, 26 U.S.C. 9031 - 9042 (copy attached), have been certified by the Federal Election Commission, and have not withdrawn. This should leave on the ballot candidates who, because of fading support, are no longer eligible for federal funding under 26 U.S.C. 9033(c); they have not been decertified. As I read it, the federal law also applies to minor party candidates and independents, so that they will also be automatically on the ballot, assuming that they have the minimum level of support necessary to qualify for federal funding.

I deleted the provision in the old law that a candidate placed on the ballot by the lieutenant governor could have his or her name withdrawn. This may have been appropriate when the lieutenant governor could place on the ballot the name of a person only mentioned as a candidate, and not necessarily planning to run (e.g., Mario Cuomo in 1988). It does not seem appropriate for a declared candidate. Since a point of this primary, I think, is to force national candidates to pay more attention to Alaska, a withdrawal provision would be inconsistent with that goal; the major candidates, if given the option, might all withdraw, rather than either having to spend time in the state or risk a poor showing.

I retained the provisions that allow a would-be candidate's supporters to get the candidate's name on the ballot by petition, and that allow a candidate so nominated

— *Legal Opinion* —

Representative Fran Ulmer  
March 29, 1991  
Page 2

to withdraw (since that person may be a genuine non-candidate). I reduced the number of signatures necessary to one percent of the number of votes cast in the last gubernatorial election; that number is consistent with the number necessary to get on the ballot as a statewide candidate, and the five percent figure in the old law is clearly unconstitutional under decisions of the United States and the Alaska Supreme Courts.

I also deleted the part of the old law that made the primary results binding on delegates to the national party conventions. As I explained in my earlier memorandum to you, the United States Supreme Court has ruled that a state's presidential primary election laws cannot supersede a national party's rules because of the party's First Amendment rights to freedom of association. The procedure prescribed by this bill (where all candidates appear on one ballot, and a voter registered in party A may vote for a candidate in party B) is, I believe, inconsistent with the charter of the national Democratic Party. (I do not know what the provisions of the Republican party are on this question.) Therefore the Democratic Party could not be bound. Of course, there is nothing to prevent the parties themselves from adopting a party rule making the primary results binding on party delegates.

Please let me know if I can be of further assistance.

JBG:pl  
91-222.plm

Enclosure

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

MEMORANDUM

April 30, 1991

TO: Rep. Gene Kubina, Chair  
House State Affairs Committee

FROM: Rep. Fran Ulmer

RE: HB 298 "An act establishing a presidential primary election; and providing for an effective date."

---

Thank you for scheduling a hearing for HB 298. This bill would create a presidential primary election in Alaska.

The Secretaries of State for Oregon and Washington are both working on a plan to hold an "early" Northwest Presidential Primary. They have requested that Alaska consider joining these two states in this endeavor to bring attention to Northwest issues and attract presidential candidates to our region. Hence, the purpose of this bill.

In the past, Alaska has declined to create a primary, partly because our sparse population and distance from the lower 48, keeps candidates from making Alaska a campaign stop. As a result, many Alaskan issues with tremendous national importance are not addressed. But a regional primary will help solve this problem by creating an early test for a crowded presidential field that focuses debate on issues concerning the Northwest and Alaska.

This focus will almost certainly attract more candidates to our state. It will also give Alaskans a greater opportunity to be heard on the many national issues that directly affect our lives.

Thank you for your prompt consideration of this bill.

District 4B — Juneau  
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

— Sponsor Statement —

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES



### REPRESENTATIVE FRAN ULMER

MEMORANDUM

May 2, 1991

TO: Rep. Dave Donley, Chair  
House Judiciary Committee

FROM: Rep. Fran Ulmer

RE: HB 298 " An act establishing a presidential primary election; and providing for an effective date."

---

I am requesting a hearing for HB 298 at your earliest convenience. This bill would create a presidential primary election in Alaska. In order for this to apply to the 1992 presidential primary, this bill must be passed this year.

The Secretaries of State for Oregon and Washington are both working on a plan to hold an "early" Northwest Presidential Primary. They have requested that Alaska consider joining these two states in this endeavor to bring attention to Northwest issues and attract presidential candidates to our region. Hence, the purpose of this bill.

In the past, Alaska has declined to create a primary, partly because our sparse population and distance from the lower 48, keeps candidates from making Alaska a campaign stop. As a result, many Alaskan issues with tremendous national importance are not addressed. But a regional primary will help solve this problem by creating an early test for a crowded presidential field that focuses debate on issues concerning the Northwest and Alaska.

This focus will almost certainly attract more candidates to our state. It will also give Alaskans a greater opportunity to be heard on the many national issues that directly affect our lives.

Thank you for your prompt consideration of this bill.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



Recycled Paper

## HOUSE BILL NO. 298

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES ULMER, Brown, Parnell, G.Phillips

Introduced: 4/24/91

Referred: State Affairs, Judiciary, Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act establishing a presidential primary election; and providing for an effective date."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 15.13 is amended by adding a new section to read:

4           Sec. 15.13.012. INAPPLICABILITY TO PRESIDENTIAL PRIMARY. The provisions  
5           of this chapter do not apply to a presidential primary election under AS 15.25.221 - 15.25.261.

6 \* Sec. 2. AS 15.25.010 is amended to read:

7           Sec. 15.25.010. PROVISION FOR PRIMARY ELECTION. Candidates for the elective  
8           state executive and state and national legislative offices shall be nominated in a primary election  
9           by direct vote of the people in the manner prescribed by AS 15.25.010 - 15.25.200 [THIS  
10          CHAPTER].

11 \* Sec. 3. AS 15.25 is amended by adding new sections to read:

12           ARTICLE 2. PRESIDENTIAL PRIMARY ELECTION.

13           Sec. 15.25.221. PRESIDENTIAL PRIMARY ELECTION. (a) The lieutenant governor  
14          shall call a presidential primary election on the third Tuesday in April of a year in which theMAY

1 President of the United States is elected.

2 (b) The lieutenant governor may conduct the presidential primary election on a date other  
3 than the date set in (a) of this section if the lieutenant governor sets the different date in a  
4 proclamation issued by September 1 of the year preceding the presidential election.

5 (c) The lieutenant governor shall prepare and distribute the ballot for the presidential  
6 primary election in the manner prescribed by AS 15.25.060.

7 Sec. 15.25.231. PLACEMENT OF NAMES ON THE PRESIDENTIAL PRIMARY  
8 ELECTION BALLOT. The lieutenant governor shall place on the presidential primary election  
9 ballot the name of each candidate for President of the United States who, as of the date five  
10 weeks before the election, has been certified by the Federal Election Commission under 26  
11 U.S.C. 9036(a), and has not withdrawn the candidate's candidacy.

12 Sec. 15.25.241. ACCESS TO THE PRESIDENTIAL PRIMARY ELECTION BALLOT  
13 BY PETITION. (a) The name of a person who does not qualify for placement on the ballot  
14 under AS 15.25.231 may be placed on the ballot if a petition is filed on the person's behalf that  
15 contains the signatures of a number of registered voters equal to one percent of the votes cast for  
16 governor in the most recent gubernatorial election. A petition under this subsection shall be filed  
17 with the lieutenant governor no later than seven weeks before the date of the election and must

18 (1) contain the person's full name, the name of the political party, if any, to which  
19 the person belongs, a statement that the subscribers to the petition are qualified voters, and a  
20 statement that the subscribers request that the person's name be placed on the presidential  
21 primary election ballot; and

22 (2) contain the printed name and the residence address of each subscriber to the  
23 petition next to the subscriber's signature.

24 (b) The lieutenant governor shall immediately notify a person on whose behalf a valid  
25 petition under this section has been filed of the filing, and shall advise the person that the person  
26 may withdraw the person's name from the presidential primary ballot no later than five weeks  
27 before the date of the election. A request to withdraw under this subsection must be in writing,  
28 and may be transmitted to the lieutenant governor by facsimile transmission.

29 Sec. 15.25.251. PRESIDENTIAL PRIMARY ELECTION NONBINDING. The results  
30 of the presidential primary election are not binding on the delegates selected by a political party  
31 to the national convention of that party.

1           Sec. 15.25.261. PROCEDURES FOR CONDUCT OF ELECTION. The provisions of  
2 this title regarding the conduct of a general election govern the conduct of the presidential  
3 primary election, except to the extent that the provisions of AS 15.25.221 - 15.25.261 are  
4 inconsistent with those provisions.

5 \* Sec. 4. This Act takes effect July 1, 1991.

**( ) USE COMMITTEE REPORT**

(7)

Date Referred: April 24, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 5-1-91

The STATE AFFAIRS Committee considered:

HB 298

HOUSE BILL NO. 298

PRESIDENTIAL PRIMARY ELECTION

"An Act establishing a presidential primary election; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with \_\_\_\_\_  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact Elections

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

| SIGNING DO PASS    | DP | OTHER RECOMMENDATIONS       | DNP | NR | AM |
|--------------------|----|-----------------------------|-----|----|----|
| <i>Gene Kubera</i> | -  | <i>E. Bruch</i>             |     | -  |    |
| <i>T. Morgan</i>   | -  | <del><i>T. Morgan</i></del> |     | ✓  |    |
|                    |    | <i>Tom [unclear]</i>        |     | ✓  |    |
|                    |    | <i>Phil [unclear]</i>       |     | ✓  |    |
|                    |    |                             |     |    |    |
|                    |    |                             |     |    |    |
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|                    |    |                             |     |    |    |

*Gene Kubera*  
CHAIRMAN'S SIGNATURE

**HOUSE COMMITTEE REPORT**

(7)

Date Referred: May 2, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-14-91

The JUDICIARY Committee considered:

HB 298

HOUSE BILL NO. 298

PRESIDENTIAL PRIMARY ELECTION

"An Act establishing a presidential primary election; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with CS HB 298 (Jud)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact Elections

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

| SIGNING DO PASS          | DP                                  | OTHER RECOMMENDATIONS | DNP | NR                                  | AM |
|--------------------------|-------------------------------------|-----------------------|-----|-------------------------------------|----|
| <i>Daniel Donley</i>     | <input checked="" type="checkbox"/> | <i>Terry Mastor</i>   |     | <input checked="" type="checkbox"/> |    |
| <i>Kevin Pad Parnell</i> | <input checked="" type="checkbox"/> |                       |     |                                     |    |
|                          |                                     | <i>J. Ellis</i>       |     | <input checked="" type="checkbox"/> |    |
|                          |                                     | <i>Mark Gurensky</i>  |     | <input checked="" type="checkbox"/> |    |
|                          |                                     | <i>Mark Gurensky</i>  |     | <input checked="" type="checkbox"/> |    |
|                          |                                     |                       |     |                                     |    |
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|                          |                                     |                       |     |                                     |    |
|                          |                                     |                       |     |                                     |    |

*Daniel Donley*  
CHAIRMAN'S SIGNATURE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CS HB 298

Revision Date: 5-14-91 Department Affected: Elections  
 Title: Establishing a presidential BRU: Elections  
primary  
 Component: General & Primary  
 Sponsor: Rep. Ulmer  
 Requestor: House Judiciary Comm. COMPONENT SERIAL NO. 

|   |   |   |   |
|---|---|---|---|
| 0 | 0 | 2 | 2 |
|---|---|---|---|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING              | FY 92        | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|--------------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      | 69.5         |       |       |       |       |       |
| TRAVEL                 | 60.8         |       |       |       |       |       |
| CONTRACTUAL            | 854.8        |       |       |       |       |       |
| SUPPLIES               | 8.3          |       |       |       |       |       |
| EQUIPMENT              | 0            |       |       |       |       |       |
| LAND & STRUCTURES      |              |       |       |       |       |       |
| GRANTS, CLAIMS         |              |       |       |       |       |       |
| MISCELLANEOUS          |              |       |       |       |       |       |
| <b>TOTAL OPERATING</b> | <b>993.4</b> |       |       |       |       |       |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |              |  |  |  |  |  |
|---------------|--------------|--|--|--|--|--|
| GENERAL FUND  | 993.4        |  |  |  |  |  |
| FEDERAL FUNDS |              |  |  |  |  |  |
| OTHER         |              |  |  |  |  |  |
| <b>TOTAL</b>  | <b>993.4</b> |  |  |  |  |  |

POSITIONS:

|           |    |  |  |  |  |  |
|-----------|----|--|--|--|--|--|
| FULL-TIME | 1  |  |  |  |  |  |
| PART-TIME |    |  |  |  |  |  |
| TEMPORARY | 14 |  |  |  |  |  |

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared By: Elizabeth A. Zierler, Dep. Dir. Phone: 465-4611  
 Division: Division of Elections Date: 5-14-91  
 Approved by Commissioner: D. Max Hodel, Chief of Staff  
 Agency: Office of the Governor Date: 5-14-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS  
P.O. BOX AF  
JUNEAU, ALASKA 99811-0105  
PHONE (907) 465-4611

### FISCAL NOTE ANALYSIS

The Division of Elections has analyzed the various operating expenditures for the 1990 primary election to determine what costs would be needed to run a presidential primary in 1992.

The division found that with the exception of equipment purchases, the costs for running the presidential primary should be the same. The division is mandated by statute to conduct training sessions for all election workers in all 438 precincts statewide. Additionally, this note also includes \$60,000 for ballot printing costs associated with the closed Republican primary. According to Republican Party of Alaska rules, its primary elections are to be limited to registered Republicans and nonpartisan. This would require an additional ballot for Republican presidential candidates.

The division has estimated that it would need at least 14 temporary employees to assist the regional offices with the primary. This is consistent with past primary elections.

The divisions greatest costs are associated with election worker payments, advertising, ballots, and the DataVote contract. There is no reason that these costs would be any less.

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

BILL NO. HB 298

Revision Date: \_\_\_\_\_ Department Affected: Elections

Title: Establishing a presidential BRU: Elections

primary Component: General & Primary

Sponsor: Rep. Ulmer

Requestor: House State Affairs Comm. COMPONENT SERIAL NO. 

|   |   |   |   |
|---|---|---|---|
| 0 | 0 | 2 | 2 |
|---|---|---|---|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING              | FY 92 | FY 93  | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|-------|--------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       | 350.8  | 147.6 | 385.8 | 149.1 |       |
| TRAVEL                 |       | 38.4   | 35.9  | 42.2  | 39.5  |       |
| CONTRACTUAL            |       | 866.2  | 79.4  | 953.2 | 87.3  |       |
| SUPPLIES               |       | 2.5    | 9.2   | 2.8   | 10.1  |       |
| EQUIPMENT              |       | 2.7    | 37.3  | 3.0   | 41.0  |       |
| LAND & STRUCTURES      |       |        |       |       |       |       |
| GRANTS, CLAIMS         |       |        |       |       |       |       |
| MISCELLANEOUS          |       |        |       |       |       |       |
| <b>TOTAL OPERATING</b> |       | 1260.6 | 309.4 | 1387. | 327.  |       |

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| CAPITAL |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

|         |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|
| REVENUE |  |  |  |  |  |  |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

|               |  |        |       |       |      |  |
|---------------|--|--------|-------|-------|------|--|
| GENERAL FUND  |  | 1260.6 | 309.4 | 1387. | 327. |  |
| FEDERAL FUNDS |  |        |       |       |      |  |
| OTHER         |  |        |       |       |      |  |
| <b>TOTAL</b>  |  |        |       |       |      |  |

POSITIONS:

|           |  |    |    |    |    |  |
|-----------|--|----|----|----|----|--|
| FULL-TIME |  | 1  | 1  | 1  | 1  |  |
| PART-TIME |  |    |    |    |    |  |
| TEMPORARY |  | 14 | 14 | 14 | 14 |  |

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Elizabeth Ziegler, Dep. Dir. Phone: 465-4611

Division: Division of Elections Date: 5-1-91

Approved by Commissioner: D. Max Hodel, Chief of Staff

Agency: Office of the Governor Date: 5-1-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**CHAPTER 96—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT**

- Sec.  
 9031. Short title.  
 9032. Definitions.  
 9033. Eligibility for payments.  
 9034. Entitlement of eligible candidates to payments.  
 9035. Qualified campaign expense limitations.  
 9036. Certification by Commission.  
 9037. Payments to eligible candidates.  
 9038. Examinations and audits; repayments.  
 9039. Reports to Congress; regulations.  
 9040. Participation by Commission in judicial proceedings.  
 9041. Judicial review.  
 9042. Criminal penalties.

In '74, P.L. 94-283, Sec. 305(b), substituted "limitations" for "limitation" in the title of Sec. 9031, effective 5/11/76.  
 In '74, P.L. 93-443, Sec. 408(c), substituted a new chapter 96. Prior to amendment, chapter 96 read as follows:

**"CHAPTER 96. PRESIDENTIAL ELECTION CAMPAIGN FUND ADVISORY BOARD**

**"Sec. 9021. ESTABLISHMENT OF ADVISORY BOARD.**

**"(a) Establishment of board.**

"There is hereby established an advisory board to be known as the Presidential Election Campaign Fund Advisory Board (hereinafter in this section referred to as the "Board"). It shall be the duty and function of the Board to counsel and assist the Comptroller General of the United States in the performance of the duties and functions imposed on him under the Presidential Election Campaign Fund Act.

**"(b) Composition of board.**

"The Board shall be composed of the following members:

"(1) the majority leader and minority leader of the Senate and the Speaker and minority leader of the House of Representatives, who shall serve ex officio;

"(2) two members representing each political party which is a major party (as defined in section 9002(4)), which members shall be appointed by the Comptroller General from recommendations submitted by such political party; and

"(3) three members representing the general public, which members shall be selected by the members described in paragraphs (1) and (2).

"The terms of the first members of the Board described in paragraphs (2) and (3) shall expire on the sixtieth day after the date of the first presidential election following January 1, 1973, and the terms of subsequent members described in paragraphs (2) and (3) shall begin on the sixty-first day after the date of a presidential election and expire on the sixtieth day following the date of the subsequent presidential election. The Board shall elect a Chairman from its members.

**"(c) Compensation.**

"Members of the Board (other than members described in subsection (b)(1)) shall receive compensation at the rate of \$75 a day for each day they are engaged in performing duties and functions as such members, including traveltime, and, while away from their homes or regular places of business, shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

**"(d) Status.**

"Service by an individual as a member of the Board shall not, for purposes of any other law of the United States be considered as service as an officer or employee of the United States."

**Sec. 9031. Short title.**

This chapter may be cited as the "Presidential Primary Matching Payment Account Act".

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9031, effective with respect to tax yrs. begin. after 12/31/74

**Sec. 9032. Definitions.**

For purposes of this chapter—

(1) The term "authorized committee" means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

(2) The term "candidate" means an individual who seeks nomination for election to be President of the United States. For purposes of this paragraph, an individual shall be considered to seek nomination for election if he (A) takes the action necessary under the law of a State to qualify himself for nomination for election, (B) receives contributions or incurs qualified campaign expenses, or (C) gives his consent for any other person to receive contributions or to incur qualified campaign expenses on his behalf. The term "candidate" shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States.

(3) The term "Commission" means the Federal Election Commission established by section 309(a)(1) of the Federal Election Campaign Act of 1971.

(4) Except as provided by section 9034(a), the term "contribution"—

(A) means a gift, subscription, loan, advance, or deposit of money, or anything of value, the payment of which was made on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such gift, subscription, loan, advance, or deposit of money, or anything of value, is made, for the purpose of influencing the result of a primary election,

(B) means a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose,

(C) means funds received by a political committee which are transferred to that committee from another committee, and

(D) means the payment by any person other than a candidate, or his authorized committee, of compensation for the personal services of another person which are rendered to the candidate or committee without charge, but

(E) does not include—

(i) except as provided in subparagraph (D), the value of personal services rendered to or for the benefit of a candidate by an individual who receives no compensation for rendering such service to or for the benefit of the candidate, or

(ii) payments under section 9037.

(5) The term "matching payment account" means the Presidential Primary Matching Payment Account established under section 9037(a).

(6) The term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party whose nomination a candidate seeks nominates

its candidate for the office of President of the United States, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of (A) the date such party nominates its candidate for the office of President of the United States, or (B) the last day of the last national convention held by a major party during such calendar year.

(7) The term "primary election" means an election, including a runoff election or a nominating convention or caucus held by a political party, for the selection of delegates to a national nominating convention of a political party, or for the expression of a preference for the nomination of persons for election to the office of President of the United States.

(8) The term "political committee" means any individual, committee, association, or organization (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any person for election to the office of President of the United States.

(9) The term "qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value—

(A) incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and

(B) neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

For purposes of this paragraph, an expense is incurred by a candidate or by an authorized committee if it is incurred by a person specifically authorized in writing by the candidate or committee, as the case may be, to incur such expense on behalf of the candidate or the committee.

(10) The term "State" means each State of the United States and the District of Columbia.

In '76, P.L. 94-283, Sec. 306(b)(1), added a sentence to the end of para. (2), effective 5/11/76. The new sentence read as follows: "The term 'candidate' shall not include any individual who is not actively conducting campaigns in more than one State in connection with seeking nomination for election to be President of the United States."

—P.L. 94-283, Sec. 115(c)(2), substituted "306(a)(1)" for "310(a)(1)" in para. (3), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9032, effective with respect to tax yrs. begin. after 12/31/74.

#### Sec. 9033. Eligibility for payments.

##### (a) Conditions.

To be eligible to receive payments under section 9037, a candidate shall, in writing—

(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,

(2) agree to keep and furnish to the Commission any records, books, and other information it may request, and

(3) agree to an audit and examination by the Commission under section 9038 and to pay any amounts required to be paid under such section.

##### (b) Expense limitation; declaration of intent; minimum contributions.

To be eligible to receive payments under section 9037, a candidate shall certify to the Commission that—

(1) the candidate and his authorized committees will

not incur qualified campaign expenses in excess of the limitations on such expenses under section 9035,

(2) the candidate is seeking nomination by a political party for election to the office of President of the United States,

(3) the candidate has received matching contributions which in the aggregate, exceed \$5,000 in contributions from residents of each of at least 20 States, and

(4) the aggregate of contributions certified with respect to any person under paragraph (3) does not exceed \$250.

##### (c) Termination of payments.

(1) General rule. Except as provided by paragraph (2), no payment shall be made to any individual under section 9037—

(A) if such individual ceases to be a candidate as a result of the operation of the last sentence of section 9032(2); or

(B) more than 30 days after the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of votes cast for all candidates of the same party for the same office in such primary election, if such individual permitted or authorized the appearance of his name on the ballot, unless such individual certifies to the Commission that he will not be an active candidate in the primary involved.

(2) Qualified campaign expenses; payments to secretary. Any candidate who is ineligible under paragraph (1) to receive any payments under section 9037 shall be eligible to continue to receive payments under section 9037 to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible under paragraph (1).

(3) Calculation of voting percentage. For purposes of paragraph (1)(B), if the primary elections involved are held in more than one State on the same date, a candidate shall be treated as receiving that percentage of the votes on such date which he received in the primary election conducted on such date in which he received the greatest percentage vote.

##### (4) Reestablishment of eligibility.

(A) In any case in which an individual is ineligible to receive payments under section 9037 as a result of the operation of paragraph (1)(A), the Commission may subsequently determine that such individual is a candidate upon a finding that such individual is actively seeking election to the office of President of the United States in more than one State. The Commission shall make such determination without requiring such individual to reestablish his eligibility to receive payments under subsection (a).

(B) Notwithstanding the provisions of paragraph (1)(B), a candidate whose payments have been terminated under paragraph (1)(B) may again receive payments (including amounts he would have received but for paragraph (1)(B)) if he receives 20 percent or more of the total number of votes cast for candidates of the same party in a primary election held after the date on which the election was held which was the basis for terminating payments to him.

In '76, P.L. 94-283, Sec. 305(c), substituted "limitations" for "limitation" in para. (b)(1), effective 5/11/76.

—P.L. 94-283, Sec. 306(b)(2), added new subsec. (c), effective 5/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9033, effective with respect to tax yrs. begin. after 12/31/74.

**Sec. 9034. Entitlement of eligible candidates to payments.**

**(a) In general.**

Every candidate who is eligible to receive payments under section 9033 is entitled to payments under section 9037 in an amount equal to the amount of each contribution received by such candidate on or after the beginning of the calendar year immediately preceding the calendar year of the presidential election with respect to which such candidate is seeking nomination, or by his authorized committees, disregarding any amount of contributions from any person to the extent that the total of the amounts contributed by such person on or after the beginning of such preceding calendar year exceeds \$250. For purposes of this subsection and section 9033(b), the term "contribution" means a gift of money made by a written instrument which identifies the person making the contribution by full name and mailing address, but does not include a subscription, loan, advance, or deposit of money, or anything of value or anything described in subparagraph (B), (C), or (D) of section 9032(4).

**(b) Limitations.**

The total amount of payments to which a candidate is entitled under subsection (a) shall not exceed 50 percent of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971.

In '74, P.L. 94-283, Sec. 307(b), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code," (sic) in subsec. (b), effective 3/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9034, effective with respect to tax yrs. begin. after 12/31/74.

**Sec. 9035. Qualified campaign expense limitations.**

**(a) Expenditure limitations.**

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 320(b)(1)(A) of the Federal Election Campaign Act of 1971, and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000.

**(b) Definition of immediate family.**

For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

In '76, P.L. 94-283, Sec. 305(a), substituted "limitations" for "limitation" in the title of Sec. 9035 . . . added "(a) Expenditure limitations." before "No candidate" to designate subsec. (a) . . . added ", and no candidate shall knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election to the office of President in excess of, in the aggregate, \$50,000" after "State Code" in subsec. (a) . . . added new subsec. (b), enacted 3/11/76. Sec. 305(d) of the Act provides: "For purposes of applying section 9035(a) of the Internal Revenue Code of 1954, as amended by subsection (a), expenditures made by an individual after January 29, 1974, and before the date of the enactment of this Act [3/11/76] shall not be taken into account."

—P.L. 94-283, Sec. 307(c), substituted "section 320(b)(1)(A) of the Federal Election Campaign Act of 1971" for "section 608(c)(1)(A) of title 18, United States Code" in subsec. (b), effective 3/11/76.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9035, effective with respect to tax yrs. begin. after 12/31/74.

**Sec. 9036. Certification by Commission.**

**(a) Initial certifications.**

Not later than 10 days after a candidate establishes his eligibility under section 9033 to receive payments under section 9037, the Commission shall certify to the Secretary for payment to such candidate under section 9037 payment in full of amounts to which such candidate is entitled under section 9034. The Commission shall make such additional certifications as may be necessary to permit candidates to receive payments for contributions under section 9037.

**(b) Finality of determinations.**

Initial certifications by the Commission under subsection (a), and all determinations made by it under this chapter, are final and conclusive, except to the extent that they are subject to examination and audit by the Commission under section 9038 and judicial review under section 9041.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9036, effective with respect to tax yrs. begin. after 12/31/74.

**Sec. 9037. Payments to eligible candidates.**

**(a) Establishment of account.**

The Secretary shall maintain in the Presidential Election Campaign Fund established by section 9006(a), in addition to any account which he maintains under such section, a separate account to be known as the Presidential Primary Matching Payment Account. The Secretary shall deposit into the matching payment account, for use by the candidate of any political party who is eligible to receive payments under section 9033, the amount available after the Secretary determines that amounts for payments under section 9006(c) and for payments under section 9008(b)(3) are available for such payments.

**(b) Payments from the matching payment account.**

Upon receipt of a certification from the Commission under section 9036, but not before the beginning of the matching payment period, the Secretary shall promptly transfer the amount certified by the Commission from the matching payment account to the candidate. In making such transfers to candidates of the same political party, the Secretary shall seek to achieve an equitable distribution of funds available under subsection (a), and the Secretary shall take into account, in seeking to achieve an equitable distribution, the sequence in which such certifications are received.

In '76, P.L. 94-433, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9037, effective with respect to tax yrs. begin. after 12/31/74.

**Sec. 9038. Examinations and audits; repayments.**

**(a) Examinations and audits.**

After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037.

**(b) Repayments.**

(1) If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candi-

date, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

(2) If the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than—

(A) to defray the qualified campaign expenses with respect to which such payment was made, or

(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses,

it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

(3) Amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

(c) Notification.

No notification shall be made by the Commission under subsection (b) with respect to a matching payment period more than 3 years after the end of such period.

(d) Deposit of repayments.

All payments received by the Secretary under subsection (b) shall be deposited by him in the matching payment account.

In '76, P.L. 94-455, Sec. 1906(b)(1)(A), substituted "Secretary" for "Secretary or his delegate" in paras. (b)(1) and (2), and subsec. (d), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(c), added Code Sec. 9038, effective with respect to tax. yrs. begin after 12/31/74.

Sec. 9039. Reports to Congress; regulations.

(a) Reports.

The Commission shall, as soon as practicable after each matching payment period, submit a full report to the Senate and House of Representatives setting forth—

(1) the qualified campaign expenses (shown in such detail as the Commission determines necessary) incurred by the candidates of each political party and their authorized committees,

(2) the amounts certified by it under section 9036 for payment to each eligible candidate, and

(3) the amount of payments, if any, required from candidates under section 9038, and the reasons for each payment required.

Each report submitted pursuant to this section shall be printed as a Senate document.

(b) Regulations, etc.

The Commission is authorized to prescribe rules and regulations in accordance with the provisions of subsection (c), to conduct examinations and audits (in addition to the examinations and audits required by section 9038(a)), to conduct investigations, and to require the keeping and submission of any books, records, and information, which it determines to be necessary to carry out its responsibilities under this chapter.

(c) Review of regulations.

(1) The Commission, before prescribing any rule or regulation under subsection (b), shall transmit a statement with respect to such rule or regulation to the Senate and to the House of Representatives, in accordance with the provisions of this subsection. Such statement shall set forth the proposed rule or regulation and shall contain a detailed explanation and justification of such rule or regulation.

(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. Whenever a committee of the House of Representatives reports any resolution relating to any such rule or regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph.

(3) For purposes of this subsection, the term "legislative days" does not include any calendar day on which both Houses of the Congress are not in session.

(4) For purposes of this subsection, the term "rule or regulation" means a provision or series of interrelated provisions stating a single separable rule of law.

In '76, P.L. 94-283, 304(b), added three new sentences at the end of the first sentence in para. (c)(2) . . . added new para. (c)(4), effective 5/11/76. Prior to amendment, para. (c)(2) read as follows:

"(2) If either such House does not, through appropriate action, disapprove the proposed rule or regulation set forth in such statement no later than 30 legislative days after receipt of such statement, then the Commission may prescribe such rule or regulation. The Commission may not prescribe any rule or regulation which is disapproved by either such House under this paragraph."

In '74, P.L. 93-443, Sec. 404(c), added Code Sec. 9039, effective with respect to tax. yrs. begin after 12/31/74.

Sec. 9040. Participation by commission in judicial proceedings.

(a) Appearance by counsel.

The Commission is authorized to appear in and defend against any action instituted under this section, either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

(b) Recovery of certain payments.

The Commission is authorized, through attorneys and counsel described in subsection (a), to institute actions in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary as a result of an examination and audit made pursuant to section 9038.

(c) Injunctive relief.

The Commission is authorized, through attorneys and counsel described in subsection (a), to petition the courts of the United States for such injunctive relief as is appropriate to implement any provision of this chapter.

(d) Appeal.

The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.

In '74, P.L. 93-455, Sec. 1906(b)(1)(X)(A), substituted "Secretary" for "Secretary or his delegate" in subsec. (b), effective 2/1/77.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9040, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9041. Judicial review.

(a) Review of agency action by the Commission.

Any agency action by the Commission made under the provisions of this chapter shall be subject to review by the United States Court of Appeals for the District of Columbia Circuit upon petition filed in such court within 30 days after the agency action by the Commission for which review is sought.

(b) Review procedures.

The provisions of chapter 7 of title 5, United States Code, apply to judicial review of any agency action, as defined in section 551(13) of title 5, United States Code, by the Commission.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9041, effective with respect to tax. yrs. begin. after 12/31/74.

Sec. 9042. Criminal penalties.

(a) Excess campaign expenses.

Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

(b) Unlawful use of payments.

(1) It is unlawful for any person who receives any payment under section 9037, or to whom any portion of any such payment is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purpose other than—

- (A) to defray qualified campaign expenses, or
- (B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(c) False statements, etc.

(1) It is unlawful for any person knowingly and willfully—

- (A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Commission under this chapter, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Commission or an examination and audit by the Commission under this chapter, or
- (B) to fail to furnish to the Commission any records,

books, or information requested by it for purposes of this chapter.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(d) Kickbacks and illegal payments.

(1) It is unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate, or his authorized committees, who receives payments under section 9037.

(2) Any person who violates the provisions of paragraph (1) shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both.

(3) In addition to the penalty provided by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary for deposit in the matching payment account, an amount equal to 125 percent of the kickback or payment received.

In '74, P.L. 93-443, Sec. 408(e), added Code Sec. 9042, effective with respect to tax. yrs. begin. after 12/31/74.

Subtitle I—Trust Fund Code

Chapter

98. Trust fund code.

CHAPTER 98—TRUST FUND CODE

Subchapter

- A. Establishment of Trust Funds.
- B. General provisions.

Subchapter A—Establishment of Trust Funds

Sec.

- 9501. Black Lung Disability Trust Fund.
- 9502. Airport and Airway Trust Fund.
- 9503. Highway Trust Fund.
- 9504. Aquatic Resources Trust Fund.
- 9505. Harbor Maintenance Trust Fund.
- 9506. Inland Waterways Trust Fund.
- 9507. Hazardous Substance Superfund.
- 9508. Leaking Underground Storage Tank Trust Fund.
- 9509. Oil Spill Liability Trust Fund.
- 9510. Vaccine Injury Compensation Trust Fund.

In '77, P.L. 100-203, Sec. 9202(b), added item 9510.

In '76, P.L. 99-662, Sec. 1403(e), added item 9503 . . . Sec. 1403(c), added item 9506.

—P.L. 97-509, Sec. 8033(c), added item 9509.

—P.L. 99-499, Sec. 317(d), added item 9507 . . . Sec. 322(b), added item 9508.

In '84, P.L. 98-169, Sec. 1016(d), added item 9504.

In '83, P.L. 97-448, Sec. 531(d), added item 9503.

In '82, P.L. 97-248, Sec. 281(c)(1), amended item 9501 and added item 9502. Prior to amendment item 9501 read as follows:

"9501. Establishment of Black Lung Disability Trust Fund."

Sec. 9501. Black Lung Disability Trust Fund.

(a) Creation of trust fund.

(1) In general. There is established in the Treasury of